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Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 832)

Supreme Court of the United States

OCTOBER TERM, 1950

No. 352

THE TIMKEN ROLLER BEARING COMPANY,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

FILED OCTOBER 11, 1950.

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VOL. I

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92—Statement of Grounds	5014	1997
93—Letter, September 25, 1925, Skerrett to Carr	5016	1999
94—Letter, October 9, 1925, Carr to Skerrett	5017	2000
95—Letter, October 7, 1925, Skerrett to Carr	5018	2001

	Original	Print
Record from U. S. D. C., Northern District of Ohio—Continued		
Defendant's exhibits—Continued		
96—Letter, January 9, 1926, Carr to Skerrett	5019	2001
97—Letter, January 9, 1926, Carr to defendant	5020	2002
98—Letter, February 2, 1926, Stibbard to defendant	5021	2003
99—Joint opinion, attached to Ex. 98	5024	2005
100—Letter, January 12, 1927, Carr to defendant	5027	2008
101—Letter, February 2, 1927, defendant to Carr	5029	2009
102—Telegram, April 1, 1927, Strough to Carr	5030	2010
103—Telegram, April 2, 1927, Carr to Strough	5031	2011
104—Letter, April 2, 1927, Carr to defendant	5032	2011
105—Letter, April —, 1927, defendant to Ely	5035	2013
106—Cable, April 5, 1927, defendant to Stibbard	5037	2015
107—Letter, April 6, 1927, Stibbard to defendant	5038	2015
109—Letter, February 6, 1928, Dallow to Hess and attachment	5039	2016
110—Letter, February 20, 1928, Hess to Dallow	5042	2019
111—Letter, September 3, 1929, Hess to Dallow	5043	2019
112—Letter, March 29, 1928, Hobley to Hess and attachments	5044	2020
113—Letter, October 8, 1929, British Timken to Hess	5050	2025
114—Letter, May 27, 1930, Hess to Dallow and attachments	5055	2030
115—Letter, September 11, 1931, Hess to Dallow	5059	2034
116—Letter, October 20, 1931, Dewar to Hess	5060	2034
117—Letter, November 6, 1931, Hess to Dewar	5062	2036
118—Letter, November 25, 1931, Hess to Dewar	5064	2038
119—Letter, November 27, 1931, Hess to Dewar	5065	2039
120—Letter, April 14, 1930, British Timken to Hess and enclosures	5067	2041
121—Weekly Report, British Timken, March 17, 1928	5075	2048
122—Letter, December 2, 1938, British Timken to W. R. Timken and enclosures	5076	2049
123—Letter, August 6, 1930, Hess to Dallow	5079	2050
124—Letter, August 15, 1930, Dallow to Hess	5080	2051
125—Letter, October 1, 1930, British Timken to Hess and enclosure	5081	2051
126—Withdrawn		
127—Letter, August 19, 1932 from Hess Timken, etc.	5084	2053
128—Report on Foreign Subsidiaries by Hess	5085	2054
129—Hess's report on visit to Timken	5102	2077
130—Hess's reports re first half of 1932, British		
131—Report by Hess dated May 31, 1935	5114	2084
132—Cable, May 31, 1935, Duncan to Hess	5116	2090
133—Cable, May 31, 1935, Hess to Duncan Timken	5117	2092
	5109	2092

Record from U. S. D. C., Northern District of Ohio—Continued

	Original	Print
Defendant's exhibits—Continued		
134—Cable, May 31, 1935, Duncan to Hess	5118	2093
135—Cable, May 31, 1935, Hess to Duncan	5119	2093
136—Letter, Feb. 18, 1930, Seward to Hess	5120	2094
137—Cable, March 4, 1930, Hess to Seward	5121	2094
138—Cable, March 5, 1930, Seward to Hess	5122	2095
139—Letter, December 16, 1929, Seward to Timken R. B. Co. and enclosures	5123	2095
140—Letter, May 30, 1930, French Timken to T.R.B. Co. and enclosure	5127	2097
141—Memo., "Date Rec'd from British Timken"	5138	2104
142—Letter, December 2, 1930, T.R.B. Co. to British Timken	5141	2106
143—Letter, January 9, 1931, British Timken to Hess	5142	2107
144—Letter, June 26, 1931, American Timken to French Timken	5143	2108
145—Letter, August 24, 1931, TRB Co. to Mr. Dallow and enclosure	5144	2109
146—Letter, January 5, 1931, Seward to T.R.B. Co. and enclosure	5146	2111
147—Letter, July 7, 1931, Seward to T.R.B. Co.	5157	2119
148—Letter, July 18, 1933, French Timken to T.R.B. Co. and enclosure	5158	2120
149—Letter, July 1, 1933, French Timken to T.R.B. Co. and enclosure	5161	2123
150—Summary re employees, French Timken, December, 1933	5162	2124
151—Letter, October 6, 1927, T.R.B. Co. to British Timken	5165	2127
152—Letter, January 4, 1933, T.R.B. Co. to Dewar	5166	2127
153—Letter, November 28, 1932, Dewar to Hess	5167	2128
154—Letter, March 21, 1933, Dewar to Hess	5168	2128
155—Letter, April 6, 1933, T.R.B. Co. to Dewar	5169	2129
156—Letter, April 20, 1933, Dewar to Hess	5170	2130
157—Collection of material re bearing applications for South Australia Railway	Physical	
158—List of blueprints furnished to British Timken from 1928	Physical	
159—Photostats, blueprints, etc.	Physical	
160—Blueprints and data	Physical	
161—Blueprints and data	Physical	
162—List of machine tools	5171	2131
162A—List of machine tools	5175	2134
162B—List of machine tools	5178	2135
163—Industrial Engineering Department report	5184	2141
163A—Industrial Engineering Department report	5189	2146
164—Tabulation of work for British Timken	5196	2153
165—Engineering journals	Physical	

	Original	Print
Record from U. S. D. C., Northern District of Ohio—Continued		
Defendant's exhibits—Continued		
166—Blueprints and data	Physical	
167—Sloan report, European trip, 1929	5202	2158
168—Sloan report, French Timken trip, 1930	5216	2172
169—Copies of reports (Shuler)	5230	2185
170—Timken engineering journal (German)	Physical	
171—Sumary table re clearing and payments agreements	5270	2213
172—Charts from Department of Commerce Bulletin	5271	2214
173—October '34 report of U. S. Tariff Commission	5280	2223
174—Document of U. S. Tariff Commission "Regulation of Imports by Executive Action", etc.	5294	2237
175—Compilation re international trade in anti-friction bearings in 1934 and 1938	5296	2238
176—Table re value of U. S. exports of bearings	5310	2256
177—Table re imports to U. S. of bearings	5311	2256
178—Table re value of production of ball and roller bearings in U. S.	5312	2257
179—Sheet of United Kingdom production for 1924 and 1930, and sheet of Swedish Production for 1930-31-32	5313	2257
180—Tariff schedules showing rates in 1947	5315	2259
181—Reprint from Foreign Commerce weekly re import license and exchange control regulations on principal foreign countries	5337	2281
182—Schedule of import duties of the U. S., June, 1946	5339	2283
183—Excerpts from U. S. Tariff Commission study re bearings	5342	2287
184—Tariff Commission report on metals manufacturers	5346	2291
185—Tabulation of bearing sizes	5351	2296
186—TRB investments in British, French and German Timken	5353	2298
187—Tabulation of dividends	5356	2301
188—Advertising material	5357	2302
189—Agreement between Timken & Electric Ordnance Co., Ltd.	5360	2305
190—Agreement between Timken & Electric Ordnance Co., Ltd.	5383	2322
191—Agreement, April 6, 1920, between Timken and Wolseley	5400	2338
192—Agreement, April 6, 1920, between Timken and Wolseley	5406	2343
193—Agreement, January 11, 1925, Timken and British Timken (omitted—Identical with defendant's exhibit 88)		

	Original	Print
Record from U. S. D. C., Northern District of Ohio—Continued		
Defendant's exhibits—Continued		
194—Agreement, December 31, 1924, Timken and British Timken	5417	2347
195—Memo., Timken and British Timken	5423	2350
196—Agreement, January 1, 1928, Timken and British Timken	5426	2352
197—Agreement, March 13, 1928, TRB-British Timken-Dewar	5430	2354
198—British Timken resolutions, April 20, 1928	5432	2356
199—Articles of Ass'n British Timken	5437	2359
200—Agreement, April 20, 1928, TRB-Dewar	5480	2394
201—Agreement, April 20, 1928, TRB-British Timken-Dewar	5485	2397
202—Letter, May 1, 1928, Dewar to Strough	5489	2399
203—Letter, May 16, 1928, Strough to Dewar	5494	2403
204—Letter, Stibbard Gibson to TRB, June 4, 1928	5495	2403
205—Letter, June, 1928, to Marschal, Sanz & Ainsworth	5497	2404
206—Articles of Incorporation—French Timken	5510	2412
207—Cable, Porter to Timken, March 11, 1929	5540	2450
208—Cable, Strough to Porter, March 12, 1929	5541	2451
209—Cable, Strough to Porter, March 14, 1929	5542	2451
210—Cable, Porter to Timken, March 18, 1929	5543	2451
211—Cable, Strough to Porter, March 18, 1929	5544	2452
212—Cable, Porter to Timken, March 19, 1929	5545	2452
213—Cable, Lothrop to Porter, March 24, 1929	5546	2453
214—Cable, Porter to Timken, March 25, 1929	5547	2453
215—Letter, March 29, 1929, TRB to Nat'l City Bank	5548	2454
216—Cable, April 23, 1929, Strough to Dewar	5549	2454
217—Cable, April 24, 1929, Dewar to Strough	5550	2455
218—Cable, April 27, 1929, Strough to Dewar	5551	2455
219—Cable, May 1, 1929, Dewar to Strough	5552	2456
220—Cable, May 3, 1929, Strough to Dewar	5553	2457
221—Letter, May 28, 1929, Dewar to TRB	5554	2457
222—Letter agreement, June 7, 1929, Dewar-TRB	5557	2459
223—Letter agreement, June 7, 1929, Dewar-TRB	5559	2460
224—Agreement, November 8, 1929, Dewar-TRB	5562	2462
225—Agreement, November 8, 1929, Dewar-TRB	5568	2465
226—Letter agreement, November 9, 1929	5580	2474
227—Letter, November 11, 1929, TRB-Bankers Trust	5582	2476
228—Folder of agreements	5593	2483
229—Net Sales of TRB and subsidiaries	5667	2544
230—List of royalties	5668	2545
231—Cable, June 26, 1936, Dewar to Timken	5669	2547
232—Letter, June 29, 1936, Timken to Dewar	5670	2547
233—Letter, June 30, 1936, Dewar to Timken	5671	2548
234—Letter, July 15, 1936, Dewar to Timken	5674	2551
235—Letter, July 31, 1936, Timken to Dewar	5677	2553

	Original	Print
Record from U. S. D. C., Northern District of Ohio—Continued		
Defendant's exhibits—Continued		
236—Folder of correspondence, TRB-Wolseley Motors	5678	2554
237—Pleadings, opinion, findings and conclusions, and judgment in case of Detachable Bit Co. vs. Timken Roller Bearing Co.	5733	2607
238—Tabulation of employees and production	5791	2655
239—Contract, TRB, M.B.U. Dewar-Timken Holdings	5792	2656
240—Contract, TRB-Dewar	5798	2659
241—Picture of Timken Roller Bearing	Physical	
242—Letter, March 10, 1924, Wolseley to Ely	5803	2662
243—Letter, March 25, 1924, TRB to British Timken	5808	2668
244—Cable, May 15, 1924, Stibbard to Timken	5809	2669
245—Cable, May 16, 1924, Timken to Stibbard	5810	2670
246—Cable, June 2, 1924, Sibbard to Timken	5811	2670
247—Letter, June 19, 1924, Stibbard to Timken	5812	2671
248—Department of Commerce regulation	5813	2672
249—Investment sheet, TRB-Dewar-French Timken	5815	2672
250—Cable, Day to Augis	5816	2673
251—Cable, April 26, 1948, Murray to Day	5817	2673
Government's decree exhibits:		
1—Letter, March 23, 1949, Timken to Duncan, and attachments	5818	2673
2—Agreement, March 22, 1948, Timken-Dewar-Timken Holdings	5822	2677
3—Agreement, March 22, 1948, Timken & Dewar	5828	2680
4—Agreement, September 7, 1935, Timken & Dewar	5833	2683
5—Agreement, June 5, 1943, Timken & Dewar	5838	2686
6—Agreement, June 5, 1943, Timken-Dewar-Timken Holdings	5843	2689
7—Memo. & Articles of Associates of Timken Holdings	5853	2697
8—Sec. 28 of Trademarks Act, 1938, etc.	5898	2741
Defendant's decree exhibits:		
"A"—Catalog published by Detroit	Physical	
"B"—Catalog published by St. Paul	Physical	
"C"—Exports tabulation	5916	2756
"D"—Memo. of London Conference, October 12, 1949	5917	2757
Clerk's certificate	5925	2762

[fol. 1] [File Endorsement Omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

Civil Action No. 24214

UNITED STATES OF AMERICA, Plaintiff,

v.

THE TIMKEN ROLLER BEARING COMPANY, Defendant

COMPLAINT—Filed July 31, 1946

To the Honorable, the Judges of the District Court of the United States for the Northern District of Ohio.

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendant and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted against the defendant under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Antitrust Act, in order to prevent and restrain continuing violations by defendant, as hereinafter alleged, of Sections 1 and 3 of the Sherman Antitrust Act.

2. Defendant The Timken Roller Bearing Company is incorporated under the laws of the State of Ohio and is an inhabitant of the Northern District of Ohio. It maintains offices and transacts business within the Eastern Division of the Northern District of Ohio.

[fol. 2] II

The Defendant

3. The Timken Roller Bearing Company, hereinafter referred to as "Timken", a corporation organized under

the laws of the State of Ohio and having its principal offices and place of business in Canton, Ohio, is named a defendant herein. It is engaged in the manufacture of tapered roller bearings at plants located in Canton, Gambrinus and Columbus, Ohio.

III

Co-Conspirators

4. British Timken, Limited, hereinafter referred to as "Limited", a joint stock company organized and existing under the laws of the United Kingdom, with its head office and principal place of business at Birmingham, England, is not named as a defendant but is named as co-conspirator herein. Limited is engaged in the manufacture and sale of ball bearings and straight and tapered roller bearings. Defendant Timken owns 29% of the capital stock of Limited.

5. Societe Anonyme Francaise Timken, hereinafter referred to as "Francaise", a corporation organized and existing under the laws of France, with its head office and principal place of business at Asnieres, France, is not named as a defendant but is named as co-conspirator herein. Francaise is engaged in the manufacture and sale of tapered roller bearings. Defendant Timken owns 50% of the capital stock of Francaise.

IV

The Nature of Trade and Commerce Involved

6. Antifriction bearings are rotating devices for reducing friction between moving mechanical parts. Their usual employment is between a shaft and rotating body, such as an automobile axle and wheel. Balls or rollers are inserted between containers called "races" which are, in turn, affixed to the moving parts. Rollers vary in shape from straight or tapered cylinders to configurations resembling spools and barrels.

[fol. 3] 7. Ball bearings are generally utilized where high speeds and light loads are required; roller bearings, where a heavy load must be supported; tapered roller bearings, where both a heavy load and side thrust are encountered, as on truck wheels and axles. Otherwise, all types may be used interchangeably.

8. The anti-friction bearing is distinguished from the plain bearing in that the plain bearing employs no rolling

objects but depends upon lubrication alone. The anti-friction bearing has much greater load-carrying ability, endurance, and freedom from friction.

9. Whenever the term "anti-friction bearings" is employed in this complaint, it will include ball bearings, and straight and tapered roller bearings, and accessories for, and parts of such bearings.

10. Anti-friction bearings are a necessity in the functioning of a modern industrial economy. Aircraft, trucks, automobiles, railroad cars and locomotives, gun mounts, machine tools, rolling mills, mining machinery, power generating and transmission equipment, household appliances and other machinery and engines of all types, require and utilize tapered roller bearings and other types of anti-friction bearings. They are currently in great demand, both in the United States and for shipment abroad in connection with the postwar reconversion and expansion of industry and the rehabilitation of war areas.

11. Defendant Timken is now and for many years has been the largest manufacturer of tapered roller bearings in the world. In 1944 Timken produced approximately eighty per cent of all the tapered roller bearings manufactured in the United States, and its gross sales of bearings amounted to approximately $75,000,000.

12. Bearings manufactured by Timken are shipped from its plants in Ohio to customers located in other States and Territories of the United States and, subject to limitations hereinafter alleged, in certain foreign countries. Timken transacts business in Canada through its wholly-owned subsidiary, Canadian Timken, Limited, and in South [fol. 4] America through its wholly-owned subsidiary, S. A. Timken Roller Bearing Company of South America.

13. Timken sells the bearings manufactured by it directly to manufacturers of automobiles, railroad equipment, machine tools, machinery, and other products containing bearings. It also sells large quantities of bearings to distributors for resale to bus and truck owners, garages, repair shops, factories, and others for replacement of worn-out or damaged bearings in vehicles and machinery. Such bearings are known as "service" or "replacement" bearings.

14. The co-conspirators Limited and Francaise have been, since 1928, the principal manufacturers of tapered roller bearings in Great Britain and France, respectively. Limited

and Francaise export their products to various countries throughout the world. Since 1933, Limited has also manufactured and sold ball bearings and straight roller bearings.

V

Background of the Conspiracy

15. On June 16, 1909, defendant Timken entered into an agreement with the Electric and Ordnance Accessories Company, Ltd. of England, granting the latter an exclusive license to manufacture and sell roller bearings in the United Kingdom under certain letters patent. Timken agreed not to manufacture or sell any roller bearings in the United Kingdom or sell to others for shipment into the United Kingdom except as parts of complete automobiles, assembled and manufactured in the United States. Electric and Ordnance Accessories Company, Ltd., agreed not to sell any roller bearings directly or to others for shipment outside the United Kingdom, except as parts of complete automobiles manufactured in the United Kingdom.

16. On July 16, 1909, Timken entered into a second agreement with Electric and Ordnance Accessories Company, Ltd., whereby the latter received an exclusive "license" to manufacture and sell roller bearings of all kinds in Europe and the British Empire (except Canada), whether patents [fol. 5] were secured in such countries or not. Timken agreed not to manufacture or sell directly or to others for shipment into the territory allocated to Electric and Ordnance Accessories Company, Ltd., and the latter agreed not to manufacture or sell directly or indirectly outside the territory allocated to it.

17. The rights of Electric and Ordnance Accessories Company, Ltd., under the aforesaid contracts were subsequently assigned to Limited. By 1927, Limited was manufacturing and selling large quantities of tapered roller bearings of the same types and sizes as those manufactured and sold by Timken.

18. In 1927 Timken and M. B. U. Dewar, Esq., a British businessman, acquired all of the capital stock of Limited, and Dewar became Limited's managing director. Thereafter, Limited together with Timken organized Francaise for the manufacture of tapered roller bearings in France. Throughout the period from 1928 to the date of the filing of this complaint, Dewar has held voting control of Limited

and Francaise, and has supervised and controlled the management and operations of these companies.

VI

Offenses Charged

19. Beginning in or about the year 1928 and continuously thereafter up to and including the date of the filing of this complaint, defendant Timken and the co-conspirators Limited and Francaise have been engaged in an unlawful combination and conspiracy in restraint of trade and commerce in anti-friction bearings among the several states of the United States and with foreign nations, and between territories of the United States and foreign nations, in violation of Sections 1 and 3 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Antitrust Act. Such offenses will continue, unless the relief hereinafter prayed for in this complaint is granted.

[fol. 6] 20. Timken and the co-conspirators Limited and Francaise have entered into contracts, agreements, and understandings, and have continuously planned and acted together to eliminate competition between them in the manufacture and sale of anti-friction bearings in all markets of the world, including the United States, by:

(a) allocating to each party a designated territory for the manufacture and sale of anti-friction bearings as follows:

1. France, its colonies, mandates and dependencies except those in South America—to co-conspirator Francaise;

2. Great Britain, Ireland, and all countries other than France and Russia on the continent of Europe and all colonies, dominions, mandates, and dependencies of the United Kingdom and other European countries, except France, in any part of the world, except in North and South America—to co-conspirator Limited;

3. Russia—jointly to defendant Timken and co-conspirator Limited;

4. The rest of the world—to defendant Timken;

(b) preventing each party from selling or shipping anti-friction bearings into the territory allocated to any other party, except in completed articles of manufacture and for replacement of bearings therein;

(c) fixing and agreeing upon prices of replacement bearings sold and shipped into the territory allocated to any other party;

(d) fixing and agreeing upon prices of anti-friction bearings sold and shipped to Russia.

[fol. 7] 21. The said combination and conspiracy has been formed and effectuated by the means, methods, agreements, and understandings hereinafter set forth.

22. On January 1, 1928, Timken and Limited entered into a contract referred to by them as a "business agreement" under which the United Kingdom, North Ireland, all countries of Europe, and all colonies and dependencies of the United Kingdom and European countries (except those in North or South America) were allocated to Limited and the rest of the world was allocated to Timken, as exclusive territory for the manufacture and sale of anti-friction bearings. Limited agreed not to manufacture, sell, or deal in any bearings except under the terms of the agreement and under the trademark "Timken." Each party agreed not to sell bearings directly or to others for shipment into the other party's territory, except (a) as assembled parts of completed articles of manufacture manufactured in its own territory; and (b) for bearing replacement purposes in such completed articles of manufacture, and then only on payment to the other party of 10% of the net sale price as a penalty.

23. In or about June 1928, Limited, on its own account and on behalf of and with the approval of Timken, entered into an agreement with Francaise allocating France and its colonies, dependencies, and mandates (except those in North and South America) as the exclusive territory of Francaise for the manufacture and sale of anti-friction bearings. Limited and Timken agreed not to sell in this territory and Francaise agreed not to sell outside of this territory except under terms and conditions similar to those set out in the Limited-Timken contract of January 1, 1928, hereinbefore referred to in paragraph 22.

24. In or about February 1932, it was agreed between Limited and Timken that Limited would not quote on any

inquiry for service or replacement bearings coming from Timken's territory, but would advise the customers that the product should be obtained from Timken unless (a) the customer demanded a British product, or (b) "SKF or F.S. are in competition." It was also agreed that Hong [fol. 8] Kong, formerly allocated to Limited, was now to be the territory of Timken.

25. On December 29, 1934, a new contract was entered into between Timken and Limited, superseding the contract of January 1, 1928, hereinabove referred to in paragraph 22. The contract specifically applied to anti-friction bearings of all kinds and was to be in effect for fifteen years. It contained substantially the same terms as the 1928 contract for the division of sales and manufacturing territories, but with the following modifications: (a) service or replacement bearings, which each company was permitted to sell in the other's territory could henceforth be sold only at prices approved by the company into whose territory the bearings were to be sold and the penalty payments on such sales were reduced to 5%, and (b) Russia was to be considered open territory into which both Limited and Timken could sell at prices and terms mutually agreed upon.

26. On or about July 15, 1935, Limited, on its own account and on behalf of and with the approval of Timken, entered into a new agreement with Francaise revising the earlier agreement of June 1928, hereinabove referred to in paragraph 23, so as to permit sales of bearings for replacement or service purposes by Limited and Timken in the territory allocated to Francaise, and by Francaise into the territories of Limited and Timken, at prices satisfactory to the company into whose territory the bearings were being sold.

27. On or about November 28, 1938, Timken, Limited, and Francaise entered into a contract, hereinafter referred to as the Tripartite Contract, embodying substantially the allocations of territory and other terms and conditions contained in the agreements of December 29, 1934 and July 15, 1935 hereinabove referred to in paragraphs 25 and 26. The Tripartite Contract, which superseded the previous agreements, provided that it should continue in effect for a period of twenty-seven years from January 1, 1938. A copy of this contract, attached hereto and marked

[fol. 9] "Exhibit A", is made a part of this complaint as if herein set forth in full.

28. The Tripartite Contract was supplemented by an agreement dated November 29, 1938 between Timken, Limited, and M. B. U. Dewar, Esq., which provided that Russia would be considered joint territory in which both Timken and Limited could sell anti-friction bearings at prices agreed upon between them. This agreement was coterminous with the Tripartite Contract.

29. As a result of the outbreak of war and the requirements of the British armament program, Limited, in 1939, became increasingly unable to supply the requirements of its overseas markets. In September 1939, therefore, Limited arranged with Timken to transmit to Timken certain of its orders from the territory allocated to it. Under this arrangement, Timken shipped bearings manufactured in the United States to Limited's customers, charging prices determined by Limited, and paying the latter a commission on all such sales. Limited refused to permit Timken to accept orders directly from customers located in Limited's territory, with the exception of unsolicited orders for replacement bearings in accordance with the Tripartite Contract. In the case of replacement bearings, it was agreed that Timken, rather than make inquiry on each order as to the price agreeable to Limited, could make quotations based upon a "protective discount" off Timken's export price list on standard bearings. As a result, Timken sold replacement bearings for use in Limited's territory at prices approximately 65 per cent higher than Timken's regular export price for such bearings.

30. In 1940, the largest distributor of anti-friction bearings in Australia urged Timken to break its agreement with Limited, so that said distributor could purchase its requirements of tapered bearings from Timken rather than from Limited. Timken refused, and the distributor was required to send its orders to Limited, which filled such parts of the orders as it could and then transferred the balance to Timken. This procedure caused delays in the [fol. 10] transmission and filling of orders, and in some cases Limited wholly failed to refer to Timken Australian orders which Limited was unable to supply. Finally, Limited agreed to permit Timken to handle orders from Australia direct for the duration of the war, but only at prices established by Limited.

31. Defendant Timken, throughout the period of the conspiracy herein alleged, has not accepted orders for anti-friction bearings for shipment to the territory allocated to Limited and Francaise, except with the consent of Limited and at prices agreed upon with Limited, and has referred to Limited and Francaise all inquiries relating to agency or distribution arrangements in said territories. Limited, in turn, has not accepted orders for anti-friction bearings for shipment to the territory allocated to Timken, except with Timken's consent and at prices agreed upon with Timken.

32. The Tripartite Contract and supplemental agreement hereinbefore referred to in paragraphs 27 and 28 are in full force and effect and the defendant and its co-conspirators threaten to and will continue the aforesaid illegal practices and arrangements, unless the relief prayed for in this complaint is granted.

VII

Effects of the Conspiracy

33. As a result of the combination and conspiracy in restraint of trade hereinbefore alleged, the defendant and its co-conspirators have:

(a) unreasonably restrained the manufacture and sale of anti-friction bearings in the United States and its territories;

(b) unreasonably restrained the importation of anti-friction bearings into the United States;

(c) unreasonably restrained the importation of anti-friction bearings into the territories of the United States from foreign countries;

(d) unreasonably restrained and prevented the sale [fol. 11] and export of anti-friction bearings from the United States to purchasers in foreign countries, despite the demand for lower price American-made bearings;

(e) unreasonably restrained and prevented American manufacturers of automobiles, and their dealers in foreign countries, from purchasing American-made anti-friction bearings for shipment or sale outside the United States to territories allocated to Limited and

Francaise as hereinabove alleged, and have caused such firms to buy British and French bearings at substantially higher prices; and

(f) arbitrarily and unreasonably increased the prices of replacement bearings sold to American manufacturers and exporters and to foreign purchasers for shipment or sale outside the United States to territory allocated to Limited and Francaise as hereinabove alleged.

34. The current world shortage of anti-friction bearings and the decrease of European bearing production caused by World War II has created large potential export markets for anti-friction bearings of American manufacture. Due to the demands of the war effort, Timken has expanded its productive facilities. The continuation of the combination and conspiracy herein alleged will have the effect of restraining and preventing Timken from seeking and acquiring many foreign markets with the eventual consequence of reducing Timken's production of bearings and employment of labor.

Prayer

Wherefore, plaintiff prays:

1. That the Court adjudge and decree that the defendant Timken has combined and conspired with its co-conspirators Limited and Francaise to restrain trade and commerce among the States and with foreign nations, and between territories of the United States and foreign nations, in [fol. 12] violation of Sections 1 and 3 of the Sherman Antitrust Act; and that the contracts, understandings, arrangements, and practices alleged in this complaint are in violation of the Sherman Antitrust Act.

2. That the defendant and its officers, directors, agents, representatives, and all persons and corporations, acting or claiming to act on behalf of them, be perpetually enjoined from combining, conspiring or agreeing to restrain commerce in anti-friction bearings among the several states of the United States and with foreign nations, and between territories of the United States and foreign nations; and that they be perpetually enjoined from engaging in or participating in practices, contracts, relationships, or under-

standings, or claiming any rights thereunder, having the purpose or effect of continuing, reviving or renewing any of the violations of the Sherman Antitrust Act, in the complaint set forth and described.

3. That the contracts, understandings, and arrangements between defendant Timken and its co-conspirators Limited and Francaise, heretofore alleged, be adjudged to be illegal and ordered terminated and cancelled.

4. That the defendant, its officers, directors, agents, representatives, and all persons and corporations, acting or claiming to act on behalf of it, be perpetually enjoined from carrying out, claiming any rights under, or entering into any contract, agreement, or understanding, in any manner restricting the defendant's exports of anti-friction bearings from the United States, or dividing export markets, allocating territories, fixing prices for export sales, or in any manner restricting or affecting the importation of anti-friction bearings into the United States and its territories.

5. That the defendant Timken be enjoined from transferring, selling or assigning the trademark "Timken" to or for the use of co-conspirators Limited or Francaise, or the successors and assigns thereof, so as in any manner to exclude the defendant from using the trademark "Timken" anywhere in the world.

[fols. 13-20] 6. That defendant Timken be ordered to divest itself of its stock holdings and other financial interests, direct and indirect, in Limited and Francaise, upon such terms and conditions as shall be approved by the Court; and that until such time as said divestiture shall have been effected, the defendant Timken, its officers, directors, agents and representatives and all persons and corporations acting or claiming to act on behalf of such defendant, be enjoined from refusing to sell anti-friction bearings to the extent available in the normal course of such defendant's business to any person, partnership, or corporation ordering such commodities for export, and exporting the same from the United States, where such persons, partnerships, or corporations make appropriate payment or tender of payment at defendant's current export prices.

7. That the plaintiff have such other, further, general and different relief as the nature of the case may require and the Court shall deem proper.

8. That the plaintiff recover its taxable costs.

Dated: Cleveland, Ohio.

(S.) Robert A. Nitschke, Special Assistant to the Attorney General. (S.) Joseph Rand, Special Attorney.

(S.) Tom C. Clark, Attorney General. (S.) Wendell Berge, Assistant Attorney General. (S.) George B. Haddock, Special Assistant to the Attorney General. (S.) Don C. Miller, United States Attorney.

[fol. 21] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

INTERROGATORIES PROPOUNDED TO THE DEFENDANT—Filed February 24, 1947

To Jones, Day, Cockley & Reavis, Esqs., 1759 Union Commerce Building, Cleveland 14, Ohio; Day, Cope, Ketterer, Raley & Wright, Esqs., 1110 First National Bank Building, Canton 2, Ohio, Counsel for Defendant:

The United States of America, by its attorneys, demands of defendant The Timken Roller Bearing Company written answers under oath to the interrogatories set forth below pursuant to and in accordance with Rule 33 of the Rules of Civil Procedure.

[fols. 22-23] *Definitions*

As used herein:

A. "Defendant" means The Timken Roller Bearing Company.

B. "Limited" means British Timken, Limited.

C. "Francaise" means Societe Anonyme Francaise Timken.

D. "Tripartite Agreement" means the agreement entered into on November 28, 1938 between defendant, Limited and Francaise and attached to the Complaint as Exhibit "A".

* * * * * * *

1. List all countries, dominions, colonies, dependencies and mandatory territories comprising the territory allo-

cated under the Tripartite Agreement to (a) Francaise, (b) Limited, and (c) defendant.

2. State the following concerning each inquiry and order to purchase anti-friction bearings for shipment, and inquiry for distributor representation, outside of the territory allocated to the defendant under the Tripartite Agreement, received by the defendant from July 1, 1945 to date; the date of the inquiry or order, the inquirer's or buyer's name and address, the type and quantity of anti-friction bearings inquired for or ordered, the name and location of the intended user thereof, and the disposition of such inquiry or order.

[fol. 24] 8. List all trade marks and trade names used in the sale of anti-friction bearings (a) registered by defendant from 1909 to date, (b) registered by Limited from 1928 to date and (c) registered by Francaise from 1928 to date; setting forth as to each (1) the country of registration (2) the registration number (3) the title, design and description (4) the registration date (5) the expiration date (6) the expiration date of any possible renewal thereof and (7) with respect to all rights therein granted by the defendant to Francaise, Limited or others, state: (A) the date (B) name of grantee or other user, and (C) nature of the contents of each agreement or writing relating to the granting or termination of such rights.

[fol. 25] Dated: Washington, D. C., February 20, 1947.

(S.) Robert A. Nitschke, Special Assistant to the Attorney General; (S.) Joseph Rand, Special Attorney, Attorneys for the Plaintiff

[fol. 26] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED

COMPLAINT—Filed December 15, 1947

To the Honorable, the Judges of the District Court of the United States for the Northern District of Ohio,

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the

United States, brings this action against the defendant and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted against the defendant under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Antitrust Act, in order to prevent and restrain continuing violations by defendant, as hereinafter alleged, of Sections 1 and 3 of the Sherman Antitrust Act.

2. Defendant The Timken Roller Bearing Company is incorporated under the laws of the State of Ohio and is an inhabitant of the Northern District of Ohio. It maintains offices and transacts business within the Eastern Division of the Northern District of Ohio.

[fol. 27]

II

The Defendant

3. The Timken Roller Bearing Company, hereinafter referred to as "Timken", a corporation organized under the laws of the State of Ohio and having its principal offices and place of business in Canton, Ohio, is named a defendant herein. It is engaged in the manufacture of tapered roller bearings at plants located in Canton, Gambrinus and Columbus, Ohio.

III

Co-Conspirators

4. British Timken, Limited, hereinafter referred to as "Limited", a joint stock company organized and existing under the laws of the United Kingdom, with its head office and principal place of business at Birmingham, England, is not named as a defendant but is named as co-conspirator herein. Limited is engaged in the manufacture and sale of ball bearings and straight and tapered roller bearings. Defendant Timken owns 29% of the capital stock of Limited.

5. Societe Anonyme Francaise Timken, hereinafter referred to as "Francaise", a corporation organized and existing under the laws of France, with its head office and principal place of business at Asnieres, France, is not named as a defendant but is named as co-conspirator herein. Francaise is engaged in the manufacture and sale of tapered roller bearings. Defendant Timken owns 50% of the capital stock of Francaise.

IV

The Nature of Trade and Commerce Involved

6. Antifriction bearings are rotating devices for reducing friction between moving mechanical parts. Their usual employment is between a shaft and rotating body, such as an automobile axle and wheel. Balls or rollers are inserted between containers called "races" which are, in turn, affixed to the moving parts. Rollers vary in shape from straight or tapered cylinders to configurations resembling spools and barrels.

[fol. 28] 7. Ball bearings are generally utilized where high speeds and light loads are required; roller bearings, where a heavy load must be supported; tapered roller bearings, where both a heavy load and side thrust are encountered, as on truck wheels and axles. Otherwise, all types may be used interchangeably.

8. The anti-friction bearing is distinguished from the plain bearing in that the plain bearing employs no rolling objects but depends upon lubrication alone. The anti-friction bearing has much greater load-carrying ability, endurance, and freedom from friction.

9. Whenever the term "anti-friction bearings" is employed in this complaint, it will include ball bearings, and straight and tapered roller bearings, and accessories for, and parts of such bearings.

10. Anti-friction bearings are a necessity in the functioning of a modern industrial economy. Aircraft, trucks, automobiles, railroad cars and locomotives, gun mounts, machine tools, rolling mills, mining machinery, power generating and transmission equipment, household appliances and other machinery and engines of all types, require and utilize tapered roller bearings and other types of anti-friction bearings. They are currently in great demand,

both in the United States and for shipment abroad in connection with the postwar reconversion and expansion of industry and the rehabilitation of war areas.

11. Defendant Timken is now and for many years has been the largest manufacturer of tapered roller bearings in the world. In 1944 Timken produced approximately eighty per cent of all the tapered roller bearings manufactured in the United States, and its gross sales of bearings amounted to approximately $75,000,000.

12. Bearings manufactured by Timken are shipped from its plants in Ohio to customers located in other States and Territories of the United States and, subject to limitations hereinafter alleged, in certain foreign countries. Timken transacts business in Canada through its wholly-owned subsidiary, Canadian Timken, Limited, and in South America [fol. 29] through its wholly-owned subsidiary, S. A. Timken Roller Bearing Company of South America.

13. Timken sells the bearings manufactured by it directly to manufacturers of automobiles, railroad equipment, machine tools, machinery, and other products containing bearings. It also sells large quantities of bearings to distributors for resale to bus and truck owners, garages, repair shops, factories, and others for replacement of worn-out or damaged bearings in vehicles and machinery. Such bearings are known as "service" or "replacement" bearings.

14. The co-conspirators Limited and Francaise have been, since 1928, the principal manufacturers of tapered roller bearings in Great Britain and France, respectively. Limited and Francaise export their products to various countries throughout the world. Since 1933, Limited has also manufactured and sold ball bearings and straight roller bearings.

V

Background of the Conspiracy

15. On June 16, 1909, defendant Timken entered into an agreement with the Electric and Ordnance Accessories Company, Ltd. of England, granting the latter an exclusive license to manufacture and sell roller bearings in the United Kingdom under certain letters patent. Timken agreed not to manufacture or sell any roller bearings in the United Kingdom or sell to others for shipment into

the United Kingdom except as parts of complete automobiles, assembled and manufactured in the United States. Electric and Ordnance Accessories Company, Ltd., agreed not to sell any roller bearings directly or to others for shipment outside the United Kingdom, except as parts of complete automobile- manufactured in the United Kingdom.

16. On July 16, 1909, Timken entered into a second agreement with Electric and Ordnance Accessories Company, Ltd., whereby the latter received an exclusive "license" to manufacture and sell roller bearings of all kinds in Europe and the British Empire (except Canada), whether patents [fol. 30] were secured in such countries or not. Timken agreed not to manufacture or sell directly or to others for shipment into the territory allocated to Electric and Ordnance Accessories Company, Ltd., and the latter agreed not to manufacture or sell directly or indirectly outside the territory allocated to it.

17. The rights of Electric and Ordnance Accessories Company, Ltd., under the aforesaid contracts were subsequently assigned to Limited. By 1927, Limited was manufacturing and selling large quantities of tapered roller bearings of the same types and sizes as those manufactured and sold by Timken.

18. In 1927 Timken and M. B. U. Dewar, Esq., a British businessman, acquired all of the capital stock of Limited, and Dewar became Limited's managing director. Thereafter, Limited together with Timken organized Francaise for the manufacture of tapered roller bearings in France. Throughout the period from 1928 to the date of the filing of this complaint, Dewar has held voting control of Limited and Francaise, and has supervised and controlled the management and operations of these companies.

VI

Offenses Charged

19. Beginning in or about the year 1928 and continuously thereafter up to and including the date of the filing of this complaint, defendant Timken and the co-conspirators Limited and Francaise have been engaged in an unlawful combination and conspiracy in restraint of trade and commerce in anti-friction bearings among the several states of the

United States and with foreign nations, and between territories of the United States and foreign nations, in violation of Sections 1 and 3 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Antitrust Act. Such offenses will continue, unless the relief hereinafter prayed for in this complaint is granted.

[fol. 31] 20. Timken and the co-conspirators Limited and Francaise have entered into contracts, agreements, and understandings, and have continuously planned and acted together to eliminate competition between them and with others in the manufacture and the sale of anti-friction bearings in all markets of the world, including the United States, by:

(a) allocating to each party a designated territory for the manufacture and sale of anti-friction bearings as follows:

1. France, its colonies, mandates and dependencies except those in South America—to co-conspirator Francaise;

2. Great Britain, Ireland, and all countries other than France and Russia on the continent of Europe and all colonies, dominions, mandates, and dependencies of the United Kingdom and other European countries, except France, in any part of the world, except in North and South America—to co-conspirator Limited;

3. Russia—jointly to defendant Timken and co-conspirator Limited;

4. The rest of the world—to defendant Timken;

(b) preventing each party from selling or shipping anti-friction bearings into the territory allocated to any other party, except in completed articles of manufacture and for replacement of bearings therein;

(c) fixing and agreeing upon prices of replacement bearings and shipped into the territory allocated to any other party;

(d) fixing and agreeing upon prices of anti-friction bearings sold and shipped to Russia.

[fol. 32] (e) allocating the use of the trade-mark "Timken" to each of the parties in its designated

territory, requiring that the co-conspirators not manufacture, sell or otherwise deal in bearings except under the trade-mark "Timken" and requiring said co-conspirators to agree to surrender to defendant rights in the name "Timken" upon termination of such contracts, agreements and understandings;

(f) in certain of the designated territories, entering into agreements and understandings with other manufacturers, regulating and allocating the sale of anti-friction bearings;

(g) furnishing aid and assistance to each other in restricting and eliminating in their respective territories competition from others in the manufacture and sale of anti-friction bearings.

21. The said combination and conspiracy has been formed and effectuated by the means, methods, agreements, and understandings hereinafter set forth.

22. On January 1, 1928, Timken and Limited entered into a contract referred to by them as a "business agreement," under which the United Kingdom, North Ireland, all countries of Europe, and all colonies and dependencies of the United Kingdom and European countries (except those in North or South America) were allocated to Limited and the rest of the world was allocated to Timken, as exclusive territory for the manufacture and sale of anti-friction bearings. Limited agreed not to manufacture, sell, or deal in any bearings except under the terms of the agreement and under the trademark "Timken." Each party agreed not to sell bearings directly or to others for shipment into the other party's territory, except (a) as assembled parts of completed articles of manufacture manufactured in its own territory; and (b) for bearing replacement purposes in [fol. 33] such completed articles of manufacture, and then only on payment to the other party of 10% of the net sale price as a penalty.

23. In or about June 1928, Limited, on its own account and on behalf of and with the approval of Timken, entered into an agreement with Francaise allocating France and its colonies, dependencies, and mandates (except those in North and South America) as the exclusive territory of Francaise for the manufacture and sale of anti-friction bearings. Limited and Timken agreed not to sell in this territory and Francaise agreed not to sell outside of this

territory except under terms and conditions similar to those set out in the Limited-Timken contract of January 1, 1928, hereinbefore referred to in paragraph 22.

24. In or about February 1932, it was agreed between Limited and Timken that Limited would not quote on any inquiry for service or replacement bearings coming from Timken's territory, but would advise the customers that the product should be obtained from Timken unless (a) the customer demanded a British product, or (b) "SKF or F. S. are in competition." It was also agreed that Hong Kong, formerly allocated to Limited, was now to be the territory of Timken.

25. On December 29, 1934, a new contract was entered into between Timken and Limited, superseding the contract of January 1, 1928, hereinabove referred to in paragraph 22. The contract specifically applied to anti-friction bearings of all kinds and was to be in effect for fifteen years. It contained substantially the same terms as the 1928 contract for the division of sales and manufacturing territories, but with the following modifications: (a) service or replacement bearings, which each company was permitted to sell in the other's territory could henceforth be sold only at prices approved by the company into whose territory the bearings were to be sold and the penalty payments on such sales were reduced to 5%, and (b) Russia was to be considered open territory into which both Limited and Timken could sell at prices and terms mutually agreed upon.

[fol. 34] 26. On or about July 15, 1935, Limited, on its own account and on behalf of and with the approval of Timken, entered into a new agreement with Francaise revising the earlier agreement of June 1928, hereinabove referred to in paragraph 23, so as to permit sales of bearings for replacement or service purposes by Limited and Timken in the territory allocated to Francaise, and by Francaise into the territories of Limited and Timken, at prices satisfactory to the company into whose territory the bearings were being sold.

27. On or about November 28, 1938, Timken, Limited and Francaise entered into a contract, hereinafter referred to as the Tripartite Contract, embodying substantially the allocations of territory and other terms and conditions contained in the agreements of December 29, 1934 and

July 15, 1935 hereinabove referred to in paragraphs 25 and 26. The Tripartite Contract, which superseded the previous agreements, provided that it should continue in effect for a period of twenty-seven years from January 1, 1938. A copy of this contract, attached hereto and marked "Exhibit A", is made a part of this complaint as if herein set forth in full.

28. The Tripartite Contract was supplemented by an agreement dated November 29, 1938 between Timken, Limited, and M. B. U. Dewar, Esq., which provided that Russia would be considered joint territory in which both Timken and Limited could sell anti-friction bearings at prices agreed upon between them. This agreement was coterminous with the Tripartite Contract. A copy of this contract, attached hereto and marked "Exhibit B", is made a part of this complaint as if herein set forth in full.

29. As a result of the outbreak of war and the requirements of the British armament program, Limited, in 1939, became increasingly unable to supply the requirements of its overseas markets. In September 1939, therefore, Limited arranged with Timken to transmit to Timken certain of its orders from the territory allocated to it. Under this arangement, Timken shipped bearings manufactured in the United States to Limited's customers, charging prices determined by Limited, and paying the latter a commission on all such sales. Limited refused to permit Timken [fol. 35] to accept orders directly from customers located in Limited's territory, with the exception of unsolicited orders for replacement bearings in accordance with the Tripartite Contract. In the case of replacement bearings, it was agreed that Timken, rather than make inquiry on each order as to the price agreeable to Limited, could make quotations based upon a "protective discount" off Timken's export price list on standard bearings. As a result, Timken sold replacement bearings for use in Limited's territory at prices approximately 65 per cent higher than Timken's regular export price for such bearings.

30. In 1940, the largest distributor of anti-friction bearings in Australia urged Timken to break its agreement with Limited, so that said distributor could purchase its requirements of tapered bearings from Timken rather than from Limited. Timken refused, and the distributor was required to send its orders to Limited, which filled such parts of the orders as it could and then transferred

the balance to Timken. This procedure caused delays in the transmission and filling of orders, and in some cases Limited wholly failed to refer to Timken Australian orders which Limited was unable to supply. Finally, Limited agreed to permit Timken to handle orders from Australia direct for the duration of the war, but only at prices established by Limited.

31. Defendant Timken, throughout the period of the conspiracy herein alleged, has not accepted orders for anti-friction bearings for shipment to the territory allocated to Limited and Francaise, except with the consent of Limited and at prices agreed upon with Limited, and has referred to Limited and Francaise all inquiries relating to agency or distribution arrangements in said territories. Limited, in turn, has not accepted orders for anti-friction bearings for shipment to the territory allocated to Timken, except with Timken's consent and at prices agreed upon with Timken.

32. The Tripartite Contract and supplemental agreement hereinbefore referred to in paragraphs 27 and 28 are in full force and effect and the defendant and its co-conspirators threaten to and will continue the aforesaid illegal [fol. 36] practices and arrangements, unless the relief prayed for in this complaint is granted.

VII

Effects of the Conspiracy

33. As a result of the combination and conspiracy in restraint of trade hereinbefore alleged, the defendant and its co-conspirators have:

(a) unreasonably restrained the manufacture and sale of anti-friction bearings in the United States and its territories;

(b) unreasonably restrained the importation of anti-friction bearings into the United States;

(c) unreasonably restrained the importation of anti-friction bearings into the territories of the United States from foreign countries;

(d) unreasonably restrained and prevented the sale and export of anti-friction bearings from the United States to purchasers in foreign countries, despite the demand for lower price American-made bearings;

(e) unreasonably restrained and prevented American manufacturers of automobiles, and their dealers in

foreign countries, from purchasing American-made anti-friction bearings for shipment or sale outside the United States to territories allocated to Limited and Francaise as hereinabove alleged, and have caused such firms to buy British or French bearings at substantially higher prices; and

(f) arbitrarily and unreasonably increased the prices of replacement bearings sold to American manufacturers and exporters and to foreign purchasers for shipment or sale outside the United States to territory allocated to Limited and Francaise as hereinabove alleged.

[fol. 37] 34. The current world shortage of anti-friction bearings and the decrease of European bearing production caused by World War II has created large potential export markets for anti-friction bearings of American manufacture. Due to the demands of the war effort, Timken has expanded its productive facilities. The continuation of the combination and conspiracy herein alleged will have the effect of restraining and preventing Timken from seeking and acquiring many foreign markets with the eventual consequence of reducing Timken's production of bearings and employment of labor.

Prayer

Wherefore, plaintiff prays:

1. That the Court adjudge and decree that the defendant Timken has combined and conspired with its co-conspirators Limited and Francaise to restrain trade and commerce among the States and with foreign nations, and between territories of the United States and foreign nations, in violation of Section 1 and 3 of the Sherman Antitrust Act; and that the contracts, understandings, arrangements, and practices alleged in this complaint are in violation of the Sherman Antitrust Act.

2. That the defendant and its officers, directors, agents, representatives, and all persons and corporations, acting or claiming to act on behalf of them, be perpetually enjoined from combining, conspiring or agreeing to restrain commerce in anti-friction bearings among the several states of the United States and with foreign nations, and between territories of the United States and foreign nations; and that they be perpetually enjoined from engaging in or

participating in practices, contracts, relationships, or understandings, or claiming any rights thereunder, having the purpose or effect of continuing, reviving or renewing any of the violations of the Sherman Antitrust Act, in the complaint set forth and described.

3. That the contracts, understandings, and arrangements between defendant Timken and its co-conspirators Limited and Francaise, heretofore alleged, be adjudged to be illegal and ordered terminated and cancelled.

[fol. 38] 4. That the defendant, its officers, directors, agents, representatives, and all persons and corporations, acting or claiming to act on behalf of it, be perpetually enjoined from carrying out, claiming any rights under, or entering into any contract, agreement, or understanding, in any manner restricting the defendant's exports of anti-friction bearings from the United States, or dividing export markets, allocating territories, fixing prices for export sales, or in any manner restricting or affecting the importation of anti-friction bearings into the United States and its territories.

5. That the defendant Timken be enjoined from transferring, selling or assigning the trademark "Timken" to or for the use of co-conspirators Limited or Francaise, or the successors and assigns thereof, so as in any manner to exclude the defendant from using the trademark "Timken" anywhere in the world.

6. That defendant Timken be ordered to divest itself of its stock holdings and other financial interests, direct and indirect, in Limited and Francaise, upon such terms and conditions as shall be approved by the Court; and that until such time as said divestiture shall have been effected, the defendant Timken, its officers, directors, agents and representatives and all persons and corporations acting or claiming to act on behalf of such defendant, be enjoined from refusing to sell anti-friction bearings to the extent available in the normal course of such defendant's business to any person, partnership, or corporation ordering such commodities for export, and exporting the same from the United States, where such persons, partnerships, or corporations make appropriate payment or tender of payment at defendant's current export prices.

[fols. 39-57] 7. That the plaintiff have such other, further, general and different relief as the nature of the case may require and the Court shall deem proper.

8. That the plaintiff recover its taxable costs.

Dated: Cleveland, Ohio.

(S.) John F. Sonnett, Assistant Attorney General; (S.) Robert A. Nitschke, Special Assistant to the Attorney General; (S.) George L. Derr, Special Attorney; (S.) Bertram C. Dedman, Special Attorney.

[fol. 58] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANT TO AMENDED COMPLAINT—Filed January 9, 1948

Now comes the defendant, The Timken Roller Bearing Company, and for its answer to the amended complaint herein says:

I

Answering generally, the defendant denies that it is now or has been at any time engaged with Limited and Francaise, (adopting herein the names used in the amended complaint to designate British Timken, Limited, and Société Francaise Timken, styled in the amended complaint Société Anonyme Francaise Timken, respectively), or either of them, or otherwise, in an agreement, combination or conspiracy in restraint of trade and commerce in anti-friction bearings among the several states of the United States, or with foreign nations, or between territories of the United States and foreign nations in violation of the Sherman Anti-trust Act; denies that, with Limited or Francaise, or either of them, or otherwise, it entered into the agreement of November 28, 1938 between the defendant, Limited and Francaise, described in paragraph 27 of the amended complaint, or any agreement, contract or understanding, to restrain trade or to eliminate competition between them, or with others, in the manufacture and sale of anti-friction bearings; denies that it has in any manner planned or acted with Limited and Francaise, or either of them, or with others, to restrain trade or to eliminate competition between them in the manufacture and sale of anti-friction bearings;

denies that the said agreement of November 28, 1938, or any of the agreements described in the amended complaint, [fol. 59] was or is in fact in restraint of trade and commerce in anti-friction bearings as is alleged in the amended complaint, and denies that it entered into any of the agreements or understandings or did any of the acts and things alleged in the amended complaint as means, methods, agreements or understandings in the formation or effectuating of the alleged agreement, combination and conspiracy described in the amended complaint.

II

And, without limiting the denials in the preceding paragraph, the defendant, answering more specifically the averments of the amended complaint, and with the following numbered paragraphs corresponding with the numbered paragraphs thereof, avers as follows:

1. Defendant denies the allegations of paragraph 1, except that it admits that the amended complaint purports to have been filed, and that these proceedings purport to have been instituted, under Section 4 of the Act of Congress of July 2, 1890, Chapter 647, 26 Stat. 209, as amended, entitled, "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," commonly known as the Sherman Anti-trust Act.

2. Defendant admits the allegations of paragraph 2.

3. Defendant admits the allegations of paragraph 3, except that defendant avers that Gambrinus is not an incorporated municipality, but is simply a name given to a plant of defendant located beyond the city limits of Canton, Ohio.

4. Defendant admits the allegations of paragraph 4, except that defendant avers that it owns 30.25% of the capital stock of Limited.

5. Defendant admits the allegations of paragraph 5.

6. Defendant avers that anti-friction or rolling contact bearings are rotating machine elements employed to carry loads and at the same time reduce friction between moving mechanical parts, their usual employment being between a stationary or rotating shaft and a rotating or stationary [fol. 60] body, such as an automobile axle and wheel or transmission shafts. The usual elements of an anti-friction bearing are a number of balls or rollers properly dis-

posed between an inner and outer race, which races in turn are mounted on or in the moving and stationary parts respectively. Rollers vary in shape from cylindrical or conical to configurations resembling spools or barrels. Except as herein averred, defendant denies the allegations of paragraph 6.

7. Defendant avers that ball bearings are generally utilized to carry light loads, cylindrical roller bearings to carry heavy loads and tapered roller bearings to carry heavy loads and loads that involve side thrust. Timken Roller Bearings are also used in high speed applications. Defendant denies that all types of bearings may be used interchangeably. Except as herein averred, defendant denies the other allegations of paragraph 7.

8. Defendant avers that an anti-friction bearing is distinquished from a plain bearing in that the anti-friction bearing employs rolling elements, while the plain bearing relies entirely on an oil film, to support a load. Except as herein averred, defendant denies the other allegations of paragraph 8.

9. Defendant admits the allegations of paragraph 9.

10. Defendant admits the allegations of paragraph 10, except that it denies that the current demand for anti-friction bearings in the United States, or such demand therefor as there may be for shipment abroad, is in connection with post-war reconversion and expension of industry and the rehabilitation of war areas.

11. Defendant admits that it is the largest manufacturer of tapered roller bearings in the world and that its gross sales thereof in the year 1944 amounted to approximately Seventy-Five Million Dollars ($75,000,000.00). Defendant does not have sufficient knowledge or information to form a belief as to the other allegations of paragraph 11.

[fol. 61] 12. Defendant admits that tapered roller bearings manufactured by it are shipped from its plants in Ohio to customers located in other states and territories of the United States, and to many foreign countries. Defendant avers that there is a Canadian corporation known as, "The Timken Roller Bearing Service and Sales, Limited," of which defendant owns all the stock, and that such corporation handles sales of tapered roller bearings for service purposes in Canada. Defendant avers that it is qualified to transact business in Canada and now has in operation a

tapered roller bearing plant at St. Thomas in Ontario, Canada, the operation of which is handled directly by defendant and not through such Canadian subsidiary. Defendant avers that it owns all the stock of an Ohio corporation known as The Timken Roller Bearing Company of South America, which corporation is qualified to do business in Brazil, and that all other sales operations of defendant in South American countries are conducted in the name of defendant and not in the name of said subsidiary. Defendant denies the allegations of paragraph 12, except as herein admitted.

13. Defendant admits that it sells tapered roller bearings manufactured by it to original manufacturers of various types of equipment, and to distributors for service or replacement purposes; but avers that the great bulk of defendant's business in such service and replacement field consists of the service or replacement of bearings originally manufactured and sold by it. Defendant denies the allegations of paragraph 13, except as herein admitted.

14. Defendant denies the allegations of paragraph 14, except that it admits that since 1933 Limited has manufactured, sold and at times has exported ball bearings and straight roller bearings as well as tapered roller bearings.

15. Defendant avers that, as licensor, defendant entered into a patent license agreement with The Electric & Ordnance Accessories Company, Limited, as licensee, originally executed by defendant under date of June 16, 1909, but [fol. 62] subsequently re-executed by defendant after certain changes and alterations, on August 4, 1909, and later executed by the licensee under date of August 1909, granting to such licensee an exclusive license to make, use and vend in the United Kingdom and the Isle of Man roller bearings of all kinds made under or in accordance with the specifications of the various Letters Patent described therein. This agreement was valid and lawful in every respect including the extent to which its operation was limited either as to scope or territory. Defendant, as such licensor, agreed, among other things, that it would not make or sell roller bearings to others in the United Kingdom and the Isle of Man while such license was in effect, subject to the proviso, however, that defendant, as licensor, reserved the right to make, sell or license others to make or sell bearings for automobiles or other vehicles manufactured outside the

United Kingdom and Isle of Man which might go into the territorial limits described in said license agreement. Said licensee agreed, among other things, that as long as said license agreement was in effect, the licensee would not sell any roller bearings outside the limits of the territory assigned to it thereunder knowing them to be for shipment outside said territory, subject to the proviso, however, that the licensee could sell tapered roller bearings for installation in automobiles or other vehicles manufactured in the United Kingdom or Isle of Man which might be shipped to countries outside the limits assigned to it. Defendant denies the allegations of paragraph 15, except as herein admitted.

16. Defendant avers that defendant, as licensor, entered into a patent license agreement with The Electric & Ordnance Accessories Company, Limited, as licensee, originally executed by defendant under date of June 16, 1909, but subsequently re-executed by defendant after certain changes and alterations, on August 4, 1909, and later executed by the licensee under date of August - 1909. This agreement granted to such licensee the exclusive right to make, use and [fol. 63] vend in the territory described therein roller bearings of all kinds, made under or in accordance with the specifications of the various Letters Patent described therein; and further granted the right to make, use and vend articles involving the subject-matter of said patents and roller bearings of every kind whatsoever in that part of the territory wherein said patent or patents had not been granted or had ceased to exist, the latter grant being subject to the proviso that it was effective only so far as the licensor could lawfully make it. This agreement was valid and lawful in every respect including the extent to which it was limited either as to scope or territory. Defendant avers that it, as such licensor, agreed, among other things, that it would not make or sell roller bearings to others in the territory described in said license agreement while such license was in effect, subject to the proviso, however, that it, as licensor, reserved the right to make, sell or license others to make or sell bearings for automobiles or other vehicles manufactured outside the territory described in the license agreement, which might go into the territory described therein. The licensee agreed, among other things, that as long as said license agreement was in effect it would

not sell any roller bearings outside the limits of the territory assigned to it thereunder knowing them to be for shipment outside said territory, subject to the proviso, however, that the licensee could sell bearings for installation in automobiles or other vehicles manufactured within the territory described in the license agreement which might be shipped to countries outside the limits assigned to it. Defendant denies the allegations of paragraph 16, except as herein admitted.

17. Defendant admits that the rights of The Electric & Ordnance Accessories Company, Limited, as such licensee, were subsequently transferred to Limited. Defendant denies the other allegations of paragraph 17.

18. Defendant avers that in 1927 it offered to purchase all the stock of Limited which offer was accepted by the [fol. 64] owner of such stock; that subsequently by agreement between defendant and M. B. U. Dewar, a portion of the stock was issued to Dewar; that during a part of the period from 1928 to the date of filing the amended complaint, Dewar has acted as managing director of Limited and of Francaise, respectively, pursuant to agreement with defendant. Defendant denies the allegations of paragraph 18, except as herein admitted.

19. Defendant denies the allegation of paragraph 19.

20. Defendant denies the allegations of paragraph 20.

21. Defendant denies the allegations of paragraph 21.

22. Defendant admits that on January 1, 1928, in England, the defendant and Limited entered into an agreement by which Limited agreed, among other things, that except with defendant's consent, it would not manufacture, sell or deal in any bearings except under the terms of the agreement and under the trade-mark "Timken". Defendant avers that paragraph 22 does not otherwise accurately or correctly describe the provisions of the said agreement to which it refers, and defendant denies the other allegations thereof.

23. Defendant admits that on June 16, 1928, Limited on its own account and on behalf of and with the approval of defendant, entered into an agreement with Francaise by which Limited agreed, among other things, not to sell in France, her colonies, dependencies and mandatory territories (except those in or adjacent to North or South America) except under the terms of said agreement. Defendant

avers that said agreement was entered into in England, and provided that it was to be construed and take effect according to English law. Defendant avers that paragraph 23 does not otherwise accurately or correctly describe the provisions of said agreement to which it refers, and defendant denies the other allegations thereof.

24. Defendant admits that in February 1932, in England, the defendant and Limited entered into a certain agree- [fol. 65] ment regarding their business relations. Defendant avers that paragraph 24 does not otherwise accurately or correctly describe the provisions of the said agreement to which it refers, and defendant denies the other allegations thereof.

25. Defendant admits that on December 29, 1934, in England, a new agreement was entered into between the defendant and Limited. Defendant avers that paragraph 25 does not otherwise accurately or correctly describe the provisions of the said agreement to which it refers, and defendant denies the other allegations thereof.

26. Defendant admits that on July 15, 1935, Limited on its own account and also for and on behalf of the defendant, entered into a new agreement with Francaise. Defendant avers that said agreement was entered into in England and provided that it was to be construed and take effect according to English law. Defendant avers that paragraph 26 does not otherwise accurately or correctly describe the provisions of the said agreement to which it refers, and defendant denies the other allegations thereof.

27. Defendant admits that on November 28, 1938, in England, the defendant, Limited and Francaise entered into an agreement, referred to by plaintiff in the amended complaint as the Tripartite Contract, which was to continue in effect for a period of twenty-seven years from January 1, 1938, admits that a copy of said agreement is attached to the amended complaint and marked Exhibit "A", and respectfully refers the court thereto for the terms and provisions thereof. Defendant avers that paragraph 27 does not otherwise accurately or correctly describe the provisions of the agreement to which it refers, and defendant denies the other allegations thereof.

28. Defendant admits that on November 29, 1938, in England, defendant, Limited and Dewar entered into a supplemental business agreement by which, among other things, arrangements were made for future business in Russia,

admits that a copy of said agreement is attached to the amended complaint and marked Exhibit "B", and respectfully refers the court thereto for the terms and provisions [fol. 66] thereof. Defendant avers that paragraph 28 does not otherwise accurately or correctly describe the provisions of said agreement to which it refers, and defendant denies the other allegations thereof.

29. Defendant admits that as a result of the outbreak of war and the requirements of the British armament program in 1939, Limited became unable to supply the requirements of its overseas markets, and avers that new and various arrangements were entered into between the defendant and Limited to provide Timken bearings. Defendant avers that paragraph 29 does not otherwise accurately or correctly describe such arrangements so entered into between the defendant and Limited, and defendant denies the other allegations thereof.

30. Defendant denies the allegations of paragraph 30.

31. Defendant admits it referred to Limited and to Francaise certain inquiries relating to agency or distribution arrangements in certain countries. Defendant denies the other allegations of paragraph 31.

32. Defendant admits that the agreements referred to in paragraphs 27 and 28 of the amended complaint are in full force and effect. Defendant denies the other allegations of paragraph 32.

33. Defendant denies the allegations of paragraph 33.

34. Defendant admits that its productive facilities were expanded during the war. Defendant denies the other allegations of paragraph 34.

Wherefore, the defendant having fully answered the amended complaint herein, prays that said amended complaint be dismissed and that it go hence with its costs.

(S.) Luther Day, John G. Ketterer, Counsel for Defendant.

Jones, Day, Cockley & Reavis, 1759 Union Commerce Building, Cleveland 14, Ohio.

Day, Cope, Ketterer, Raley & Wright, 1110 First National Bank Building, Canton 2, Ohio.

[fol. 67] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ON MOTION OF THE TIMKEN ROLLER BEARING COMPANY TO RELEASE WITNESSES FROM OATH OF SECRECY—Filed March 18, 1948.

It appearing to the Court, upon motion of the defendant, The Timken Roller Bearing Company, for an order to release witnesses from the oath of secrecy taken before the Grand Jury in connection with the investigation of charges resulting in an indictment against General Motors Corporation, et al., Criminal Docket No. 18,915 in this Court, that an obligation of secrecy was imposed upon the following officers and employees of The Timken Roller Bearing Company who appeared before that Grand Jury:

Robert Riblet.
Sidney Partridge.
Albert Bertstrom.
Edwin H. Austin.
William E. Umstattd.
W. Robert Timken.
L. M. Klinedinst.
E. W. Austin.

and it further appearing to the Court that it is just and practicable that the above named witnesses should be released from that obligation of secrecy so that they may fully confer with counsel for The Timken Roller Bearing [fols. 68-72] Company and members of the organization of The Timken Roller Bearing Company in the preparation of the defense of this case.

Now, therefore, it is ordered that the above named witnesses who appeared before the Grand Jury be, and they are hereby released from the obligation of secrecy imposed upon them by the oath of secrecy and they may confer with counsel for The Timken Roller Bearing Company and members of the organization of The Timken Roller Bearing Company concerning their testimony before the Grand

Jury and all matters which pertain thereto, or which pertain to the defense of this case.

(S.) Freed, Judge.

March 18, 1948.

Notice by Clerk hereby waived.

(S.) Robert A. Nitschke, Per F. Cavanaugh.

[fol. 73] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

No. 24214 Civil Action

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE TIMKEN ROLLER BEARING COMPANY, Defendant

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

Transcript of Proceedings at the trial of the above entitled cause before the Hon. Emerich B. Freed, commencing on Monday, March 22, 1948, 10:00 o'clock A. M.

[fols. 74-117] Appearances:

For the United States: Robert A. Nitschke, Special Assistant to the Attorney General. George L. Derr, Esq., and Bertram C. Dedman, Esq., Special Attorneys, Department of Justice.

For the Defendant: Luther Day, Esq., George H. Rudolph, Esq., and Eugene T. Kinder, Esq., of Messrs. Jones, Day, Cockley & Reavis. John G. Ketterer, of Messrs. Day, Cope, Ketterer, Raley & Wright.

* * * * * * *

[fols. 118-119] OPENING ARGUMENT FOR DEFENDANT

The French situation comes into the picture prior to 1927 in the fact that the evidence will disclose that British Timken had entered into a sublicense agreement with a French company known as S. M. G. Under this sublicense this S. M. G. Company had a right to make the bearings. Now, the evidence will show that the operation under that

sublicense was very unsatisfactory, practically from every point of view, until 1927, which is one of the crucial dates in this case, and which we believe your Honor will believe and which I think cannot be disputed was the beginning crucial date here. At that time, we have a situation where British Timken is operating under that assignment in Great Britain and in the territory of Great Britain, the United Kingdom, the Isle of Man, and Europe, with a sublicense to S. M. G. over in France, and the operations were generally of the character I have described.

* * * * * * *

[fols. 120-130] I cannot over-emphasize the importance of the situation in 1927 because, as we see it, the agreement which was made in 1927 between American Timken, the defendant, and Michael Dewar, is the basic, underlying agreement in this case. British Timken had no assets in 1927, it had made some money, and the record will show how much, it had a successful operation to a certain extent, but not, as I have already indicated, in the number of bearings that were sold, and that we hoped would indicate an acceptance by the British public of Timken Roller bearings. Its property was under lease from Wolsley. Its equipment was under lease. It had a contract by which it was making Timken roller bearings. That was a contract with the defendant, American Timken, and it was its sole authority for making Timken roller bearings. The contract had about a year and a half to run. My recollection is that these discussions took place early in 1927, perhaps the end of 1926—I know they did—and the contract expired the 1st of January, 1929.

* * * * * * *

[fols. 131-133] The Heads of Agreement were signed by Michael Dewar and American Timken, dated May 16, 1927. It is, to our minds, one of the most important documents in this case.

* * * * * * *

[fols. 134-135] So the ultimate control was in American Timken in that respect, the management and operation control was in Dewar.

* * * * * * *

[fol. 136] I want to talk about the contract, the first contract. That's January 1, 1928. That's when the complaint charges that the conspiracy began, some time in 1928. The evidence will show that whatever business British Timken had in 1928 was built up by reason of its relation to American Timken, and as of January 1, 1928, the first contract was drawn up between American Timken and British Timken. That contract will be in evidence. The Govern-
[fols. 137-162] ment will offer it and, of course, we will join in the offer of it. That's the contract that carries out pretty much the terms of the heads of agreement that was drawn up in May, 1927, between American Timken and Michael Dewar.

* * * * * * *

[fol. 163] Mr. Nitschke: I would like to call to the stand Mr. Klinedinst.

Thereupon the Government called as a witness Louis M. Klinedinst, who, being first duly sworn, testified as follows:

Direct examination

By Mr. Nitschke:

Q. Will you state your name?
A. Louis Meyers Klinedinst.
Q. What is your residence?
A. Hills and Dales, Canton, Ohio.
Q. What position do you hold with the Timken Roller Bearing Company?
A. Vice-president in charge of sales and Director.
Q. How long have you been with the Timken Roller Bearing Company?
A. Since April, 1905.
Q. What did you do for them at that time?
A. In the beginning?
Q. Yes.
A. I think I was an inspector at the start.
Q. Would you mind telling the character of the positions you have held with the company since that time up to date?

A. Well, for four or five years I think I was inspector, [fol. 164] that is, shop inspector. Following that I was follow-up man in charge of shipping, receiving, and so forth. Then I was transferred into sales; I had charge of the wagon and carriage axle division, selling axles and bearings for horse-drawn vehicles. That lasted until about 1915, when the company sold out that division of the business. Then I was assistant general sales manager for four or five years. About 1922 we decided to sell bearings in industries other than automotive and I had charge of what we call the whole industrial division, which included farm machinery, machine tools, road-building machinery, electrical devices, railroads, and what not. I had charge of that division, and in 1930 I was elected Vice-president, but still retaining that position.

Q. In charge of industrial sales?

A. Yes. In 1934 I was elected a director and put in charge of all sales, which position I hold today. That is substantially the way I recall it.

Q. You are the second ranking officer of the company, are you not?

A. No, I wouldn't say so. Henry Timken is the ranking officer, Chairman of the Board. Mr. Umstattd is President, and Henry Timken also holds the position of executive [fol. 165] vice-president.

Q. Let me put it this way: You are the second highest paid man in the company?

A. That is awfully nice of you to say that.

Q. Well, I won't ask you then whether it is true or not. I think it is true, though, isn't it?

A. I don't know.

Q. I wonder if you could tell the Court what anti-friction bearings are as distinguished from plain bearings?

A. Well, there are many types of anti-friction bearings but generally it is a series of rollers or balls maintained in a cage, rotating between two hardened surfaces, as against the plain bearing which slides over the shaft or spindle. That is essentially the main difference between a friction and anti-friction bearing. Now, there are different types of anti-friction bearings.

Q. Will you tell us what those are?

A. That is quite a long story. I will try to define, first, the tapered roller bearings, which contain the roller bear-

ings between two hardened surfaces. They are tapered to take the load radially and end-thrust.

Q. Will you tell us what radial and end thrust are?

[fol. 166] A. Well, the best way to define that is when you are sitting in your automobile and it is standing still you are putting a radial load on the bearings. If the automobile is driven around a curve it tries to pitch you out, and that is thrust, and I think that is the easiest way to illustrate that: if you went around a curve very rapidly you will feel the thrust trying to push you out of the car.

Q. What other types of bearings are there?

A. Then there are several types of ball bearings. What is called the radex type, which takes somewhat of the thrust. That has a series of balls rotating between two races. Then another type of ball bearing called the deep groove ball bearing, which has a series of balls rotating between two races that will take a slight amount of end thrust and the radial load. Then there is another type of ball bearing which is an all-thrust bearing, no radial load whatever, two races side by side and the balls lying between with no radial capacity. I think that covers the ball bearings.

Then there are several types of straight roller bearings, some of which will take a slight amount of thrust, the major parts of the straight roller bearing are two cylindrical [fol. 167] races with a series of rollers, which have to be backed up on the sides to hold the bearings in place. Another type of straight roller bearing which is popular has a grooved race-way which holds the rollers in place on the inside, and there is a washer on the outside of the race to hold the rollers from moving back and forth. That is the type of bearing used where they want to anchor one end so the shaft can't float through it.

Then there is a bearing called the hour-glass type, which is spherangular in a way but the hour-glass is a type where the rollers are made in the form of a sphere and the races the same way so you get what is called self-alignment in the bearing itself. Then there is a type of spherangular bearing which is called the barrel type. That particular type is the same with the rollers rolling between two hardened surfaces, and is also a self-aligning bearing.

Q. Now, you have given us tapered roller bearings, ball bearings, straight roller and two types of spherangular.

A. I think that about covers it. There may be some other types but they have very narrow usages.

Mr. Nitschke: I would like to have marked for identification as Government's Exhibit 1 a pamphlet entitled [fol. 168] "Anti-friction Bearings" published by the Timken Roller Bearing Company.

(So marked.)

Q. Do you recognize that pamphlet?

A. Yes.

Q. Is that put out by the Timken Roller Bearing Company?

A. It is.

Q. I would like to call your attention to the fifth page. Does that show illustrations of some of these various types of bearings you have described?

A. Not all of them. It doesn't show the spherangular bearing. It doesn't show either one of the spherangular, either the hour-glass type of the barrel type. It does describe the two types of ball bearings—flat thrust and radial.

Q. In the back of the front page, is that a picture of the Timken Roller Bearing plant at Canton?

A. Yes, both Canton and Columbus. I don't think they are the latest pictures but they were at one time.

Q. Mr. Klinedinst, could you describe for us the component parts of a tapered roller bearing?

A. I would prefer to have a bearing. There is one there in my portfolio. It is easier to do it by showing you a bearing.

The Court: Possibly before we get into that we better take a ten minute recess.

(Recess taken.)

[fol. 169] Mr. Nitschke: I have had marked for identification as Government's Exhibit 2 the Timken Reference Manual, and marked for identification as Government's Exhibit 3 a tapered roller bearing carrying the numbers 3984 on the cone and 3920 on the cup.

Q. Mr. Klinedinst, I was asking you before the recess if you could describe to the court the component parts of a tapered roller bearing, and I show you from Government's Exhibit 2, being Timken Reference Manual, on page

6, a diagram J-2, and ask you if that shows the component parts of a tapered roller bearing?

A. Yes, the one is what we term the outside race and the other the inside race, or the track for the rolls.

Q. That's called a cone?

A. That's called a cone, and the other is the cage with a series of pockets that hold the rollers. This shows a complete assembly, J-3 shows the complete assembly.

Q. That's also on page 6?

A. Also on page 6.

Q. I show you also Government's Exhibit 3——

[fol. 170] Q. Mr. Klinedinst, just before the recess you said you would like to illustrate to the judge from a Timken roller bearing what you had said before about thrust. I'll hand you this bearing.

A. This is different in design from any other type of bearing in, as I said before, that the rollers and races are tapered, and they are tapered for two reasons. One is to make the bearing adjustable, so it can be drawn up, can be adjusted by moving the cone further into the cup, and the other reason is in order to carry a heavy thrust load. The Timken bearing differs from all other types of bearings because it carries the load over the entire length of the roller. There are a lot of bearings that carry some thrust, ball bearings carry a little thrust, and a number of them carry a certain amount of thrust, spherangular bearings carry some, but none carries the same amount of thrust as the Timken roller bearing because, as I said, we carry the load over the entire length of the roller. That in itself is a unit and is never used separately. It takes two, they must be mounted in pairs always, because if you mount one singly it pushes the roller right out of the cup.

[fol. 171] Q. They are mounted in pairs?

A. They must be mounted in pairs, you can never use a Timken roller bearing alone.

Q. Tapered roller bearing.

A. Yes.

Q. I wonder, Mr. Klinedinst, if you can tell the court some of the uses of tapered roller bearings?

A. Well, I think I could describe that better by telling what some of the places are where they are not used. I think the largest use for tapered roller bearings is on auto-

mobiles and trucks and farm machinery. We find, for example, the average automobile has anywhere from ten to twelve tapered roller bearings, except General Motors, who make their own bearings, by the way. In farm machinery, tractors, for example, there are as high as twenty-two tapered bearings in one machine. In machine tools, take for example the Cincinnati miller, we might find fifty tapered roller bearings in one machine. In road building machinery, such things as road scrapers, cement mixers, and so on, you'll find anywhere from two to probably fifty bearings. Another large use of roller bearings is on railroad rolling stock, particularly in locomotives, gas, electric, and diesel.

[fol. 172] Q. Is that on the wheels?

A. Gas, electric, and diesel locomotives.

Q. They are used in the engines?

A. In the wheels.

Q. In the wheels?

A. Yes, in the wheels, in some cases on the crank shafts of steam locomotives, and in passenger cars, dining cars, club cars, and so on. Freight cars are our biggest market. We haven't yet made any great inroads there——

Q. Those are enough examples, Mr. Klinedinst.

A. Is that enough?

Q. Yes, I think so. I would like to call your attention to page 17 of Government's Exhibit 2, and ask you if on that page and on the following page are shown several applications for tapered roller bearings?

A. Well, we show there a marine drive engine reduction gear unit, which is used in paper mills and rolling mills and so on; and we use an automotive front wheel which shows the bearing in the inner and outer position; this happens to be a disc plow used by a farmer to disc his farm, if you ever saw them plow the furrows, this wheel is lying over on the side, that's where the thrust is getting very heavy, thrust on the inside bearing. The one in the bottom left corner is a worm drive truck, and the one at [fol. 173] the bottom right is a Jordan engine for paper mills. Jordan doesn't mean anything except that the man that invented this was named Jordan.

Q. And on the following pages are there also further illustrations?

A. Those are typical industrial applications.

Q. Does page 24 show illustrations of an automobile and a truck showing the applications for tapered roller bearings?

A. The upper position on page 24 shows a typical application of bearings in a passenger car, showing the bearings in the rear wheel, differential, transmission, and so on. The picture at the bottom of the page is a conventional type of motor truck showing the various positions in that application to show 26 bearings on that one. That's a typical truck.

Mr. Nitschke: We wish to offer in evidence Government's Exhibits 1, 2, and 3.

Mr. Day: No objection.

The Court: They may be received.

Q. Mr. Klinedinst, what are taper roller bearings made of, that is, what are the raw materials used to make them?

A. Well, tapered roller bearings are made out of a low [fol. 174] carbonized steel, I think it's number 4615, as contrasted with the high carbon steel used in ball bearings, where you harden it all the way through.

Q. In what forms and shapes do they come in for transformation into tapered roller bearings?

A. Well, they start out from the ingots and are rolled down, and made into tube, and both the inside and outside races are cut off from the tubing, you do that in the screw machine. The rollers are made out of cold bar steel, wire we call it, which is practically the same analysis as we use in the bearings.

Q. What are the cages made out of?

A. Straight carbon sheet steel.

Q. They are pressed out of that?

A. Well, sheet steel is used in automotive bodies, and all of that, and the steel is bought by us in strips and we perforate the cages.

Q. Could you tell the court how small and how large tapered roller bearings are made?

A. I think the smallest tapered roller bearing we have ever made is about 1½ inches outside diameter, with a ⅜ bore.

Q. About how much would that weigh?

A. Well, that gets down to a matter of ounces. The larg- [fol. 175] est bearing is a 26 inch bore—the largest tapered

bearing has a 36 inch bore and 58 inches outside diameter and weighs about 12,000 pounds.

The Court: What was that, 58 inches outside diameter?

The Witness: 58 inches outside diameter and weighs about 12,000 pounds.

Q. In other words, six tons?

A. Yes. In other words, a bearing like that is used very largely on rolling mills for rolling steel.

Q. What would a bearing like that cost?

A. Oh, I don't know. I guess a dollar a pound.

Q. As much as $12,000?

A. Yes.

Q. And how much would the smallest bearing cost?

A. About a quarter.

Q. Mr. Klinedinst, how does the Timken Roller Bearing Company sell tapered roller bearings?

A. The selling of tapered roller bearings really starts with machinery sales work, you take a manufacturer of equipment who makes machinery in which bearings can be used. A sales engineer will get drawings of the equipment, have them brought into the office, and a layout is made of the drawings showing the bearings mounted in [fol. 176] the various positions.

Q. That's on bearing sales to manufacturers of equipment that are going to install bearings in the equipment?

A. That's exactly what I'm trying to describe right now. When those drawings are made our engineers follow that through, and the salesman follows it through. They have to sell that layout, and they have to sell that in competition with probably four or five other drawings that other manufacturers have made, and the man with the best salesman and the best product usually gets the business. I want to make that point clear, because when you get a drawing and lay the bearings in it doesn't mean we have the business. That's when competition starts and we have got to sell that over the other fellows', and there may be ten, twelve, or fifteen, or however many competitors you may have.

Q. Is there any difference in the way you sell bearings for replacement purposes, that is, where a bearing is worn out in a machine somewhere?

A. All the difference in the world. In selling a bearing for replacement all we do is make the bearing available.

Availability is the kingpin in handling service. We don't sell any bearings to replace other bearings, it has to be a [fol. 177] Timken bearing to replace a Timken bearing.

Q. Do you have your own distributors handling the sale of bearings, or do you sell to companies engaged in that work?

A. Well, we have a series of sales offices. From those offices we appoint distributors. For example, I think in Cleveland here we don't have a branch here, it's operated under the Detroit branch, and I think we have eight or ten distributors here. That's done by the Detroit sales office, they appoint the distributors around Cleveland, and they resell, make the bearings available to anyone who may have a breakdown.

Q. And these distributors buy the bearings from you?

A. Yes, sir.

Q. And resell them to the people that need them?

A. Yes, sir.

Q. Is there any difference in how you sell bearings for export from the way you sell them in the United States?

A. No, we have agents in places like South America who appoint these authorized distributors for us. I think in South America we have got possibly two or three agents, and we have one in Mexico and one in Cuba, and so on, and let's say he spreads propoganda for us, and he picks out [fol. 178] the proper distributor and he appoints him, and then we make sales to him directly, or sometimes from the authorized agent.

Q. What is meant in your business by a manufacturing account?

A. Chrysler Motor Company is a manufacturing account.

Q. That is, a person who buys your bearings for inclusion in some product he is manufacturing?

A. That's right.

Q. Is that correct?

A. That is correct.

Q. What is meant in your business by the phrase "service bearings" or "replacement bearings"?

A. Well, there is no difference between a service bearing and a bearing that is used in a piece of equipment. The bearings are exactly alike, exactly the same, and it becomes a service bearing, I would say, when it gets out in the hands of an authorized distributor who does not sell to

a manufacturer, but so far as the bearings are concerned they are exactly the same.

Q. Can you tell us approximately what percentage of your sales in the United States are sales for original application and what percentage of your sales are sales for [fol. 179] replacement or service?

A. I don't know that division exactly, but my guess would be it's under five percent.

Q. Under five percent for replacement?

A. Yes.

Q. And is there any difference in that percentage as far as your export trade is concerned?

A. I imagine it would be less, although I have never made any figures on that. It's very difficult to set up figures like that because we don't handle much of it ourselves.

Q. Mr. Klinedinst, your tapered roller bearings, can they be interchanged with other types of antifriction bearings, such as ball bearings and straight roller bearings?

A. There may be certain instances where they will interchange in the bore, o.d. and width, but not in the mounting.

Q. In the what?

A. In the mounting of the bearing. As I told you before, the tapered roller bearing is adjustable. You might find a ball bearing the same size as the tapered roller bearing, but you couldn't put it in where the tapered roller bearing was, or you couldn't put the tapered roller bearing in where [fol. 180] the ball bearing had been, because you haven't got provision in the mounting, in the engineering of the position to take care of a tapered roller bearing.

Q. So that if a bearing in a Ford car front wheel, tapered roller bearing, wears out, it would not be sound engineering to replace it with a ball bearing or straight roller bearing?

A. You couldn't do it.

Q. You couldn't do it?

A. No, sir.

Q. And if the car were designed with ball bearings in the front wheels, could you replace them with a tapered roller bearing?

A. Not unless you made one especially for the application. That applies to the front wheels now, because you have got adjustment on both ball and tapered roller.

Q. That's an exceptional case where you could interchange?

A. When it could be done, but you would have to make the bearing fit the place, that is the bore, o.d. and width.

Q. Mr. Klinedinst, is Timken the largest manufacturer of tapered roller bearings in the United States?

A. Yes.

Q. Does it make anything else besides tapered roller bearings?

[fol. 181] A. Rock bits.

Q. What are they?

A. That's an attachable bit for rock drilling, a little bit you stick in the end of the drill rod, saving a lot of expense. The old method was to take the long drill rod and when it got dull replace it and throw it away. Now they use these rock bits in the end of the drill rod. We make those in the Mount Vernon plant and in Colorado Springs.

Q. Do you make anything else?

A. Well, we make various kinds of steels.

Q. You have a steel mill?

A. Yes.

Q. Is that steel used in the manufacture of your own tapered roller bearings?

A. Yes, sir.

Q. And do you also sell some of that steel?

A. Yes, sir.

Q. To other bearing manufacturers?

A. Yes, sir.

Q. Has Timken always been the largest manufacturer of tapered roller bearings in the United States?

[fol. 182] A. As far as I recall, yes.

Q. At least since 1904?

A. Yes.

Q. And was it the largest in 1927, 1928?

A. Yes.

Q. Do you have any idea of approximately what percentage of the United States production of tapered roller bearings Timken had in 1927 and 1928?

A. I wouldn't know. If I knew what the other fellows produced I could tell you that, but I don't know.

Q. Well, could you give us an approximation, give us your opinion as sales manager, about what it was?

A. Oh, if I had to make a guess I would say probably from 50 to 60 per cent.

Q. In 1927?

A. Yes. That's just a guess, by the way, because I have no figures on that.

Q. You think that's probably a fairly conservative guess?

A. I hope so.

Q. In 1927 or 1928, Mr. Klinedinst, who else made tapered roller bearings besides Timken, to the best of your recollection?

[fol. 183] A. Why, I think in 1927 Bower started that year, I believe. I think that's all there was at that time.

Q. And is it your recollection that they had as much as 50 percent of the business at that time?

A. I don't know. They got started sometime around there, and I don't know what they had. They had quite a bit of business. I don't think they had that much, though. That sounds like quite a lot, a little high for just getting started.

Q. I know as sales manager you probably wouldn't want to over-estimate the percentage of your company's sales, but isn't it true, Mr. Klinedinst, that about 1927 you had pretty nearly all the tapered roller bearing business in the United States?

A. Well, there was only one manufacturer that I can tell you about and I don't know how much they had. I would say we probably had the majority of it.

Q. Were there any tapered roller bearing manufacturers in the United States before 1927 or 1928?

A. Yes.

Q. Who were they?

A. Gilliam Manufacturing Company started, I think, in 1916 or 1917, and the Buck Roller Bearing Company of [fol. 184] Toledo started about the same time, or a little later. And the Wright Roller Bearing Company, they were a little later, probably 1920.

Q. What happened to those companies?

A. Well, I think they went broke, and we bought some of the machinery. They are not in existence any more.

Q. You think you bought them out?

A. We bought the assets. I don't know just when it was.

Q. Do you know what percentage of the tapered roller bearing production in dollars Timken has today?

A. What percentage in dollars?

Q. Yes.

A. No. I don't.

Q. Could you give us an approximation of that?

A. No, I haven't the least idea without knowing what the other fellow has. There are more tapered roller bearing companies today than we ever had in our history.

Q. Who else is making them now?

A. Well, the Tyson Roller Bearing Company in Massillon, Ohio; The Bower Roller Bearing Company in Detroit. The Bantam Roller Bearing Company of South Bend. Pratt Company of Joliet, Illinois, and there is one other in Muskegon, Michigan. I can't think of the name of that now.

[fol. 185] Q. Do all those companies make bearings for sale to manufacturing accounts?

A. Yes.

Q. Mr. Klinedinst, what is the Timken Detroit Axle Company?

A. What are they?

Q. Yes.

A. Well, they are a manufacturer of truck axles for heavy duty trucks, busses, and so on.

Q. Do they have any connection with Timken Roller Bearing Company?

A. And they manufacture the Timken oil burners.

Q. Do you know if they have any connection with the Timken Roller Bearing Company?

A. To my knowledge, none.

Q. Do you sell them bearings?

A. We do.

Q. For original application?

A. Yes, sir.

Q. And also for replacement?

A. Yes, sir.

Q. That is, for replacement in their axles when the bearings wear out?

[fol. 186] A. Well, we think they are for replacement. They don't make any distinction. They order so many bearings from us. We don't know where they put them. We have no way of knowing that, how many are for replacement and how many go into the axles.

Q. I would like to ask you about another company that I think we are going to hear quite a bit about in this trial. What is S. K. F.?

A. Antifriction bearing manufacturer.

Q. Do you know what the initials S. K. F. stand for?

A. Svenska Kugellager Fabriken. If there are any S. K. F. men here they will probably call me on that.

Q. Do they have a plant in the United States?

A. Yes, sir.

Q. What is the name of the company in the United States?

A. I think it's S. K. F., Inc.

Q. S. K. F. Industries, Inc.?

A. Yes, I believe that's right.

Q. That's located in Philadelphia?

A. Yes, sir.

Q. Are there other S. K. F. companies outside the United States?

A. Yes, sir.

Q. Do you know where they are located?

[fol. 187]. A. I can't name all of them. I can give you Skefco Company in England, and the company in Stockholm—I can't tell you the names of them, but there are several others.

Q. They make bearings with the trademark S. K. F. on them?

A. Yes, sir.

Q. Have you ever heard of the initials F. & S. in connection with the S. K. F. Company?

A. F. & S.?

Q. Yes.

A. I recall a company like that in Germany, yes, sir.

Q. That's Fechtel & Sachs?

A. Yes, sir.

Q. Do you know if that was taken over by S. K. F.?

A. I don't know.

Q. But you have heard of bearings bearing those initials which came from Germany?

A. I have seen them, yes, sir.

Q. For purposes of the record I would like to have you identify some of the people who are in your organization, or who have been. Who was Don P. Hess?

A. Donald Hess was at one time—I think he had the position of assistant works manager for a while in the Canton plant, and he was later on transfered to Columbus [fol. 188] and was our Columbus plant manager for a number of years, and then he was moved back to Canton as assistant to the president.

Q. Was that around 1928?

A. I believe so. He resigned.

Q. Do you know when he resigned?

A. I couldn't tell you the date, no.

Q. And he was assistant to the president until he resigned?

A. That's right.

Q. And who was president during the time he was assistant?

A. M. T. Lothrop.

Q. Do you know what Mr. Hess' duties were?

A. Well, as I told you, he was assistant works manager at the Canton plant. The duties comprised the conducting of the affairs of the shop, and in Columbus he had complete charge of the Columbus plant while he was there. When he came back to Canton his duties were executive, as assistant to the chief executive. It would be most difficult just to define those duties. I don't think I could do that.

Q. Do you know if he had any connection with your foreign activities?

A. I know he made several trips to Europe.

[fol. 189] Q. And who was R. E. Forsythe?

A. He was a young boy that was brought in and worked up through the various divisions to an executive assistant.

Q. Whose assistant is he now?

A. Right now he is assistant general manager of the foreign division under Mr. Sauer.

Q. Do you know what position he held before the war?

A. Well, he was executive assistant before the war.

Q. And assistant to whom then?

A. Well, he was assistant to me and to our president, Mr. Umstattd. He had quite a lot of bosses, I assure you.

Q. Who is Jud Spray?

A. Spray was formerly vice president in charge of sales.

Q. About what time was that?

A. Up to about 1933—no, from 1932 to about 1934. In 1934 he resigned.

Q. And at the present time Mr. Umstattd is president of the company, is he not?

A. He is.

Q. How long has he been president?

A. My guess would be fifteen years, although I may be wrong on that.

Q. Do you know what his position was back in 1928?

[fol. 190] A. No, I don't recall. He was in an executive

position in the shop, I don't know whether he was works manager or assistant works manager. I just don't recall, but he was one of the executives in the factory.

Q. And who was Harry J. Porter?

A. Harry Porter was also a former vice president in charge of sales. He preceded Mr. Spray.

Q. This Porter I'm speaking of is the one that was in Detroit, Harry J. Porter?

A. That's the one.

Q. How long was he vice president in charge of sales?

A. I think about—I think he was elected vice president in 1927, but he retired. He retired from the company, I think, about 1938 or 1939.

Q. What was his position at the time he retired?

A. Vice president in charge of sales.

Q. Is that automotive sales?

A. Well, yes, automotive sales.

Q. Do you know a man by the name of G. H. Turner?

A. Yes.

Q. What is his position?

A. He has charge of labor relations.

[fol. 191] Q. Do you know what he was doing around 1937 and 1938?

A. I have a hazy recollection, I think he was on rock bits. I think we had him in the field introducing our rock bit.

Q. Do you know if he had anything to do with trademarks or patents?

A. Not to my knowledge.

Q. And what is W. Robert Timken's position in the company?

A. He is a vice president and a director.

Q. And what are his duties?

A. His duties are primarily executive duties on finances, I believe.

Q. How long has he been vice president?

A. My guess would be ten years. I don't have any dates on that.

Mr. Nitschke: I would like to have marked for identification as Government's Exhibit 4, a document dated January 16, 1933, by L. M. Klinedinst.

[fol. 192] Further examination of L. M. Klinedinst.

By Mr. Nitschke:

Q. I want to show you Government's Exhibit 4 for identification, which is a memorandum dated January 16, 1933, and bears the typewritten name "L. M. Klinedinst" at the bottom, and I direct your attention to the first part of the second paragraph on the last page, where you say: "None of us and we here at the home office must be included know very much about selling in a highly competitive market. We have had about eight years, which is just about the length of time we took developing our Industrial Department, selling our tapered roller bearings without any tapered roller bearing competition."

Mr. Klinedinst, does that refresh your recollection as to the position of Timken in the tapered roller bearing market in 1927?

A. Not exactly. There were some competitors, Gilliam [fol. 193] and Bock, which are referred to, have passed out of the picture. There are a number of others which I looked up last night and I want to get those in the record.

The International Harvester Company——

Q. These are companies that were making bearings in 1927?

A. Making tapered roller bearings in '27. W. J. Pratt Company, Messenger Bearings Company, the Bower Roller Bearing Company.

The Court: I think you mentioned that yesterday.

Mr. Nitschke: Yes, I think you did. You are mentioning all of them?

The Court: Is that the same one or another one? That is the reason I asked.

The Witness: Bower I mentioned yesterday.

Mr. Day: I think the witness is a little hard of hearing, he probably didn't hear your question.

The Witness: What was the question?

Mr. Nitschke: The Judge wondered whether you were giving all the companies in the business making roller bearings in 1927, or whether these are additional ones.

[fol. 194] The Witness: That is right, the companies that were making tapered roller bearings in 1927, and Bower Roller Bearing Company, the Hoover Company, the Orange

Roller Bearing Company, and the Tiger Bearings Company.

Q. What was the last one Tiger?

A. Tiger Bearings Company.

Q. Mr. Klinedinst, what is your present recollection now as to Timken's position in 1927, what percentage of the market is it your opinion they had in 1927?

A. Of course in 1927 tapered roller bearings had not been developed to the extent that they are now. We were just getting along in our industrial division, and the biggest use for tapered roller bearings or any type of bearings at that time was really in automobile equipment. There was of course some we were getting along in in general industry, but the growth of that was later. As to the position of Timken in relation to other companies, I don't know what the percentage of business was, I have no way to check it any more than we have now. We know what our own total sales were, of course, in 1927, but I do not know what the other fellows' sales were, and without those it would be impossible to tell the Court what our percentage of the tapered roller business was at that time.

Q. Do you think you could give the Court an estimate, an [fol. 195] approximate estimate, your opinion as sales manager?

A. I don't think my opinion would be any good. In the first place it is twenty years ago, and I can't remember details back that far.

Mr. Nitschke: I offer Government's Exhibit 4 in evidence, your Honor.

[fol. 196] The Court: Suppose you do it. Suppose you have a copy of the second to the last paragraph made and offer it as an exhibit. This is Exhibit 5?

Mr. Nitschke: This is Exhibit 4.

The Court: That is right. That is the document dated January 16, 1933.

Mr. Nitschke: All right, we will do that.

Q. Mr. Klinedinst, do you think you could give the Court an estimate at the present time of Timken's position in the tapered roller bearing market of the United States in 1943?

[fol. 197] A. No, that would be a very wild guess for the reason that I have no way of getting figures. As an example——

Q. Well, that is all right.

The Court: Was that question with reference to tapered roller bearings or all roller bearings?

The Reporter: Tapered roller bearings.

Mr. Nitschke: I have had marked for identification as Government's Exhibit 5 a memorandum addressed to A. M. Donze, by L. M. Klinedinst, dated May 27, 1943.

Q. Do you recognize that document, Mr. Klinedinst?

A. Yes, I recognize that.

Q. Who is Mr. Donze?

A. Mr. Donze is vice-president in charge of operations, and this letter was addressed to him for the purpose of having him take better care of the customers.

Q. I will call your attention to the third paragraph of this letter where you said: "Many of the customers listed on the attached sheet have used our company exclusively for many years. They have not known of two sources of supply. They do not know that Timken supplied 85% of the tapered roller bearings in the country."

Does that refresh your recollection, Mr. Klinedinst, as [fol. 198] to Timken's percentage?

A. Well, I can testify as to the writing that letter, not as to the accuracy of the figures. However, if there was any such figure like 85% it certainly was a lot less than that when we lost these customers' business, or part of them, it showed we were slipping, and that was the reason for writing the letter, the other fellows were taking the business away from us and I wrote the letter, yes.

Q. At some time prior to 1943 you believed you did have 85%?

A. The 85% is very frankly, I checked last night with my associates, I don't know who compiled it for me, it was given to me by somebody, I certainly wouldn't testify before the Court as to the accuracy of it, because, in the first place, I don't think it is right. I am pretty certain it is not right.

Q. You think you were making an incorrect statement in this memorandum to Mr. Donse?

A. Not necessarily that.

Q. You thought it was an opinion——

Mr. Ketterer: Just let the witness answer.

A. (Continued) The letter was written to impress Mr. Donse that we were losing business. Just how some of

the other details crept in there I don't know but I cer-
[fol. 199] tainly have no way now, didn't have then to determine the exact amount in percentage of tapered roller bearings that the Timken Roller Bearing Company had. Of course we know our own but we can't find out the other fellows'. There is only one company in the tapered roller bearing business that publishes their figures and that is the Bower Company. And by the way, it came out the other day they had $20,000,000 worth of business last year. They made our company shake in its boots.

Q. What I want to have clear, would you say to the Court that is not your opinion?

A. That was undoubtedly a guess.

Q. You think it is high?

A. I think it is too high.

Q. You think it is high?

A. I do.

Mr. Nitschke: I wish to offer, I think in this case I perhaps should offer the first three paragraphs of Mr. Klinedinst's memorandum, which is Plaintiff's Exhibit 5.

The Court: Again excluding the other paragraphs. Without reading them, I am assuming they have no relevancy to the question asked. That is the reason I excluded the
[fol. 200] balance of that prior exhibit. Now, in making that statement, I repeat I assume that the balance of the exhibit has no relevancy to the matter in controversy. Now, is that true with reference to this exhibit?

Mr. Nitschke: Well, your Honor, I am satisfied to offer the portion I read.

The Court: Only these portions?

Mr. Nitschke: Yes.

The Court: In other words, I don't want to mutilate the exhibits. Where you offer paragraphs that are taken out of their proper context, the contents will have no meaning.

Mr. Nitschke: Well, that was the reason I was offering the first three rather than just the third which I read. I thought it might have that effect. But I think the third paragraph is sufficient and I will limit my offer to the third paragraph.

The Court: All right, it may be received.

Mr. Day: We have no objection to your offering the
[fol. 201] whole exhibit if you wish, this second one, the

Donse memorandum. Of course that is up to you whether you desire to do it or not.

Mr. Nitschke: I will confine my offer to the portion I read, the third paragraph.

The Court: The third paragraph only of Plaintiff's Exhibit 5? I am assuming these two volumes of exhibits which you have given me do not contain all the exhibits?

Mr. Nitschke: No, your Honor, they do not.

The Court: I think also that as I do not find these two I am to assume the two volumes do not contain all the exhibits.

Mr. Nitschke: That is correct. They contained all I anticipated using when the trial started. I didn't know I would use these. There may be a few others.

The Court: This is exhibit what?

Mr. Nitschke: No. 5.

[fol. 202] Q. We were talking, Mr. Klinedinst, about the problem of interchangeability yesterday, and there is just one thing I would like to clear up on that. Are there some applications for anti-friction bearings, such as ball bearings, for which tapered bearings cannot be used?

A. Yes, sir, many of them.

Q. What are some of those?

A. Electric motors, of which there are many millions built. We went into that industry and failed, got out of it, and it cost us several million dollars to get out of it. That [fol. 203] is a field of the ball bearing, it is a type where the bearings have to float, and the tapered bearing won't float. The two applications, one at each end, makes a very excellent application. The ball bearing people have had almost 100% of that business. That is one.

Q. Are ball bearings made in smaller sizes than tapered roller bearings?

A. Yes, sir.

Q. Than tapered roller bearings can be made in?

A. Yes, sir.

Mr. Nitschke: That is all I have at present.

Cross-examination of L. M. Klinedinst.

By Mr. Ketterer:

Q. Mr. Klinedinst, I believe you testified yesterday that you came with the Timken Roller Bearing Company in 1904 or 5?

A. Early in '05, to be exact.

Q. You have been with the company ever since that time?

A. Yes, sir.

Q. In 1905 how large was the Timken Roller Bearing Company in respect to the number of employees it had?

A. I believe 65. I think there is a photograph in the court that will show that.

Q. And it has grown progressively larger since the time [fol. 204] you came there in 1905?

A. It has.

Q. To your knowledge from 1905 up until 1922 did the Timken Roller Bearing Company make any other type of bearing other than tapered roller bearings?

A. No, sir.

Q. That was the exclusive product that they manufactured during that period?

A. Yes, sir.

Q. Now, what competition did you have during that period as to anti-friction bearings?

A. Our largest competitor—you are talking now about the period up to 1922?

Q. Up to 1922.

A. Our largest competitor then was ball bearings and plain bearings, ball bearings very largely in automobiles.

Q. And in the applications in which tapered roller bearings were used from 1905 until 1922 what is the fact as to whether or not they were largely used in automobiles and trucks and things of that sort?

A. I don't just get that.

(Question read by reporter.)

A. Yes, they were largely used in automobiles and trucks, practically no other applications.

[fol. 205] Q. And the competition that you had from ball bearings and tapered roller bearings was for use in automobiles and trucks, too, was it?

A. Yes.

Q. Now, was the ball bearing an older type of anti-friction bearing in the American market or had it been developed later than the tapered roller bearing?

A. The ball bearing was developed a number of years before the tapered roller bearing. As a matter of fact the

first ball bearings were brought here from Europe by Hess & Bright.

Q. And did the advent of the ball bearings in the anti-friction bearing market in America, did that precede the development of the tapered roller bearing in America?

A. Quite so.

Q. How much, by how many years did it precede the development of tapered roller bearings?

A. Well, tapered roller bearings actually were not developed to any extent until around 1905 and '06. Previous to that time everything was on ball bearings, all the automobiles. Of course there weren't so many, a lot of different kinds, but not a lot of cars and trucks, but they were practically exclusively ball bearings and straight roller bearings.

[fol. 206] Q. Then is it correct, Mr. Klinedinst, that in the period from 1905 to 1922 that the operations of the Timken Roller Bearing Company in developing tapered roller bearings in competition with the ball bearings was a process of putting out the ball bearing out of the automobile applications?

A. That is it exactly.

Q. And were ball bearings used during that period in the same kind of applications as tapered roller bearings?

A. Entirely so.

Q. Now, when you say the anti-friction bearing industry, Mr. Klinedinst, I would like to ask you what types of anti-friction bearings you include in that general definition?

A. Ball, straight roller bearing, spherangular, I would say that that would include the general line of bearings.

Q. Of anti-frictions?

A. Anti-friction bearings, yes.

Q. Without including tapered?

A. I have got to include tapered.

Q. Now, is there any competition between any other type of bearings and anti-friction bearings of the classes that you have described?

A. And tapered roller bearings?

Q. Well, is there any competition for business between [fol. 207] the types of anti-friction bearings you have described and any other types of bearings?

A. Yes, decidedly so.

Q. And what other types of bearings are in competition with the anti-friction bearing business?

A. Plain bearings, that includes bronze bushings, micarda bearings, there are probably more plain bearings made than all anti-friction bearings combined.

Q. So that we may better understand what you mean by plain bearings, will you refer for the Court to some of the common types of plain bearings and the applications to which they are applied?

A. Yes, we can only look at freight trains, and you can see they have a half bronze bearing which is called—I forget what the name of it is now—but practically 100% of all the freight cars operating on American railroads are of this plain bronze bearings. And it is a real competitor of the tapered roller bearing or anti-friction bearing in railroad use. There are others, of course, if you want me to proceed on that. Take the steel mills, some steel mills are going in to the roller bearings, tapered roller bearings, and barrel type, such as made by the S.K.F. Company; but the biggest competitor is the people who make the roller mill bearings, the Mesta Machine Company, and they use [fol. 208] the plain bearing on the back-up roll. The Morgan Construction Company at Worcester, who are in the bearing business, they call their bearing the morgoil, which is essentially a plain bearing.

Q. Is that at Worcester or Alliance?

A. Worcester, Massachusetts. There are many other applications of plain bearings where anti-friction bearings can be used but the market has not been broken down yet. There are millions of wheelbarrows and railroad trains and steel mills and many applications are still of those different types of plain bearings.

Q. Now, you were asked a while ago on direct examination whether there were any types of any applications in which ball bearings can be used and tapered roller bearings cannot be used. I believe you said there were some?

A. Yes,

Q. Now I want to ask you whether there are any large sizes of tapered roller bearings which are suitable to applications in which ball bearings are not suitable?

A. Yes. There are in the larger sizes places where the tapered roller bearings are suitable, whereas a ball would have to be very large to go into the same place that the tapered roller bearing will go, not only the tapered roller bearing but the straight roller bearing, the spherangular

[fol. 209] roller bearing, anti-friction, and the barrel type, such as made by the SKF.

Q. In this group of small applications on electric motors, I believe that was the example you used a little while ago, in this group of small applications can you give us some estimate of the total of the anti-friction bearing business represented by the small applications for which tapered roller bearings are not suitable and ball bearings are?

A. No, I couldn't but the market is very large. I would say in the electric motor industry alone probably the market probably is a market for ten million bearings where the tapered roller bearing isn't at all suitable, and where ball bearings are now used.

Q. And that is, I think you said a while ago, because of the fact the tapered roller bearing would float in the application?

A. In the first place the tapered roller bearing has certain peculiarities. It will not lubricate itself very well, and a ball bearing can operate with a very small amount of lubrication. That is point 1.

Point 2 is you must, in an electric motor, because of the expansion of the armature shaft, you must devise float. You must be able to have the armature shaft expand, and the bearing must move with it. The tapered roller bearing [fol. 210] will not move with it because it is a separable unit, but the ball bearing is a self-contained unit and mounted on the end of a shaft, as that shaft expands it moves the bearing on the end out a little farther, therefore it doesn't pinch the bearings and burn them out.

Q. Now, in between the small applications in which you say ball bearings are used in preference to tapered roller bearings, and the large applications in which you say it is impractical because of the size of the balls to use ball bearings, what is the fact as to whether there is competition at all times in the anti-friction bearing industry between tapered roller bearings, ball bearings, straight roller bearings and a combination of the three?

A. Well, I would say that on general applications, general industrial applications, farm machinery and automobiles, the ball bearing can be used just as well as the tapered roller bearing and straight roller bearing, but the whole thing becomes a matter of engineering and price and salesmanship. As I repeated yesterday, we don't go and sell so many bearings over the counter. We make a

lay-out and all the other bearing companies make a lay-out, also, with their product, and the engineers of the manufacturing company take those lay-outs, they go over them, and whichever one seems to make the best mounting, whatever one seems to be the most economical mounting, that is the [fol. 211] one they buy. It may be ball bearings, roller bearings, spherangular bearings, in some cases it may be plain bearings.

Q. And would you say that is the great bulk of the anti-friction bearing business as such, is the competition between the various types of anti-friction bearings?

A. I would, sir.

Q. That is, as to the number of applications and the uses of the different types of bearings?

A. Yes, sir.

Q. Is it also correct in that connection you also have the problem of competing with various types of plain bearings?

A. Absolutely.

Q. And part of the business of all anti-friction bearing manufacturers, including Timken, is the persuade users of plain bearings to substitute anti-friction bearings for plain bearings?

A. That is exactly it. The entire industry faces the same problem that we face on that.

Q. Now, you were asked yesterday, or you made some statement yesterday, as I understood it, that in 1922 the Timken Roller Bearing Company embarked on a program of industrial uses in respect of its tapered roller bearings. [fol. 212] Will you tell us what you meant by that?

A. Well, up to that period practically all of our business was automotive. By automotive I mean automobiles and trucks and trailers, very few trailers, and the business was more or less limited, that is as to growth. In other words the only growth we could expect would be the growth of the automotive industry. Along with the other companies we embarked into the general industrial field, which I had charge of, from the start up until about 1934 or '35, and the biggest battle we had in that industry, in all those industries was to knock out plain bearings. Ball bearings were very well established. Also we did show a lot of manufacturers where they could use Timken bearings to advantage over ball bearings, but the ball bearing people and the straight roller bearing people were very well estab-

lished, so that was the big battle in the general industry was to knock out plain bearings, and that was a considerable problem.

The Court: How do you spell that word—"plain" or "plane"?

The Witness: P-l-a-i-n.

The Court: Just "plain".

The Witness: Well, that means a lot of things. It is a bearing that rotates, a bushing that turns, and so forth.

[fol. 213] Mr. Ketterer: If the Court please, we will have, before we finish this case, for illustration a sample of a plain bearing and a mounting so that we will be able to tell with more accuracy by a model exactly what we are talking about when we say a plain bearing.

The Court: I just didn't know, in making reference to it, whether it was plain, p-l-a-i-n, or whether it had some technical connotation.

Mr. Ketterer: No.

A. This battle with plain bearings—I wanted to go a little farther. We made very little headway in pushing ball bearings out of the various industrial machines. Our greatest success there was pushing plain bearings out. As an example, on the railroads today, in spite of the fact that Timken, Hyatt, Fafnir and SKF maintain a tremendous pressure on the railroad industry to introduce anti-friction bearings in freight cars, we would make a little headway, but not very much. The fact of the matter is, I'm sure, that the other companies who are pushing that with us trying to get anti-friction bearings in these positions are not making any more, if as much, headway as we are. It's a long task. Another case we went into was steel mills, [fol. 214] these large rolling mills that are set up in tandem. We started out and we thought we had an excellent job. They had used plain bearings, they had straight roller bearings, and they had SKF ball type bearings, and we were trying to get our own bearings in, and I think all the bearing companies failed like we failed, and they went back to ball bearings.

Q. You mean by all the bearing companies all the anti-friction bearing companies?

A. All the companies making anti-friction bearings.

Q. For backup rollers on steel mills?

A. That's right. There was probably eight or ten companies involved there, and they all failed with us. As a matter of fact, the majority of those mills are now being built with plain bearings, such as in the Morgan Construction Company. A tremendous amount of business was lost because, you might say, it was an engineering blunder.

Q. This process of developing business in the industrial field on the part of Timken as against plain bearings, and as against ball bearings, during the period that commenced in 1922, did other manufacturers of tapered roller bearings in the United States, after they got started in business, engage in the same competitive picture as did Timken in trying to get that business?

[fol. 215] A. Exactly. They didn't do it in our way. We being the biggest, they thought we had to do the pioneering and the engineering, but the other fellows did come on in the industrial field and, as a matter of fact, just followed right after us. We had to work out designs and develop the bearings, and we didn't know whether we would get the orders. Sometimes we didn't. Sometimes the other fellow walked in and took it away from us. I'm talking about tapered roller bearings now. We were never sure we would walk away with the order.

Q. That business of going into the industrial field, you say, commenced in 1922?

A. Yes, sir.

Q. Well, what is the fact as to whether or not that has continued down to the present time, the invasion of the industrial field by anti-friction bearing manufacturers?

A. It is continuing, and in a larger sense now than ever before. I think the other bearing companies with ourselves have increased their sales organizations and their engineering and research organizations in order to tap that big plain bearing market.

Q. By the other bearing companies, there are ball bearing companies, straight roller bearing companies and tapered roller bearing companies? Is that what you mean?

[fol. 216] A. Yes, sir, I do.

Q. Now, there was something said yesterday, and again this morning, about the question of interchangability between ball bearings and tapered roller bearings, and I believe you testified yesterday something about the process that goes on in the placing of one type of anti-friction

bearing or friction bearing in a given application as against another type. How is that done? At the time a manufacturer is getting ready to put into production a particular type of business, what process do the sales engineers of the Timken Company, as representatives of the anti-friction bearing industry, follow in this competitive picture that you have described?

A. As a matter of fact, after a job has once been developed and started, that is very seldom done. That is done when the business is in its initial stages.

Q. And by its initial stages you mean when it is on the drawing board, or where?

A. I mean when it is on the drawing board, or when it comes off of the drawing board.

Q. Can we be a little more specific about that? An automobile that is going to be produced in 1949, when do the plans and drawings for that car go on the drawing boards?

A. That would probably be started a year ago. They [fol. 217] usually start about two years ahead on any new model, whether it be an automobile, or what not, because they go through the process of design, and the next thing is to build up four or five sample cars, and the next thing is to run them for a year or two and test out the bearings. If the bearings are not suitable, then they may tear the design apart again and try some other kind of bearing.

Q. What is done when the car is first conceived and put on the drawing board, what is done by the car manufacturer, as an illustration, as to what type of anti-friction bearing or friction bearing is going to be used at a given place in the automobile?

A. That usually starts with the heads of the companies. The engineers are instructed to develop an automobile or truck, or whatnot, and these engineers start to lay out the general plan of the car, and when they get down to developing the axle and transmission and steering pivots where anti-friction bearings are used, the sales engineers of the various bearing companies are called in to submit their best proposition.

Q. Let me interrupt you there at that point. You say the sales engineers of the various bearing companies are called in?

A. Yes, sir.

Q. What kind of bearing companies?

A. Anti-friction bearings. That's ball, straight, roller, [fol. 218] any type of bearing company—most likely the ball bearing are called in first because they are easier to put in.

Q. And then what happens after that, what do the representatives of these various companies in the anti-friction bearing industry do?

A. These people come in and they may sit down at a drawing board and lay in there some of their bearings, or the engineer, or the car builder or car company, may give them a drawing and they take it home and the engineers design these bearings into the various applications, and then the sales engineers of the various companies take these drawings back to the sheet designer of the motor company and he goes over it and studies it, and we are out of it then until he decides the question of whether a tapered roller bearing or ball bearing or spherangular bearing might be more economical, not only as to the price of the bearing, but as to the mounting of the bearing, a big point to consider. They take all those things into consideration, and then if they find out that the ball bearing is more economical all over, they buy ball bearings. If they find out a tapered roller bearing is more economical they buy tapered roller bearings. In other words, that thing is decided when the car or piece of machinery is in the process of design. After that there is very little interchang-ability because it's [fol. 219] almost impossible, except in ball bearings. That is, Hess-Bright, Hyatt, New Departure, or Fafnir, could go in and make a change, but that is not true with tapered, to interchange with the ball. The bearing itself could be made to interchange, but the mountings are not interchangeable on account of the adjustability of Timken bearings. Now, it can be done by a lot of supporting mechanism, a lot of washers, or threading of a shaft, or something like that, but that's a very costly procedure after the car is once designed.

Q. But when the designing process is going on, is it a fact, then, that there is a choice generally between different types of anti-friction bearings as to whether or not they are going to use the ball bearing, the straight roller bearing, the tapered roller bearing, spherangular bearing, or any one of the types of anti-friction bearings?

A. Definitely so.

Q. Now, you referred to the automobile manufacturer by

way of illustration. Is that true generally in the industry in which anti-friction bearings are used, the process you have described?

A. That is true with any piece of machinery, equipment, whether it be an automobile, a road machine, an electric motor—which we are not in, by the way—but any type of machine, any place where wheels and shafts turn, that is [fol. 220] true. The engineer is the fellow who starts it, and that's when the bearing people are called in to give the best type of application they have.

Q. Now, have there been instances, to your knowledge, where you have gotten into a given application and then at some later time have lost on that business?

A. Many of them.

Q. I think you referred a while ago to the electric motor industry.

A. Yes.

Q. Did you ever have tapered roller bearings on the shafts of electric motors?

A. Many of them.

Q. And that is the case where you say ball bearings are used almost to the exclusion of tapered roller bearings?

A. We recognize an engineering blunder. A ball bearing is better suited, and we not only pulled out but we were asked to get out by some of our best friends in the industry. We were doing a poor job and we were very willing to get out.

Q. Do you know of any other places where you have succeeded in getting tapered roller bearings in and then you have lost out to ball bearings or these other types of bearings?

A. Yes, sir. I know a number of them. One of the outstanding examples would be paper making machinery. I [fol. 221] don't know whether you people are familiar with that, but a paper mill for rolling newsprint may be 304 inches wide and they have a big roller 6 feet in diameter, hollow, where steam is shot through. They call it the drier section of a paper mill. We went into that, and that's the big market in the paper mills, we went into that, we thought, will not do the job, and these bearings they now have will bearings, or more, out in the field and they began to go down for us, and that has cost us hundreds of thousands of dollars trying to replace those. Those bearings are now replaced or will be replaced with a peculiar type, I might

say, with SKF ball type bearings, that is self-aligning, and the tapered bearing is not self-aligning. When a shaft expands, or there is a deflection in the roller, it throws a lot of the deflection in such a way that the Timken bearing will not do the job, and those bearings they now have will take care of that deflection.

Q. On the paper mill business, you say, you are losing out in that field?

A. We have already lost out. We hope we can sometime design something that will get by, or that will win, but as the matter stands today we are definitely out of the drier section of the paper mills, which is the big part of that industry. We have a few little applications scattered [fol. 222] around, but the main application is in the drier section, a very large bearing and a very expensive bearing.

Q. Are there any places in which you have tried to get tapered roller bearings to the exclusion of any other type of anti-friction bearing in which you have not succeeded?

A. Yes, many places like that. We go on the theory that Timken bearing is not a panacea for all friction ills, and we take some chances ourselves, but there are a lot of people, a lot of places where we don't even try to put our bearings in. We try to get our applications into places where the design of the bearing will fit and where the customer will get long-time satisfactory operation.

Q. Can you tell the Court any places where the company has worked up drawings and submitted proposals to possible users of Timken bearings in many applications in which they have not used Timken bearings but have used other types of anti-friction bearings?

A. Oh, I can't point to any particularly, but I would say that the records in our engineering department show that we probably don't sell 10% of the companies we make layouts for.

Q. Are you familiar with what has happened in the Hoover Suction Sweeper Company?

A. Yes, that was a long time ago. That slipped my mind. [fol. 223] We worked many years on the Hoover Company. They built 1500 to 2,000 little rollers a day, and they wanted an anti-friction bearing, and we developed a very small bearing for that application, and the ball bearing fellows walked in, and they made a quieter bearing, and they could make it cheaper, and they are still using several makes of ball bearings. There is a good illustration. We are very

close to the Hoover organization, as a matter of fact, they are all friends of ours, and regardless of that they were selecting the best bearing for its place, and that was a ball bearing.

Q. Now, prior to the time that they introduced ball bearings into Hoover Suction Sweepers they had used a plain type bearing?

A. Yes, a little bronze bearing.

Q. And the competition then was between plain type bearings that were already in use, and the choice lay between the ball bearings or tapered roller bearings?

A. That's right.

Q. In determining what should replace the plain type bearing?

A. That's it exactly.

Q. Have you had any experience in the aircraft engine industry in that regard?

A. Yes. In the beginning of the war we sold millions of [fol. 224] bearings for rocker arms on airplane engines, Wright, Pratt-Whitney—no, not Pratt-Whitney, but Wright and several other manufacturers. Pratt-Whitney tried the plain bearing, and by the way they are still using the plain bearing. We put our bearing into those engines and they were a distinct failure. The rollers would pound into the ribs and the rocker arm would lock up, and one of our competitors developed a bearing which is better than ours. If I may say it, the SKF Company developed a bearing better than ours, and they are using them in there now. There are very few Timken bearings used in rocker arms except for replacement. A lot of these Wright engines that are out, they will replace that bearing with a Timken bearing, but they are not putting them in new engines, and we could consider that as an absolute failure. The application was wrong, the bearing didn't function, the ball bearing went in and did function.

Q. Now, without going into too much detail about it, I just want to ask you one further question in this regard. Have you tried to get into the textile industry and into the automotive transmission with tapered roller bearings, and have you been successful in that regard?

A. Well, that's two questions. I'll answer the first one, in automobile transmissions. There isn't a passenger car built today, out of some four and a half million cars, that has [fol. 225] a Timken bearing in the transmission.

Q. Have you tried to get them into the automobile transmissions?

A. Absolutely. We spent years and years, on it, and they are all ball bearings, not any particular ones, but ball bearings are used, and the reason for that is our bearing doesn't fit. An automobile transmission would require four Timken Bearings on the main shaft because the bearing is set, as against two ball bearings, one at each end. It's practically an impossible job. We can't make a good job, so we don't have any automobile transmission business.

Q. How about the textile mills?

A. I think perhaps I have put more work in on the textile industry than any other industry because it is very large.

Q. And what type of bearings are used in that industry?

A. Very largely ball bearings. There are two reasons why. In the first place, the speed used in textile spindles is very high, and the Timken bearing is not a high-speed bearing. That should be recognized. We try not to sell it for those high speeds. If the bearing is small enough on certain spindles we can get away with it. But on the other applications there are two companies that have had that for many many, years, and we just haven't been strong enough to break it down. That's Fafnir and SKF. Hyatt does a little, but not much. They are in solid, and I certainly [fol. 226] like to break that down if I could.

Q. Have you gone through the process that you described a while ago, submitting layout drawings when textile machinery is being designed?

A. Yes, sir.

Q. Now, you were asked this morning as to the names of the tapered roller bearing companies that were in existence in 1927. Can you give us the names of the tapered roller bearing companies that are currently operating in the United States?

A. You want the tapered roller bearings?

Q. That's right.

A. Kay-Don Engineering Company.

The Court: These are all tapered bearings?

Mr. Ketterer: These are all manufacturers of tapered roller bearings as of the present time.

A. Hyatt Roller Bearing Company, Internation- Harvester Company, Messenger Company, Bower Roller Bear-

ing Company, Orange Roller Bearing Company, Pratt Manufacturing Company, National Supply Company, Tyson Roller Bearing Company, Bantam Bearing Company, Jack & Heintz Company. That's the list.

[fol. 227] Q. Those are the tapered roller bearing manufacturers in the United States as of the present date?

A. Yes, sir.

Q. Will you tell us the names of the ball bearing manufacturers in the United States as of the present time?

A. Marlin-Rockwell Corporation, New Departure Manufacturing Company, Fafnir Bearing Company, Norma Hoffman Company, Federal Bearings Company, B. C. Company of America, Kay-Don Engineering Company, Bantam Bearings Company, Jack & Heintz Company, Link Belt Company, Aetna Ball Bearing Company, Ahlberg Bearing Company, Andrews Bearing Company, SKF Company, Miniature Bearings Company, Hoover Company, Equitable Bearings Company, Stevens-Adamson Company, Nice Ball Bearing Company, Mathews Company, Auburn Ball Bearing Company, Western Bearings Company, Schatz Ball Bearing Company, International Harvester Company, Gwilliam Company.

Q. Now, can you give us the names of the straight roller bearing manufacturers in the United States?

A. Hyatt Roller Bearing Company, Roll-Way Bearings Company, American Roller Bearing Company, Roller Bearing Company of America, Fafnir Ball Bearing Company, International Harvester Company, Norma Hoffman Company, Marlin-Rockwell Company, Gwilliam Company, Orange Bearing Company, Turrington Manufactur-

[fol. 228] ing Company, Kay-Don Engineering Company, McGill Bearings Company, Messenger Manufacturing Company, SKF Company, Enterprise Wheel & Car Company, Electric Wheel Company, Orange Bearing Company.

Q. Now, there are special types of anti-friction bearings——

The Court: How many of those companies are there altogether?

Mr. Ketterer: How many?

The Court: Yes. I didn't want them all marked down, I just wanted the number of them.

The Witness: I have 18 of the straight roller bearing companies.

The Court: 18?

The Witness: 18 straight roller bearing companies, and 25 ball bearing companies.

The Court: Thank you.

Q. Now, there are certain special types of anti-friction bearings manufactured, such as the barrel type and spherangular bearing, hour-glass bearing, and so on?

A. Yes, sir.

Q. How many manufacturers of the special types of anti-friction bearings are there in the United States?

A. Do you want their names?

[fol. 229] Q. Yes, please.

A. SKF Company makes a barrel type spherical roller bearing; the Schaeffer Company makes a spherical bearing of the hour-glass type; Kay-Don Engineering Company makes a similar bearing to the SKF, the barrel spherical type; the Bantam Company—you can just ditto that, it's exactly the same thing; the Hyatt Roller Bearing Company makes a spherangular type barrel roller; the Link Belt Company also makes a similar bearing to the spherical, which is the hour-glass type.

Q. Now, as between these various companies that you have described as tapered roller bearing companies and ball bearing companies and straight roller bearing companies and special types of anti-friction bearing companies, I think you said a while ago that in the anti-friction bearing industry generally there was constant competition as to what type of bearing would be used in a given application?

A. Yes, sir.

Q. With the exception of the large sizes and small sizes?

A. Yes, sir.

Q. Can you give us an estimate of what percentage of the anti-friction bearing business the Timken Roller Bearing Company does as of the present time, approximately?

A. Yes, and I think that figure is very accurate. Last [fol. 230] year it was, I think, 24—between 24 and 25% of the total anti-friction bearing business.

Mr. Day: In this country.

Q. In this country?

A. Yes, sir.

Q. Now, do you know what that was in 1927?

A. No, I don't, but necessarily very much less.

Q. Well, has the Timken Company maintained the same relative position in the anti-friction bearing industry in this country from 1927 down to the present time?

A. I don't think so. As I take a look at the other bearing companies I'm inclined to feel their growth has been greater than ours. That is particularly true, I think, with New Departure Company. I think New Departure's growth, making only ball bearings, was greater than the Timken Roller Bearing Company's growth. I also believe that the growth of the Bower Roller Bearing Company has been greater than our growth. In other words, the competition is eating away, pulling us down. About the only way you could measure that, of course, is by the growth of the industry and the growth of the business, but to see the other people who are growing along with us, we certainly didn't make very much progress, which is very embarrassing for the head of sales. We should have made much [fol. 231] greater progress. We should have made much more progress than New Departure, because in our opinion we think we have got a better sales organization, and we have got a better product, we think. We certainly are disappointed in the growth that we have made and, as I told you a few minutes ago, we got a shock when we saw one of our competitor's figures of twenty million dollars worth of business for last year. That's the only fellow that has given out that report to S. E. C. That's where it came from. Timken also reports there, but I don't think these other bearing manufacturers make those reports, so we have got no way of knowing what the other fellows do. But my estimate is that the Timken Company has not grown to the extent that they should have grown.

Q. Yesterday you were asked about whether Timken produced any steel, as well as bearings. Does the Timken Company produce steel in this country?

A. Yes, sir.

Q. Will you tell the Court what if any sales are made by Timken to other anti-friction bearing manufacturers in this country?

A. Our company developed what is known as the high carbon chrome steel used in ball bearings. In the early days they used bar stock, and our company has a very highly developed mill for piercing tubes, we developed [fol. 232] tubes for our own business, and we developed

a high carbon chrome tubing, and the ball bearing people were very anxious to buy this tubing and they buy a lot of it from us. I want to frankly tell you I don't like it, because—it's steel business, yes, but we developed a steel which made a much better ball and straight roller bearing and, not only that, but developed this tubing as against bar stock. We have just cut the liver out of ball bearing prices, which made it tougher for us in competition, and today we have no margin to play with, which we had probably many years ago. The ball bearing fellows' prices are down to the point where there is no advantage whatsoever.

Q. In the type of steel that you have developed, or in the forms that the steel takes—for example, I have this Exhibit No. 3 that was offered in the record yesterday. It happens to be a tapered roller bearing, the outside member of which you identified yesterday as being a cup.

A. Yes, sir.

Q. That is made from what type, or what form does the steel take to produce the cup member of a tapered roller bearing assembly?

A. That starts out with an ingot, goes through our mills and is rolled down to what we call a piercing round. It goes into a tube mill and it is pierced to make the inside diameter and outside diameter.

[fol. 233] Q. And it comes out then as a long piece of tubing?

A. As a long tube, and then that tube enters screw machines and is cut off in form and size as you see it there.

Q. Is the same true of the cone member of the assembly?

A. Precisely, yes.

Q. And from what are the roller members of the assembly made?

A. I think from the same kind of steel—there may be a slight change, but they are not made from tubing, you see. They are made from what we call roll wire, and the roll wire is fed into a machine and headed like a bolt is headed.

Q. In the sales you make of steel to the manufacturers of ball bearings in the United States, do they buy tubing in the form that is produced in the plant of the Timken Roller Bearing Company?

A. Yes, sir.

Q. For the equivalent of the cup and cone members of the ball bearing assembly?

A. That's right. They call them the inside and outside race.

Q. How about the production of steel for the use of balls in the ball bearing industry? Does Timken produce steel for that purpose?

A. Yes, we supply a lot of it. We call it ball wire.

Q. How generally do you supply steel to the various [fol. 234] members of the anti-friction bearing industry in the United States?

A. I beg your pardon? You turned away.

Q. How generally, Mr. Klinedinst, do you supply steel to the various members of the anti-friction bearing industry in the United States?

A. I believe we supply all of them except one. As to percentage, in some cases I think we probably supply a hundred per cent of the steel, in other cases 50%, in other cases 60%. We don't know, we can't tell that, but we do know there are some of them that put such a high value on the Timken high carbon chrome tubing that they give us all their business. Nobody has ever developed a tubing just like that. It's quite an operation to pierce a high carbon chrome tubing. Other people make it, but we think we make a better steel and tubing. They like ours better. That's the answer to that.

Q. In addition to supplying steel, do you supply the members of the anti-friction bearing industry to whom your steel goes any metallurgical service as to the best way to work the steel and handle it in the production of bearings?

A. That is part of our selling. As a matter of fact, we sell the metallurgist first before we ever ship steel, and when the steel is delivered to them our man goes right [fol. 235] into the plant and shows them exactly how to treat this steel.

Q. By treatment you mean the method of hardening it?

A. Yes, sir.

Q. For use in manufacturing anti-friction bearings, either ball or straight roller bearings or tapered roller bearings?

A. That is right.

Q. When was the Timken steel mill developed?

A. This is merely a guess, but I believe we started it around 1916, during World War I. We didn't start out with the equipment we have now, we started out with merely a piercing mill, I believe, in the beginning, and then we added to it until we got quite a large mill.

Q. And the production of steel has been expanded since 1916?

A. It has.

Q. And how long have you been making sales of steel to the representatives of the anti-friction bearing industry in the United States?

A. I couldn't answer that. I would say, just guessing, probably 15 years.

Q. Now, you were asked this morning to look at a part of a paper marked Government's Exhibit 4, which was a memorandum.

The Court: I have those up here.

Mr. Ketterer: Oh, I beg your pardon.

Q. I meant to say Exhibit No. 5, which was a memo-
[fol. 236] randum addressed to Mr. Donze, whom you identified as the vice-president in charge of production at the Timken plants.

A. Yes, sir.

Q. What is the fact as to whether or not this was intended as a sort of pep talk to the production department to take better care of the customers of the Timken Company?

A. Quite so. It was an inter-communication.

Mr. Ketterer: That's all.

Redirect examination of L. M. Klinedinst.

By Mr. Nitschke:

Q. I have just a few questions. I believe you said Bowers' sales in 1947 were $20,000,000?

A. In 1947, yes, sir.

Q. And was that their total sales of bearings?

A. That was the figure given out to S.E.C. I suppose so. I don't know.

Q. That included straight roller bearings as well as tapered?

A. I don't know. That's the figure they gave S.E.C. That's all I know.

Q. What is that a figure of, their total sales?

A. Total sales.

Q. Total sales?

A. Yes, sir.

Q. And you know they do make roller bearings, straight [fol. 237] roller bearings, don't you.

A. They did during the war. I don't know about now. I know they made them for airplane engines during the war.

Q. You can't tell whether this figure of twenty million dollars is simply for tapered roller bearings or whether it includes other types?

A. No, I would have no way of knowing.

Q. What was Timken's production of bearings—what was its sales of bearings in 1947?

A. The figures aren't out yet. They won't be for a couple of weeks.

Q. I believe you stated you could make an estimate for the Court on Timken's percentage of the total anti-friction bearing sales in the country at the present time.

A. That just came out a minute ago.

Q. You gave that as 24 to 25?

A. Yes.

Q. If you can do that, Mr. Klinedinist, can't you give the Court an estimate of what Timken's percentage of the tapered roller bearing market is?

A. No. Let me explain that to you. The Anti-friction Bearing Association gives us the figures, total figures of the bearing industry, which you can get and which you [fol. 238] probably have, and we know what ours is. So we just take and divide one into the other and we get our percentage of the total. But we don't know what the Bower Company's sales were, although that's published—they don't give it to us, nor do any other bearing manufacturers, so we only know what our sales are and what the total sales were, so that we can get the percentage of our business to the total anti-friction bearing industry. I think they all report—I don't know, but I imagine they do—but that comes from the Anti-friction Bearing Association. That's from no figures that the Timken Roller Bearing Company compiles in its offices. The company has no means of doing it.

Q. Does the Association give you the total figures on

tapered roller bearing production in the United States?

A. No, no. No, sir. On all the anti-friction bearings produced. We take all the anti-friction bearing production and our figures, and that gives us the percentage of the total.

Mr. Nitschke: That's all.

Mr. Ketterer: Just one question, if the Court please.

Recross-examination of L. M. Klinedinst.

By Mr. Ketterer:

Q. This Anti-friction Bearing Association that you have referred to as compiling these figures, what is the fact as to [fol. 239] whether or not that includes manufacturers of ball bearings, straight roller bearings and tapered roller bearings, all kinds of anti-friction bearings?

A. By all members, the report by all members of the Association.

Q. But that includes manufacturers of these various types of anti-friction bearings?

A. Yes, sir.

Mr. Ketterer: That's all.

Mr. Nitshke: That's all.

[fol. 240] Stipulation re Offer of Agreements and Documentary Material

Mr. Nitschke: Your Honor, the Government now expects to proceed with putting in the agreements, of which there are a great many in this case, and the documentary material, and before I do that I would like to read to the Court a stipulation which Mr. Day and I have agreed to, which we hope will dispense with the problem of proving copies, and authenticity, and if this stipulation is agreeable to the Court I would like to have it made a part of the record.

"1. The Government and Timken each waives its right to object to the introduction of evidence of any contract, agreement, letter, memorandum or other document obtained or produced from or available in Timken's files on the ground that a photostatic copy has been offered instead of the document contained in such files.

2. The Government and Timken each waives its right to object to the introduction into evidence of any agreement obtained or produced from or available in Timken's files on the ground that it has not been shown that the signatures to such agreement were authentic or that it has not been shown that the individual signing such agreement had [fol. 241] authority to do so.

3. The Government and Timken each waives its right to object to the introduction into evidence of any original letter or other original communication obtained or produced from or available in Timken's files on the grounds that it has not been shown that such original letter or other original communication was signed by the person whose signature or initials appear thereon, or that it has not been shown that such original letter or other original communication was received by the person to whom it was addressed."

The Court: The stipulation as read is agreeable to the Court.

Mr. Day: I want to say just one or two things about that. Of course we don't waive the right there, either one of us, to object to the introduction of any of these documents on the ground of materiality and relevancy, and there may be others, other matters which we wish to take up with the Government before making further stipulation relating to some of our evidence. On the question of the authority of the writer of the letter, if it appears that he was an officer [fol. 242] or an agent, we of course will not dispute that he was that officer or that agent. There may be an occasion in this case where we may wish to offer some evidence as to the extent of the authority of the person as such officer or agent. I would like to make that clear.

That is, if you have a letter signed by, apparently signed by blank, vice-president, we don't claim he is not vice-president, but we may want to offer some evidence as to what his authority as vice-president was.

The Court: Well, do you say you want to offer some evidence, or do you want to reserve the right to object to the introduction of the letter in view of your contention that his authority is limited?

Mr. Day: Your Honor, I think we would like to do both, perhaps. I don't know just exactly what occasions may

arise, therefore I don't want to make the stipulation too sweeping.

The Court: Well, as I understand the extent of this stipulation, first, there will be no objection made to the authenticity of the documents because of the fact that they are [fol. 243] copies rather than originals.

Mr. Day: That is right.

The Court: Second, that there will be no objection made to the authenticity of documents if written by an officer of the corporation, but you do reserve the right to introduce testimony to show the extent of the authority?

Mr. Day: That is right.

The Court: And further reserving the right to object to some documents, even those signed by a duly authorized officer of the corporation?

Mr. Day: That is right.

The Court: If it should appear to you that the letter, the document which is sought to be introduced, is not competent or relevant to the issues involved.

Mr. Day: That is right.

The Court: Now, does that state the matter?

Mr. Day: I think it does.

Mr. Nitschke: That is correct, your Honor.

[fol. 244] The Court: All right.

Mr. Day: And of course we reserve the right, on both sides, to object to any document on the grounds of irrelevancy and materiality.

The Court: I understand that, Mr. Day.

Offers in Evidence

Mr. Nitschke: I wish to have marked for identification as Government's Exhibit 6 an agreement dated June 16, 1909, and July 16, 1909, between Timken Roller Bearing Company and the Electric and Ordnance Accessories Company, Ltd., which agreement is attached to the deposition which was taken in London as Government's Exhibit D-52.

The Court: The exhibit is No. 6. It is dated June 16, 1909.

Mr. Nitschke: And July 16, 1909.

The Court: And July 16, 1909, and it is an agreement entered into between whom?

Mr. Nitschke: Timken Roller Bearing Company and the Electric and Ordnance Accessories Company, Ltd.

The Court: You say that is a part of the deposition which was taken in London?

Mr. Nitschke: That is right, your Honor, and it is marked, [fol. 245] it is attached to the deposition as Government's Exhibit D-52, now marked Government's Exhibit 6.

I wish to have marked for identification Government's Exhibit 7 an agreement between the Timken Roller Bearing Company——

The Court: Now, let me understand you. You are simply marking these now for identification, or are you offering them?

Mr. Nitschke: Well, I am just marking them for identification now. As soon as they are marked I will offer them.

The Court: All right.

Mr. Nitschke: Government's Exhibit 7 is a second agreement between the Timken Roller Bearing Company and Electric and Ordnance Accessories Company, Ltd., which is attached to the deposition as Government's Exhibit D-51. That agreement is also dated June 16, 1909, and July 16, 1909.

(Government's Exhibit 7 so marked.)

I wish to have marked for identification Government's Exhibit 8 an agreement between Timken Roller Bearing Company and Wolseley Motors, Ltd., dated April 6, 1920, which is attached to the deposition and identified as Gov- [fols. 246-247] ernment's Exhibit D-53.

(Said exhibit so marked.)

I wish to have marked as Government's Exhibit 9 a second agreement between Timken Roller Bearing Company and Wolesley Motors, Ltd., of the date of April 6, 1920. [fols. 248-268] I wish to have marked for identification as Government's Exhibit 10, an agreement dated January 1, 1925, between The Timken Roller Bearing Company and British Timken, Limited, which is attached to the deposition as Government's Exhibit D-55.

(So marked.)

And I wish to have marked for identification as Government's Exhibit No. 11 an agreement between The Timken Roller Bearing Company and British Timken, Limited, dated December 31, 1924, which is attached to the deposition as Government's Exhibit D-56.

(So marked.)

We wish to offer in evidence Government's Exhibits 6 through 11, which are the documents which I have just had marked for identification.

The Court: I suppose that counsel for the defense have copies?

Mr. Day: Yes, we have.

The Court: And there are no objections?

Mr. Day: There are no objections.

The Court: They may be received.

[fol. 269] We now wish to offer part of the deposition of Mr. Ellis, which begins on Page 204 of the transcript of the deposition, and we wish to offer from Pages 204 through the first seven questions on Page 208.

Your Honor, as a relief from hearing me, hearing my [fol. 270] voice, I would like to suggest perhaps I read the questions and my colleague Mr. Derr read the answers.

[fols. 271-272] (Tuesday, March 23, 1948, 2:00 o'clock, P.M.)

The Court: You may proceed.

Mr. Nitschke: Your Honor, I just made an offer of part of the deposition of Mr. Ellis, who was examined by Mr. Ketterer, and my associates, Mr. Derr and Mr. Dedman, are going to read it. Mr. Derr is going to read Mr. Ketterer's part.

[fol. 273] (Thereupon a portion of the deposition of Llewellyn Milford Ellis was read into the record, the questions being read by Mr. Derr and the answers by Mr. Dedman, as follows:)

Direct examination.

By Mr. Ketterer:

"Will you state your name?

A. My name is Llewellyn Milford Ellis.

"Q. And you live where?

A. I live in Birmingham, 15 Poppy Lane, Erdington, Birmingham, England.

[fol. 274] "Q. You are employed by what company?

A. I am employed by British Timken Roller Bearing Company.

Q. Were you ever employed by a company known as The Electric and Ordnance Accessories Company, Limited?

A. Yes, I was for a number of years.

Q. When did you first commence work with the Electric and Ordnance Accessories Company?

A. In the year 1909.

Q. In what capacity were you employed by that company?

A. I was employed as jig and tool designer and plant lay-out draughtsman.

Q. You continued with that company for what period of time?

A. I continued with them until they were disbanded, which was somewhere about 1919. That is just after the end of the 1914-1918 war.

Q. With what company did you work after 1919?

A. All the time I was working with Vickers. The Electric and Ordnance Accessories was a subsidiary of Messrs. Vickers. I was simply transferred, after they disbanded Electric and Ordnance Accessories, to the Wolseley Motor [fol. 275] Company which also was a subsidiary of Vickers.

Q. Then you went with what company following the Wolseley Motor, term of employment?

A. With Wolseley Motors it lasted for a short time, a year, or it might have been a couple, when British Timken was organized and I automatically then became a member of the British Timken staff.

Q. Have you continued on the British Timken staff down to the present time?

A. Yes, that is so.

Q. And have you always worked in the same capacity as you were employed originally by the Electrical and Ordinance Accessories?

A. No. My responsibilities have greatly increased. They have been increased from time to time.

Q. What different positions have you held with the Electric and Ordnance Accessories, Wolseley Motors and British Timken over the years from 1919 down to the present time?

A. Well, to the end of the war, I held the position I mentioned, that is chief of the jig and tool design and plant. Afterwards, when the British Timken was formed and we broke away from the Wolseley Company, I still held that same position but in addition I was put in charge of the bearing design department and also the industrial applica- [fol. 276] tion department.

Q. That continued for how long?

A. That continued to the commencement, or just after the commencement, of this last war; that is, about the end of 1939.

Q. Since 1939 what has been your position?

A. Since 1939 I took a less active part. My health, and so on, would not enable me to carry on as I had been doing. It was really a matter of drifting into the position of adviser to the Directors on the strength of my past experience. But I still took a supervisory position particularly in regard to bearing design.

Q. Now, going back to 1909, I want to ask you whether Electric and Ordnance Accessories was manufacturing tapered roller bearings when you commenced working there?

A. No, they were not when I first went there. I think it was just after I went there that they got instructions from Messrs. Vickers, of whom they were a subsidiary, to start the manufacture, that is to equip certain shops and start the manufacture of tapered roller bearings.

Q. What, if anything, did you have to do with that [fol. 277] equipment of the shop for the manufacture of tapered roller bearings?

A. I had to lay out the shops; that is, I had the dimensions of the shops to begin with, and I had to lay out the different departments, Technical Department, Grinding Department, inspection, and so on, allocating the space available, as far as possible, so that we could manufacture the whole bearing.

Q. Did Electric and Ordnance Accessories make any other products at that time?

A. Yes. They were doing quite a lot of electrical work, electrical motors, and ordnance work, that is fuse manufacture, Government ordnance work, and a number of lines in electrical stuff, switch gear and electric motors, heating apparatus, fans, and so on.

Q. Where was that plant located?

A. That plant was located at Aston, Birmingham.

Q. Is that the same place as the British Timken plant is located now?

A. Yes, that is the same factory.

Q. How much space was utilized in the Electric and Ordnance Accessories plant at the time you first laid out any space for the manufacture of tapered roller bearings [fol. 278] in 1909?

A. They started off with one fair sized shop. It would be, I should say, about 200 feet by about 40 feet.

Q. That covered the entire operation as far as bearing manufacture was concerned?

A. Yes. The only thing done outside was a certain amount of press work for producing the cage which was made in another shop, in what we called the electric ordnance press shop.

Q. In other words, they made the cages?

A. Yes.

Q. How many people were working at that time on the manufacture of bearings?

A. We started off in the actual Timken shops with not more than about a couple of dozen people. That was rapidly increased.

Q. By 1919 or 1920, when Wolseley Motors came into the picture, how many people were involved in the manufacture of bearings, as you can recall?

A. In 1920 I should say it had increased to 350 or 400 people by that time.

Q. How many bearing sizes were being manufactured or assembled?

A. At that time?

[fol. 279] Q. Yes.

A. At that time I should say we had got to about 60 or 70 definite sizes that we made.

Q. That is by 1920?

A. Yes, that is by 1920.

Q. Were they largely automotive sizes?

A. Yes, nearly all of them were. I think I can say all of them were automotive bearings.

Q. I believe you said the year or so after 1919 or 1920 British Timken organization came into the picture?

A. Yes.

Q. What was that in respect of the Wolseley Motors Company? Was it a subsidiary, or how was it panelled?

A. No. Actually Wolseley had very little to do with it except they did exercise a certain advisory position in regard to Timken just to begin with because that did not last long before Timken was entirely separated.

Q. Did you always remain at this Aston plant site?

A. No. We remained at the Aston site until about 1915. It was a little while after the war started when the plant was moved from Aston to what we called the Ward End

Works. It was about a couple of miles nearer the outskirts of Birmingham.

[fol. 280] Q. When Wolseley Motors took over the manufacture in 1920, was anything else manufactured on the premises aside from bearings?

A. Well, taking the factory altogether, yes, because the Ward End factory covered a very considerable area and it was divided into one or two sections. The main factory building was occupied by Wolseley who started there the manufacture of certain types of small car. Then the Timken plant was in a self-contained building entirely separated from the main Wolseley factory.

Q. And you remained at the Ward End plant until what date?

A. Until 1927 I think it was.

Q. Was that when the separation from Wolseley Motors was completed?

A. Yes. It was completed perhaps a month or two before we actually moved.

Q. Up until 1927 who owned the equipment, if you know, that was used in the manufacture of bearings at the Ward End plant?

A. In the first place I believe the equipment belonged to the Wolseley Company.

Q. Did they perform, up until 1927, any manufacturing operations for the bearing business?

[fols. 281-282] A. Yes. They made the cages in the Wolseley press department.

Q. And that continued up until 1927?

A. Yes. Approximately 1927.

Q. How many people were employed by 1927, to the best of your recollection, in the manufacture of bearings at the Ward End plant just preceding the removal from the Ward End plant?

A. I think it had increased to probably 500. It might even have been a little bit more than that.

Q. How many bearing sizes were you making by that date, if you recall?

A. Perhaps 100 sizes by that time.

Q. In respect to their application, were they automotive, or were there any other applications?

A. Mostly automotive, although we had a certain amount of business, which was a growing business, for other appli-

cations, such as machine tools and mill equipment, and that sort of thing."

Mr. Nitschke: I now wish to have marked for identification Government's Exhibit 12, Agreement dated January 1, 1928, between Timken Roller Bearing Company, and British Timken, Ltd., which agreement is attached to the deposition as Defendant's Exhibit D-23.

[fol. 283] The Court: It will be received.

Mr. Nitschke: I also offer Government's Exhibit No. 13, which is an agreement between the Timken Roller Bearing Company and International Harvester Company, dated December 31, 1927.

(Agreement referred to above was thereupon marked by the Clerk, for identification, Government's Exhibit 13.)

[fols. 284-292] Mr. Nitschke: This agreement is referred to, Government's Exhibit 13, is referred to in Government's Exhibit 12, and I will call your Honor's attention to it as I go through the 1928 agreement.

[fol. 293] Now I wish to have marked for identification as Government's Exhibit 14, an agreement dated January 1, 1928, between Timken Roller Bearing Company and British Timken, Ltd., which I wish to offer in evidence.

The Court: It may be received.

(Agreement referred to above was thereupon marked by the Clerk, for identification, Government's Exhibit 14.)

[fol. 294] We also wish to have marked for identification as Government's Exhibit 15 an agreement dated January 1, 1928, between Timken Roller Bearing Company and British Timken, Ltd., designated as a supplemental agreement to the principal agreement between them. I wish to offer that in evidence.

The Court: It will be received.

(Agreement referred to above was thereupon marked by the Clerk, for identification, Government's Exhibit 15.)

[fols. 295-297] I wish to have marked for identification as Government's Exhibit 16, an agreement dated June 16, 1928, between British Timken, Ltd., and Societe Francaise Timken. I wish to offer Government's Exhibit 16 in evidence.

The Court: Exhibit 16 may be received.

(Agreement referred to above was thereupon marked by the Clerk, for identification, Government's Exhibit 16.)

[fol. 298] I wish to have marked for identification as Government's Exhibit 17, a letter agreement dated——

The Court: May I ask you, before you proceed, whether the last agreement, which is marked Government's Exhibit 16, was signed or executed by the parties?

Mr. Nitschke: Yes, it was executed. It was executed by [fols. 299-300] the French Company and British Timken, but not by American Timken.

The Court: Is this purportedly a photostat of the original?

Mr. Nitschke: Yes, it is.

[fol. 301] Mr. Nitschke: I now wish to offer Government's Exhibit 17, a letter agreement dated June 7, 1929, between Timken Roller Bearing Company and M. B. U. Dewar, and I offer this in evidence.

The Court: It may be received.

(The Agreement above referred to was marked by the Clerk, Government's Exhibit No. 17.)

Mr. Nitschke: I am sorry, I didn't call your Honor's attention to the fact that this document is attached to the deposition as Defendant's Exhibit D-25.

[fol. 302] I now wish to have marked for identification as Government's Exhibit 18, a letter dated June 1, 1931, from Lynch, Day, Pontius & Lynch, to the Timken Roller Bearing Company. This document bears certain attachments, the first of which is a letter dated November 1, 1929, which I would like to have marked for identification, as Government's Exhibit 18-A. It's on the letterhead of Stibbard, Gibson & Company. And another attachment, a letter dated September 23, 1929, which I would like to have marked for identification Government's Exhibit 18-B, which is a copy of a letter from Deutsche Timken Gesellschaft; and another attachment which is a letter from British Timken, Ltd., to Deutsche Timken, dated October 21, 1929, which I would like to have marked for identification as Exhibit 18-C; and the last attachment, a letter dated October 24, 1929, from Deutsche Timken to British Timken, which I would like to have marked for identification as Government's Exhibit 18-D.

The Court: Those may be received.

[fol. 303] (The letters above referred to were marked by the Clerk, for identification, as Government's Exhibits 18-A, 18-B, 18-C, 18-D.)

Mr. Nitschke: I would also like to have marked for identification as Government's Exhibit No. 19, an agreement between British Timken, Ltd., and Deutsche Timken Gesellschaft, dated January 1, 1928, which is attached to the deposition as Defendant's Exhibit D-43.

I would like to offer Exhibit No. 19 into evidence.

The Court: It may be received.

(The agreement above referred to was marked by the Clerk, for identification, as Government's Exhibit No. 19.)

[fol. 304] I wish to have marked for identification as Government's Exhibit 20, an agreement dated December 29, 1934, between Timken Roller Bearing Company and British Timken, Ltd.

Mr. Nitschke: This exhibit, Government's Exhibit 20, is the same as—or it is the one that is attached to the deposition as Government's Exhibit D-29. I offer in evidence Government's Exhibit No. 20.

The Court: It may be received.

(The agreement above-referred to was marked by the [fol. 305] Clerk, for identification, as Government's Exhibit No. 20.)

Mr. Nitschke: I also wish to have marked for identification, Government's Exhibit 21, a document dated January 8, 1935, which is headed "Note", signed by D. P. Hess, and which states:

"Attached herewith are various memoranda covering briefly, salient features of our new agreements necessary beween British Timken, French Timken and American Timken."

I should like to have marked for further identification, from this exhibit, Page 4, which is entitled "Memorandum II, Agreement #2." I should like to have that marked for identification Government's Exhibit 21-A. It is dated January 9, 1935, and entitled: "Memorandum II, Agreement #2."

For further identification Page 5, I would like to have marked for identification Government's Exhibit 21-B,

which is headed "Memorandum II (Sheet 2)" and signed "D. P. Hess."

I wish to offer only those portions of Exhibit 21 that have been further identified as Exhibits 21-A and 21-B.

The Court: Only those two portions?

Mr. Nitschke: Only those two portions, yes, your Honor.

[fol. 306] The Court: What do you want to do, do you want to separate Exhibit 21, Mr. Nitschke?

Mr. Nitschke: If that's agreeable to your Honor. I wanted to be sure the entire document was identified so that it wouldn't appear that I was dissecting a piece of evidence.

The Court: The Court has no objection to it.

Mr. Day: What is 21-A and what is 21-B of this Exhibit marked 21?

Mr. Nitschke: They are the second memorandum described in the agreement which has been put in evidence dated December 31, 1934, between American Timken and British Timken.

Mr. Day: I think we will object to this upon the ground that the documents themselves have been offered in evidence. We cannot see how a memorandum by Mr. Hess of the Timken Company setting forth the salient features of the agreements can add anything to the situation.

[fol. 307] Mr. Nitschke: Your Honor, we are not offering this portion to vary the terms of the 1928 Agreement. We are offering it to show the intent and purposes of the conspirators in this case, and as such we believe it is admissible.

Mr. Day: We signed a contract, we were parties to the contract. We have agreed to be bound by what the con-

[fols. 308-314] tracts provide. We can't see how this tends to show anything in addition to what might be shown or claimed by reason of the fact that we signed the contracts themselves.

The Court: Assuredly if it doesn't show any more than that, Mr. Day, there should be no objection to it. If it does tend to show some intent or motive on the part of an officer of the corporation, that's another question.

The Court: It may be received, exceptions may be noted.

(The documents above referred to were marked by the Clerk, for identification, Government's Exhibits 21, 21-A and 21-B.)

[fol. 315] I wish to have marked for identification a memorandum agreement dated December 29, 1934, between the Timken Roller Bearing Company and British Timken Ltd., and that will be Government's Exhibit 22.

[fol. 316] (The Agreement above referred to was marked by the Clerk, for identification, Government's Exhibit No. 22.)

I also wish to have marked for identification an agreement between Timken Roller Bearing Company and British Timken, Ltd., dated May 28, 1935, which is to be marked Government's Exhibit 23.

(The agreement above referred to was marked by the Clerk, for identification, Government's Exhibit No. 23.)

Mr. Nitschke: I offer Government's Exhibits 22 and 23 in evidence.

The Court: They may be received.

Mr. Nitschke: And I also wish to have marked for identification as Government Exhibit 24 an agreement dated the 6th day of June, 1935, between Timken and British Timken, also entitled "Supplemental Agreement," which [fols. 317-318] is attached to the deposition as Government's Exhibit 30.

I wish to offer Government's Exhibit 24 in evidence.

The Court: Exhibit 24 will be received.

(The agreement above-referred to was marked by the Clerk, for identification, Gov't Exhibit No. 24.)

I wish to have marked for identification as Government's Exhibit No. 25 an agreement dated July 15, 1935, between British Timken, Ltd., and Societe Francaise Timken, which is attached to the deposition as Government's Exhibit D-31. And I wish to offer Government's Exhibit No. 25 in evidence.

The Court: It may be received.

(The agreement above referred to was marked by the Clerk, for identification, Government's Exhibit No. 25.)

[fol. 319] I wish to have marked for identification as Government's Exhibit 26, an agreement under date of November 28, 1938, between The Timken Roller Bearing

Company, British Timken, and French Timken, which is also attached to the deposition as Defendant's Exhibit D-27.

Your Honor, as a matter of terminology, I probably will throughout this trial refer to Societe Francaise Timken as French Timken, and British Timken, Ltd., as British Timken.

The Court: I see no reason why that should not be done. I assume counsel for Defendant understand when reference is made to British Timken or Limited or Francaise, that it refers to those respective companies.

Mr. Day: Oh, yes. I think it might be simplified if we called them American Timken, British Timken, and French Timken, and leave the Limited and Francaise out.

Mr. Nitschke: Except the pleadings use "Francaise" and "Limited." I don't think it will confuse anybody.

Mr. Day: No, I don't think so.

[fols. 320-323] (The agreement above-referred to was marked by the Clerk, for identification, as Government's Exhibit No. 26.)

Mr. Nitschke: I would like to offer as Government's Exhibit No. 27 an agreement dated November 29, 1938, entitled "Supplemental Business Agreement" between Timken Roller Bearing Company, M.B.U. Dewar, and British Timken, and which is attached to the deposition as Defendant's Exhibit D-28.

[fol. 324] I would like to offer interrogatory number one of the Government and the Defendant's answer thereto. I will have the Answer marked as Government's Exhibit 28 for identification.

Your Honor, I want to offer Government's Exhibit 26 and 27, which I now offer.

The Court: They may be received.

Those are the original Business Agreements attached to the Complaint?

Mr. Nitschke: Yes, your Honor.

For reference, your Honor, I would like to read Government's Interrogatory No. 1, which is:

"List all countries, dominions, colonies, dependencies and mandatory territories comprising the territory allocated under the tripartite agreement to (a) Francaise, (b) Limited, and (c) the Defendant."

The Interrogatory also contains the definition for tripartite agreement. It says "Tripartite agreement" means [fol. 325] the agreement entered into November 28, 1938, between Defendant Limited and Francaise, and attached to the complaint as Exhibit A. That is the agreement which is now marked as Government's Exhibit 26.

And I wish to offer as Government's Exhibit 28 Defendant's Answer to this Interrogatory which shows the various countries allocated to each under the agreement.

The Court: That exhibit may be received.

Mr. Nitschke: I would also like to hand your Honor this map that is made up from Defendant's Answer to Interrogatory No. 1, which shows the allocation of territory under the '38 agreement. Timken's territory is colored in yellow; Limited's territory is red; Francaise is green, and the joint territory, Russia, with the red striped. [fol. 326] Mr. Day: If the Court please, yesterday Government counsel read from the deposition of the witness Ellis. I think the record should show that there are certain depositions here on file in this court and the depositions are of various witnesses taken and examined on the 22nd, 23rd, 26th, 27th, and 28th days of January, 1948, at the American Embassy, London, England, under and by virtue of an order issued out of this court in this cause. Of course there will be no objection to that but when we just start to read the questions and answers there won't be anything in the record to show just what these depositions are. I would like to have that in. They are on file, they are reading from copies, but the originals are here.

The Court: The record will so show.

[fol. 327] Mr. Nitschke: Your Honor, I would now like to proceed to offer part of the deposition of Michael Dewar, from Page 2 through the first three questions on Page 3 of the transcript of the deposition, and my associates will continue the reading.

The Court: All right.

Mr. Derr: This is from the direct examination by Mr. Day.

Mr. Derr: This is the deposition of Michael Bruce Urqhart Dewar of Little Horwood Manor, Bletchley, Bucks, England, Chairman of British Timken Limited, aged 61 [fol. 328] years, being duly and publicly sworn and exam-

ined on the part of the Defendant, doth depose and say as follows:

Direct examination by Mr. Day.

"Q. Mr. Dewar, you have already stated your name and your address and your business. Where were you born?

A. Cheltenham.

Q. Where did you get your education?

A. Rugby School and Cambridge University.

Q. Now will you tell us briefly, and to some extent chronologically the events of your business career?

A. After taking an engineering honours degree at Cambridge, I went to Vickers in Sheffield and worked there for a period of years. I then joined a firm of textile manufacturers who had works in Yorkshire and in New England, and I worked for them for several years up to the outbreak of the 1914 war. After about a year of the war, I was seconded from my regiment to the Ministry of Munitions and I served the Government as Deputy Director General of Shell & Gun Manufacture. After the war was over, I joined a firm called Leeds Forge Company, who were the origin of the Pressed Steel Car Company. I stayed with them until I joined the Metropolitan Carriage Wagon and Finance Company of Birmingham, England, who were the largest subsidiary company of Vickers. I [fol. 329] was Managing Director of that Company. In 1925 and 1926 I was made Vice Chairman of Wolseley Motors, which was another subsidiary of Vickers, Vickers at that time being in considerable financial difficulties, and I was told that my job in life was to try and save as much money as I could for Vickers out of the Wolseley Motors organization. Wolseley Motors had as a subidiary Company a company called British Timken, of which I became Chairman in March, 1927.

Q. You have been connected with British Timken Limited ever since that time?

A. Yes, I have.

Q. What is your present position with British Timken Limited?

A. I am Chairman and Chief Executive Director of the Company.

Q. You say you took an engineering degree in college?

A. Yes. I am also a member of a considerable number

of engineering societies, including the S.A.E. in the United States.

Q. Were you connected as a Director or otherwise at this time with Companies other than British Timken?

A. Yes. I am connected with electric power supply [fol. 330] companies, shortly to be nationalised, and a machine tool company, Cincinnati Milling Machine Company, and several other companies."

Mr. Nitschke: We will now proceed to offer further from Mr. Dewar's testimony the last of four questions on Page 46 of the transcript.

Mr. Derr: This continues the examination of Mr. Day, your Honor.

The Court: All right.

Mr. Derr: (Reading)

"Q. I will hand you now the Defendant's Exhibit D. 27, an Agreement between the Timken Roller Bearing Company, British Timken Limited and Societe Francaise Timken, and Defendant's Exhibit D. 28, a supplemental business Agreement between Timken Roller Bearing Company, M.B.U. Dewar Esq., and British Timken Limited. Will you look at those two documents and tell us if you identify them as being what they purport to be?

A. Yes.

Q. Now, this one Agreement,"——

At this point the record shows that photostatic copy of the agreement was handed to the witness, identified by him, and marked Defendant's Exhibit D. 27, attached to the [fol. 331] deposition.

(Continuing reading)

"Q. Now this one Agreement, D. 27, between the Timken Roller Bearing Company, (American Timken), British Timken and French Timken, has the three Companies as parties to one contract?

A. That is so.

Q. Do you recall any discussion in which you participated, upon the subject of drawing up a contract that way?

A. The idea was to try and get into one legal document what was then contained in, I think, 3 or 4 different ones. The original Agreement with France was made by British

Timken only and that Agreement you have there made the three of them parties to one Agreement.

Q. Is there, do you know, any distinct difference by way of provision between this contract and the contracts which preceded it, the main contracts?

A. There was certainly nothing of any substance. There may be a variation in the words but the substance was the same.

By Mr. Nitschke: Which contract is that?

By Mr. Day: The business Agreement of 1938 and the Agreement of January 1st, 1928, and those which followed and supplemented that. Of course they show for themselves what, if any, differences there are. [fol. 332]

By Mr. Nitschke: You are including both the original Agreement and the supplemental Agreement in the question?

By Mr. Day: No, I was not including the Agreement between American Timken, M.B.U. Dewar and British Timken. I was including the three-party Agreement and wish it to be so understood."

Mr. Nitschke: We will now proceed to offer, continuing from the deposition of Mr. Dewar, but my examination of him on Pages 118 through Page 121.

The Court: All right.

Mr. Day: I think perhaps the Court's attention should be called and the record should show what was said by counsel for the Government and counsel for the defendant when Mr. Nitschke proceeded to ask certain questions of Mr. Dewar. I don't know exactly the page it is at, but it has to do with his making Mr. Dewar his own witness for certain purposes.

The Court: Is that with reference to the deposition that is to be read, or that portion which has been read? [fol. 333]

Mr. Day: That is with reference to the deposition that is now to be read. What was said before consisted of questions that I put as one of the counsel for defendant.

The Court: May I ask whether you propose to offer the depositions in their entirety?

Mr. Day: Well, I think we expect to offer all of these depositions that we took of Mr. Dewar when we had him on as our own witness, and then we expect to offer, too, some things as cross-examination with relation to the part

of the deposition in which Mr. Dewar was the Government's witness.

Mr. Derr: That is on Page 56.

Mr. Day: Are you going to start at Page 56?

Mr. Nitschke: No, we are going to start at Page 118, but I think your suggestion is a good one, that you read to the Court our colloquy.

Mr. Day: Well, on Page 56, where it says "Cross-examination by Mr. Nitschke" it was stated between counsel in London that while some of the examination of Mr. Dewar was called cross-examination and some redirect [fol. 334] that it might properly be styled just "Examination by Mr. Nitschke" and "Examination by Mr. Day," except the first testimony of Mr. Dewar, which was our direct examination. I take it there is no dispute about that. Now this took place on Page 56. I said: "That concludes the direct examination, of course on the understanding that, if at any time before we are all through, something else occurs to us that we should ask by way of direct, we will do so; but, for the time being, that is our direct examination."

Then it says, "Cross-examination by Mr. Nitschke."

Mr. Nitschke said, this is in the form of a question:

"I would just like to say, Mr. Dewar, that in a proceeding of this type you are supposed to be nobody's witness. You are a deponent giving facts, so that we may know what the facts are in the case; and, at least in the first part, I am not cross-examining you as such on your Direct Examination.

By Mr. Day: I suggest that the record should show, [fol. 335] therefore, that you are calling Mr. Dewar at this time as your witness. You say you are not going to ask him at the outset of your questions by way of cross-examination. Therefore, you must be calling him as your own witness, and I think you should so state. Perhaps you have so stated.

By Mr. Nitschke: I have no objection to that characterization, except that I think it is true that he does not become the witness of either of us until the testimony he gives here is introduced in Court. In other words, I just wanted to make it clear that I am trying to get the facts and I do not consider that you are on either side."

Mr. Nitschke: That was addressed to Mr. Dewar.

Mr. Day: To Mr. Dewar, when he said that.

(Continuing reading)

"By the witness: I will do my best to assist, I promise you.

By Mr. Day: Then is it fair to state in the record at this time that, regardless of whose witness he may be regarded at the time evidence is offered at the trial, you are at the outset of your questions going to question him as [fol. 336] your witness?

By Mr. Nitschke: I intend at the outset and I think perhaps, insofar as I can—I think it is advisable because of the nature of putting in the testimony in a deposition—I will try to keep the matters with which I am concerned as far as the Government's case is concerned separate. I think it is practically impossible to do that entirely, but that is my intention at the present time, and I will tell you when I think I have completed that part of the examination."

Mr. Derr: We will proceed with the reading from Mr. Nitschke's examination, beginning at the top of Page 118 of the deposition.

(Reading—questions read by Mr. Derr and answers by Mr. Dedman.)

"Q. Yesterday you stated that prior to the modification of the business agreements between British Timken and American Timken and British Timken and French Timken in 1934 you visited Canton with Mr. Pascoe, and that present at the Conferences were Mr. H. H. Timken, Mr. A. C. Ernst and Mr. W. H. Timken. Was Mr. Hess present at any of your Conferences?

[fol. 337] A. Yes.

Q. And after you returned you had correspondence with him on the subject of the matters to go into the agreements which were finally entered into?

A. Yes.

Q. You also testified that the object of the 1938 agreement (the tripartite agreement) between British Timken, American Timken and French Timken was to gather the provisions of the earlier agreements together in one document; and you made the statement, Mr. Dewar, that there were no variations of substance in the 1938 business agreements

from the preceding agreements. At that time the 1934 and 1935 agreements had not been submitted to you, and I wonder if you are still of the opinion that there was no change made in those agreements.

By Mr. Day: I suggest you show him the 1934 and 1935 agreements and call his attention to these matters. We did not show them to Mr. Dewar because we do not have photostat copies of them.

Q. I call your attention, Mr. Dewar, to paragraph 6 of the 1934 agreement between American Timken and British Timken and to paragraph 6 of the 1935 agreement between British Timken and French Timken. I cannot find either of those clauses in the supplemental agreement. I wonder if you consider that those are per-
[fol. 338] haps the subject of substantial changes. I call your attention to the fact that they appear to be combined in paragraph 5 of the supplemental business agreement.

By Mr. Day: Of 1935?
By Mr. Nitschke: 1938.

(Government's Exhibits 29, 30 and 31 and defendant's Exhibits 27 and 28 handed to witness.)

By Mr. Day: If I might make a suggestion, all of these documents are being shown to the witness and his attention is being called to certain paragraphs. What is the point that you wish to bring out—that there is a difference between the 1938 agreement on the one hand and the 1934 and 1935 agreements on the other?"

Mr. Day: May I suggest, Mr. Ketterer suggested to me, that if you do not identify the exhibits with the numbers given in the depositions with the numbers of the exhibits which the Clerk has now in this trial, it will be very difficult for anybody examining the record to know that No. 29, for instance, in the deposition is No. so and so in the trial. If that could be done it seems to me it would help an awful lot.

[fol. 339] The Court: I think that would be very helpful. As a matter of fact I was about to ask the number of the exhibit in this case that corresponds with Exhibits D. 27 and 28 to which reference has been made a few moments ago.

Mr. Nitschke: We could do that as they are mentioned. We could get up a little cross index, as we go through the trial to show these numbers because all the exhibits have marks on them.

The Court: I think a cross index will answer the question.

The Clerk: I can answer that right now.

The Court: What is Defendant's Exhibit D. 27?

The Clerk: D. 27 is Government's Exhibit 26.

Defendant's Deposition Exhibit 28 is Government's Exhibit 27.

Deposition Exhibit D. 29 is Plaintiff's Exhibit 20; and deposition Exhibit 30 is Plaintiff's Exhibit 24.

The Court: You say deposition Exhibit 26 is 27, and that is the tripartite agreement between Timken, British [fol. 340] and French?

The Clerk: Dated November 28, 1938.

The Court: And 27 is the supplemental agreement of November 29, 1938, is that right?

Mr. Derr: That is correct. That is also deposition exhibit D. 28.

The Court: And that agreement is likewise a tripartite agreement between American, Dewar, and British Timken?

Mr. Derr: Yes, your Honor.

The Court: Is that correct?

Mr. Day: I think it is.

We will still have to identify Exhibit D-31.

The Clerk: That is Government's Exhibit 25.

The Court: What is 25 other than the number?

Mr. Derr: It is an agreement between British Timken and French Timken dated July 15, 1935.

Continuing from the deposition (reading):

"By Mr. Nitschke: I do not know what the point was of your saying that they are the same.

By Mr. Day: Mr. Dewar testified, without having before him the 1934 and 1935 agreements, he did not think [fol. 341] a substantial change was made by the 1938 agreement I understand. He also testified at the end of his testimony that he was testifying from recollection and referred to the records. Now what is the point as to what the difference is? I have no doubt Mr. Dewar could tell you if you ask him. What substantial change do you suggest there is?

By Mr. Whitney: "——

Mr. Nitschke: I think we should say that Mr. Whitney is Mr. William Dwight Whitney who represented Mr. Dewar at the deposition.

The Court: Counsel appeared for the witness.

Mr. Day: I don't know whether the record shows his appearance as counsel for the witness or not, but he was, as Mr. Nitschke says, William Dwight Whitney, of the Cravath firm in New York, and he is the London partner of that firm, and he appeared for the witness.

Mr. Derr: Continuing with the deposition. (Reading)

"By Mr. Whitney: It may be the other way around. He may ask you two gentlemen to advise him as to what the difference is.

[fol. 342] By Mr. Day: I understand that Mr. Nitschke is making the point that there is a difference. Of course we will concede if there is a change in there, there it is, and Mr. Dewar will also admit there is.

By the Witness: I still do not think there is.

By Mr. Day: I should like to know what the point is.

Mr. Nitschke:

Q. The change is in the main agreement, is it not? You are saying that the same language or almost the identical language is in the supplemental agreement—is that right?

A. Yes, that is correct.

By Mr. Day: And what does the language refer to?

By the Witness: The use of the trade mark 'Timken'.

Mr. Nitschke:

Q. I asked Mr. Day at the time that he asked you that question if in his question he was including both agreements and he said No, he was just asking if the main agreement of 1938 was generally a combination of the provisions in the 1934 and 1935 agreement, and I am calling your attention to these differences in which some of those parts are contained in the supplemental [fol. 343] agreement. Is it your intention that the provisions of the 1934 and 1935 agreements are combined not just in the original agreement but in both the 1938 agreements?

A. Yes.

Q. The main and supplemental agreements?

A. Yes. I am afraid I had always regarded these two agreements as one. What you call the business agreement and the supplemental agreement I had always regarded as one. I am sorry if technically I have committed an error.

By Mr. Day: It may be I should have referred to both the 1938 agreements myself, but whatever the agreements show, there they are.

By Mr. Nitschke: I did not know whether there was any significance in your referring to them separately.

By Mr. Day: I do not think so. May I ask a question to clarify the mafter in my own mind? Is it true then that taking the provisions of the 1934 and 1935 agreements and the provisions of the main and supplemental 1938 agreements, they are substantially the same in effect?

By Mr. Nitschke: A combination of the 1934 and 1935 [fol. 344] agreements?

By Mr. Day: Yes.

By Mr. Nitschke: Well, is that Mr. Dewar's answer?

By Mr. Day: I do not know. I am asking anybody who has examined the agreements.

By Mr. Nitschke: I think the agreements speak for themselves.

By Mr. Day: Yes, I think that is better; and I think also if Mr. Dewar was in error, I was in error in either the question I asked, or the assumption I made in the question, and Mr. Dewar in the answer he gave. We should like to have the question and the answer amended so as to conform to what the agreements actually do show.

Mr. Nitschke:

Q. Do you know why the combining of the provisions of the 1934 agreement between British Timken and American Timken and the 1935 agreement between British Timken and French Timken were done in two documents—a tripartite agreement between the three Companies, and a supplemental agreement between the American Company, the British Company and yourself?

A. I have no idea; it is purely a legal matter.

[fol. 345] Q. Who handled the drafting?

A. Mr. Duncan.

Q. And you never discussed it with him as to why it was done?

A. No, never. I do not remember discussing those agreements with him. As I told you before, we regarded them as putting into one agreement the agreements which already existed.

Q. Is it your understanding (and you have acted upon it) that there have been no changes in substance in the agreements of 1934 and 1935?

A. Certainly.

Q. You have acted on that assumption?

A. I have.

By Mr. Whitney: You cannot take that position. You are governed by the 1938 agreements, and have been for ten years. It makes no difference what the 1934 and 1935 agreements were. I am advising you that as a matter of law. For one thing, they are governed by English law—and there was no reference to previous agreements."

Mr. Day: That is the statement to the witness by Mr. Whitney.

The Court: I understood.

[fols. 346-347] (Reading continued.)

"By Mr. Nitschke: This is just a little private aside?

By Mr. Whitney: But I am doing it in your hearing, so that you are under no misconception. I just want you to know that we take that position."

Mr. Nitschke: We will now proceed to offer, continuing from my examination of Mr. Dewar, the first ten questions on Page 110 of the transcript.

[fol. 348] (Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Q. I believe you stated that at the time you became interested in British Timken, Mr. Duncan was the attorney for American Timken?

A. Yes.

Q. And in 1927 he became a Director of British Timken?

A. Yes.

Q. Was he one of the American representatives on the Board?

A. He was the representative of the American interest. He is a British subject.

Q. Is he now still the attorney for American Timken?

A. In England?

[fol. 349] Q. Yes.

A. I believe so.

Q. Had he continued to be the attorney for American Timken even after the entering into of the 1928 agreements?

A. As far as I know.

Q. Is he also an attorney for British Timken?

A. He does work for British Timken, yes.

Q. Legal work?

A. Legal work, yes.

Q. Does he also consult with you on business problems?

A. Yes.

Q. Do you know if at the present time he is paid any fees as an attorney for British Timken?

A. Yes. He is paid fees for work done as an attorney."

Mr. Nitschke: We also wish to offer further from Mr. Day's examination of Mr. Dewar another portion of the transcript wherein he referred to Mr. Duncan, on Page 19, the first two or three questions.

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Q. Who was, and who is, Mr. Duncan?

[fol. 350] A. Mr. Duncan was the British lawyer of the Timken Roller Bearing Company of Canton, Ohio, and he is now a Director of British Timken. He is also British Timken's legal adviser at the present time.

Q. He was, and still is, a member of the law firm of Stibbard, Gibson?

A. He is the senior partner."

Mr. Nitschke: We now wish to proceed to offer further from my examination of Mr. Dewar the last four questions on Page 137 and the first question on Page 138.

The Court: Is this the portion of the deposition where you have made Mr. Dewar your own witness, Mr. Nitschke?

Mr. Day: Yes.

Mr. Nitschke: Well, I don't think that this was, your Honor, because this was in connection with the 1938 agreement. I would have asked him about that if Mr. Day hadn't, so I would have made him my witness on this if Mr. Day hadn't. But Mr. Day brought it up first, so I just continued with it.

Mr. Day: Of course, if your Honor please, Mr. Dewar is Mr. Nitschke's witness now at the trial as to anything he offers.

[fol. 351] Mr. Nitschke: Oh, yes.

The Court: No doubt about that, but you raised the question, Mr. Day, with reference to that portion of the deposition where he was the Government's witness.

Mr. Day: That's right.

The Court: And I wanted to get it straight in my own mind whether these questions pertain to that portion or to the portion of the examination where he was not the Government's witness but was being cross-examined.

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Q. There is one thing I would like to clear up, Mr. Dewar, with respect to the reasons for the 1938 agreement. I believe you stated that the purpose was to put all the agreements into one agreement. It seems to me that there were two agreements in effect prior to 1938—an agreement of 1934 December between British Timken and American Timken, and an agreement between British Timken and French Timken of 1935. Then when the 1938 agreements were drafted you ended up again with two agreements, the main agreement and the supplemental agreement?

[fols. 352-361] A. Yes.

Q. I am just wondering if there was a reason which occurred to you today in giving your testimony as being the reason for the two agreements?

A. The two agreements in 1938?

Q. Yes.

A. Well, I believe that the supplemental agreement was entered into because of some question of French taxation if the control of a Company in France was exercised from outside.

Q. Could you explain that a little further? I do not see why it had to be in two agreements. What is the nature of the agreements that required that?

A. I have no idea.

Q. Was that handled by Mr. Duncan?

A. It was a technical-financial-legal point."

[fol. 362] Mr. Nitschke: Your Honor, we would now like to proceed further with offering from the deposition. We

will offer the last three questions on Page 47 and the first two questions on Page 48, which are part of Mr. Day's examination of Mr. Dewar.

(Thereupon the following questions and answers were read:)

"Q. Reference has been made to the fact that there are territorial provisions in some of these contracts we have been talking about. What was the policy of both Companies under this agreement in the event that one of them was more able to make a sale in a given territory than the other?

[fol. 363] A. We had a common enemy in the Swedish S. K. F. who had begun the manufacture of tapered roller bearings, and our general policy was that if a tapered roller bearing was sold it had got to be a Timken and not a S. K. F. To us it was really immaterial whether it was made in the United States or whether it was made in Great Britain or France, provided it carried the name 'Timken'. We used to sell at the request of the American Company in the Argentine and the American Company has sold at our request in our territories.

Q. For the purpose of getting the Timken bearings sold?

A. Getting the Timken bearings sold, yes.

Q. Did S. K. F. begin the manufacture of tapered roller bearings?

A. Yes. I think it would have been about 1930 when they really came to the conclusion that they had lost something by not having tapered roller bearings in their repertoire.

Q. And they started to make them?

A. Yes.

By Mr. Nitschke: Are you referring to British S. K. F. Company?

By the Witness: When I say 'S. K. F.', I am afraid I [fol. 364] shall be referring to S. K. F. Sweden, S. K. F. England, S. K. F. France and S. K. F. Germany. As far as we are concerned, it is all one; European S. K. F. I am afraid I do not know enough about the American S. K. F.

By Mr. Nitschke: I just wanted to know which Company started to make tapered roller bearings in 1930.

By the Witness: The S. K. F. in Gottenburg, Sweden, the S. K. F. in England, at Luton, the S. K. F. Company in Paris, called C. A. M., and the S. K. F. people in Germany. They all started at the same time.

Mr. Day:

Q. I asked you this morning whether, back in 1927, anyone was manufacturing tapered roller bearings in Great Britain except British Timken, and you said you did not think there was anybody. Has it occurred to you that there was somebody?

A. Yes; you are quite correct. There was a Company called Bock which had a very small works in Glasgow. It was a subsidiary or an affiliated Company to the American Bock Corporation. It was so small that it was never really of any competitive danger to us, or of any sales danger. I would like to add that it went out of existence very shortly afterwards."

[fol. 365] Mr. Nitschke: We now proceed to offer from my examination of Mr. Dewar the first seven questions on Page 57.

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Q. In 1927, or (let us say) January 1st, 1928, what types of tapered roller bearings was British Timken making?

A. Only one.

Q. Do you recognise any distinction between the types of bearings that the American Company was making and the types that British Timken was making at that time?

A. No. We all make one type. There is only one type.

Q. I know there are tapered roller bearings, but there are various categories within that classification?

A. Do you mean different sizes?

Q. No; different styles or types.

A. No; there are no styles.

Q. Would it refresh your recollection any if I mentioned F. type tapered roller bearings?

A. Yes, but I do not think either you or I, without a microscope, would know the difference. If you want one that is different, there was one we had with rolls with tails on them, but I never remember those, and ever since I [fol. 366] have had anything to do with Timken the bearing we have made in England, and the one they have made in Canton has been practically indistinguishable.

Q. That is since 1925?

A. Since 1927.

Q. March, 1927?
A. A bit before that."

Mr. Nitschke: We now wish to offer from my examination of Mr. Dewar the first question on Page 59, the last question on 59, through to the sixth question on Page 61.

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Q. Do you have any idea approximately what percentage of the tapered roller bearing production in England was British Timken at this time?
A. I should have said 100 per cent or 99 per cent."

Mr. Day: What time was that?
Mr. Nitschke: From the next question it will appear we were talking about 1928.
Mr. Day: All right.

(Continuing the reading from deposition)

"Q. Could you tell me to what extent British Timken's [fol. 367] percentage of the tapered roller bearing market in England has changed from this first period in 1928?
A. It is back to just about where it was then, about 95 or 96 per cent.
Q. Did it vary at some time during that period?
A. I should think it went as low as 70 per cent.
Q. Has British Timken manufactured anything besides tapered roller bearings during this period from 1928 to date?
A. Yes.
Q. What products?
A. Ball bearings, parallel roller bearings.
Q. Anything else?
A. Axle boxes. I cannot think of anything else serious.
Q. When did it begin the manufacture of ball and straight roller bearings?
A. I am afraid I do not remember the exact date.
Q. Approximately.
A. I should think it would be about 1934 or 1933. I dare say my colleague can tell you.
Q. Do you recall if it was before the consummation of the 1935 agreement which contained that provision about Russia?

A. It would be about then, but I do not really know [fol. 368] whether it was before or after. It had no connection with it.

Q. What trade marks were used on the ball and straight roller bearings?

A. 'Timken'.

Q. The same as was used on the tapered roller bearings?

A. Yes.

Q. Did you ever use any other mark on the ball and straight roller bearings?

A. We have given up now. We do not make them.

Q. Up until the time that you stopped making ball and straight roller bearings.

A. We used to, yes.

Q. Always?

A. Yes.

Q. Have you ever manufactured tapered roller bearings which were of different dimensions than those made by the American Company?

A. Yes.

Q. To what extent?

A. I should think to a very small extent, because usually if we have manufactured a certain size the American Company have manufactured it afterwards because it becomes reasonably popular and the other way round.

Q. Do you manufacture bearings in both metric and inch [fol. 369] sizes?

A. Yes.

Q. How long have you done that?

A. 12 or 13 years.

Q. Originally, in 1927, they were all inch sizes?

A. Yes, except that we did make some metric sizes, but they were not metrically designed, if you understand what I mean. They were inch designed converted to metric.

Q. In other words, they were exactly the same size as your inch size of bearings, but were just measured in metric?

A. Not quite, no. The external, the boundary, dimensions were metric, but the internal dimensions were inches. We would have, say, a 30 millimetre bearing. It is not exactly anything in inches, and we just bored it a little bit bigger or a little smaller and called it a 30 millimetre bearing.

Q. Do you know whether or not the American Company made the same metric sizes?

A. I do not think they did unless we asked them to.

Q. Did you ask them to make them sometimes?

A. We probably did for our French factory, but I am merely saying 'probably'. I could not swear to it.

Q. In 1940 I understand that British Timken acquired a [fol. 370] plant in England owned by the Fischer Company?

A. That is right.

Q. Could you tell us about that?

A. The Fischer Company in Wolverhampton was a wholly-owned subsidiary of the Fischer Company at Schweinfurt in Germany. When the war broke out, they had no parent Company and we were asked by the Air Ministry if we would take it over and take it under our wing, and we bought it from the British Government, who took over the ownership of the Company under the Custodian of Enemy Property. We bought it from the official Custodian of Enemy Property at the request of the British Air Ministry.

Q. What was the Fischer Company manufacturing at the time you took it over?

A. Ball and cylindrical roller bearings.

Q. Did you just purchase the stock of the Company, or was it in the nature of an acquisition of the assets?

A. No; we purchased the stock of the Company, which covered everything, covered the assets as well.

Q. The letter-head of British Timken lists it as the registered proprietor of Fischer?

A. Yes.

Q. What does that mean?

[fol. 371] A. British Timken owns all the shares in the Fischer Bearing Company.

Q. Does Fischer have a separate management from British Timken Limited?

A. No.

Q. In other words, Mr. Pascoe is also the Managing Director of Fischer?

A. Not legally. In practice, Mr. Pascoe and I control Timken and Fischer.

Q. What did you do with the plant of the Fischer Company after you acquired the stock? Did you continue producing ball and straight roller bearings?

A. Yes. The object of us acquiring it at the request of the Government was to see that it did not stop.

Q. I believe you stated you are no longer manufacturing ball and straight roller bearings?

A. I said Timken was not.

Q. I take it, then, that Fischer is manufacturing?

A. Yes, but under the trade mark of the Fischer Company, 'F. B. C.'.

Q. After you had acquired Fischer, did you produce in its plant any bearings marked 'Timken'?

A. We make millions of bearings marked 'Timken', yes.

Q. In the Fischer plant?

[fol. 372] A. No; in the Timken plant.

Q. I am speaking about the Fischer plant.

A. I thought you meant: had we transferred the trade mark 'F. B. C.' to Timken?

Q. I am interested in knowing what mark the Fischer bearings have been produced under.

A. 'F. B. C.' They were being produced under 'F. A. G.' with a little star, which was the German Fischer trade mark. Then we changed it when we could to 'F. B. C.'

Q. What do those initials stand for?

A. 'Fischer Bearing Company'.

Q. That was a new mark which had not been used previously?

A. It had not been used before.

Q. Is the Fischer business conducted separately from the British Timken business? Do you have separate sales?

A. No.

Q. Do you have separate letterheads?

A. Yes, we have a separate letterhead for Fischer.

Q. So now when you sell ball or straight roller bearings you use a different letterhead?

A. It depends if the correspondence is done from the Fischer plant or the Timken plant. If our London office writes a letter to, say, Ford, about cylindrical roller bearings, it goes under a Timken heading, but the Timken head-
[fol. 373] ing has the name Fischer.

Q. When did you cease manufacturing ball and straight roller bearings?

A. When we bought the Fischer plant we transferred the machine tools there.

Q. All the machinery for making ball bearings were transferred to the Fischer plant?

A. Yes.

Mr. Nitschke: I would now like to have marked for identification as Government's Exhibit 34 a memorandum by W. Robert Timken dated February 23, 1944. The memorandum is headed "British Timken and Fischer plants" and described by Dewar. I wish to offer Government's Exhibit 34 in evidence.

(Thereupon the document last above referred to was marked by the Clerk for identification, Government's Exhibit 34.)

The Court: Do I hear any comment on that from defense counsel?

Mr. Day: We don't object to it.

The Court: It may be received.

Mr. Nitschke: I won't take the time to read that, your [fols. 374-391] Honor. It merely describes the properties of the British Company, of British Timken.

The Court: Very well.

Mr. Nitschke: We now proceed to offer further from the deposition of Mr. Dewar, this time the examination of Mr. Dewar by Mr. Day, the first question on Page 49.

[fol. 392] Mr. Nitschke: Does your Honor wish to proceed with further reading from the examination? I would like to offer from Mr. Day's examination of Mr. Dewar the first question on Page 49.

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Q. Do you know what, if any, French company was selling Timken roller bearings prior to 1927?

A. The Societe Mechanique de Genevillers—S. M. G.—was making and selling Timken roller bearings in France."

Then turning to Page 64 of the deposition, from the examination of Mr. Dewar, last seven questions on Page 64, continuing on through Page 68.

[fol. 393] (Thereupon the following questions and answers were read from the deposition of Michael Dewar by Mr. Derr and Mr. Dedman):

"Q. I believe you stated that in France in 1927 and 1928 the S. M. G. was the sole producer of tapered roller bearings?

A. I did.

Q. Can you tell me about what time French Timken began production in France?

A. Not without referring to the book of words, but it is quite easily obtainable.

Q. Was it within a year after the arrangements with British Timken and the American Timken?

A. It was within a year after the arrangement with S. M. G. was finished. We could not do it while they were the owners.

Q. But you produced it immediately after?

A. When you say 'produced', it was a long time before we produced bearings from the raw material. We were importing components and semi-finished products and finishing them in France for some time before we really went into complete manufacture.

Q. How long would you say you were doing that?

A. Four or five years before we really got going.

Q. To the point where you were making all the components yourself?

[fol. 394] A. Yes.

Q. I believe you stated that even after that time French Timken continued to import some components from British Timken and American Timken.

A. We are importing more from American Timken.

Q. That is throughout the period from, say 1934 and 1935, up to date?

A. We could even import into France after the Germans succeeded in stopping France. We could not import from England. We could import from America, and we did some.

Q. What do you mean by 'components'? What is included in that word?

A. Rolls, cages, cups and cones. Those are the four components of a tapered roller bearing.

Q. And raw materials?

A. Tube or forgings.

Q. Were all those things imported from American Timken for French Timken?

A. Yes.

Q. From the time it began production right on through?

A. The first operations we did in French Timken were just the grinding of the two major components. I will bring a bearing here tomorrow.

Q. Would you say that as of 1934 or 1935, at the time of

the second agreement, that French Timken was still import-
[fol. 395] ing from America considerable quantities of components?

A. I do not think it has ever stopped. We imported an enormous quantity of raw material and finished bearings, as well as components, even this year. I would not in my own mind think there is any difference in level.

Q. There have been substantial quantities at all times?

A. There have been substantial quantities at all times.

Q. Does French Timken today make balls or roller bearings?

A. No.

Q. Has it ever made ball and roller bearings?

A. No.

Q. How has the percentage of tapered roller — production of France continued throughout this period?

A. That is awfully difficult to say, because it is so much more difficult to get figures. You see, there was importation from R. I. V. in Italy. There was the production of the Renault Works and the production of S. K. F.; in other words, there were four people in that business whereas there were only two in this country.

Q. And that is of what period?

A. As of now. It has been all the time since 1934 onwards.

Q. Did S. M. G. continue to make tapered roller bearings after 1928?

A. I do not think so. We never met any competition from them.

[fol. 396] Q. Do you know when C.A.M. began the manufacture of tapered roller bearings in France?

A. About the same time as we did.

Q. What trademarks has French Timken used during this entire period?

A. 'Timken' all the time.

Q. Approximately what time did you begin the production of tapered roller bearings in the German Company, D.T.G.?

A. We never really produced tapered roller bearings in Germany. We bought all the cages from America and England. We never machined from the raw material at all. We did the grinding there and the assembly and then, before we could really get going, we decided to quit.

Q. Can you recall approximately when you began assembling and grinding?

A. I should think about 1931. I would sooner not be tied down.

Q. I just wanted an approximate date.

A. Three years we were in operation.

Q. What trademarks were used?

A. 'Timken'.

Q. Has British Timken during this entire period from 1928 to date purchased components from American Timken for use in its products?

A. Yes.

[fol. 397] Q. In substantial quantities?

A. Yes. I saw very substantial quantities only a week ago when I was down at our works.

Q. What were the principal components purchased by British Timken?

A. The British components were rolls and cages.

Q. The tapered roll?

A. Yes.

Q. And the cage is the container?

A. The cage holds the rolls together.

Q. Has British Timken during this period also purchased finished and completed bearings from American Timken?

A. Yes.

Q. For resale in its territory?

A. Yes.

Q. I would like to pin that down to periods. From the beginning in 1928, did it purchase finished bearings?

A. Yes, and we do still, substantial quantities.

Q. In 1934?

A. Yes.

Q. And in 1938?

A. Yes.

Q. Were those sizes that you did not manufacture usually?

A. They were either sizes we did not manufacture, or special bearings for special equipment, where it was not sensible to spend enormous sums of money in tooling to [fol. 398] manufacture one off or two off.

Q. Were those bearings for original application and replacement purposes?

A. Yes, I should say both.

Q. Did the same situation exist for French Timken during this period for finished bearings?

A. Yes, except that they imported relatively far more finished bearings than British Timken did because their operations were not so great.

Q. From American Timken?

A. Yes. At this time they were importing far more than British Timken.

Q. Throughout the period, they had imported finished bearings from American Timken?

A. Yes.

Q. For resale?

A. For resale, yes.

Q. Could you give me any idea approximately of the relative quantities that French Timken has purchased from the American company? Was it half or a quarter of their sales, or 10 per cent or what?

A. I have no idea at all. We can easily get it for you.

Q. I would like that information. I assume that we can get that from American Timken?

[fol. 399] By Mr. Day: As a matter of fact, we expect to show that.

By the Witness: Then I need not make a note about it.

Mr. Nitschke:

Q. During this period have British Timken and French Timken purchased finished tapered roller bearings from any other United States manufacturers?

A. No.

Q. Do you know if American Timken has sold bearings directly to customers in the British territory during this entire period, 1928 to date?

A. Yes, they have.

Q. They have regularly done that?

A. They are selling them today.

Q. Have you any idea relatively how much of the sales of 'Timken' marked bearings in the British territory are made by American Timken?

A. I could not tell you. I should think the percentage is considerable today even.

Q. Do you know if the American Company has shipped bearings into the British territory for service or replacement purposes and for original applications?

A. It is very difficult to differentiate because, supposing Ford is buying bearings from the Timken Roller Bearing

Company, I cannot tell you what Ford does with them. He [fols. 400-410] may put them into original equipment, or put them into cartons and sell them as service. So I am afraid it is difficult to answer.

Q. You think perhaps they have been sold for both purposes?

A. Yes. I am certain they have been sold for both purposes, but what proportion I have no idea.

Q. Was that true in 1928?

A. Yes, it must have been true in 1928 if it is true today.

Q. And 1934?

A. Yes.

Q. And 1938?

A. Yes."

Mr. Nitschke: I now wish to offer from Mr. Ketterer's examination of Jean LeMarie.

[fol. 411] Mr. Nitschke: I wish to read from once more—I believe I said I was going to proceed to offer from Mr. Ketterer's examination of Lemarie, on page 223 of the transcript of the deposition, the first five questions and answers.

Mr. Day: Will you read the start of Mr. LeMarie's deposition, who he is, just like you did with Mr. Dewar, so the Court will get some idea.

Mr. Nitschke: I intend to do that. If I don't read enough you will point out where you want me to read and I will read it all.

(Mr. Nitschke reading:)

"Jean Lemarie of 11, Rue Parmentier, Neuilly sur Seine, near Paris, France, aged 53 years, being duly and publicly sworn and examined on the part of the Defendant, doth depose and say as follows."

Did you want me to read his colloquy between us?

Mr. Day: Oh, no.

(Mr. Nitschke reading:)

"Q. Will you state your name, pleazse?

A. Lemarie, Jean.

Q. Where do you live?

A. Neuilly sur Seine, near Paris.

Q. Do you have any connection with the French Timken Company?

[fols. 412-413] A. I am Director General of French Timken.

Q. How long have you been Managing Director of the French Timken Company?

A. Since 1st January, 1946.

Q. Did you have any connection with French Timken before January 1st, 1946?

A. Yes, I was Director from February 1st, 1943."

Now, turning to page 228 of the transcript, we offer my examination of Mr. Lemarie, the first two questions:

"Q. Do you know what percentage of the French tapered roller bearing market Francaise Timken has today?

A. I do not know exactly.

Q. Could you make an approximation, as you did for Mr. Ketterer with respect to all anti-friction bearings?

A. I think perhaps it would be 80 per cent."

I now wish——

[fol. 414] Mr. Nitschke: We will continue with offering further portions of the deposition. We will now proceed to offer the last four questions on page 53 of the transcript and the first five on page 54, which are part of Mr. Day's examination of Mr. Dewar.

(Thereupon, the following questions and answers were read from the deposition of Michael Dewar:)

"Q. What was the German situation as of that time?

A. During the first World War a man of the name of [fol. 415] Prausnitzer had registered for himself the name 'Timken,' I believe in 1916; anyhow, during the period of the war. He was a German citizen.

Q. What was his relation to British Timken?

A. His relation previous to the first World War had been that he was a representative of Vickers in Germany and he did sell what Timken tapered roller bearings were sold in Germany; so that when the 1914/18 War ended we found Prausnitzer in Germany owning a small company which, for short, I will call D.T.C., German Timken Company, and we were totally unable to wrest the name from him, because it was his own personal property, the name of Timken.

Q. That is, the trade mark 'Timken' was registered in Prausnitzer's name?

A. Yes. It belonged to Prausnitzer.

Q. Then what was done with relation generally to Germany?

A. We set out to form a Company exactly in the same way as we had in France, the idea being to import parts from England and the United States and finish them and assemble in Germany. We did this and we carried on till, I think, 1934, when the Hitler position became rather acute and we decided that we would get out from underneath as soon as possible, and we shut down and came out.

[fol. 416] Q. Was that the end of the German enterprise?

A. That was the end of the German enterprises; but, in order to enable us to get the German Timken Company under control of Timken again, we had to pay Prausnitzer, I think not in cash, but we gave him a 20 or 25 per cent interest in the German Company and a salary as manager of it.

Q. Then Prausnitzer assigned——

A. Prausnitzer assigned his Company to us.

Q. So that the trade mark which had been registered in the name of Prausnitzer passed to the German Timken; is that right?

A. Yes, that is right.

Q. In 1934 do you know what happened to the trade mark 'Timken' in Germany?

A. I presume the trade-mark still belongs to the Deutsche Timken Gesselschaft.

Q. Do you know whether or not it was acquired by British Timken?

A. No, I do not know."

Mr. Nitschke: We will now proceed to offer a part of Mr. Ketterer's examination of Andre Augis, beginning at page 229 of the transcript, going through page 231 and concluding with the first question on page 232. We will also offer [fol. 417] as this part of the deposition goes in, the exhibits attached thereto and referred to therein. Perhaps it would be convenient if we marked those for identification at this time, and then we can have them in as we read the deposition.

The Court: The exhibits?

Mr. Nitschke: Yes.

The Court: Very well.

Mr. Nitschke: I will have them marked right now. We wish to offer——

Mr. Day: Mr. Nitschke, would you be willing to read what it says about the witness on page 229 so the record will contain that introduction, showing who the witness is and where he comes from?

Mr. Nitschke: Yes, I was going to offer the documents first, or have them identified——

Mr. Day: I wish you would read that.

Mr. Nitschke: "Andre Bernard Jules Augis of 179, Avenue Victor Hugo, Paris XVI, France, Companies Director and Private Counsellor, aged 64 years, being duly and publicly sworn and examined on the part of the Defendant, doth depose and say as follows:"

Mr. Day: Thank you.

[fol. 418] Mr. Nitschke: Before going on to reading the deposition, I will have marked for identification these two documents which are attached to this portion of the depositions, the first of which I will have marked Government's Exhibit 35, which is attached to the deposition as Defendant's Exhibit D-35-A. It is written in French, dated the 7th and 10th of August, 1928, and is an assignment of a trade mark. It's entitled, "Assignment of Trade Mark."

The Court: What is the exhibit number here? Is it Government's Exhibit No. 35?

Mr. Nitschke: Our Exhibit No. 35.

The Court: That's the first one which seems to correspond.

Mr. Nitschke: Yes. I will have marked as Government's Exhibit 36, for identifiication, a translation into English of Government's Exhibit 35.

(Thereupon the documents above referred to were marked by the Clerk, for identification, Government's Exhibits 35 and 36, respectively.)

Mr. Nitschke: This is attached to the deposition as Defendant's Exhibit 35-B.

[fol. 419] (Thereupon, the following questions and answers were read from the deposition of Andre Augis:)

"Q. Will you state your name?

A. Andre Augis.

Q. Where do you live?

A. Paris XVIth Arrondissement, 179, Avenue Victor Hugo.

Q. What is your profession?

A. I am a lawyer by profession.

Q. Have you any official connection with the French Timken Company at the present time?

A. At the present time I am a Director of the French Timken Company.

Q. How long have you been a Director?

A. I was made a member of the Board at Bordeaux on the 19th June, 1940.

Q. Where was the German Army at that time when you were made a Director?

A. They were just arriving at Bordeaux.

Q. Have you continued to be a Director ever since?

A. Yes, since 1940 I have always been a member of the Board of French Timken.

Q. Prior to 1940 had you performed any legal services [fol. 420] for the French Timken Company as a lawyer?

A. Yes, since the inception of the Company I have been advising Mr. Michael Dewar on legal and fiscal matters mainly, and I have always been associated with the development of the company because Mr. Dewar always kept me au courant with what was done as to French Timken.

Q. Can you tell me in whose name the trade mark 'Timken' was registered in France prior to 1928?

A. Yes, the trade mark 'Timken' was registered in the name of Societe Mecanique de Gennevilliers, a limited company established in France.

Q. I have here a Certificate of Registration that has been marked for identification Defendant's Exhibit D. 34 and I ask you whether or not you can tell us what that is.

A. That is the official document delivered by the Registrar of Industrial Property and it is the only evidence which can be obtained in France as regards trade marks and what you call names used in the trade.

Q. What does that show in respect of the registration of the mark 'Timken'?

A. That shows, first of all, the identification of the mark and also it applies to certain trades which are specified on [fols. 421-422] the Certificate.

Q. What does it show as to the name of the person or company who is the owner of the mark 'Timken'?

A. It is always the name of the company, of the owner, they do not say anything except to whom it belongs.

Q. But to whom does it belong as shown by the Certificate?

A. It is shown as the Societe Mecanique de Gennevilliers.

Q. Does it show the date on which that registration was obtained in the name of the Societe Mecanique?

A. Yes, it was registered on 17th February, 1921.

By Mr. Ketterer: I would like to offer in evidence this certificate."

Mr. Derr: At this point, your Honor, the Government would like to offer that document.

The Court: That may be received.

[fol. 423] The Court: I'm afraid I have lost the connection there. I thought Government's Exhibit 35, which was Defendant's Exhibit 35 in the deposition, was the French document.

Mr. Nitschke: Yes, that's right.

The Court: And Exhibit 36 is the English translation?

Mr. Nitschke: That's right, your Honor.

The Court: This last one, Exhibit 37, what is that?

Mr. Nitschke: That is the certificate of registration of the trade mark "Timken" in France, which is attached to the deposition as Defendant's Exhibit D-34.

The Court: I see.

Mr. Nitschke: And which Mr. Augis just described in the deposition. I will get a copy of that for your book, your Honor.

The Court: Very well.

Mr. Nitschke: We offer that Exhibit 37 in evidence.

[fol. 424] The Court: It may be received.

I assume this was another one that you offered, Mr. Day, at the time?

Mr. Day: That's right, your Honor.

(Thereupon, the following questions and answers were read from the deposition of Andre Augis:)

"Q. Did you have anything to do with a transfer of that trade mark in 1927 or 1928?

A. Yes—in France?

Q. In France, yes.

A. The mark 'Timken' was transferred by the Societe

Mecanique de Gennevilliers to French Timken by a notarial deed which was made by the notary of French Timken.

Q. I hand you two documents marked for identification Defendant's Exhibit D.35A and Defendant's Exhibit D.35B, and I ask you if you can tell us what they are?

A. D.35A is a deed of cession of the trade mark 'Timken' by Mr. Alby, an engineer who was connected with the Societe Mecanique de Gennevilliers. He received special power from the Company to transfer the mark to Societe Francaise Timken.

[fol. 425] Q. Did you assist in the preparation of that document?

A. Yes, I did so.

Q. I understood you to say a while ago that it was referred to as a notarial instrument of transfer?

A. Yes, the notarial deed. To make the transfer valid in France you must have a written document. It may be what you call sous seing prives, a writing not before a notary. but generally it is done by the notary of the company for technical reasons to be certain they have the power to transfer the mark. That has been the case with Societe Francaise Timken, because the person who accepted the transfer for Societe Francaise Timken was appointed by a special meeting of the board of French Timken which had been formed not long before. The document is dated 7th and 10th of August, 1928.

Q. What is the document that has been marked Defendant's Exhibit D.35B?

A. That is what we call a true copy or rather a sworn translation of the notarial document.

Q. Of the one that has been marked D.35A?

A. It is legalised before the American Consul in Paris.

[fol. 426] By Mr. Ketterer: We would like to offer in evidence Defendant's Exhibits D.35A and D.35B."

Mr. Derr: At this point, your Honor, the Government will offer these two documents.

The Court: They will be received.

[fol. 427] Mr. Nitschke: There is just one more question in Mr. Augis' deposition that we might offer.

(Thereupon, the following question and answer were read from the deposition of Andre Augis:)

"Q. Do you know what consideration was paid to the Societe Mecanique in 1928 for the transfer of the mark to the new French Timken Company?

A. I think the document shows it was 12,000 Francs, [fol. 427-A] something like that."

Mr. Nitschke: I now wish to have marked for identification as Government's Exhibit 38 copy of a letter dated October 13, 1927, from D. P. H. to Mr. Lothrop.

(Thereupon, the document above referred to was marked by the Clerk, for identification, Government's Exhibit 38.)

Mr. Day: Was that offered in the deposition?

Mr. Nitschke: No, these were not in the deposition.

Mr. Day: I see.

Mr. Nitschke: I wish to have marked for identification as Government's Exhibit 39 a letter dated January 13, 1928, from W. E. Hobley to D. P. Hess.

(Thereupon, the document above referred to was marked by the Clerk, for identification, Government's Exhibit 39.)

Mr. Nitschke: I wish to have marked for identification as Government's Exhibit 40 a carbon original of letter dated February 17, 1928, from D.P.H. to W. E. Hobley.

[fol. 428] (Thereupon, the document above referred to was marked by the Clerk, for identification, Government's Exhibit 40.)

The Court: That is dated February 17th?

Mr. Nitschke: Yes, your Honor, February 17, 1928.

I wish to have marked for identification as Government's Exhibit 41 a letter from W. E. Hobley to D. P. Hess, dated March 6, 1928.

(Thereupon, the document above referred to was marked by the Clerk, for identification, Government's Exhibit 41.)

Mr. Nitschke: I wish to have marked for identification as Government's Exhibit 42 a letter from W. E. Hobley to D. P. Hess, dated March 22, 1928.

(Thereupon, the document above referred to was marked by the Clerk, for identification, Government's Exhibit 42.)

Mr. Nitschke: I would like to have marked for identification as Government's Exhibit 43 a carbon original of a letter from D. P. H. to W. E. Hobley, dated April 18, 1928.

(Thereupon, the document above referred to was marked [fol. 429] by the Clerk, for identification, Government's Exhibit No. 43.)

Mr. Nitschke: I wish to offer the first three paragraphs of Government's Exhibit 38, from the beginning down to the words "at once" in the middle of the page.

The Court: Let me turn back to it.

Mr. Nitschke: That's the letter dated October 13, 1927, which is marked Government's Exhibit 38.

The Court: Now, what portion of that are you offering?

Mr. Nitschke: The first three paragraphs, your Honor, just about the first half, down through the words "I impressed Mr. Dewar with the fact that this should be done at once."

The Court: How do you propose to do that? Do you propose to copy that portion of the exhibit and substitute it for the original letter?

Mr. Nitschke: Yes, I will do that, your Honor.

The Court: All right, they may be received.

[fol. 430] Mr. Nitschke: I offer all of the other letters, which are Government's Exhibits 39, 40, 41, 42, and 43.

The Court: They may be received.

Mr. Nitschke: Your Honor, I won't read all these letters to you. I think that it would save time if I just read the pertinent pages, if that is agreeable to you.

The Court: All right.

[fols. 431-436] Mr. Nitschke: Your Honor, I think Mr. Day will stipulate that these letters which are initialed "D. P. H." are carbon originals of letters written by Mr. Donald P. Hess?

Mr. Day: That's right.

[fol. 437] I now wish to have marked for identification [fol. 438] as Government's Exhibit 44 a carbon original of a letter from D. P. H. to British Timken Limited, dated July 13, 1929.

(Thereupon, the document above referred to was marked by the Clerk, for identification, Government's Exhibit 44.)

Mr. Nitschke: I wish to have marked for identification as Government's Exhibit 45 a cable f n Dewar to Hess, dated August 3, 1929.

(The document above referred to was marked by the Clerk, for identification, Government's Exhibit 45.)

Mr. Nitschke: As Government's Exhibit 46 a cable from Spray to Dewar, dated August 3, 1929.

(The document above referred to was marked by the Clerk, for identification, Government's Exhibit 46.)

Mr. Nitschke: As Government's Exhibit 47 a cable from Dewar to Hess, dated October 11th—there is no year shown here, as far as I can see.

[fols. 439-443] I assume it's 1929 because it follows right in sequence with the other cables.

(Thereupon, the document above referred to was marked by the Clerk, for identification, Government's Exhibit 47.)

Mr. Day: What is the last one you offered?

Mr. Nitschke: Government's Exhibit 47.

We want to have marked for identificatiaon as Government's Exhibit 48 a copy of a cable from Hess to Dewar, dated October 11, 1929.

(The document above referred to was marked by the Clerk, for identification, Government's Exhibit 48.)

Mr. Nitschke: I wish to offer Government's Exhibits 44, 45, 46, 47, and 48.

The Court: They will be received.

[fols. 444-464] Mr. Nitsche: Your Honor, we will now proceed to offer more of the deposition. This next portion, I think, Mr. Day will be glad to know will be a very substantial excerpt of about 50 or 60 pages, which contains the better part of what I designated as my examination of Mr. Dewar. This begins on page 71, starting with the last three questions on page 71, and it continues indefinitely—I'm not quite sure how far it goes.

Mr. Day: We wish to object to it, if your Honor please.

[fol. 465] The Court: I'm of the opinion that the testimony should be received at this time. If it should transpire after the testimony is received, and at the conclusion of this case, that, in the first place, the conspiracy or the activities of these people abroad were not a part of the general conspiracy, the Court may then disregard it and, again, if it should appear at the conclusion of this case that the matter of the intervention of war would make it not only unlikely but practically impossible for the revival of these contracts or these agreements, then the Court can likewise exclude

this testimony. I am of the opinion that at this time, on the [fol. 466] basis of the testimony heretofore offered, it should be received.

Mr. Day: And will your Honor, without our making objection, take it all under objection and exception?

The Court: Yes, the objection will be overruled and I will receive it.

We will take a recess at this time.

(Short recess taken.)

Mr. Nitschke: Your Honor, I will now proceed to offer that part of the deposition beginning with the last three questions on page 71 and continuing on my examination of Mr. Dewar, and my offer will include the exhibits attached thereto, and when I come to them I will specifically offer them with the trial exhibit numbers.

(Questions read by Mr. Nitschke, and answers read by Mr. Derr:)

"Q. I have here Government's Exhibit D.2 for identification, which is a letter dated June 6, 1932, from M.B.U. Dewar to D. P. Hess, Timken Roller Bearing Company. First of all, would you tell me if that is your signature on the photostatic copy of the letter?

A. Yes, that is my signature all right."

[fol. 467] I will interpose at this point to have that document marked for identification as Government's Exhibit No. 49.

(The document above referred to was marked by the Clerk, for identification, Government's Exhibit No. 49.)

Mr. Nitschke: Continuing the deposition:

"Q. And that is a photostatic copy of a letter you wrote?

A. I assume so. I did not sign the middle page. To the best of my knowledge it is, yes. May I read it?

Q. Certainly you may read it; you may read the whole thing if you like. I am going to call your attention to part 3.

A. Yes; thank you."

At this point Mr. Day said:

"I understand that we do not have to make any objections on the ground of materiality, or relevancy, or com-

petency at this time. We expect to object to this evidence, but we have the understanding with you that we do not have to make objections on that ground on either side at this time, only as to the form of the question."

[fol. 468] And then my statement:

"That is right, and I think you are agreed that we may have the same stipulation with regard to authenticity; you will not question the fact that these are photostats, and not the original?

"Mr. Day: Yes."

Continuing:

"Q. I will read from page 2 of Government's Exhibit D.2. At the bottom of the page, under the heading 3, it says: 'Price arrangement within the country: In this direction, you will be interested to hear that largely at the instigation of the R. I. V. Company, we have attended meetings of all the manufacturers in France with a view to finding means not only to prevent further price cutting, but to raise our prices.' Perhaps you would like to have this when I question you about it. (Samd handed)

A. Yes.

Q. What is the R. I. V. Company referred to in that letter?

A. It is an Italian Company making all types of anti-friction bearings.

Q. Where is it located?

A. Turin.

[fol. 469] Q. Do you know what the initials 'R.I.V.' stand for?

A. No. I think they were the initials of one of the early workmen for a company which is a subsidiary of the Fiat Company.

Q. And the Company is always known as the R.I.V. Company?

A. Yes.

Q. Do you know anything about the size of that company, and the range of products that it produces—the R.I.V. Company?

A. As of today?

Q. As of the time that this letter was written—1932?

A. Yes. Not as much as I do today.

Q. But generally?

A. Yes.

Q. Generally what was it in 1932?

A. It was a biggish company employing somewhere around 2,000 people.

Q. One of the largest anti-friction bearing producers in the world?

A. It was certainly the largest producer in Italy, and ranked with the large producers in Europe anyway.

[fol. 470] Q. Did it make tapered roller bearings in 1932?

A. It does today. I would not like to say that it did in 1932.

Q. Do you recall who were the manufacturers in France with whom you expected to meet, as referred to in your letter?

A. C.A.M.—I may give them by initials, may I?

Q. Surely. I think perhaps it would be a good idea if you gave both the initials and the full name. It would get it on the record, and hereafter we can always refer to it.

A. C.A.M. is the Compagnie d'Applications Mecanique; R.I.V.; the Swiss Company, S.R.O., Societe Roulements Oerliken, I think it is—I forget what the "O" stands for but the Managing Director's name was Mr. Schmidt, and they had a factory in Switzerland and a factory in France just across the border.

Q. Do you recall a Company that goes by the initials of M. & B.?

A. Yes, Malicet et Blin."

I wish to offer in evidence that portion of Government's Exhibit 49, beginning at the bottom of page 2, the paragraph marked 3, entitled, "Price Arrangement Within the [fol. 471] Country," beginning there and continuing through the rest of the document.

The Court: It may be received.

Mr. Nitschke: I have had marked for identification Government's Exhibit D.3, which is an exhibit attached to a report by Mr. Donald Hess dated February 29, 1932, from Turin, Italy. This is a document which I did not offer in evidence then but I used it to refresh the witness' recollection. Apparently that document isn't right here available at our finger tips. Since I will not offer it, only mark it for identification, would it be agreeable if I did that later?

The Court: All right.

Mr. Nitschke: I will continue reading:

The Court: What was that exhibit?

Mr. Nitschke: That is a report by Mr. Donald Hess dated February 29, 1932, which was marked Exhibit D.3 and which will be marked Government's Exhibit 50.

Mr. Nitschke: (Reading:)

"Q. I have had marked for identification Government's Exhibit D.3, which is an Exhibit attached to a report by Mr. Donald Hess dated February 29th, 1932, from Turin, [fol. 472] Italy. I just want to read this to you to see if it refreshes your recollection on the question I asked you previously, as to whether or not R.I.V. was manufacturing tapered roller bearings at this time. Mr. Hess says: 'The writer accompanied by Mr. Derr visited the Turin Plant (headquarters) of R.I.V. on February 29th, 1932'. Then I skip the next part, and go on reading: 'This plant produced all types of bearings but the bulk of the production going through at the time of our visit was tapered bearings of tractor and truck sizes for Russia.' Then further: 'Generally speaking, their methods are exactly like Canton, i.e., headed rolls (Manville header)', etc; I will not read any further. Does that refresh your recollection on that point?

A. Yes, that does, but Mr. Hess only went round one of their factories; he went round one that obviously was making tapered roller bearings. Yes, you are quite correct. I apologize for mis-remembering, but we ultimately bought some special machines from Italy which they were using on tapered roller bearings, and you are quite right. Their biggest factory, not in Turin but at Villar Perosa, was [fol. 473] making only ball and straight roller bearings.

By Mr. Nitschke: Mr. Day, I may offer some of these in evidence. I do not know at this point whether or not I shall. When I do know, I will make the offer.

By Mr. Day: All right.

By Mr. Nitschke: I have here Government's Exhibit D.4 which purports to be a letter dated June 22nd, 1932, written by Michael B. U. Dewar to D. P. Hess."

I will have that marked for identification as Government's Exhibit 51.

(The document above referred to was marked by the Clerk, for identification, Government's Exhibit No. 51.)

Mr. Nitschke: Continuing with the question:

"I will ask you to look at that and tell me if you wrote that letter? (Same handed) I think I should say that in all cases where I refer to 'the letter', I am referring to a photostatic copy of the letter unless I say otherwise.

"A. Yes, I acknowledge the authenticity of that. May I read it? Are you going to ask me anything about it?

Q. Yes, I wish you would read it.

[fol. 474] A. Yes.

Q. Can you tell us what each of the companies mentioned in the first paragraph of this letter was manufacturing: S.K.F., R.I.V., S.R.O., and M.&B.—in 1932, in France?

A. Anti-friction bearings.

Q. Were they manufacturing tapered roller bearings also?

A. If you will read them through again I will tell you which was and which was not.

Q. S.K.F.?

A. C.A.M.—S.K.F. had another company.

By Mr. Day: Did you say 'In France'? I did not hear the end of that.

By Mr. Nitschke: Yes, I did.

A. C.A.M. controlled by S.K.F. was manufacturing both.

Q. When you used the initials 'S.K.F.' you were referring to the French Company?

A. I covered everything controlled in France by S.K.F.

Q. And that went under the name of C.A.M.?

A. Yes, although they used the letters S.K.F. as their advertisement always. There was another company, a [fol. 475] small one, whose name I forget.

Q. Your answer to the question is that they were not making tapered roller bearings?

A. No—they were. C.A.M. were making tapered roller bearings.

Q. And R.I.V.?

A. Yes, in Italy, not in France.

Q. Did they have a factory in France?

A. No, not at that time; they were just going to.

Q. Did they, shortly after this time?

A. They built a factory at Chambery, which was closed down fairly soon after this date. I could not give you the exact date.

Q. Did they manufacture tapered bearings there?

A. They started to.

Q. S.R.O.?

A. S.R.O. did not manufacture tapered roller bearings.

Q. M.&B.?

A. No, they did not either.

Q. And Timken, I think you have told us before, was making tapered roller bearings?

A. Only tapered roller bearings.

Q. The second paragraph of this letter reads:

[fol. 476] 'The basis of this arrangement, which has been provisionally concluded to start as from the 1st July and to continue for eighteen months, is that each company should have a percentage of the total of the anti-friction bearing business in France, and that they shall not exceed this quota.'

Was this arrangement put into writing?

A. I cannot tell you whether the whole arrangement was put into writing. We never had a round table meeting with all the factories concerned. We dealt with S.K.F. and S.K.F. dealt with the others, so that I am afraid I cannot tell you.

Q. It was the hub of the wheel, so to speak?

A. Yes, it was.

Q. Did you have an arrangement with S.K.F. in writing?

A. Yes.

Q. We have a copy of such agreement which you sent to the Timken Roller Bearing Company in 1934, but we do not have a copy of this provisional agreement, as it is called, in 1932.

A. I do not know that the provisional agreement was ever put into the form of a legal agreement. I think it may have been, but to the best of my recollection it [fols. 477-478] was an exchange of letters between the French Timken Company and S.K.F.

Q. Would it be possible for you to supply us with copies of those letters?

A. I will do my best, but it is a longish time ago now."

[fol. 479] "Q. Then in the last paragraph on the first page of your letter you say: 'I am informed by S.K.F.

privately that they have concluded in France and in most parts of the world, a 20 years' agreement with R.I.V. In France, the average total SKF-RIV turnover for three years was given us as 136 million francs; of this figure we understand R.I.V. is 15 per cent.' Then continuing on the second page: 'Our average turnover worked out on the same basis came to 6.75 per cent of S.K.F. plus R.I.V.' I take it that your quota was figured on the basis of a percentage of the combined SKF-RIV turnover, is that correct? Would you like to look at this letter?

A. No. I do remember this, because I negotiated it all myself. As between ourselves and S.K.F., our percentage of the anti-friction bearing trade was regarded as the percentage compared with S.K.F. plus R. I. V.

[fol. 480] Q. Do you know why that was, why it was a percentage of the combined SKF-RIV business?

A. I do not know actually, although I may have a suspicion. If you read a little further on in that letter, I think I stated that SKF-RIV had a 20-year agreement.

Q. Was there something in that agreement which caused the basis for the quotas to be established on the combined total of their production?

A. I am afraid really honestly I do not know. I cannot testify to that directly.

Q. You state in this letter: 'I am informed by S.K.F. privately that they have concluded . . . a 20 years' agreement.' I am re-reading the last paragraph on the first page. Do you recall who told you about that?

A. Yes, I can recall the names of the two people. One was the head of S.K.F. in France for the time being, and the other was the head of R.I.V., who is now dead, Agnelli.

Q. Who was the head of the S.K.F. Company in France at that time. Was it Mr. Bratt?

A. Yes, Mr. Bratt.

Q. Were any penalties set up for violations of this first provisional agreement, or what is called a provisional [fol. 481] agreement?

"By Mr. Day: I object to the form of the question.

"By Mr. Nitschke: I will re-phrase the question.

"Q. Do you know whether or not there were any penalties set up for failure to keep the quotas established in this arrangement?

A. Yes.

"By Mr. Day: I object to the form of that. Go right ahead and answer, Mr. Dewar.

A. Yes, there were.

"By Mr. Whitney: You understand, Mr. Dewar, that when Mr. Day objects, that reserves the right to him to argue in the American Court that your answer should not be considered, but you still go ahead and answer.

"By Mr. Nitschke: We wish to offer Government's Exhibit D. 4 in evidence."

[fols. 482-483] I now offer Government's Exhibit 51 which is the letter of June 22, 1932, which was attached to the deposition as Government's Exhibit D. 4.

[fol. 484] Then, going back to the deposition:

(Reading:)

"Q. I have Government's Exhibit D.5 for identification, which purports to be a letter dated June 22nd, 1932, from M.B.U. Dewar to D. P. Hess. Did you write that letter?

A. Yes."

[fol. 485] I wish to have that now marked for identification as Government's Exhibit 52.

The Court: It may be received.

(The document above referred to was marked by the Clerk, for identification, Government's Exhibit 52.)

Returning to the deposition:

"Q. Who was de Benedetti?

A. I do not remember, I am sorry.

Q. Do you think perhaps he was an employee of R.I.V.?

A. I should have thought he would be an employee of S.K.F., but he might be R.I.V.

[fol. 486] Q. Perhaps from some of the next few documents we can refresh your memory on that. Do you have any recollection of what was his suggestion with respect to joining forces in France? I will read your exact language. You said: 'I saw de Benedetti in France last week, but apart from their general suggestion that we should join forces with them in France, they have not got any nearer making a direct proposal.'

A. I am afraid not, I am sorry. I have no recollection as to de Benedetti."

Then I had marked for identification Government's Exhibit D.6, which purports to be a copy of a letter to M.B.U. Dewar, dated July 7, 1932, and containing on the carbon the

initials D.P.H., which I now wish to have marked for identification as Government's Exhibit 53.

(The document above referred to was marked by the Clerk, for identification, Government's Exhibit 53.)

Mr. Nitschke: Also Government's Exhibit D.7, which purports to be a letter written by Dewar July 19, 1932, to D. P. Hess, which I have had marked for identification, Government's Exhibit 54.

[fol. 487] Also Exhibit D.8, which purports to be a copy of a letter of July 29, 1932, written to M.B.U. Dewar, and containing the initials "D.P.H.," which I now wish to have marked for identification Government's Exhibit 55.

Government's Exhibit D.9, dated August 4, 1932, which purports to be a copy of a letter written to M.B.U. Dewar from the Timken Roller Bearing Company, bearing the initials "D.P.H.," which I now wish to have marked for identification Government's Exhibit 56.

(Thereupon, the documents above referred to were marked by the Clerk, for identification, Government's Exhibits 54, 55, and 56.)

[fol. 488] Mr. Nitschke: Your Honor, I am not sure that the record is clear on whether or not I offered Government's Exhibits 49 and 51, but I now do so.

The Court: 49 is the letter of Mr. Dewar to Mr. Hess of June 6, 1932?

Mr. Nitschke: Yes.

The Court: What is the other one?

Mr. Nitschke: The first was 49, letter of June 6, 1932, [fol. 489] from Dewar to Hess; and then 51, a letter of June 22, 1932, of Dewar to Hess.

Government's Exhibit 50 is just marked for identification. It was used during the depositions to refresh the witness' recollection, but it is not being offered.

The Court: Those letters may be received in evidence.

Mr. Nitschke: I continued then with marking a few other documents for identification.

Government's Exhibit D.10 in the deposition, a letter dated August 23, 1932.

Mr. Day: May I ask what page of the deposition?

Mr. Nitschke: Page 79.

I wish to have that marked for identification as Gov-

ernment's Exhibit 57, what is attached to the deposition as Government's Exhibit D.10, a letter dated August 23, 1932, from Dewar to Hess.

(Thereupon the document above referred to was marked by the Clerk, for identification, Government's Exhibit 57.)

Government's Exhibit D.11 attached to the deposition, dated August 30, 1932, a letter from Michael Dewar to [fol. 490] R. P. Hess, I would like to have marked for identification Government's Exhibit 58.

(Thereupon the document above referred to was marked by the Clerk, for identification, as Government's Exhibit 58.)

Continuing with the deposition still on Page 79, after having marked these for identification, I state to the witness:

"Q. I would like to have you look at these letters, and, if you can, state whether or not you wrote the ones which are originals and signed by you? Do your letters in this group, Government's Exhibits D.7, D.10 and D.11 accurately state the nature of the arrangement in France, and its purposes and effect?

A. As far as we knew them, yes."

Mr. Day: I take it, your Honor, it is not necessary to renew any objections, all this is going in under objection and exception.

The Court: Yes, that is with reference to the depositions being read now referring to the agreements in the European countries between British Timken and French Timken.

Mr. Day: Yes, your Honor.

Mr. Nitschke: I now wish to offer in evidence Government's Exhibits 53, 54, 55, 56, 57 and 58.

[fols. 491-495] The Court: They may be received.

[fol. 496] I will now continue reading from the deposition, Page 80 of the transcript:

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Q. On Page 2 of your letter dated July 19, 1932, Government's Exhibit D.7, it says: 'I note you are doubtful about the possibility of raising prices 20%. I am too, but the

French prices have been so long uneconomic that I do not think that there is likely to be quite the objection that there would be in some other countries. It has already been agreed to advance our service prices 10%. Do the words 'service prices' there mean the same as prices for bearings for replacement purposes?

A. That is so, yes.

Q. How was this agreement arranged? I am speaking about the agreement to raise service prices 10%. Do you [fol. 497] recall?

A. I am sorry; I do not quite understand.

Q. How did the agreement to raise service prices 10% take place?

A. We wrote to our distributors. When I say 'we' I am speaking of Francaise Timken. They wrote to their distributors in France saying that in future prices for replacements would be raised.

Q. Did you agree upon that C.A.M. or S.K.F., or was that with all the manufacturers in France?

A. No, only with C.A.M.

Q. In your letter of August 23, 1932, Government's Exhibit D.10, you state that you recently had the pleasure of meeting the Chairman of RIV at their French factory at Chambery. Who was the Chairman of RIV?

A. Agnelli.

Q. Do you recall what he told you with respect to the RIV-SKF arrangement? Do you have a present recollection of it?

A. Only from reading that letter. I think I have told you early on today that he was one of the people who told me of the SKF-RIV agreement.

Q. Does this letter correctly state what he told you?

A. It states what he told me, yes.

Q. Do you know who Bill Batt of SKF is?

[fols. 498-499] A. Yes.

Q. Who is he?

A. He is Mr. William Batt.

Q. What is his position with SKF?

A. I do not know today, but at that time he was the head of the American SKF.

Q. Do you know the name of the American company?

A. I am afraid I do not. SKF, I suppose.

Q. SKF Industries?

A. Yes, SKF Industries, Inc., that is right."

Mr. Nitschke: I now wish to have marked for identification as Government's Exhibit 59 a cable from Hess to Timken, Canton, Ohio, dated November 3, 1932.

(Thereupon the document referred to above was marked by the Clerk, for identification, as Government's Exhibit 59.)

I would also like to have marked for identification Government's Exhibit 60, a letter dated November 4, 1932, from Don P. Hess to Mr. H. H. Timken of the Timken Roller Bearing Company.

(Thereupon the document referred to above was marked by the Clerk, for identification, as Government's Exhibit 60.)

[fol. 500] Continuing with the deposition on Page 81, I stated:

(Thereupon the following questions and answers were read from the deposition of Michael Dewar:)

"Q. I have a letter dated December 5, 1932, from Michael B. U. Dewar to J. D. Spray, Esq., Timken Roller Bearing [fol. 501] Company, marked for identification Government's Exhibit D. 12."

I would now like to have that marked for identification as Government's Exhibit 61.

(Thereupon the document referred to above was marked by the Clerk, for identification, as Government's Exhibit 61.)

My question was:

"Did you write that letter?

A. Yes.

Q. Who was Judd Spray, or J. D. Spray?

A. He was head, I believe, of the sales organization of the Timken Roller Bearing Company at Canton.

Q. In 1932, at the time you wrote this letter?

A. When he wrote that letter.

Q. I will not bother to read the letter, except that on the second page, in the second paragraph, it says: "During

Mr. Hess's visit he told us of certain events on your side of the water. The result of this information has been that we are engaged at present in negotiating an arrangement with S.K.F to cover orders placed by Ford, Dagenham." What events did Mr. Hess tell you about?

A. I have no recollection at this time; I am sorry.

Q. Does the fact that you stated the result of the information had been to cause you to engage at present in [fol. 502] negotiating an arrangement with S.K.F. to cover orders placed by Ford, Dagenham, mean anything to you?

A. No. To the best of my recollection what we were trying to do was to stop S.K.F. selling bearings in Canada from Sweden.

Q. What was the arrangement that you were negotiating with S.K.F. with respect to orders placed by Ford, Dagenham?

A. I think it states that in the end we reached an agreement with them.

Q. You are referring to the sentence: 'Our proposed agreement for Dagenham will be on the basis of us having 70 per cent and SKF having 30 per cent. of the work'?

A. Yes.

Q. What is Ford, Dagenham; I think I had better ask you?

A. The Ford Motor Company, their British plant.

Q. It is located in a town named Dagenham?

A. Yes. It is about eight or ten miles from here—a suburb.

Q. The letter also says: 'I would add, in addition, that we hope to come to an arrangement on Service work for all bearings in England as part of the same arrangement.' Do you mean again by 'Service work', sales of bearings for replacement purposes?

A. Replacements."

[fols. 503-505] Mr. Nitschke: I would like to offer in evidence Government's Exhibit 61.

(Letter referred to was marked by the Clerk, for identification, Government's Exhibit 61.)

Mr. Nitschke: I'm sorry, your Honor, I neglected to offer Government's Exhibits 59 and 60.

The Court: Exhibits 59, 60 and 61 will be received.

[fol. 506] Continuing on Page 82 of the transcript:

"Q. I have 'Government's Exhibit D. 13', for identification, which purports to be a letter signed by M.B.U. Dewar and written to D.P. Hess dated December 13th 1932."

I now wish, your Honor, to have that document marked as Government's Exhibit 62.

(Document above referred to was thereupon marked by [fol. 507] the Clerk, for identification, Government's Exhibit 62.)

Mr. Nitschke: Continuing with the deposition:

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Did you read that letter? (Same handed)

A. Yes.

Q. The letter you have just read refers to a meeting on Friday December 9th, 1932, at which were present the people mentioned here in the letter?

A. Yes.

Q. Do you recall that meeting?

A. Yes.

Q. Do you recall that Mr. Agnelli and Mr. de Benedetti were present?

A. Yes. I do not remember de Benedetti even now, but Agnelli I do remember well.

Q. And Mr. Forsberg?

A. Yes.

Q. What was his position? With whom was he associated?

A. S.K.F., Sweden. He was the Managing Director, I think, at the time.

[fol. 508] Q. And Mr. Batt?

A. Yes.

Q. And Mr. Bratt?

A. Yes.

Q. And Mr. Pascoe and yourself?

A. Yes.

Q. Do you remember where the meeting was held?

A. No, I do not at the moment.

Q. Can you tell me what took place at the meeting?

A. Is not that letter as good a description as I could give you verbally?

Q. Do you have any independent recollection of what took place there?

A. Nothing other than what is down in that letter.—

Q. When you wrote that letter to Mr. Hess did you intend to state to him accurately what had transpired?

A. What had taken place at the metting.

Q. And as far as you know, you did state accurately what had taken place?

A. As far as I know, I certainly did.

Q. On the third page of 'Government's Exhibit D.13' you state, at the end of the second paragraph: 'In England, Timken have just concluded an arrangement with SKF on prices to be quoted to Ford, Dagenham, and on Service bearings in England'. That is the arrangement [fol. 509] you mentioned just previously?

A. Yes, that is so.

Q. To divide the business of Ford, Dagenham, 70-30 with S.K.F.?

A. That was the idea.

Q. And did you also agree on the prices at which you would sell to Ford?

A. Yes.

Q. With whom did you make these arrangements? Who was the individual for S.K.F.?

A. Dohlerus. I am sorry to be so long in answering, but it is a long time ago.

Q. What was his position?

A. He was Managing Director of the British S.K.F.

Q. That is Skefco?

A. Yes, Skefco.

Q. Do you recall how this arrangement operated? Did you Exchange figures on your sales to Ford?

A. Yes, on the telephone.

Q. And did you have any method of correcting the quotas, if the sales of one got out of line?

A. Only by modifying prices.

Q. You mean that the person who had too much business [fol. 510] would quote a higher price?

A. Yes.

Q. Do you know how long these arrangements lasted with S.K.F.?

A. The particular arrangement regarding Fords?

A. The particular one regarding Fords, yes.

A. I think up to the outbreak of war in 1939.

Q. And the arrangement on prices of service bearings in England?

A. Up to the same time.

Q. Did you have any other arrangements of this type with S.K.F. with respect to customers?

A. In this country?

Q. In England, yes?

A. Yes.

Q. What were those arrangements, generally?

A. In what sense?

Q. Did you have arrangements with respect to other customers besides Fords?

A. We had a general arrangement, sometimes with regard to a customer, sometimes with regard to the general total turnover.

Q. On all bearings for original application as well as for replacements?

A. On tap-red roller bearings.

[fol. 511] Q. Then your answer is 'Yes'?

A. It is yes, but not entirely yes. It is yes partially, because we had no agreement on service bearings other than the one you have referred to on Fords.

Q. I believe the letters states you had an arrangement on service bearings in England?

A. Yes. That was with regard to Ford.

Q. That was just with regard to Ford?

A. Yes.

Q. I see, and on original applications?

A. On original applications, yes. We had other arrangements.

Q. You had agreed prices with respect to all the bearings, to all customers?

A. Yes.

Q. And all your sales?

A. Yes.

Q. How did you agre—the word has a rather artistic con-

notation in the United States—how did you get together on prices? Did you consult over the telephone?

A. Yes, and by letter.

Q. And you would discuss what the prices would be, and then determine that you would both sell at the same price, some fixed price?

A. Not necessarily sell at the same price, no.

[fol. 512] —. —reached an understanding as to what each other's prices would be, but they would be different?

A. Yes.

Q. In cases where you had decided that one party would not get the business, you would agree to have one Party's prices higher than the other's?

A. Yes. It does not always follow that you get the business, even if your price is lower.

Q. During this period from December 1932 up until the time of the war, did your arrangements with S.K.F. involve any division of the bearing market as to fields—that is, as to types of applications? Your answer is 'No'?

A. I do not understand what you mean. I wanted to ask you what you mean.

Q. To give you an example, for instance were railroad bearings allotted to S.K.F. and motor-cycle bearings perhaps to you?

A. No. Railway bearings were excluded from any agreement at all.

Q. That is what I meant.

A. Yes, I follow.

Q. Were there any fields for the application of bearings which were solely allotted to one or the other of the two companies?

A. No."

[fol. 513] I now offer Government's Exhibit 62 in evidence.

The Court: Exhibit 62 may be received.

I am continuing with the deposition on Page 87:

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

[fol. 514] "Q. Have any of these arrangements that British Timken had with S.K.F. been renewed since they were discontinued in 1939?

A. No, none. Might I make one remark about service. I am afraid I may have misled you in answer to a previous question. Our general arrangement on service was that the service bearings should follow the original equipment. You asked me whether we had agreements with S.K.F. on service and I think I said, yes or no, if you remember. The general arrangement was that those service bearings should follow the original equipment.

Q. In other words if you sold the bearing for use in a machine tool and it eventually wore out, S.K.F. would not supply a replacement for that machine too, is that what you mean?

A. That is the idea—but you could not possibly make it work as closely as that.

Q. But your understanding was to try to work it that way?

A. Yes.

Q. There is just one other matter with respect to England I want to ask you about. Government's Exhibit D.14 is a copy of a report by D. P. Hess headed: 'European Trip. D. P. Hess. August and September, 1933.'" [fol. 515] I would like now to have that report marked for identification as Government's Exhibit 63.

(Document above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 63.)

Mr. Nitschke: Continuing with the deposition:

(Thereupon the following questions and answers were read from the deposition of Michael Dewar:)

"and in the section entitled: 'British Timken Limited', Mr. Hess says: 'The British Bock Company of Glasgow has finally decided to liquidate and the entire stock of bearings on hand has been taken over by us and S.K.F. and divided equally. In the contract which is in the name of British Timken, it is specified that all tools and gauges and special machinery is to be destroyed, and the writer agreed to cancel our present license to British Bock and transfer it to British Timken. No further manufacture of Bock bearings is contemplated so the license is merely to protect the name of Bock. The plan was to divide the present Bock customers between S.K.F. and ourselves, but at the

time of my visit this was not working out very well as most of the Bock customers were demanding Timken [fol. 516] bearings, but we are giving S.K.F. a copy of every inquiry so that they can quote on the business. We decided this was the fair and wisest thing to do, and if they cannot get the business, it is entirely their own fault.' Does that refresh your recollection with respect to my question yesterday about what happened to the British Bock Company?

A. Yes, I think I was fairly accurate.

Q. And the stocks of bearings were taken over jointly by you and S.K.F.?

A. Yes.

Q. You each shared in the paying for them, did you?

A. Originally we did the whole deal and then S.K.F. paid us.

Q. For half of them?

A. Yes, for half.

Q. And then disposed of them?

A. Yes.

Q. Do you recall that you had a contract with Bock to destroy their tools and gauges and special machinery?

A. Yes. It only meant the tools and gauges. To the best of my recollection no machinery was destroyed.

Q. What was the purpose of destroying the tools and gauges?

A. To prevent someone starting them up and starting to [fol. 517] manufacture Bock bearings.

Q. Did you divide the Bock customers with S.K.F.?

A. No, to the best of my recollection we got them all.

Q. Did you exchange inquiries with them?

A. Yes, they had a list of the customers.

Q. You gave S.K.F. a list of the customers?

A. Yes.

Q. Or did you divide them up?

A. I remember trying to divide them up.

Q. At the time these arrangements were entered into with S.K.F., did you discuss them with any of the people from American Timken?

A. Verbally?

Q. Yes.

A. Only if any of them happened to be in this country.

Q. The records indicate that Mr. Hess made a trip every year—at least he reported making a trip in this year?

A. Yes.

Q. Did you discuss it with Mr. Hess?

A. Yes.

Q. Who is Mr. Hess?

A. He is President of the American Bosch Corporation.

Q. And what was he at the time of this correspondence in 1932 to 1933?

[fol. 518] A. He was at that time, I believe, Assistant to the President of the Timken Roller Bearing Company.

Q. In what connection did you have business with him?

A. He was the channel through which our communications went to Canton both from England and from France.

Q. And Mr. Hess visited Europe each year?

A. I would not like to be made to say each year.

Q. But several times?

A. Several times, yes.

Q. During those visits did you discuss with him your operations?

A. We did, yes.

Q. And any problems which you had with respect to your relations with American Timken?

A. Yes.

Q. In other words he was the liaison man?

A. Yes, that is the word I was trying to think of.

Q. Between you and American Timken?

A. Yes."

I now wish to offer in evidence Government's Exhibit 63 which is the Hess report on the European trip.

The Court: August and September, 1933.

Mr. Nitschke: Yes, your Honor.

[fols. 519-522] The Court: It may be received.

[fol. 523] I now wish to have marked for identification as Government's Exhibit 64 a letter dated December 2, 1933, from Hess to Dewar.

(Letter referred to was thereupon marked by the Clerk, [fol. 524] for identification, Government's Exhibit 64.)

Continuing the deposition on Page 89:

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Q. I have here Government's Exhibit for identification D.15 and hand to you a letter dated December 22nd, 1933, Mr. Michael B. U. Dewar to Mr. D. P. Hess enclosing a draft of an agreement which the letter states is between Francaise Timken and C.A.M."

I wish to have marked for identification as Government's [fol. 525] Exhibit 65 the letter attached to the deposition as Government's Exhibit D-15, being a letter from Dewar to Hess dated December 22, 1933.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 65.)

Mr. Nitschke: And attached to this letter is an agreement containing no date, but the pages bear the serial numbers 11135 through 11143, inclusive. I would like to have that marked for identification as Government's Exhibit 65-A.

(Document last above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 65-A.)

Mr. Nitschke: This is a copy of an agreement that is attached to Government's Exhibit 65.

[fol. 526] Mr. Nitschke: Your Honor, before I go ahead I would like to make the offer to receive in evidence Government's Exhibit 64, which was the letter dated December 2, 1932, from Hess to Dewar.

The Court: That may be received.

Mr. Nitschke: And I would like to offer in evidence Government's Exhibit 65 and 65-A, which is the letter and the contract attached to the letter.

The Court: Dated December 22, 1933?

Mr. Nitschke: Yes, your Honor.

The Court: Those may be received.

Mr. Nitschke: Continuing with the deposition on Page 89 of the transcript; referring to Government's Exhibit for identification D-15, which is identified in the deposition as being this letter of December 22, enclosing the draft of the agreement,

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

[fol. 527] "Q. Did you write that letter, Mr. Dewar, and send along with it that enclosed draft of agreement?

A. Yes. I believe that to be the agreement for which you asked before. You asked me for the French agreement between C.A.M. and ourselves in France.

Q. That was referred to in a letter of June 22, 1932, the provisional agreement about which I asked you?

A. I beg your pardon. The one you have in your hand is the first agreement.

Q. This is the first agreement?

A. Yes.

Q. I have also Government's Exhibit D.16 purporting to be a telegram dated December 30, 1933, from Dewar to Hess which I hand to you, and ask you if you sent that telegram?

A. I presume I sent it. I am prepared to admit it."

I now ask that telegram to be marked for identification Government's Exhibit 66.

The Court: 66 is what?

Mr. Nitschke: It is a telegram from Dewar to Hess dated December 30, 1933. The deposition shows that I handed this to Mr. Dewar.

(Thereupon the telegram above referred to was marked by the Clerk, for identification, Government's Exhibit 66.)

[fols. 528-537] Mr. Nitschke: I wish to offer Government's Exhibit 66 in evidence.

The Court: It may be received.

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Q. The telegram refers to Page 2 of your letter of December 22nd where figures are given of tapered roller bearing sales, and I ask you to look at Page 2 of that portion and say if that telegram refers to a correction in those figures?

A. Yes, I agree."

[fol. 538] Continuing now reading from Mr. Dewar's testimony in this record, on Page 90:

(Thereupon the following questions and answers were read from the deposition of Michael Dewar:)

"Q. (Mr. Nitschke): The second paragraph of this letter states: 'As you know, we have been working on this for some months. The idea of this arrangement is to divide the Tapered Roller Bearing market between ourselves and C.A.M. in a manner which is not constant but which depends on the total anti-friction bearing turnover of C.A.M.'. When you say: 'We have been working on this for some months', whom did you mean, Mr. Dewar?

A. French Timken.

[fol. 539] Q. Were you representing French Timken in this matter?

A. Yes.

Q. Was anyone from French Timken with you in the matter, anyone else familiar with the negotiations?

A. Well, there was Mr. Seward who was familiar with it and Mr. Pascoe who was also familiar with it. Mr. Seward has left us now and I do not know where he is.

Q. What was his position at that time?

A. He was the Manager of the French Timken Company resident in Paris.

Q. Did the three of you negotiate with persons from C.A.M. or a person from C.A.M.?

A. We negotiated; I will not say we all three were always present at every talk.

Q. Who represented C.A.M. in the discussions?

A. Mostly Mr. Bratt and Mons. Oliron.

Q. Also reading from the first page, at the beginning of the third paragraph you say: 'Taking the agreement clause by clause, I should like to make the following comments: Introduction: 'C.A.M.' will cover 'S.K.F.' and all its associated companies wherever situated.' Does that refer to the language of the agreement just preceding Article I which is the fourth page of Government's Exhibit D.15 which reads: 'The Compagnie d'Applications Me-[fol. 540] caniques', if you will read that out aloud.

A. 'The Compagnie d'Applications Mecaniques, with a capital of Frs. 27,000,000. hereafter described as 'C.A.M.'

having its registered office at Paris, 15 Avenue de la Grande Armee, being the only organisation for the sale of S.K.F. Bearings in France, French Colonies and Protectorates'.

Q. My question was did the language in your letter which I read entitled 'Introduction' refer to that portion of the attached agreement which you have just read?

A. I was under the impression that there was a clause in the agreement which is called 'Introduction' which states that C.A.M. does cover S.K.F.

Q. Will you look at the agreement and see if you can find anything like that in it?

A. This 'Introduction' refers to a preliminary clause in the agreement labelled 'Introduction', and then Article II was the next one to it as far as I remember—I beg your pardon; yes, you are quite right, it does.

Q. In other words those two preliminary paragraphs prior to the heading 'Article I' are the Introduction?

A. Yes.

Q. And you were referring to the second paragraph [fol. 541-542] which you had just read yourself?

A. Yes.

Q. At this time in December of 1933 do you know what were the associated companies of S.K.F.?

A. In what territory?

Q. Anywhere or wherever situated, as you say in the letter.

A. You mean as applying to France—you do not mean in the world?

Q. I mean with respect to the language in your letter where you state 'C.A.M. will cover S.K.F. and its associated companies wherever situated'.

A. Yes, within French territory. That agreement applied only to France.

Q. You interpret the words 'wherever situated' to mean 'wherever situated in France'?

A. In France or French territory.

Q. That is the French Colonies and Protectorates?

A. That is right.

Q. Article II of the agreement states: 'Timken agrees not to manufacture or sell, either directly or indirectly, in France, or in the French Colonies or Protectorates, bearings or thrust washers other than tapered roller bear-

ings and tapered roller thrust washers and their components'. What are thrust washers?

[fol. 543] Q. And in that sense the agreement also covers the sale of bearings in France of the other companies?

A. Yes, certainly.

Q. At this time in December 1933, Mr. Dewar, what were the associated companies of S.K.F.?

A. S.K.F. Gothenberg, Skefko Ball-Bearing Company in Luton, England, C.A.M. in France, S.K.F. Inc. in U.S.A.

Q. And Germany?

A. I am just hazy as to the date at which they really acquired the interest in Germany, but I think they had at this time an interest in Fichtel & Sachs which ultimately they acquired and is no- called V.K.F.

Q. I do not know that we have in the record the full name of S.K.F. Gothenberg—do you have it?

A. Svenska Kugellager Fabrik, Gothenberg.

Q. In Article III of the agreement attached as a part of Government's Exhibit D.15 it states at the bottom of page 2: 'In calculating the 'total' and the 'special markets', the following will be excluded: (a) The sales of the two contracting parties consisting of: (1) Bearings destined for use with axle boxes or wheels of Railways or Tramways'. What are axle boxes?

A. They are the bearing whic- supports the axle of a railroad train or a tramcar—street car.

[fol. 544] Q. Is there more to them than there is to an ordinary anti-friction bearing? Do they contain more than just the two races with the rollers in between separated by a cage?

A. They are naturally rather larger than the ones used on automobiles, but apart from that there is relatively no difference, no technical difference.

Q. There is no significance to the word 'box'—there is no housing?

A. Well, there is a housing with it, yes.

Q. Would you describe it just a little more, Mr. Dewar. What do you have in addition to the ordinary tapered roller bearing?

A. In this case you actually have a doubled tapered roller bearing mounted in a box through which the axle of the railroad car goes. The bearing is tight in the box and

the inside of the bearing spins round in the box tight on the axle.

Q. And is the outside of the box fastened to the car?

A. It is not fastened to it, it slides up and down in guides to allow the springs to work.

Q. Continuing with Article III and reading at the top of page 3 of the agreement: '(2) Castings for Plummer Blocks'. What are Plummer Blocks?

[fol. 545] A. It is like a very small axle box but it is used in line shafting in factories. You have a line shaft with pulleys on it and it is supported at intervals by bearings in Plumber Blocks.

Q. '(3) Tapered Rollers sold alone'. What does that mean?

A. I think it means exactly what it says—rollers sold separately from anything else.

Q. Rollers are the little tapered cones?

A. Little tapered rolls.

Q. Not assembled in a bearing?

A. Not assembled in a bearing.

Q. Then No. 4: 'Bearings employed on Rolling Mills'. What are 'Rolling Mills' as used in this agreement?

A. Machinery in which iron and steel is rolled down from one thickness to another.

Q. Did the 'special' and 'total' markets described in this agreement include bearings for original equipment—for original application and for replacement purposes? Would you like to refer to the agreement? (Agreement handed to witness).

A. Yes. To the best of my recollection it covered the service bearings, too.

Q. Reading further in Article III of the agreement on page 3 the second last paragraph: 'In calculating the 'spe-[fol 546] cial market', exception will in addition be made of any article which is not a true tapered roller bearing.' What is the meaning of 'true tapered roller bearing'?

A. S.K.F. had a bearing at that time which possibly might have been construed as something of the kind. It had not got a straight roll and it had not got a plain ball. It had a peculiar barrel-shaped roll.

Q. Is that the bearing which is sometimes called a spherical roller bearing?

A. A spherical roller bearing, yes.

Q. Was this agreement entered into for two years as proposed?

A. I expect so. It certainly was entered into but I am afraid I cannot say the number of years.

Q. Do you know how long it continued in effect?

A. It continued up to the entry of the Germans into Paris.

Q. And has it been renewed since that time?

A. No.

Q. Article VII of the agreement on page 7 of the agreement which is part of Government's Exhibit D.15 reads as follows: 'In order to arrive at the allocation of the market as provided in as precise a manner as possible, an intimate commercial collaboration will be established between the two contracting parties, which will have to determine by agreement the tariff prices and discounts for [fol. 547] the retail market, the prices and delivery dates quoted for all large orders, or for important customers.' What is the meaning of the phrase 'tariff prices'?

A. I expect in that case it means prices taken from a list. The word in French from which that is a translation really means just a list.

Q. Did both British Timken and French Timken sell bearings on a list discount basis as does the American Company?

A. Yes.

Q. Would you have a list price which was much larger than the actual price paid?

A. In most cases, yes.

Q. And you quote the customer a discount off the list?

A. Yes.

Q. And the expression 'tariff prices' refers to that?

A. To some form of list prices.

Q. Do you know who handled the administration and execution of this agreement for French Timken?

A. Mr. Seward and Mons. de Beauvivier.

Q. What was Mons. de Beauvivier's position?

A. He was the French Technical Manager of the French Timken Company. He died in 1943.

Q. Do you know if there were any modifications or

amendments made to this agreement during the period from [fol. 548] the time it was entered into until 1940?

A. I do not remember any substantial modifications in it. I cannot promise that there were not.

Q. I have Government's Exhibit D.17 which is a letter dated March 4th, 1935, from M.B.U. Dewar to D.P. Hess which I hand to you."

Mr. Nitschke: I would now like to have that marked for identification as Government's Exhibit 67.

(Thereupon the document above referred to was marked by the Clerk, for identification, Government's Exhibit 67.)

Continuing with the deposition:

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Did you write that letter, Mr. Dewar?

A. Yes.

Q. That letter speaks of a temporary arrangement. What does it refer to?

A. It referred to the agreement which you have before you in which penalties were paid if one side or the other exceeded their quota. In this particular case owing to the failure of the Citroen Company the total number of tapered roller bearings sold by S.K.F. fell considerably and we agreed to a limitation of the resulting pen- [fol. 549] alty.

Q. That French Timken had to pay?

A. Yes."

Mr. Nitschke: Your Honor, I wish to offer in evidence Government's Exhibit 67.

The Court: It may be received.

Now, I have to go to my examination of Mr. Dewar at another point on Page 127 of the deposition where I went back and referred again to the contract, which has just been put in evidence.

"Q. I want to go back again to some questions on matters the Government introduced as distinguished from matters which related to Mr. Day's examination, and to clear up a few points. You will recall, Mr. Dewar, the letter of June 22nd, 1932, (Government's Exhibit D.4) and I believe

you want to clarify your testimony as to whether or not the arrangements described in that letter were oral or writ-
[fol. 550] ten. I believe that at the time we introduced Government's Exhibit D.15 which consisted of your letter of December 22nd, 1933, to which was attached a copy of a contract between French Timken and C.A.M. you thought at that time the contract attached to your letter of December 22nd, 1933, was the first written agreement between the French Timken and C.A.M. I will show you the contract which is now marked Government's Exhibit D.15A (Same handed to witness). The question is whether or not the contract now marked Government's Exhibit D.15A was the first written agreement on the French situation?

A. Yes.

Q. And the 1932 arrangements were oral?

A. I do not think there were any 1932 arrangements. This letter to which you previously referred related to the preliminary discussions with a large number of other firms with whom ultimately we had no agreement at all.

Q. With reference to the written agreement Government's Exhibit D.15A I believe you stated that under this agreement C.A.M.'s quota included S.K.F. bearings manufactured by S.K.F. Companies outside of France and imported into France?

A. Any bearings under the control of S.K.F., which I
[fol. 551] think is what you mean.

Q. Yes—any S.K.F. roller bearings manufactured anywhere which were sold in France?

A. Yes, not only S.K.F. but R.I.V. Any S.K.F. controlled bearings which were sold in France.

Q. Were included in C.A.M.'s quota under this agreement?

A. Yes.

Q. Similarly did French Timken's quota include Timken bearings manufactured elsewhere and imported into France?

A. Yes.

Q. I believe you call bearing- which are sold by French Timken that have been imported factored bearings—is that right?

A. Yes, I think it is—in England we do. I am afraid

the French word is not 'factored' so we cannot very well, can we, call them that in France?

Q. But you would say, speaking in English, that the French Company does 'factor' bearings which it acquired outside the country from British Timken or American Timken?

A. Yes.

Q. And the quota of French Timken therefore included factored bearings?

A. Yes.

Q. Did it also include Timken bearings which were sold [fol. 552] directly to customers in France by British Timken and American Timken such as for replacement purposes?

A. There were no bearings sold directly.

Q. They were all sold through French Timken?

A. Through French Timken, unless they went in original equipment. I mean, if a motorcar made in the United States was sold in France, of course it did contain some Timken bearings made in America. You do not mean that, do you?

Q. No, I mean bearings to use for replacement in such cars?

A. No, it was all imported through the French Company.

Q. I now call your attention to your letter of December 5th, 1932, marked Government's Exhibit D.12''——

Which is now in evidence, your Honor, as Government's Exhibit 61——

''—in which letter you referred to several cables passing between yourself and Judd Spray in which the word Blare is used?

A. Yes.

Q. Can you tell us what that word is and what it means?

A. Yes, it means S.K.F. You took it for granted on Friday when you examined about this letter, otherwise I came prepared to say it was.

Q. That was a code word which you used in cables to refer to S.K.F.?

[fols. 553-557] A. Yes.''

I now wish to have marked for identification Government's Exhibit 68 a letter from D. P. Hess to A. C. Ernst, dated January 18, 1934, of Ernst & Ernst, Union Trust Building, Cleveland, Ohio.

(Thereupon the letter above referred to was marked by the Clerk, for identification, as Government's Exhibit 68.)

And I wish to have marked for identification Government's Exhibit 69 copy of a letter dated February 12, 1934, from Hess to H. H. Timken.

(Thereupon the letter referred to above was marked by the Clerk, for identification, as Government's Exhibit 69.)

Government's Exhibit 70, which is a cable from Hess to Dewar dated January 22, 1934.

(Thereupon the cable above referred to was marked by the Clerk, for identification, as Government's Exhibit 70.)

And I wish to offer in evidence Government's Exhibits 68, 69, and 70.

The Court: They may be received.

[fol. 558] Now, continuing with the deposition, my examination of Mr. Dewar on Page 97 of the tran-

[fol. 559] script.

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Q. I have Government's Exhibit D.18 for identification which purports to be a memorandum by D. P. Hess dated February 16th, 1932, from London, England, headed: 'Russian Situation'."

Which I would now like to have marked for identification Government's Exhibit 71.

(Thereupon the document above referred to was marked by the Clerk, for identification, Government's Exhibit 71.)

Continuing with the reading of the deposition.

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"The memorandum states: 'As cabled, the R.I.V. have quoted 83 per cent, off list and give two years time pay-

ments to the Russians. The entire amount of the invoice was guaranteed by the Italian Government. During 1931 they received approximately $500,000.00 of tapered bearing business in addition to their ball bearing and straight roller bearing business which amounted to $200,000.00. I questioned these figures, but Pascoe spent three weeks [fol. 560] in Russia and they were verified by Beneditti, Managing Director of R.I.V. to Dewar. Beneditti also stated the last order they received was in October for 50,000 cones and cups 78216/78531. No orders have been placed since that time and he and Dewar have agreement on bottom prices at 85 with interchange of information on quotations etc.' I asked you previously, Mr. Dewar, about Beneditti, and I thought perhaps that might refresh your recollection?

A. Well, you refreshed it before this too, because he appeared in another letter. I know who he was now.

Q. Would you tell us?

A. He was the General Manager I think of R.I.V. at that time.

Q. Is Mr. Hess's statement correct that he had an agreement?

A. We had a general agreement over prices to quote to Russia, yes. I am afraid at this time, as to whether the 85 per cent, was what we agreed, I cannot say, but we did have an agreement with Russia.

Q. In other words that you would not quote below a certain price?

A. That is so, yes.

Q. And did you interchange information and quotations? [fol. 561] A. Yes, we did.

Q. How long did that arrangement last?

A. The Russian flurry lasted only a very short time—it would be six or seven months, something of that kind. The Russian orders suddenly came and then suddenly disappeared.

Q. So that your answer is that the agreement lasted six or seven months also?

A. Yes, it faded out.''

I wish to offer in evidence Government's Exhibit 71.

The Court: What is 71?

Mr. Nitschke: 71 is the memorandum headed "Russian Situation" dated February 16, 1932, written by D. P. Hess, and it was attached to the deposition as Government's Exhibit D.18.

I won't bother to read from it because I read the important portions of it to Mr. Dewar.

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Q. I have here marked for identification Government's Exhibits D.19, D.20, and D.21 which purport to be respectively a letter from Mr. Michael Dewar to 'My dear Don' [fol. 562] dated September 3rd, 1929, from Mr. Michael B. U. Dewar dated November 20th, 1930, to D. P. Hess and from Michael Dewar to D. P. Hess dated November 24th, 1930."

I would like to have marked for identification as Government's Exhibit 72 a letter from Dewar to "My dear Don" dated September 3, 1929, which is attached to the deposition as Government's Exhibit D.19.

(Thereupon the letter above referred to was marked by the Clerk, for identification, Government's Exhibit 72.)

I wish to have marked for identification as Government's Exhibit 73, a letter dated November 20, 1930, from M.B.U. Dewar to D. P. Hess, which is attached to the deposition as Government's Exhibit D.20.

(Thereupon the letter above referred to was marked by the Clerk, for identification, Government's Exhibit 73.)

I would like to have marked as Government's Exhibit 74 a letter dated November 24, 1930, from Michael Dewar to D. P. Hess, which is attached to the deposition as Government's Exhibit D.21.)

[fol. 563] (Thereupon the letter above referred to was marked by the Clerk, for identification, Government's Exhibit 74.)

Referring to these letters which have just been marked for identification I said:

"Did you write these letters, Mr. Dewar?

A. Yes.

Q. Is the 'My dear Don' referred to in Government's Exhibit D.19 Don P. Hess?

A. Mr. Hess, yes.

Q. Of the Timken Roller Bearing Company?

A. Yes.

Q. In your letter of September 3rd you state: 'We have made a temporary arrangement with the former which will prevent them cutting prices to our best customers' and in the preceding sentence you state: 'The reason for my pressing you on the question of heading rolls, and so on, as Bock and S.K.F. are continually forcing our prices down'. I take it this states that you had a temporary arrangement with Bock in 1929?

A. Yes.

Q. What was the nature of that arrangement?

A. I have no recollection at all."

I wish to offer Government's Exhibit 71.

[fol. 564] The Court: It may be received.

Mr. Nitschke: I also offer Government's Exhibit 72 in evidence.

The Court: They both may be received.

Mr. Nitschke: I also offer at this time Government's Exhibits 73 and 74.

The Court: 73 and 74 may be received.

Mr. Nitschke: Continuing with the reading of the transcript.

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Q. In your letter of November 10th" (Which is Government's Exhibit 73) "in the first paragraph on the second page you made the statement: 'I have no intention whatever of letting them get in to our business under the pretext of a friendly arrangement'. I will not read you the rest of the paragraph. What was the 'friendly arrangement' that you referred to?

A. We were trying to come to an agreement with them at the same time we did not think they were quite playing the game by cutting the ground under our feet.

Q. And agreement on what?

A. Well, an agreement on an arrangement in England.

[fols. 565-566] Q. On prices?

A. Yes.

Q. And customers?

A. Yes.

Q. Of the sort which you eventually concluded?

A. That we eventually concluded, yes.

Q. In your leter of November 24th, 1930" (which is marked Government's Exhibit 74) "(Government's Exhibit D-21) you stated: 'They have now undertaken definitely to cover us in future on all commercial vehicle work pending the completion of the negotiations in America'. What do the words 'to cover us in future on all commercial vehicle work' mean?

A. I expect they mean to quote a higher price. May I glance at the letter?

Q. Certainly. (Letter handed to witness)

A. Yes, that is right. That is what it means.

Q. Do you know what 'negotiations in America' are referred to in this letter?

A. I am trying to think of dates.

Q. This is November 24th, 1930.

A. Yes, I really do not know, not with the context there at that length of time."

[fol. 567] I wish to have marked as Government's Exhibit 75 a letter, copy of letter, from Hess to Dewar, dated December 27, 1929.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 75.)

[fol. 568] Mr. Nitschke: Your Honor, I have had marked for identification Government's Exhibit 75, and I wish to offer it in evidence.

The Court: It will be received.

[fol. 569] Mr. Nitschke: Continuing with the deposition:

(Thereupon the following questions and answers from [fol. 570] the deposition of Michael Dewar were read:)

"I have Government's Exhibit D-22, a letter dated January 8th, 1930, from Michael Dewar to D. P. Hess."

I would like now, your Honor, to have that letter marked for identification Government's Exhibit 76. This is a letter from Dewar to Hess.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 76.)

Mr. Nitschke: Continuing from the deposition:

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Did you write that letter?

A. Yes.

Q. You have read this letter, have you?

A. Yes, I have.

Q. In the last sentence you say: 'I do want to take every [fol. 571] possible step we can to keep S.K.F. out of the taper roller bearing business anywhere.' What steps did you have in mind?

A. Under-quoting them in price.

Q. Whether the sales were in your territory or the American Company's territory?

A. That is so, yes. I think I explained that before."

Mr. Nitschke: Your Honor, I wish to offer Government's Exhibit 76 in evidence.

The Court: It may be received.

[fol. 572] Mr. Nitschke: I now wish to have marked for identification as Government's Exhibit 77 a letter from Hess to Dewar dated December 16, 1932, and attached to the deposition as Government's Exhibit D-23.

(Letter last above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 77.)

Mr. Nitschke: I would like to have marked for identifi- [fol. 573] cation as Government's Exhibit 78 a letter dated January 12, 1943, from Dewar to Hess, and that is attached to the deposition as Government's Exhibit D-24.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 78.)

Mr. Nitschke: Continuing with the deposition, your Honor, from the bottom of Page 100:

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Q. I have Government's Exhibit D.23, which is a copy of a letter written to M.B.U. Dewar, initialled 'D.P.H.',

dated December 16th, 1932, and Government's Exhibit D.24, which is a letter dated January 12th, 1933, from Michael Dewar to D. P. Hess."

Mr. Nitschke: These are the two letters, your Honor, which have just been marked for identification Government's Exhibits 77 and 78.

The Court: Yes, I understand.

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

[fol. 574] "I will ask you first if you wrote the letter Government's Exhibit D.24. (Exhibit handed to the witness.)

A. Yes.

Q. Is Government's Exhibit D.23 the letter which you received from Mr. Hess and to which you refer in the first sentence of your letter? (Exhibit handed to witness).

A. Yes.

Q. I call your attention, on the second page of your letter of January 12th, 1933, to the first full paragraph: 'I have just written you another letter in connection with the competition with SKF Gothenburg. I merely would add here that we will, of course, do everything in our power to enable Timken to hold the Canadian market.' Were you referring there to American Timken?

A. No. I should say I was referring to British Timken in that case. The basic idea, as I think I explained before, was that bearings should bear the name 'Timken' whether they were made in England, France or the United States.

Q. The reason that I ask about Timken is that in Mr. Hess's letter of December 16th, to which you are replying, he says, in the third paragraph on page 2 of his letter:

[fol. 575] 'SKF using bearings shipped from Sweden have underquoted us in Canada to quite a marked degree and have obtained quite a good bit of the Ford Canadian business as well as some of the other automotive manufacturers. Judd and I have been discussing it and he left for Detroit early this week convinced, as I am, that the only way to handle the situation is with British made product, which we intend to do.'

A. Yes. You can take it either way. The idea was to retain the market for Timken, not necessarily U.S. Timken

or British Timken. He is asking us, really: can we supply bearings made by British Timken at a price that we can compete with S.K.F. in Canada?

Q. At this time American Timken was selling in Canada?

A. They were, yes.

Q. And Canada was included in their territory under the business agreements?

A. Yes.

Q. Did you have in mind selling bearings to American Timken for re-sale in the Canadian market at a lower price than they could sell their own bearings?

A. I do not think that the mechanism ever reached that stage. We quoted the American Timken Company for delivery of bearings in Canada, but, to the best of my recollection, no orders were ever placed.

[fol. 576] Mr. Hess, in his letter of December 16th, 1932, says (again reading from that paragraph I read from before): 'I, therefore, cabled for the maximum discount you could allow from your No. 317 List and I have just received an answer that this will be 87½ per cent,'

A. Yes.

Q. I think I asked you this morning or yesterday whether you know what the No. 317 List is. Does that refresh your recollection any?

A. No, not at all. It is a list of prices, but I am afraid I cannot separate it in my mind from any other by the number.

Q. Do you think perhaps Mr. Pascoe would know what that list is?

A. He might.

Q. Or who would know in British Timken—any of the persons who are testifying at this deposition?

A. I am afraid I cannot answer the question, because I really do not know who is testifying. It is not in my hands.

Q. Mr. Hobley?

A. He would know, certainly, what 317 meant.

Q. I have Government's Exhibit D.25, which is a copy of a letter from the Timken Roller Bearing Company, Assistant to the President, to Mr. M.B.U. Dewar, dated [fol. 577] December 14th, 1932, with the initials 'D.P.H.',"

Mr. Nitschke: I wish to have that letter marked for identification as Government's Exhibit 79. That's a letter from Hess to Dewar of December 14, 1932, and is attached to the deposition as Government's Exhibit D-25.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 79.)

Mr. Nitschke: Continuing reading from the deposition:

(Thereupon the following questions and answers were read from the deposition of Michael Dewar:)

"and Government's Exhibit D.26, which is a letter signed 'Michael Dewar', addressed to Mr. D. P. Hess, Timken Roller Bearing Company, dated December 29th, 1932."

Mr. Nitschke: I wish to have this letter marked for identification as Government's Exhibit 80. This letter is from Dewar to Hess dated December 29, 1930, and this is attached to the deposition as Government's Exhibit D-26.

(Letter above referred to was thereupon marked by the [fol. 578] Clerk, for identification, Government's Exhibit 80.)

Mr. Nitschke: Continuing reading from the transcript of the deposition:

(The following questions and answers from the deposition of Michael Dewar were read:)

"Is D.26 a letter you wrote and is D.25 the letter to which it was a reply?

A. Yes."

Mr. Nitschke: Your Honor, I offer Government's Exhibit 79 and 80 in evidence.

The Court: They may be received.

Mr. Nitschke: And I will also offer in evidence Government's Exhibits 77 and 78.

The Court: They may be received.

Mr. Nitschke: Continuing to read from the transcript:

(The following questions and answers from the deposition of Michael Dewar were read:)

"Q. In your letter of December 29th, 1932, do you thank Mr. Hess for his letter of December 14th 'regarding your

arrangement with Ford. The Co-Ordination Department of the Ford Company in London had apparently been advised by Detroit of your arrangement and wished to obtain the same concession from us'?

A. Yes.

Q. And in Mr. Hess's letter he says: 'Upon my return to this famous country I find a cable from Birming-
[fol. 579] ham with reference to a statement made by Ford Dagenham that we have granted Ford America a license to manufacture Timken bearings according to our patents, and it puzzled me just a little bit because this is the situation I described to you when I explained that we had dropped the Bower suit and had given Ford such a license as they describe'. Can you tell us what this arrangement was that Mr. Hess explained to you that American Timken had with Ford?

A. I am afraid not. I do not remember the detail of it at this range of time, I am afraid.

Q. Do you recall what concession it was that Ford in England wanted to obtain from you?

A. I am afraid I do not even remember that.

Q. Continuing your letter, you say: 'There is no doubt at all that Ford have decided here, as a policy, to have two sources of supply and they have certainly favoured SKF in the last month or two in placing orders. However, our arrangement with SKF will prevent this going too far.' What arrangement with S.K.F. are you referring to here?

A. To the one you questioned me about earlier this morning.

Q. The arrangement on price for service bearings?

A. For all bearings.

[fol. 580] Q. And for sharing the Ford business?

A. Yes."

[fol. 581] I now wish to have marked for identification as Government's Exhibit 81 a copy of a letter dated February 2, 1933, from the Timken Roller Bearing Company to the Ford Motor Company, to which there is attached a copy of a letter dated January 26, 1933, from Ford Motor Company to Timken Roller Bearing Company which I would like to have marked as Government's Exhibit 81-A for identification; and another letter attached to Exhibit

81 which I would like to have marked for identification as Government's Exhibit 81-B, a letter from Timken to Ford dated August 31, 1932, which also bears the notation "Date changed to September 19, 1932;" and the last attachment to Exhibit 81 I would like to have marked as Government's Exhibit 81-C, being a copy of a contract dated September 19, 1932, between Timken Roller Bearing Company and Ford Motor Company. I guess I should describe that as a letter agreement between Timken Roller Bearing Company and the Ford Motor Company.

(Thereupon the documents above referred to were marked by the Clerk, for identification, Government's Ex-
[fols. 582-583] hibits 81, 81-A, 81-B, 81-C, respectively.)

Mr. Nitschke: Your Honor, I would like to call your attention—first, I should offer Government's Exhibits 81, 81-A, 81-B, and 81-C, in evidence.

The Court: They will be received.

[fol. 584] Mr. Nitschke: I now wish to have marked for identification as Government's Exhibit 82 a memorandum of D. P. Hess dated February 16, 1932.

Mr. Nitschke: I offer Government's Exhibit 82, your Honor.

The Court: It may be received.

[fol. 585] I now wish to proceed to offer from the deposition of Walter Ernest Hobley of Churchill, Somerset, England, retired, aged 58 years, being duly and publicly sworn and examined on the part of the Defendant, doth depose and say as follows, and I'm reading now from Page 215 of the transcript. This is Mr. Ketterer's direct examination of Mr. Hobley.

(Thereupon the following questions and answers from the deposition of Walter Ernest Hobley were read:)

"Q. Will you state your name, please?

A. Walter Ernest Hobley.

[fol. 586] Q. Are you presently employed?

A. Not at present.

Q. Were you formerly employed by British Timken, Ltd.?

A. I was for 32 years.

Q. When did you stop working for British Timken?

A. 1946.

Q. Did you retire at that time?

A. I did.

Q. Did you ever work for a Company known as Electric & Ordnance Accessories, Ltd.?

A. Yes.

Q. When did you start working for that Company?

A. Early 1914.

Q. And you continued working for that Company for what period?

A. Until British Timken was formed as a Company in 1920.

Q. Then you continued working for British Timken for what period?

A. Until 1946.

Q. In what capacity were you employed by Electric & Ordnance Accessories?

A. In the sales office.

Q. Did you continue in the sales department of that Company until British Timken came into the picture?

A. Yes.

[fol. 587] Q. Did you continue in the sales department with British Timken until the time of your retirement?

A. Yes."

Mr. Nitschke: I now refer to the last seven questions on Page 218 of the transcript, being Mr. Derr's examination of Mr. Hobley. It is headed here "Cross-examination by Mr. Derr" in the transcript. The exhibit referred to there marked Defendant's Exhibit D-28 is the tripartite agreement, your Honor.

(Thereupon the following questions and answers from the deposition of Walter Ernest Hobley were read:)

"Q. I have here a copy of the business agreement dated 28th November, 1938, which has been introduced in evidence as Defendant's Exhibit D.28. I direct your attention to Paragraph 6(b) and ask that you read that.

(The witness studied the document.)

Q. I have here an agreement of 29th December, 1934, between the Timken Roller Bearing Company and British Timken, Ltd., which has been introduced in evidence as

Government's Exhibit D.29. I direct your attention to Paragraph 7(b) of that Agreement, and ask that you read it.

(The witness studied the document.)

[fol. 588] Q. It has been testified in these proceedings that your—and by 'your' I m-an British Timken's—ball and straight roller bearings were sold in South America and Canada during the period covered by these Agreements. Is that correct?

A. I think a certain number of bearings were sold by us in South America and Canada.

Q. Is that your best recollection?

A. To the best of my recollection they were.

Q. Could you give us the approximate dates of such sales?

A. It must have been the 30's, in the early 30's.

Q. Was an amount equal to 5 per cent. of the net sales price paid to American Timken on such sales?

A. Yes, as part of our arrangement with them.

Q. I hand you a letter dated December 16th, 1932, bearing initials 'DPH' to Mr. M.B.U. Dewar, which has been offered in evidence as Government's Exhibit D.23."

Mr. Nitschke: Your Honor, that's the letter now in evidence as Government's Exhibit 77.

The Court: Yes.

"It is a letter of three pages, and I direct your attention to the third paragraph on page 2 and ask that you read it."

Mr. Nitschke: Your Honor, just so you will know what he is referring to, it's the middle paragraph of the second [fol. 589] page of the letter from Hess to Dewar where there was a discussion about SKF bearings, and an inquiry as to whether or not Timken, British Timken, could furnish bearings to Canada.

(Thereupon the following questions and answers from the deposition of Walter Hobley were read:)

"Q. Just to refer back a moment, I asked you whether or not a 5 per cent. commission was paid on sales of British Timken straight roller and ball bearings in Canada and South America. I believe your answer was yes?

A. Yes.

Q. Was a commission also paid on straight roller and ball bearings bearing the trade mark 'FBC' sold in those territories?

A. I have no knowledge of FBC bearings, but on Timken ball bearings I believe we paid a commission.

Q. During the time you were with British Timken did British Timken sell tapered roller bearings to American Timken for resale in American Timken's territory?

A. No.

By Mr. Derr: I have here a document purporting to be a letter of 26th January, 1934, signed for British Timken, [fol. 590] Ltd., by W. E. Hobley, to D. P. Hess, Timken Roller Bearing Company, and I ask that it be marked for identification as Government's Exhibit 59."

Mr. Nitschke: I now wish to have that document marked for identification as Government's Exhibit 83. That's a letter dated January 26, 1934, from Hobley to Hess, attached to the deposition as Exhibit D.59.

(Letter referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 83.)

Mr. Nitschke: Continuing from the deposition:

(The following questions and answers from the deposition of Walter E. Hobley, were read:)

"I have here a document purporting to be a letter dated 27th April, 1934, from W. E. Hobley to D. P. Hess and ask that it be marked for identification as Government's Exhibit D-60."

Mr. Nitschke: Your Honor, I wish to have that letter marked for identification now as Government's Exhibit 84, a letter from Hobley to Hess, dated April 27, 1934, and which was attached to the deposition as Government's [fols. 591-597] Exhibit D-60.

(Letter last above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 84.)

Mr. Nitschke: I wish to offer Government's Exhibits 83 and 84 in evidence.

The Court: They may be received.

Mr. Nitschke: Returning to the transcript of the deposition:

(The following questions and answers from the deposition of Walter E. Hobley were read:)

"Q. I would like you to read those letters, please.

(The witness studied the letters.)

Q. Do those two letter and Government's Exhibit D.23, which you read just a moment ago, refresh your recollection that tapered roller bearings manufactured by British Timken were sold?

A. Seeing those were my letters I cannot very well go back on them. Apparently a small number of bearings were sold."

[fol. 598] Mr. Nitschke: Your Honor, I discovered over the week-end that an amendment to one of the contracts was inadvertently left out. Listed as Government's Exhibit 13 was a contract between Timken and International Harvester Company referred to in the agreement with British Timken and American Timken. To make that agreement complete it is necessary to have along with it a letter agreement made May 14, 1936, amending the agreement dated December 31, 1927, which is in evidence as Government's Exhibit 13. I would like to have this letter agreement amending Government's Exhibit 13 to be marked for identi-

[fols. 599-602] fication as Government's Exhibit 13-A, and to offer it in evidence.

The Court: It may be received.

(Thereupon the document above referred to was marked by the Clerk, for identification, Government's Exhibit 13-A.)

[fol. 603] Continuing from the deposition, Page 219, at the bottom:

(Thereupon the following questions and answers from the deposition of W. E. Hobley were read; questions read by Mr. Derr, answers read by Mr. Dedman:)

"Do those two letters and Government's Exhibit D.23, which you read just a moment ago, refresh your recollection that tapered roller bearings manufactured by British Timken were sold?

A. Seeing those were my letters I cannot very well go back on them. Apparently a small number of bearings were sold.

Q. Now your recollection has been refreshed, can you tell us when and where such bearings were sold?

A. Do you mean those bearings?

Q. British Timken tapered roller bearings in American territory—when were they sold and in what territories?

A. Our territory, of course, was Europe, the whole of Europe.

Q. I mean American Timken's Territory?

A. We had no territory over there; we did not regard that as our territory.

Q. But you have just said that you did sell, that those [fol. 604] letters refreshed your recollection that you did sell?

A. Yes, to the Timken Roller Bearing Company, but we would not take orders from any other clients in that territory.

Q. At what prices did you sell to the American Timken Company?

A. The prices are given there.

Q. There are prices given in the letter. Are they the prices at which you sold?

A. Yes, they must have been.

Q. How did these prices at which you sold to American Timken compare with the prices which were given to other customers of British Timken?

A. Those prices were much more favourable than we would give to other customers.

Q. Were they more favourable than the prices given to other distributors of British Timken?

A. I would say Yes."

I will now continue with the "Re-direct examination by Mr. Ketterer."

"Q. In a question that was directed to you by Mr. Derr you were asked whether or not there was any commission paid to American Timken on sales in American Timken [fol. 605] territory of ball bearings or straight roller bearings?

A. Yes.

Q. I believe you said you thought there was?

A. To the best of my recollection I think there was.

Q. Was it your job to handle the payment of commission to the American Timken Company on any sales made, or was that handled by anybody else?

A. It was handled by the Accounts Department.

Q. So that you might be mistaken about that?

A. Quite.

Re-cross-examination.

By Mr. Derr:

Q. Did you get the consent of the American Timken Company to sell straight roller and ball bearings in Canada and South America?

A. I do not think the consent was necessary, because our agreement only covered tapered roller bearings.

Q. I show you again the Agreement dated 29th December, 1934, between American Timken and British Timken, Ltd. (Government's Exhibit D.29), and refer you to the first part of Paragraph 7. I also show you the preamble to this Agreement and ask that you please read it including the 'Whereas' clause.

(The witness studied the document.)

Q. Clause (b) of the 'Whereas' clause reads: 'The expression 'bearings' for the purposes of this Agreement [fol. 606] means anti-friction bearings of all kinds'?

A. Yes.

Q. Does that refresh your recollection as to the limitations on the authority of British Timken under the Agreements to sell in American territory?

A. Yes. The arrangement, as I recall it, was that we could supply in the Timken Company's territory, they could equally supply in our territory, and a commission was payable either way.

Re-direct examination.

By Mr. Ketterer:

Q. You have been asked about the matter of selling bearings by British Timken in American Timken territory, and a payment of commission on that. Reference has been

made to provisions in one of the business Agreements between British Timken and American Timken. I want to ask whether you had anything to do with the making of that contract?

A. No, I had nothing to do with the making of it.

Q. Did you have anything to do with its administration?

A. Yes.

Q. What did you have to do with that?

A. Mainly this question of trading in each other's territory.

[fol. 607] Q. And your best recollection about that now is what?

A. The whole object of that arrangement was that if clients in our territory insisted on buying bearings from America we would let them do so. If there were clients in the Timken Company's territory who wished to buy from Great Britain we would supply them. A commission would be granted in either case. That was in order to combat competition; that was the chole basis of it.

Q. That is your best recollection of that?

A. That is to the best of my recollection.

Q. What is your best recollection now as to whether the consent of American Timken was asked for in respect of sales by British Timken in American Timken's territory of ball and straight roller bearings as distinguished from tapered roller bearings?

A. Well, I really cannot recollect whether we did make application to the Timken Company to supply ball bearings in South America or not, but we did supply them, I am sure of that."

Mr. Nitschke: The disposition now refers to Government's Exhibit D.27, a letter dated September 11, 1934, from Dewar to "My dear Don:" which I would like to [fol. 608] have marked for identification Government's Exhibit 85.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 85.)

I would also like to have marked for identification a letter dated September 20, 1934, from Hess to Dewar, as Government's Exhibit 86.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 86.)

[fol. 609] Continuing with the deposition, referring to deposition Exhibit 27, Page 104 of the transcript of the [fol. 610] deposition, the last two questions:

(Thereupon the following questions and answers from the deposition of Dewar were read:)

"Did you write that letter? (Exhibit handed to the witness).

A. Yes.

Q. In this letter you state: 'The question of your selling steel to Russia was never mentioned to me either during your visit to England or during our visit to Canton. The only question of the sale of steel that was discussed was the question of selling your steel in England or making an arrangement for some firm in England or elsewhere to make your special steels.' Do you recall what the discussion was regarding the sale of American Timken steel in England?

A. The American Timken Company were developing a series of very special steels and at that time they asked me about getting some firm in England to manufacture them under license over here. At that time it never came to anything. I do not think it ever has yet. In that letter I took exception to the thought that they might sell their special bearing tubing to our competitors."

Then the deposition shows I offered that exhibit in evidence.

[fol. 611] Your Honor, I offer Government's Exhibits 85 and 86 in evidence.

The Court: They may be received.

Mr. Nitschke: Continuing with the deposition of Mr. Dewar, Page 129, the question:

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Who is Mr. Prytz?

A. Who was Mr. Prytz at the date of these conferences, would that suit you—because I am afraid I do not know what he is now.

Q. Say in 1934 and 1935?

A. He was then Chairman of the SKF Swedish Company.

Q. He held the top position?

A. Yes."

I now wish to have marked for identification several letters that are referred to in the deposition. The first is a letter dated August 14, 1934, from Hess to Dewar, attached to the deposition as Government's Exhibit D.43, which I now wish to have marked for identification Government's Exhibit 87.

(Letter above referred to was thereupon marked by the [fol. 612] Clerk, for identification, Government's Exhibit 87.)

I wish to have marked for identification Government's Exhibit 88 a letter from Dewar to Hess dated September 19, 1934, attached to the deposition as Government's Exhibit D.44.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 88.)

I wish to have marked for identification as Government's Exhibit 89 a letter dated November 28, 1934, from Hess to Dewar, attached to the deposition as Government's Exhibit D.45.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 89.)

As Government's Exhibit 90, a letter from Dewar to Hess dated December 7, 1934, and attached to the deposition as Government's Exhibit D.46.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 90.)

For identification as Government's Exhibit 91 a cable from Dewar to Hess dated December 11, 1934, attached to the deposition as Government's Exhibit D.47.

[fols. 613-614] (Cable above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 91.)

As Government's Exhibit 92, for identification, a letter from Hess to Dewar dated February 4, 1935, attached to the deposition as Government's Exhibit D.48.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 92.)

As Government's Exhibit 93, a letter from Dewar to Hess dated February 14, 1935, and attached to the deposition as Government's Exhibit D.49.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 93.)

And as Government's Exhibit 94 a letter dated February 22, 1935, from Dewar to Hess, attached to the deposition as Government's Exhibit D.50.

(Thereupon letter above referred to was marked by the Clerk, for identification, Government's Exhibit 94.)

Mr. Day: I think we will object to those upon the ground that nothing ever came of the matters that are referred to in those exhibits.

[fol. 615] The Court: Let me do this then: your objection will be overruled at this time and I will entertain the objection at the time you enter it not as an objection but rather on the motion to strike.

Mr. Day: Thank you very much.

Mr. Nitschke: I would like to offer in evidence Government's Exhibits 87, 88, 89, 90, 91, 92, 93 and 94.

[fols. 616-619] The Court: They will be received in evidence.

[fol. 620] Mr. Nitschke: We will now proceed to offer [fol. 621] from my examination of Dewar, beginning on Page 122,

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Q. Mr. Day asker you yesterday, Mr. Dewar, making reference to the territorial provisions of the business agreements, what the policy of your company was under this agreement in the event that one of them was more able to make a sale on the given territory than the other. You replied: 'We had a common enemy in the Swedish SKF

who had begun the manufacture of tapered roller bearings, and our general policy was that if a tapered roller bearing was sold, it had got to be a Timken and not a SKF. To us it was really immaterial whether it was made in the United States or whether it was made in Great Britain or France, provided it carried the name 'Timken'.' "

And then Mr. Day said: "You are reading from what?"

"By Mr. Nitschke: I am reading from the transcript of the testimony on the previous day, Page 47, and I have also read from Mr. Dewar's answer to your question.

Q. Is it your intention to say that it was immaterial to you who sold as between American Timken and British Timken at all times, or just when you were in competition [fol. 622] with S.K.F.?

A. Our main object in life was to sell Timken tapered roller bearings. Naturally, I did not want the American Timken Company to sell bearings in our territory unless—well, in our territory.

Q. In other words, you did not mean that as between a bearing made in Canton and one made in Birmingham, you did not care which was sold in your territory—they both have the name 'Timken' on them?

A. Yes.

Q. But you are interested in selling bearings made in Birmingham in your territory?

A. Yes, certainly; but if we were unable to sell a bearing made in Birmingham, we preferred to sell in our territory a bearing made in Canton or in France rather than a S.K.F. bearing made in Gothenburg.

Q. So in other words, if you were trying to get the business from S.K.F., it was then that it was immaterial to you which Timken bearing was sold?

A. Well, I should have put it the other way round: it was when S.K.F. was trying to get the business from us. After all, we started.

Q. You used the phrase 'common enemy' referring to Swedish S.K.F. Were they a common enemy at all times, [fol. 623] or were they not during some time?

A. They were a common enemy all the time.

Q. And they were a common enemy at the time you

entered into the arrangements in France in 1934, and the arrangements in England in 1932?

A. They were largely a common enemy from the time we ever heard of them up to now inclusive.

Q. So that they were a common enemy with whom you had friendly arrangements?

A. We occasionally had a truce—like the Russians and the Germans.

Q. Then it is a case of the American slang expression—if you can't beat them, you join them?

By Mr. Day: I object to that question."

Mr. Nitschke: I now wish to have marked for identification as Government's Exhibit 95 a cable dated May 16, 1938, from Umstattd to Dewar.

(Cable referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 95.)

Mr. Nitschke: And as Government's Exhibit 96 a cable from Pascoe to Umstattd dated May 20, 1938.

(Cable referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 96.)

Mr. Nitschke: And as Government's Exhibit 97 an inter-[fol. 624] office letter from Harry J. Porter to Mr. W. E. Umstattd, dated May 23, 1938.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 97.)

Mr. Nitschke: I wish to offer in evidence Government's Exhibits 95, 96 and 97.

The Court: They may be received.

[fol. 625] I wish to have marked for identification as Government's Exhibit 98 a letter from W. Robert Timken to British Timken Ltd. dated April 25, 1939.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 98.)

Mr. Nitschke: I wish to offer Government's Exhibit 98 [fol. 626] in evidence.

The Court: It may be received.

Now I wish to have marked for identification as Government's Exhibit 99 a letter from Klinedinst to Dewar dated August 25, 1939.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 99.)

Mr. Nitschke: I wish to offer Government's Exhibit 99 in evidence.

The Court: It may be received.

Mr. Nitschke: I would like to have marked for identification as Government's Exhibit 100 a letter from Dewar to Klinedinst dated September 11, 1939, and attached to the deposition as Government's Exhibit D-28.

(Thereupon letter above referred to was marked by the [fols. 627-628] Clerk, for identification, Government's Exhibit 100.)

Mr. Nitschke: I would like to offer Government's Exhibit 100 in evidence.

The Court: It may be received.

[fol. 629] Mr. Nitschke: Reading from Page 105 of the transcript, where Mr. Dewar's attention was called to this letter of September 11, 1939, Government's Exhibit 100:

(Thereupon the following questions and answers from the deposition of Michael Dewar were read:)

"Did you write that letter?

[fol. 630] A. Yes.

Q. In this letter you are replying to a letter of the 25th August from Mr. Klinedinst 'regarding the trouble you are having with SKF in Canada. We will give this matter our most careful consideration, but at the present time it is rather unlikely that we shall be able to help you very much. If, however, we can help you by persuading SKF not to fight you, that would appear to be the best way! I just wanted to ask you if, in stating that 'at the present time it is rather unlikely that we shall be able to help', you are referring to the fact that your production was going into the war effort.

A. Yes; we had a war at that time.

Q. And that therefore you could not ship any bearings abroad?

A. That is right."

Mr. Nitschke: I now wish to have marked for identification as Government's Exhibit 101 a letter from W. Robert Timken to Dewar dated September 27, 1939.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 101.)

Mr. Nitschke: And I wish to have marked as Government's Exhibit 102 a letter dated October 26, 1939, from Dewar to W. Robert Timken.

(Letter above referred to was thereupon marked by the [fols. 631-633] Clerk, for identification, Government's Exhibit 102.)

Mr. Nitschke: And as Government's Exhibit 103 a further letter from Dewar to W. Robert Timken dated November 14, 1939.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 103.)

Mr. Nitschke: I wish to offer in evidence Government's Exhibits 101, 102, and 103.

The Court: They may be received.

[fol. 634] Mr. Nitschke: I wish to have marked for identification as Government's Exhibit 104 a letter dated October 23, 1939, from British Timken Limited to W. Robert Timken.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 104.)

Mr. Nitschke: And a letter from W. Robert Timken to British Timken, Ltd., dated December 28, 1939, which I [fols. 635-644] wish to have marked for identification as Government's Exhibit 105. This is attached to the deposition as Government's Exhibit D-32.

(Letter above referred to was thereupon marked by the clerk, for identification, Government's Exhibit 105.)

Mr. Nitschke: And also I would like to have marked a copy of a contracted dated September 1, 1939, entitled "Memorandum of Agreement By and Between British Timken Limited and Percy Grant & Company Limited," bearing the notation "File copy for TRB" and "Contract File."

(Contract above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 106.)

Mr. Nitschke: I wish to offer in evidence Government's Exhibits 104, 105 and 106.

The Court: They may be received.

[fol. 645] I should now like to read from Page 107a of the deposition, last question on the page:

"I have here, again for identification, Government's Exhibit D.32, a copy of a letter written by W. Robert Timken to British Timken Limited, dated December 28, 1939. This letter states:

'We have gone over *over* the draft of a proposed Agreement between yourselves and Messrs. Percy Grant & Company inclosed in your letter of October 23, 1939. While we were in substantial agreement with the terms included, our counsel felt that some changes were advisable from our viewpoint. I have underlined in red these changes on an extra copy and would appreciate your comment on them.' Do you recall that agreement?

A. Yes.

Q. Was such an agreement entered into?

A. I think so.

Q. Do you recall what it related to?

A. Yes.

Q. What was that?

A. Most of the Argentine railways at that time were British-owned and they wished to place orders for passenger stock and locomotives in this country fitted with Timken bearings. Then they wished also be able to import spares in the shape of axle boxes and bearings complete. The agent that we employed for that purpose was [fol. 646] Percy Grant, and it was agreed that the Timken Roller Bearing Company should employ the same agent.

Q. Agreed between who?

A. British Timken and American Timken."

Mr. Derr: At that point Mr. Nitschke said, "I will not offer D.32 at this time."

Mr. Nitschke: I now wish to have marked for identification Government's Exhibit 107, a copy of a memorandum from Mr. Klinedinst to Mr. Goodwin, dated December 5, 1939.

The Court: Did I hear you say you were offering it?

Mr. Nitschke: Having it marked for identification first, then I will offer it.

(Thereupon the memorandum above referred to was marked by the Clerk, for identification, Government's Exhibit 107.)

And for identification Government's Exhibit 108, a memorandum from Klinedinst addressed to four people, J. R. Comber, W. B. Moore, W. H. Richardson and W. D. Sanders, dated December 6, 1939.

(Thereupon the memorandum above referred to was marked by the Clerk, for identification, Government's Exhibit 108.)

[fols. 647-652] As Government's Exhibit 109, a memorandum by W. R. Timken, dated January 29th, 1940, attention W. Robert Timken, subject "Mr. L. M. Klinedinst's General Letter No. 11-13 of 12-6-39."

(Thereupon the memorandum above referred to was marked by the Clerk, for identification, Government's Exhibit 109.)

I wish to offer in evidence Government's Exhibits 107, 108 and 109.

The Court: They may be received.

[fol. 653] Mr. Nitschke: I would like to have marked for identification as Government's Exhibit 110 a letter from Colin S. Gibson to Mr. R. E. Forsythe, of The Timken Roller Bearing Company, dated September 20, 1940. The letter bears the heading "C. S. Gibson, Technical Representative. S. C. Campbell, Resident Service Engineer of [fols. 654-663] British Timken Ltd., Birmingham, England."

(Letter last above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 110.)

For identification as Government's Exhibit 111, a letter from R. R. Thomas, Deputy Chairman of Directors, Bearings Service Co. of Australia, Limited, to Mr. R. Forsythe, of Timken Roller Bearings Company, dated October 23, 1940. Attached to Government's Exhibit 111 is a copy of a letter from R. R. Thomas to C. S. Gibson, and on the

same date, which I would like to have marked as Government's Exhibits 111 and 111-A, respectively.)

(Letters above referred to were thereupon marked by the Clerk, for identification, Government's Exhibits 111 and 111A, respectively.)

I wish to offer in evidence Government's Exhibits 110, 111 and 111-A.

The Court: They may be received.

[fol. 664] Mr. Nitschke: Now I wish to have marked for identification as Government's Exhibit 112 a memorandum from R. E. Forsythe to L. M. Klinedinst, dated December 3, 1940, which I wish to offer in evidence.

The Court: It may be received.

(Thereupon the memorandum above referred to was [fol. 665] marked by the Clerk, for identification, Government's Exhibit 112.)

Mr. Nitschke: Government's Exhibit 112 was attached to the deposition as Government's Exhibit D.33.

This Government's Exhibit 112 attached to the deposition as D.33 was mentioned in the transcript of deposition on Page 108 of my examination of Mr. Dewar. I said to him:

(Thereupon the following questions and answers were read from the deposition of Michael Dewar:)

"I have Government's Exhibit D.33 which appears to be a memorandum dated December 3rd, 1940, from R. E. Forsythe to L. M. Klinedinst on the subject of sales into British Timken's territory. This is an inter-office memorandum that came from the files of American Timken.

A. Would you give me the date?

Q. December 3rd, 1940.

A. I was not in England.

Q. I do not think that will make any difference with respect to my use of the document. Do you know who Mr. Forsythe and Mr. Klinedinst are?

[fol. 666] A. Yes; I know Mr. Klinedinst and Mr. Forsythe.

Q. I will just ask you to read the third paragraph and see if that refreshes your memory on the question of the

modification or understanding relating to paragraphs 7 and 8 of the 1935 agreement. (Exhibit handed to witness.)

A. I am afraid not. It does not help me at all.

Q. We have been referring to the practice of selling replacement bearings, quoting at a protective discount of 50 per cent off the list, rather than enquiring as to what the price should be, and I take it you have no recollection of yourself making any such understanding?

A. No; I have none.

Q. Who do you think in British Timken would have made such an arrangement with the American Timken people?

A. I do not know that such an arrangement was necessary. We should have quoted automatically a figure of that kind, knowing quite well that we could not get any business at it, anyway. It may be there is an agreement. Please do not take it from me that there is not.

By Mr. Whitney: I am afraid that we cannot turn up witnesses for you. We can answer questions, but I do not think you can reasonably ask Mr. Dewar to go round looking for who might be a witness to something he does not [fols. 667-674] know about. It is not within the scope of the examination.

By Mr. Day: (To the witness): When did you come to America in 1940?

By the Witness: In July.

By Mr. Day: What is the date of that memorandum?

By Mr. Nitschke: 3rd December.

By Mr. Day: That is five or six months after you came to America."

Mr. Day: I think we should state that Mr. Dewar came to America at that time in connection with some official capacity he had with the British Government during the war.

[fol. 675] (Monday, March 29, 1948, 2:00 o'clock p.m.)

Mr. Nitschke: Your Honor, we will now proceed with the reading of part of the deposition of Frederick John Pascoe, starting at page 157 of the transcript. This is the examination of Mr. Pascoe by Mr. Ketterer, and we will proceed to offer it.

(Thereupon, the following questions and answers from the deposition of Frederick John Pascoe were read:)

"Q. Will you state your full name, please?

A. Frederick John Pascoe.

Q. Where do you live?

A. Broom Hill, Spratton, Northamptonshire.

Q. Will you give us a description of your education and early business connections?

A. I was educated at Exeter School and Cambridge University, where I took an Engineering Degree—Mechanical Sciences Tripos, to be exact. At the end of the war——

Q. You mean the first World War?

A. Yes, in 1919 I first went into industry by joining the Leeds Forge Company. My job there was in the nature of an apprenticeship. I spent some few years with the Leeds Forge Company in Leeds. I afterwards came to London and spent a little time in their London office. Following that I joined the Electric & Railway Finance Cor- [fol. 676] poration in the capacity of Personal Assistant to the Chairman. There I was mostly engaged in financial business, new issues, underwriting, investment work, and a certain amount of technical work. I afterwards became Secretary of the Electric & Railway Finance Corporation. While with them I was associated with one or two other companies. In 1930-1931 I first became interested in British Timken and French Timken, being invited by Mr. Dewar to join the Boards of those companies. During the period from 1930 up to 1938, a year before the war, I became progressively more interested in and progressively spending more time in the service of British Timken, until in 1938 I severed my connection, which by that time had grown rather thin, with the Electric & Railway Finance Corporation and became a full-time Director of the Timken Companies, British Timken and Francaise Timken.

Q. Have you continued since 1938 to devote your full time to the business of British Timken and French Timken?

A. Yes, and during the war, from 1940 to 1943, Mr. Dewar was in America for the British Government and I was for that period the chief executive Director of the [fol. 677] Timken organization in this country. On Mr. Dewar's return I was appointed Managing Director, when

my duties were general supervision and direction of the Company's affairs, subject to the instructions of Mr. Dewar as the chief executive Director."

Mr. Derr: Continuing from the deposition of Mr. Pascoe, your Honor, we would like to offer all that occurred on page 192 and the first question and answer on page 193:

(Thereupon, the following questions and answers from Frederick John Pascoe were read:)

"Q. Now I want to go back to the sales of bearings that are made in the territory that is set aside for operations of British Timken in the 1938 contract. When bearings are sold by American Timken in that territory what, if any, commission is paid to the British Timken Company in respect of those sales?

A. Sales by American Timken into our Territory?

Q. That is right.

A. The only payments of any size were payments on Australian business. They were the only payments of any real size that I remember.

Q. And that was payment for what purpose?

A. They did not pay us a commission when they sent bearings out there. They supplied the bearings at a price [fol. 678] which we indicated to them as being the price level. Then we asked the American Company to invoice the bearings at that price and give us the difference between that price and the price which they would have invoiced to us had they supplied the bearings to us. We were very anxious to get that price difference, because we had to maintain our technical force in Australia, although we were not getting the business. The business was going to America and we were maintaining the technical engineers in Australia. Therefore, we said: 'This is Australian business and we want a contribution to the cost of maintaining those engineers.' I think that was the arrangement.

Q. Were those payments in any sense penalty payments?

A. No, they were what we demanded to meet our costs in Australia. We did not see why we should maintain the engineers and indeed why we should, as we expected to have to do and indeed did towards the end of the period, have to make payments to our agents to compensate them for the fact that they did not get any commission on bear-

ings supplied from this country. So we had a considerable expense in Australia and we made that arrangement with America.

[fol. 679] Q. Has that same procedure been followed in any other territories outside Australia where sales have been made in circumstances where you have, for one reason or another, not been able to make delivery?

A. I cannot think of one. I can only say I should certainly follow that principle. I cannot think of one at the moment—I cannot think of any."

Mr. Derr: Now, your Honor, we would like to offer the last question and answer on page 198 from the testimony of Mr. Pascoe, all of pages 199, and 200, and the first question and answer on page 201.

(Thereupon, the following questions and answers from the deposition of Frederick John Pascoe were read:)

"Q. I hand to you Government's Exhibit D.33 which is the letter from Forsythe to Klinedinst that I used in attempting to find out what protective discount of 50 per cent. off the American list meant with reference to prices charged by American Timken when it was selling in British Timken's territory. Do you recall any understanding arrived at or discussion between American Timken and British Timken when American Timken sold replacement bearings in British Timken's territory—would it say at a protective discount of 50 per cent off the American list? I call your attention to the third paragraph in that letter and ask you if that is of any aid to you?

[fol. 680] A. This third paragraph?

Q. Yes.

A. I cannot tell you from memory what 50 per cent off was.

Q. My question was whether or not you recall any understanding between British Timken and American Timken?

A. Yes, I recall an understanding. In other words I think I said so in answer to Direct examination that we asked American Timken to quote prices which we gave. We had established a price level in Australia, a price level which not only gave us our cost of manufacture but also enabled us to maintain this expensive sales force in Australia, and we were anxious that that price level should

not be disturbed by odd orders which were seized under special conditions from anywhere.

Q. Did you establish prices in every case where American Timken received an order or an inquiry from your territory?

A. Are you talking about Australia or any territory?

Q. Any of your territory, what is designated as the British territory?

A. I do not remember details particularly, but I think [fol. 681] it is quite possible that we did.

Q. You have no recollection, however, of an understanding that American Timken could sell at a 50 per cent. discount off American list without inquiring of you as to what the price should be in each case?

A. The way we should inform American Timken of the price level was by reference to a list. We could not send them an enormous list of dozens of bearings and say: 'This is the price of each particular bearing.' We should refer to some particular price list and say: 'The price level we wish you to quote is a certain percentage from this list.' That was the normal procedure.

Q. That is what you did do?

A. That is what we undoubtedly did do.

Q. But you have no recollection of a general understanding that American Timken, without getting a specific price from you in each case, could sell in your territory at a 50 per cent discount off list?

A. Well, we have said that when the question arose of the American Timken Roller Bearing Company selling in our territory we should indicate to them what the price level was and we should indicate it by quoting a discount off the list; and if they asked us: 'We are having orders [fol. 682] from Australia; what price shall we quote?' we should say: 'Quote a certain percentage off the list,' and that would remain until we wanted to alter it, when we should again alter it by altering the discount.

Q. And is it your recollection that you did tell them that in all sales in Australia they should quote 50 per cent off the American list?

A. I should say it was quite possible that we told them that. I say that we should have given them a discount off the list which we could quote.

Q. You do not recall any discussion of that sort with any of the Timken people?

A. Well, it was during the war, was it not?

Q. I was not limiting it to any particular time.

A. Well, we are talking about 1940. I should say that our procedure always would be to ask them to quote, when they are quoting into our territory, a discount off list. When you say you are covering the whole time, we are going back now in my memory to 1930 which is eighteen years ago. I cannot remember now whether we said: 'Quote 50 per cent off list in every territory' or 50 per cent in one territory and 49 per cent in another. I can only say that we should have given them a discount off [fol. 683] list as being the simplest way of indicating what the price level was in any particular territory.

Q. And you have no recollection during this period from 1930 to date of either yourself or anyone else having to arrive at a general understanding that throughout an indefinite period American Timken could quote for replacement bearings in your territory—on unsolicited orders from your territory—a 50 per cent discount, a protective discount? You do not recall that that arose or any understanding or discussion which you had with them?

A. I am afraid I can only repeat myself. I cannot recall——

Q. I am just trying to make it specific.

A. I cannot recall myself that we ever said to the American Timken Company: 'Quote anywhere you like at 50 per cent.' I do not say we did. I do not say we did not. I only say I remember during the war—it is fresher in my memory during the war, I was the whole time with Timken and for a time during the war I was the Chief Executive Officer of the Company—that during that period I should undoubtedly have given them a discount off list."

Mr. Derr: I think, your Honor, the record should show that the last part of the deposition, that which was read [fol. 684] from page 198 to 201, was in the examination by Mr. Nitschke. The first part was by Mr. Ketterer.

The Court: Very well.

Mr. Nitschke: I wish to have marked for identification as Government's Exhibit No. 113 a letter from Klinedinst to Dewar dated December 4, 1940.

(The letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit No. 113.)

Mr. Nitschke: I would like to have marked for identification as Government's Exhibit No. 114 a letter dated December 18, 1940, from Gibson to Forsythe.

(The letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit No. 114.)

Mr. Nitschke: I would like to call your Honor's attention to the second page of Mr. Klinedinst's letter to Mr. Dewar of December 4, 1940, Government's Exhibit No. 113, where Mr. Klinedinst writes:

"We have in mind a situation——"

The Court: You haven't offered them yet.

Mr. Nitschke: I am sorry, your Honor. I want to offer in evidence Government's Exhibits 113 and 114.

The Court: They will be received.

[fols. 685-690] (The letters heretofore marked Government's Exhibits No. 113 and 114, for identification, were received in evidence.)

[fol. 691] Thereupon, Louis M. Klinedinst was recalled as a witness, and, having heretofore been duly sworn, was examined and testified further as follows:

Direct examination.

By Mr. Nitschke:

Q. Mr. Klinedinst, in the subpoena which was issued to you you were asked to bring a bearing bearing certain number manufactured by British Timken and one made by French Timken. Do you have those with you?

A. We have got the French Timken this morning and expect to have the British Timken tomorrow morning.

Q. Will you give those to Mr. Day so that he can give them to me?

A. Yes, sir.

Q. When they arrive?

A. Yes, sir.

Mr. Nitschke: Your Honor, if they fail to arrive before the Government's case is in, I would like to have them marked for identification whenever they do arrive and put them in evidence.

The Court; Very well.

Q. Mr. Klinedinst, did you see Mr. Harrison of the Bearing Service Company of Australia, Ltd. when he was in Canton in 1940?

A. Yes, sir.

Q. And did you talk with him when he was there?

[fol. 692] A. Yes, sir.

Q. Was anyone else with you when you had these discussions with Mr. Harrison?

A. I believe not.

Q. Did you talk to him on more than one occasion?

A. Just once.

Q. Just once?

A. Yes, sir.

Q. Did Mr. Harrison ask you to cancel your agreement with British Timken so that you could sell to his company direct in Australia?

A. No, he did not.

Q. How?

A. He did not.

Q. Or did he ask you to modify the contract in such a way as to permit yourself to deal with him direct?

A. No, sir.

Q. You are sure of that, are you, Mr. Klinedinst?

A. Positive.

Mr. Nitschke: Your Honor, I would like to ask permission to use the Grand Jury transcript to refresh the witness' recollection on that question. Would you like to see the portion first before I ask him about it?

The Court: Yes.

[fol. 693] (Thereupon, Mr. Nitschke handed Grand Jury's transcript to Court.)

Mr. Day: May we see that?

Mr. Nitschke: I have no objection to your seeing that portion of it.

Mr. Day: That's all we want to look at right now.

(Thereupon, Mr. Nitschke handed the Grand Jury transcript to Mr. Day.)

Mr. Day: How much are you going to ask him from this? I don't want to look at anything you are not going to ask about.

Mr. Nitschke: Just that one question.

The Court: Very well.

Q. I will read you my questions and your answers, Mr. Klinedinst, from your testimony before the Grand Jury:

"Q. I have here a copy of a letter from British Timken to Kemsley & Company in Australia in which they say that for the remaining war period the Australian requirement of Timken bearings will be supplied by their American associate, and that this decision results from discussion which their chairman, Mr. Dewar, has had with Timken Roller Bearing Company of America, and he goes on [fol. 694] to say that he thinks Mr. Dewar was in some way influenced by Mr. Harrison of the Bearing Service Company who visited Canton while he was in America."

Your answer was:

"A. Bearing Service Company is, as I remember—Yes, they were a jobber for British Timken in Australia.

"Q. Does that refresh your memory of that situation?

"A. Yes.

"Q. Could you tell the jury what happened in connection with the Bearing Service Company?

"A. Well, this Harrison was the Bearing Service man and was very much dissatisfied with the service he was getting from the British company, and he wrote several letters to us and wanted us to cancel the British Timken contract, and he said British Timken had taken over a dealer down there, Kemsley & Company—does he mention that—who was entirely unfit and couldn't possibly replace the bearings in operation. Nothing happened on that. As I understand, Kemsley is the British representative and the things stand just as they did at that time, as far as I know. Kemsley is a very big house in Australia, [fol. 695] much larger than is Bearing Service Company.

"Q. But, as I understand it, British Timken had insisted that the Australian people order their bearings through British Timken, and British Timken would then forward

any orders to you that they wanted you to fill for Australia?

"A. Not exactly that. British Timken wanted the Bearing Service Company to place their orders with Kemsley & Company, and Kemsley undoubtedly got a profit, and then Kemsley would send the orders to British Timken. In other words, you had an added step in there, and the Bearing Service Company didn't like that. They tried to get us to upset the contract and do business directly with them. You will find in that correspondence where they said other competition was coming in and we would lose a lot of business if we continued to have British Timken handling their sales through Kemsley."

Does that refresh your recollection as to whether Mr. Harrison sought to have you cancel your contract?

A. Harrison did not tell me that. Since you read that, it was talked over, but Harrison didn't tell me. The only point Harrison took up with me was that the deliveries were rotten and somebody had to get back of it and get some shipments for them, but I don't think there was [fol. 696] any request or any discussion about trying to upset the contract. I don't recall that. I think that I did hear something said about it, with Forsythe or someone, but I only had a very short visit with Harrison when he was there. He was there only the one day.

Mr. Nitschke: Your witness.

Cross examination.

By Mr. Ketterer:

Q. Mr. Klinedinst, who is Kemsley & Company?

A. I understand that they are, not exactly a jobber themselves, but they are commission people who place jobbers, and, as I understand it, that's the way they functioned for British Timken. They placed jobbers in Australia, for which they received a commission.

Q. Now, were they in any way a representative of American Timken, Kemsley & Company?

A. No, not that I recall.

Q. You had no connection with Kemsley & Company of any kind?

A. No.

Q. Bearing Service Company of Australia, who were they?

A. Well, they were a jobber appointed by Kemsley to handle Timken bearings—not only Timken bearings, I understand they handled other automotive parts, but they were a jobber acting for British Timken.

[fol. 697] Q. And they were located in Australia, too?

A. Yes.

Q. And, as I understand it, they had several places of business in Australia, that is, Bearing Service Company?

A. Yes. I don't know how many.

Q. You had no contract—by you I mean American Timken—had no contract of any kind with Bearing Service Company, either?

A. No, sir.

Q. When Mr. Harrison came over here in 1940—was that when it was?

A. I believe so.

Q. How long did you say you saw him in Canton?

A. I saw him one day for a very short time.

Q. How long?

A. Oh, I wouldn't say over an hour.

Q. During that period of time what subjects did you discuss with him, or what did he say he came over there for?

A. He was very much dissatisfied with the deliveries that they were getting from British Timken, and he asked if some arrangement couldn't be set up whereby they could place their orders directly with Canton.

Q. To the best of your knowledge now, was there ever any discussion between you and Harrison the purport of which was that American Timken should cancel any agree-
[fol. 698] ment that it had with British Timken, during the time you talked to Mr. Harrison in 1940?

A. I don't recall anything like that being said by Harrison to me.

Q. Did Bearing Service Company, to your knowledge, represent any other anti-friction bearing manufacturers?

A. Not that I know of. I think they do handle ball bearings, but I don't know what type.

Q. Do you know whether Mr. Harrison was here for the purpose of talking with any other anti-friction bearing

manufacturers about deliveries of other types of anti-friction bearings, or the product of any other manufacturer?

A. If I remember correctly, he told me that he was in here not only on Timken bearings, that he was jobbing other bearings, but he didn't tell me what kind. He did, however, tell me that, as I recall it, that Bower was getting in pretty strong, and that if he couldn't get tapered roller bearings from Timken that the only recourse would be to go to Bower.

Mr. Ketterer: I think that's all.

Mr. Nitschke: That's all, Mr. Klinedinst, and if you will give Mr. Day those bearings when they come in, then Mr. Day can give them to me.

[fol. 699] The Witness: Yes.

OFFERS IN EVIDENCE

Mr. Nitschke: I wish to have marked for identification as Government's Exhibit 115 a cable dated December 24, 1940, from Pascoe to Robert Timken.

(Thereupon the cable referred to was marked by the Clerk, for identification, Government's Exhibit 115.)

Mr. Nitschke: I wish to have marked as Government's Exhibit 116 a cable from Gibson to Timken Roller Bearing Company dated December 28, 1940.

(Thereupon the cable referred to was marked by the Clerk, for identification, Government's Exhibit 116.)

Mr. Nitschke: And as Government's Exhibit 117 a letter from Gibson to Forsythe dated December 31, 1940.

(Thereupon the letter referred to was marked by the Clerk, for identification, Government's Exhibit 117.)

Mr. Nitschke: I wish to offer in evidence Government's Exhibits 115, 116, and 117.

The Court: They may be received.

(The documents heretofore marked for identification Gov-
[fol. 700] ernment's Exhibits 115, 116, and 117, were received in evidence.)

[fol. 701] I wish to have marked for identification as Government's Exhibit 118 a memorandum by Umstattd,

which has a notation at the top "CC M.B.U. Dewar, L. M. Klinedinst, F. J. Pascoe, H. H. Timken, Jr., W. Robert Timken," and is dated February 20, 1941.

(The memorandum above referred to was marked by the Clerk, for identification, Government's Exhibit 118.)

Mr. Nitschke: And as Government's Exhibit 119 a copy of a letter from E. B. Clapp, British Purchasing Commission, Australian Division, 15 Broad Street, New York, to Mr. Umstattd, dated February 26, 1941.

(The letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 119.)

Mr. Nitschke: And as Government's Exhibit 120 a carbon original of a letter dated March 1, 1941, from Umstattd to Clapp.

(The letter above referred to was thereupon marked by [fols. 702-705] the Clerk, for identification, Government's Exhibit 120.)

Your Honor, I believe I forgot to offer these last three exhibits in evidence, which I do at this time.

The Court: They may be received.

(The documents heretofore marked, for identification, Government's Exhibits 118, 119 and 120, were received in evidence.)

[fol. 706] I now wish to have marked for identification as Government's Exhibit 121 a copy of a cable from Robert Timken to British Timken dated February 18, 1941.

(The cable above referred to was thereupon marked by [fol. 707] the Clerk, for identification, Government's Exhibit No. 121.)

Mr. Nitschke: And as Government's Exhibit 122 a carbon original of a letter from W. Robert Timken to British Timken Limited dated February 18, 1941.

(The letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit No. 122.)

Mr. Nitschke: And as Government's Exhibit 123 I would like to have marked, for identification, a letter dated February 24, 1941, from L. M. Klinedinst to M.B.U. Dewar.

(The letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit No. 123.)

Mr. Nitschke: And as Government's Exhibit 124 a letter dated February 24, 1941, from L. M. Klinedinst to F. J. Pascoe.

(The letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit No. 124.)

Mr. Nitschke: I would like to have marked for identification as Government's Exhibit No. 125 a letter from Pascoe to Timken Roller Bearing Company dated March 14, 1941.

[fols. 708-716] (The letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit No. 125.

Mr. Nitschke: I wish to offer in evidence Government's Exhibits 121, 122, 123, 124, and 125.

The Court: They may be received.

(The documents heretofore marked for identification Government's Exhibits 121, 122, 123, 124, and 125, were received in evidence.)

[fols. 717-721] Mr. Nitschke: I should like to have marked for identification as Government's Exhibit No. 126 copy of a letter from C. Robert Timken to F. J. Pascoe, dated April 15, 1941.

(The letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit No. 126.)

Mr. Nitschke: I wish to have marked for identification as Government's Exhibit 127, a letter from Pascoe to W. Robert Timken, dated May 6, 1941.

(The letter above referred to was marked by the Clerk, for identification, Government's Exhibit No. 127.)

Mr. Nitschke: I wish to offer Government's Exhibit No. 126 and 127 in evidence.

The Court: They may be received.

(The documents heretofore marked for identification Government's Exhibits 126 and 127, were received in evidence.)

[fol. 722] (Recess taken.)

Mr. Nitschke: I wish to have marked for identification Government's Exhibit No. 128, a memorandum dated June 12, 1941, from Robert P. Kelly to W. G. Turner, with the notation "Carbon copy to R. E. Forsythe."

(The document above referred to was marked by the Clerk, for identification, Government's Exhibit No. 128.)

Mr. Nitschke: I wish to have marked for identification Government's Exhibit No. 129, a memorandum by R. E. Forsythe, entitled "Commission Contract with British Timken Ltd." dated March 19, 1942.

(The document above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit No. 129.)

Mr. Nitschke: I wish to have marked for identification as Government's Exhibit No. 130, a memorandum by W. Robert Timken, entitled "General Discussion With Dewar," dated February 23, 1944.

(The document above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit No. 130.)

Mr. Nitschke: I wish to offer in evidence Government's Exhibits 128 and 129, and the last three paragraphs of [fols. 723-724] Government's Exhibit No. 130.

The Court: They will be received.

(Whereupon, the documents above referred to and previously marked Government's Exhibits 128, 129, and 130, were received in evidence.)

[fols. 725-730] The Court: Is there any way of identifying the two individuals who signed these memoranda? Who is Kelly?

Mr. Day: We will be very glad to state in the record who he is.

Mr. Ketterer: He is a representative in the Service Sales Department.

[fol. 731] Mr. Nitschke: I wish to mark for identification as Government's Exhibit No. 131, a memorandum dated June 10, 1944, from E. H. Austin to R. A. Baal.

Mr. Ketterer, could you stipulate who Mr. E. H. Austin is, and R. A. Baal, of New York?

Mr. Ketterer: Mr. Austin is the head of the Timken Sales Division at the Timken plant in Canton, and Mr. Baal has been in charge of export business in the New York office.

Mr. Nitschke: I thank you.

I wish to have marked as Government's Exhibit No. 132 a memorandum from R. A. Baal to E. H. Austin, dated June 15, 1944.

(Thereupon, the documents above referred to were marked by the Clerk, for identification, Government's Exhibit 131 and 132.)

Mr. Nitschke: As Government's Exhibit 133, a carbon original of a letter from L. M. Klinedinst to M. B. U. Dewar, [fols. 732-738] dated July 10, 1944, to which is attached a memorandum from Austin to Klinedinst dated July 6, 1944, and a memorandum from Austin to Klinedinst dated July 7, 1944, and referred to in Government's Exhibit 133.

(The letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit No. 133.)

Mr. Nitschke: I wish to offer in evidence Government's Exhibits 131, 132 and 133.

The Court: They may be received.

(The documents heretofore marked for identification Government's Exhibits 131, 132, and 133, were received in evidence.)

[fol. 739] Now, I wish to proceed to offer from Mr. Ketterer's examination of Mr. Pascoe that part of Pascoe's deposition which begins on page 174 of the transcript, going through to the first question on page 176.

(Said portion of deposition, questions read by Mr. Derr and answers by Mr. Dedman:)

"Q. Now I would like to direct your attention to the situation that has prevailed since the war. Since the war, what procedure is it necessary to follow before there can be any importation of bearings into England?

A. If any Company wanted to import bearings into England now, the first thing they have got to do is go to the Ministry of Supply and get permission, get what is known as an import license, which in effect is a license to enable them to spend the dollars. When that happens now, when [fol. 740] you apply for an import license from America, whether it covers a machine tool or a bearing or anything else, it is extremely difficult to get these licenses, owing to the dollar position.

Q. What showing has to be made by any person applying for a license to import bearings since the war?

A. If any users of bearings go to the Ministry of Supply now and say 'We want to buy some bearings from America,' the first thing they will be asked is: 'Cannot you get them from British sources?' It may be they would say: 'No, we cannot get them.' If they were tapered bearings, they may say: 'No; we cannot get them from British Timken, because British Timken now cannot give us delivery, because their capacity is not enough.' Then, after saying that, the next thing that would happen would be that the officials of the Bearing Division of the Ministry of Supply would refer to us and say: 'We have a request for an import license from Company AB of so many thousand tapered roller bearings and they claim that you cannot promise them any delivery of these bearings within some very long period. Is that the case?' If we say 'Yes, that is the case,' then [fol. 741] they might get the import license. They probably would get it. We should be asked our opinion about it, of course, and we are frequently in contact with this Department. Our general attitude has always been, if we cannot supply from our factories—and we cannot meet the demand from our factories now; our capacity is not big enough to meet the demand—we say: 'Yes; we cannot meet that demand, but we are increasing our capacity as rapidly as possible.' We are doing so, as the Ministry

well know, with their encouragement, even more than their encouragement, and we say: 'Of course, we shall one day be in a position, when our capacity has increased, to meet this demand.' So we welcome the importation under those conditions, because by the time the next order comes along, our capacity will be large enough to meet it.

Q. What, if any, effort do you make in connection with the request for import licenses to direct sales of that kind to American Timken?

A. Very often when the import license is applied for, the user will apply for the import license and make the case to the Ministry and then we should import bearings from American Timken. There has been very little direct importation. It has usually been guided that way. Some-[fol. 742] times we might apply for the license.

Q. What, if any, effect, in your opinion, has that procedure had upon the volume of imports from American Timken into this territory? Has it resulted in their making more sales or less sales than otherwise would have been made?

A. More sales, because naturally we have directed all our orders for tapered roller bearings and directed as many orders as we could direct to the Timken Roller Bearing Company. There is only one real instance to my knowledge where the orders have not gone direct to the Timken Roller Bearing Company.

Q. Will you tell us what that is?

A. That is the Ford Motor Company, Dagenham. We have imported—and, indeed, we are importing ourselves. from the Timken Roller Bearing Company at this moment—bearings for the Ford Company at Dagenham. Also, they themselves have placed, naturally to our full knowledge, through the procedure I have previously described, substantial orders for bearings with the Ford Company of Detroit. That is the only instance I know of any quantity of tapered roller bearings coming into this country other than through ourselves.'

Mr. Nitschke: I now wish to offer from my examination [fol. 743] of Mr. Dewar the last question on page 109 and the questions on page 109a.

"Q. (Mr. Nitschke): I have Government's Exhibit D.34, which came from the files of the Timken Roller Bearing

Company at Canton and which appears to be a photostat of a typewritten copy of a letter headed '65 Cheaton Road, Birmingham, 7, 30th November, 1943,' addressed to 'My dear Louis' and the typed signature 'Michael Dewar.' "

Mr. Nitschke: I would like to have that document marked for identification as Government's Exhibit 134, copy of a letter from Michael Dewar to "My dear Louis," dated November 30, 1943, attached to the deposition as Government's Exhibit D34.

(The document above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit No. 134.)

Mr. Nitschke: (Reading:)

"It has some other notes on it. I would like to ask you if you recall writing that letter to Mr. Klinedinst, or writing the letter of which that is a copy. (Exhibit handed to the witness). Do you recall that letter?

[fol. 744] A. Yes.

Q. I would like to call your attention to the fourth paragraph, where you say: 'If we are to play our part in the discussions which are beginning and which may conceivably lead to negotiations on a Governmental level between Great Britain, the United States and Sweden, I should like to feel that we are in a position to say that we are not being prevented by you from exporting to any markets by reason of a trade agreement between us.' Do you still have a feeling that you would like to be in a position to say that?

"By Mr. Day: I object to the form of that question."

Mr. Day: Go ahead.

Mr. Nitschke: (Reading:)

"A. I do not think my opinion has changed really since I wrote that letter.

Q. Your statement 'I should like to feel that we are in a position to say that we are not being prevented by you from exporting to any markets by reason of a trade agreement between us' expresses your present views on that subject?

A. Yes."

Mr. Nitschke: I wish to offer in evidence Government's [fol. 745] Exhibit 134.

The Court: It may be received.

(The document heretofore marked for identification Government's Exhibit No. 134, was received in evidence.)

Mr. Day: Is that part of the deposition?

Mr. Nitschke: Yes, attached to the deposition as Government's Exhibit D.34.

[fol. 746] Counsel for the plaintiff having concluded the offer of depositions we would now like to offer by way of cross-examination certain part of the testimony of the witness M.B.U. Dewar taken in London.

I would like to call the Court's attention to the fact that over in London when the depositions were taken, on Page 239, counsel for the defendant said this:

"Mr. Day: Let the record show also that we wish also to make the same preservation of rights with relation to our examination of Mr. Dewar as has already been set [fol. 747] forth in the record by opposing counsel."

Prior to that time Mr. Nitschke had made a similar reservation.

"In other words, we want to preserve whatever right we have under the rule to offer any of Mr. Dewar's testimony by way of direct examination, cross-examination or rebuttal."

With the Court's permission I will read the questions and Mr. Ketterer will be the witness.

What is called "redirect" begins in the transcript on Page 139. It is really cross-examination now, but we will not read anything at this time earlier than Page 144, because those matters weren't touched upon in the evidence offered by the plaintiff.

The last question on Page 144:

"Q. Coming now to another part of the evidence you were asked about certain letters—cables perhaps—passing between you and Mr. Don Hess (Government's Exhibits D.43 to 50, inclusive)."

Those numbers are now Government's Exhibits 87 to 94. [fol. 748] "dated in 1934 and 1935 having to do with some possible arrangement applying to Mexico and South Amer-

ica. I call your attention now to a statement by you in your letter to Mr. Hess of February 22nd, 1935 (Government's Exhibit D.50): 'You will recollect that you asked me some months ago to find out from SKF whether they would be willing to make an agreement for service prices in Mexico and South America. I took this matter up with Mr. Forsberg when he was in England last, and he said he would be very willing to consider any proposals that you might put up and seemed to think some arrangement could be made. I informed you of this and in reply you wrote to me and told me that, owing to the fluctuation of the rates of exchange, you did not consider any useful purpose would be served by trying to arrive at an agreement.' You remember you wrote that to Mr. Hess?

A. Yes.

Q. Here is Government's Exhibit D.49 which is a letter from you to Hess of February 14th, 1935: 'My dear Don, I have to thank you for your letter of the 4th inst. regarding a working agreement with SKF in Mexico and South America. I notice you find it impossible to put forward any proposal. Very sorry that you cannot do so and I am writ-[fol. 749-754] ing to Mr. Forsberg to tell him that you do not wish to pursue the matter further'. Was that the end of the matter?

A. I think that was entirely the end of the matter. Mr. Forsberg shortly after that went over to America."

Mr. Day: Now, without spending much time on it, we repeat the motion we made the other day, or move to move at this time to exclude these Exhibits 87 to 94 having to do with South America and Mexico, on the ground it clearly appears in the record nothing ever came of the transaction. [fol. 755] The Court: It is not the type of evidence which the Government is entitled to introduce. The matter of collateral agreements or actions which show intent or motive or course of conduct is a matter that is entirely within the sound discretion of the Court.

The objection will be sustained and the motion to strike those out.

(Mr. Day read the following questions and Mr. Ketterer the answers thereto, commencing at the end of page 145.)

[fol. 756] "Q. You were asked some questions by Mr. Nitschke last week concerning the shipment of bearings by American Timken to Great Britain and France, and to the French and British Companies. Would you tell us in what circumstances those bearings were shipped and have been shipped?

A. If the shipment is made by the American Timken Company the shipments are almost entirely made direct to the British and French Companies.

Q. And not by the American Company directly; is that right?

A. They are shipped by the American Timken Company directly to the British and French Companies, not directly to their customers.

Q. Do you know into what countries those shipments have been made by American Timken? Are they shipped in substantial quantities into the United Kingdom?

A. Bearings shipped by the American Timken Company to British Timken?

Q. Yes.

A. They are shipped in considerable quantities, and to French Timken.

Q. Do you know whether or not some of the bearings that come into this country come in connection with the Ford Motor Company?

[fol. 757] A. Yes, but those are not shipped direct by the American Company.

Q. Will you explain that situation, please?

A. The Ford Motor Company here sometimes, if they cannot get delivery of bearings from British Timken, ask the Ford Company in Detroit if they can provide them with bearings shipped direct from Detroit to Dagenham. At this time we are advised of all these requests through the Bearing Division of His Majesty's Government and whether or not His Majesty's Government give permission depends on whether we can give delivery from England.

Q. What effect does your answer to that question have upon bearings being shipped here to be used by Ford?

A. We have lately, owing to the enormous increase in the tractor output in this country, had to agree to bearings being shipped by Ford from Detroit to Dagenham direct.

Q. Do you know whether or not the bearings thus shipped

constitute an important percentage of the bearings shipped into this country from America?

A. I think, yes, very important.

Q. And we are talking about tapered roller bearings in these connections, are we not?

A. Yes.

[fol. 758] Q. Something was asked you by Mr. Nitschke last week about Fischer bearings being sold in, I think he said, American territory?

A. Yes.

Q. Are those Fischer bearings shipped into the United States of America?

A. No.

Q. Where are they shipped?

A. Canada and certain South American countries.

Q. I want to call your attention now to a letter offered in evidence by the Plaintiff here dated November 10th, 1930, and written by you to Mr. Hess. It is Government's Exhibit D.20. (Government's Exhibit 73 in this trial.) You were asked the other day concerning the paragraph at the top of the second page which I wish to read to you, or perhaps two paragraphs. Will you read to yourself those first two paragraphs on the second page? (The witness studied the document) I will call your attention now to this statement on the top of page 2: 'I do hope that you will be able to come to a decision soon regarding SKF. I am on the verge of a real row with them in this country. I agreed that pending all these discussions—which have now been going on for a year—we would let them have [fol. 759] Motor Cycle Bearings to make provided they would not interfere with our large bearing business'. I think you testified the other day in substance that you believed that the paragraph beginning with that statement referred to certain arrangements with SKF having to do with Great Britain?

A. I was not intending to refer to the first ten lines. I was referring to the agreement by which they had offered one of our customers—Dennis—a rebate of 10 per cent. and so on. In connection with that I was not intending to infer that the other remark applied to the British agreement with SKF.

Q. Calling your attention to the part I have read and

the part contained also in the second paragraph of that page referring to Prytz and Grover Higgins, to what do those matters refer?

A. They refer to the proposal that Prytz made to me that the SKF Swedish Company should buy the American Timken Company's interests in Europe and that the Timken Roller Bearing Company in the United States should purchase the SKF interests in that continent.

Q. Do you know from what source that suggestion originated?

A. It came from Prytz really, from SKF.

Q. State what, if anything, ever came of it.

[fol. 760] A. Nothing came of it. It dragged on for a year or more, and in the end it was turned down flatly by Mr. H. H. Timken and Mr. A. C. Ernst.

Q. And they were connected with American Timken?

A. Yes, that is so.

Q. You have been asked by Mr. Nitschke concerning certain documents and arrangements relating to British Timken and SKF in England and there has been introduced in evidence a contract, which I think is marked Government's Exhibit D.15A, (Government's Exhibit 65-A in this trial) between French Timken and SKF in France. I think you were asked some question having to do with an arrangement or a suggested arrangement applicable to Russia. You were asked about certain letters that refer to conferences between French Timken and representatives of SKF and RIV. Was American Timken a party to any of those arrangements or agreements or discussions?

A. No.

Q. Did any of those arrangements, agreements or discussions relate to United States of America?

A. None of them.

Q. Will you state whether or not in your opinion any of those arrangements, agreements or discussions could have an effect of restricting the shipment of tapered roller bear-

[fol. 761] ings from the United States or their receipt into the United States?

A. I should not have thought they had any effect at all on the import of tapered roller bearings into the United States. My feeling is that they have facilitated the export

of bearings from the United States, but that is only an opinion.

Q. I think you said in examination the other day that the French agreement was terminated when the Germans invaded France?

A. That is so, yes.

Q. I think you said that was in 1940?

A. I think it was.

Q. And it was not renewed, I think you said?

A. That is so, yes.

Q. I think you also stated the other day that whatever arrangements were made in Great Britain they terminated with the advent of the war?

A. That is so, yes.

Q. That was in what year?

A. 1939, the September, I think.

Q. I think you also stated they have never been renewed?

A. That is also true, yes.

Q. Is British Timken a party now to any agreement or [fol. 762] understanding or arrangement with any other company or competing company with relation to the sale of Timken tapered roller bearings or any bearings which are a product manufactured by British Timken?

A. No, no product at all.

Q. You say 'no product'. Do you mean by that 'no agreement'?

A. There is no agreement for any product.

Q. Has there been any agreement as to any product since the advent of the war and the entry of the Germans into France, as you have described?

A. No, none.

Q. Will you tell us something about the origin and background of the arrangement that was made between French Timken and SKF as embodied in Government's Exhibit D.15A (Government's Exhibit 65-A in this trial)?

A. The SKF part of it, the agreement between French Timken and SKF?

Q. Yes.

A. Not the preliminary discussions?

Q. No, I will ask you about them later.

A. The basis of the starting of the French Timken Company in France la, with a contract that we obtained with

the Citroen Company for the supply of bearings for their [fol. 763] cars. The Citroen Company a year or two later fell on rather evil days and the SKF Company in Sweden financed them until such time as they were ultimately bought by, I believe, the Michelin Company. Part of the financial arrangement was that Citroen should buy their steel from Sweden and all their bearings from SKF. So Citroen were compelled to cease to place any orders with us, with the French Company, and they left us with practically no orders at all. We felt—and looking back I think correctly—that it was better for us to have some arrangement with SKF to keep the French Timken Company alive rather than let it die which it would have done without such an arrangement.

Q. Do you recall how much of a loss had been accumulated by French Timken in its operations?

A. To the best of my knowledge we had lost about half our capital.

Q. Amounting approximately to how much?

A. In francs in those days I think it was about eight million francs, something of that kind.

Q. Before this arrangement was made with SKF?

A. Yes.

[fol. 764] Q. There are in evidence here some Exhibits referring to conferences relating to France between representatives of British Timken and SKF and RIV and perhaps others. Then there is in evidence also the contract between French Timken and SKF marked Government's Exhibit D.15A (Government's Exhibit 65-A in this trial). What relation does that contract, that is the contract between French Timken and SKF, have to the matters that are in evidence here as to talks between the various companies I have named?

A. I think the position at the time of that round-table conference between all the people interested in bearings in France is due to the fact that SKF were experiencing very severe competition from RIV, the Italian manufacturers. They were anxious to come to an agreement on ball bearings with RIV. Those discussions then I think gave us the opportunity of ultimately coming to an agree-

ment with SKF, as I told you, on the taper roller bearings position.

Q. Then, as I understand it, the only agreement which was actually entered into by French Timken in this regard was the agreement in evidence with SKF; is that right?

A. Yes, that is true, nothing else.

[fol. 765] Q. And SKF had its own relations with these other companies; is that right?

A. That is so.

Q. Do you know whether or not in 1928 and since 1928 SKF in USA was shipping bearings into France?

A. I can only say that it is extremely improbable.

Q. And would your best judgment be that it was not?

A. Certainly not, yes.

Q. I think the SKF Company that was a party to this contract was CAM?

A. That is so, yes.

Q. Do you know from what SKF Company CAM got its bearings during this period of time about which I am asking you?

A. It made bearings itself in France; any imported bearings would come from Gothenburg—did come from Gothenburg.

Q. That is Sweden?

A. Yes, Sweden.

Q. I think I asked you something and Mr. Nitschke also asked you something as to whether or not tapered roller bearings were interchangeable with ball bearings. Do you think you have sufficiently answered that in response either to his questions or mine, or is there anything you would like to add to that?

[fol. 766] A. It is possible that I, being rather intimately connected with the bearing industry, may have unintentionally misled you. Taper roller bearings compete a very great deal—90 per cent. of the time—with ball bearings, but it is a question of getting an engineering job arranged in the design stage to receive taper roller bearings or ball bearings. We cannot suddenly have an exchange of ball bearings for taper roller bearings, say in motor cars. We are in direct competition always.

Q. I think you were asked in your previous examination as to the percentage of taper roller bearings manufactured

by British Timken in 1927 and thereafter and at the present time, and I think you testified that it was something like 90 per cent, or over, that then it dropped to 70 per cent: and that now it is up to 90 per cent. again?

A. Yes, about that—I forget; that is approximately the curve, yes.

Q. Do you know whether or not the manufacture of tapered roller bearings has increased in volume over the years?

A. Yes, I do.

Q. And it has increased?

A. Enormously, yes. It has increased from the employ-
[fol. 767] ment of 400 people to the employment of about ten times that amount.

Q. That is all together?

A. That is all together, so that the output must be 20 or 30 times what it was.

Q. Have you any recollection of the percentage of anti-friction bearings sold in England manufactured by British Timken compared with the entire anti-friction output in England in 1927?

A. From an estimate based on my knowledge of the other companies at the time I should think it would be under 5 percent.

Q. Have you a knowledge or can you give an estimate in the form of a percentage as to the situation in that regard now?

A. Based again on people employed I should think about 20 per cent. of the total anti-friction bearings in Great Britain.

Q. Have any American Companies do*en* any substantial exporting of anti-friction bearings into England since 1927?

A. Only during the war period."

Mr. Day: I think that is all, your Honor.

Of course, we reserve the right, with your Honor's per-
[fol. 768] mission, to offer any part of Mr. Dewar's deposition when we come to our case.

The Court: All right.

Mr. Day: I would like to renew the motion I made the other day, perhaps it was in the form of an objection, to exclude the evidence with relation to the trade arrangement in England and France between the British Timken

and SKF upon the ground that the record now shows that those contracts expired and arrangements expired in 1939 and 1940 and have never been renewed. I don't care to argue it any further than I argued it the other day.

And, as Mr. Ketterer suggests, upon the further ground that it now appears that those arrangements could have no effect upon United States commerce either by way of exports or imports.

The Court: The motion will be overruled and the objection overruled.

Mr. Nitschke: Your Honor, I would like to have marked for identification French and British bearings. I'll leave them in the box. I think that is probably the best way to have them marked. I would like to have the British Timken bearing marked as Government's Exhibit 135.

[fol. 769] (Thereupon the bearing referred to was marked by the Clerk, for identification, Government's Exhibit 135.)

Mr. Nitschke: I have had marked for identification as Government's Exhibit 135 the carton entitled "Timken Tapered Roller Bearing made in England by British Timken Limited" and containing a tapered roller bearing, being cup No. 3920 and cone No. 3984.

The Court: You are marking them as separate exhibits?

Mr. Nitschke: Yes. As I understand it, Mr. Day, these just arrived, this one just arrived from England?

Mr. Day: I'm advised they just arrived, as I understand it, from England and France respectively, the two bearings. They were given to me by an officer of the defendant.

Mr. Nitschke: I would like to have the French bearing marked as Government's Exhibit 136.

(Thereupon the bearing referred to was marked by the Clerk, for identification, Government's Exhibit 136.)

[fol. 770] Mr. Nitschke: I have had marked for identification as Government's Exhibit 136 a carton bearing notation "Societe Anonyme Francaise, Timken, Roulements A Rouleaux Coniques, Asnieres (Seine)", and containing a tapered roller bearing made by French Timken bearing cup No. 3920 and cone No. 3984. I offer Government's Exhibits 135 and 136 in evidence.

The Court: They may be received.

[fol. 771] Mr. Nitschke: I wish to have marked for identification as Government's Exhibit 137 a letter from H. O. Smith of the Anti-friction Bearing Manufacturers' Association addressed to me, dated January 18, 1946.

Mr. Day: Well now, this is going in by way of the stipulation, and we are willing to stipulate that the figures contained in these documents may be offered in evidence with [fol. 772] the understanding that no further proof need be required at this time, so far as we are concerned, and with the right preserved for us to make any corrections if our evidence shows they should be made. But I don't think that the letter should be read into the record.

Mr. Nitschke: Well, that's agreeable to me.

Mr. Day: All right.

Mr. Nitschke: I will put in the tabulation if you will stipulate that it is a tabulation prepared from the statistics of the Anti-friction Bearing Association.

Mr. Day: Yes, we will stipulate that.

The Court: I assumed that was the purpose of the offer.

Mr. Day: Yes.

Mr. Nitschke: Yes, that was the only reason, your Honor, I referred to the letter. I will withdraw the letter and I will have marked for identification, instead of the letter, the table. This will be Government's Exhibit 137, and it is entitled "Complete Unit Production of Ball and Roller Bearings and Steel Balls reported to the AFBMA by mem-[fol. 773] bers of the Association, from January 1941 through July 1945."

(Tabulation referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 137.)

Mr. Nitschke: And I also would like to have marked for identification a table of figures showing the total percentage by units of the total tapered roller bearing production for the years 1941, 1942, 1943, 1944 and part of 1945.

The Court: I believe I didn't understand your comment, Mr. Nitschke. What was that again?

Mr. Nitschke. This chart shows the percentage of the total tapered roller bearing production for these years comprising Timken's production, and these figures are obtained from the table I have just put in here which has been

identified as Government's Exhibit 137. I will have this tabulation marked as Government's Exhibit 138.

(Tabulation referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 138.)

Mr. Nitschke: And I wish to offer these in evidence. It is agreeable to me that they be subject to Mr. Day's [fol. 774] privilege to correct them if he finds that, in fact, there are some errors in the figures.

The Court: They will be received.

Mr. Derr: Your Honor, we would like to have marked for identification as Government's Exhibit 139 a letter dated August 10, 1939, bearing the typewritten signature [fol. 775] of W. Robert Timken to British Timken Limited, and as Government's Exhibit 139-A——

Thereupon the letter above referred to was marked by the Clerk, for identification, as Government's Exhibit 139.)

Mr. Derr: And as Government's Exhibit 139-A a memorandum dated August 1, 1939, from R. A. Baal to Canton, subject: Rudolf Morberger.

(Document last above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 139-A.)

Mr. Derr: I should like to have marked as Government's Exhibit 140 a letter dated September 21, 1939, bearing the typewritten signature of W. Robert Timken to British Timken, Limited.

[fol. 776] (Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 140.)

Mr. Derr: And as Government's Exhibit 140-A a memorandum attached, dated September 15, 1939, from R. A. Baal to Canton, subject: Parres Hermanos.

(Memorandum above referred to was thereupon marked by the Clerk, for identification, as Government's Exhibit 140-A.)

Mr. Derr: And as Government's Exhibit 140-B a letter attached dated August 26, 1939, the copy of which is unsigned, addressed to The Timken Roller Bearing Sales & Service Company, New York, New York.

(Document last above referred to was thereupon marked by the Clerk, for identification, as Government's Exhibit 140-B.)

The Court: May I inquire at this time whether the Timken Roller Bearing Sales & Service Company is a subsidiary of Timken Roller Bearing Company?

Mr. Ketterer: It was, your Honor, but there is no com-[fol. 777] pany named Timken Roller Bearing Service & Sales Company any more. The sales and service is handled by a division of Timken Roller Bearing Company. There was at one time a Timken Roller Bearing Service & Sales Company which was a wholly owned subsidiary.

The Court: Was there in 1939 when this communication was addressed?

Mr. Ketterer: Yes, I think there was in 1939.

Mr. Derr: I should like to have marked for identification as Government's Exhibit 141 a letter dated September 20, 1945, bearing the typewritten signature of H. C. Sauer to British Timken Limited.

(Letter last above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 141.)

Mr. Derr: And as Government's Exhibit 141-A a letter dated August 31, 1945, the signature of which I cannot read, but it's headed "General Sales Manager, British Timken Limited. Fischer Bearings Company Limited.", addressed to the Timken Roller Bearing Company, Canton.

(Letter last above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit [fols. 778-789] 141-A.)

Mr. Derr: Your Honor, I would like to offer Government's Exhibits 139, 139-A, 140, 140-A, 140-B, 141 and 141-A in evidence at this time.

The Court: They may be received.

[fol. 790] Mr. Derr: Your Honor, before offering the illustrative examples, the Government would like to read into the record the second interrogatory and have marked for identification and offered in evidence the response of the defendant to that interrogatory.

The Court: All right.

Mr. Derr: The Government's second interrogatory is as follows:

"State the following concerning each inquiry and order [fol. 791] to purchase anti-friction bearings for shipment and inquiry for distributor representation, outside of the territory allocated to the defendant under the tripartite agreement, received by the defendant from July 1st, 1935, to date; the date of the inquiry or order, the inquirer's or buyer's name and address, type and quantity of anti-friction bearings inquired for or ordered, the name and location of the intended user thereof and the disposition of such inquiry or order."

I believe the record should also show, your Honor, that the Government's interrogatory was filed on February 20, 1947. This question read from "July 1st 1945 to date". "To date" was February 20, 1947.

Mr. Nitschke has already read into the record the definition of the tripartite agreement used in the interrogatory, and I think the record should show the meaning of "Defendant", "Limited", and "Francaise" as shown in the interrogatory. The sum and substance of it is right in it and perhaps it is surplusage, but "Defendant" means Timken Roller Bearing Company, "Limited" means British Timken Limited and "Francaise" means French Anonyme Francaise Timken.

[fols. 792-794] I would like to have marked for identification Government's Exhibit 142, defendant's reply to Government's interrogatory No. 2.

We now offer Government's Exhibit 142 in evidence.

The Court: It may be received.

(Document above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 142.)

[fol. 795] I should like to have marked for identification as Government's Exhibit 143-A this letter dated November 16, 1944, from Ibrahim Tascioglu to The Timken Roller Bearing Company, Canton, Ohio.

(Document above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 143-A.)

I should like to have marked for identification as Government's Exhibit 144 a letter dated April 16, 1945, bearing the

typewritten signature of H. C. Sauer, to France-Auto, Bou-
[fol. 796] levard de Paris, Casablanca, Morocco, N. Africa.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 144.)

I should like to have marked for identification as Government's Exhibit 144-A a translation of a letter dated March 8, 1945, from France-Auto to Timken Roller Bearing Company, Canton, Ohio. Attached to that is a specification sheet order to Allied Countries, which I would like to have marked for identification Government's Exhibit 144-B.

(Documents above referred to were thereupon marked by the Clerk, for identification, Government's Exhibits 144-A and 144-B, respectively.)

I should like to have marked as Government's Exhibits 144-C the letter in French dated March 8, 1945, from France-Auto to the Timken Roller Bearing Company, and the attached specification of two sheets.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 144-C.)

I should like to have marked for identification as Government's Exhibit 145 a letter of June 5, 1945, from H. C.
[fol. 797] Sauer to Rene Amiel, Paris, France.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 145.)

I would like to have marked for identification as Government's Exhibit 145-A a letter of April 6, 1945, from Rene Amiel to The Timken Roller Bearing Company, Columbus.)

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 145-A.)

I would like to have marked for identification as Government's Exhibit 146 a letter dated July 24, 1945, from H. C. Sauer to Propaganda A. G., Bern, Switzerland.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 146.)

I would like to have marked for identification as Government's Exhibit 146-A a letter from Propaganda A. G., Bern,

Switzerland, dated June 28, 1945, to The Timken Roller Bearing Service & Sales Company, Canton, Ohio.

(Letter above referred to was thereupon marked by the [fols. 798-801] Clerk, for identification, Government's Exhibit 146-A.)

I should like to have marked for identification as Government's Exhibit 147 a letter dated August 22, 1945, from J. E. Spear, General Sales Manager, British Timken, Limited, Fischer Bearings Company Limited, to The Timken Roller Bearing Company, Canton, Ohio.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 147.)

I would like to have marked as Government's Exhibit 147-A a letter dated August 22, 1945, from J. E. Spear to Messrs. A. Martinez e Hijos Sda de Rsp. Lda., Cordoba, Argentine.

(Letter above referred to was marked by the Clerk, for identification, Government's Exhibit 147-A.)

I now offer in evidence Government's Exhibits 143, 143-A, 144, 144-A, 144-B, 144-C, 145, 145-A, 146, 146-A, 147, 147-A.

The Court: They may be received.

[fol. 802] Mr. Day, I understand the defendant is willing to stipulate these letters offered and read to the Court are illustrative and typical of the referal and method of handling inquiries by the defendant during the year 1945?

Mr. Day: They are typical. We are willing to stipulate, we understand, and will so stipulate that they are typical of the letters contained in that folder there.

Mr. Nitschke: Since the folder isn't in evidence I am not sure that is quite adequate.

Mr. Day: What is the stipulation you would like to have?

Mr. Nitschke: Those are typical of inquiries received and answers made by Timken Roller Bearing Company.

Mr. Ketterer: Well, there is no question about that. We are perfectly willing to stipulate that.

Mr. Day: That is right.

Mr. Derr: I think in this connection I might also state [fol. 803] that, from the letters we have in the folder, which

are to be now withdrawn, there were inquiries received by the Timken Company in France and Morocco, from the territory allocated to the French Company by agreement, which were referred to the French Company, and inquiries received from some 28 countries in British territory which were referred to the British company. I have a list of those countries. I should like to read those into the record to show the areas from which inquiries were received.

The Court: Those inquiries are the ones contained in that volume, concerning which the stipulation has been made?

Mr. Derr: Yes.

(Reading)

Australia, Belgian Congo, Belgium, Bulgaria, Czechoslovakia, Denmark, Egypt, Finland, Gibraltar, Greece, India, Iran, Iraq, Italy, Mozambique, Netherlands, New Zealand, North Africa, Norway, Palestine, Portugal, Roumania, South Africa, Spain, Spanish Morocco, Sweden, Switzerland, Syria, Turkey.

The Court: How many of those letters are included in [fol. 804] that volume of exhibits?

Mr. Derr: All of those, your Honor, all those countries.

The Court: No, I said how many letters are there, how many inquiries are there?

Mr. Derr: I am sorry, I haven't counted them.

The Court: Can you estimate them?

Mr. Derr: Two hundred.

The Court: And those inquiries are from the countries you have just read?

Mr. Derr: Yes, your Honor.

At this time, your Honor, I would like to read into the record Government's interrogatory No. 6 and the defendant's answer thereto. The answer in this case was given in the answer which is, I believe, on file.

(Reading)

"State which of the inquiries and orders described in answer to interrogatory No. 2 relate to anti-friction bearings which at that time embodied an invention of an unexpired patent owned by defendant, and designate each such patent by registration number."

[fol. 805] And then the Answer:

"None of the inquiries and orders described in the Answer to Interrogatory No. 2 relate to antifriction bearings which at that time embodied an invention of an unexpired patent owned by the defendant."

We are offering it to show that the defendant had no patent covering anti-friction bearings which were the subject of these inquiries and orders.

I should like also to read in the record interrogatory No. 7 and answer thereto.

"No. 7. Designate by catalogue number which of the antifriction bearings listed in defendant's complete current catalogue embody an invention of an unexpired foreign patent, (a) licensed by the defendant to Limited or Francaise; (b) owned by Limited or Francaise; designate each such patent by number, date, and country of issue and describe generally the feature or features of the antifriction bearing covered by each such patent."

Defendant's answer is:

"There was no current catalogue of the defendant, as of the date of the plaintiff's interrogatories, which listed any antifriction bearings which embody an invention of an [fol. 806] unexpired foreign patent licensed by the defendant to Limited or Francaise or owned by Limited or Francaise."

[fols. 807-808] Mr. Derr: Your Honor, I should like to have marked for identification as Government's Exhibit 148, a memorandum dated February 4, 1937, signed G. H. Turner, subject "Timken Trade-Marks". (So marked)

I offer Government's Exhibit 148 in evidence.

The Court: It may be received.

[fol. 809] Now, I would like to read in the record Government's Interrogatory No. 8 and offer defendant's answer thereto.

"8. List all trademarks and trade names used in the sale of antifriction bearings (a) registered by defendant from 1909 to date; (b) registered by Limited from 1928 to date; and (c) registered by Francaise from 1928 to date; setting forth as to each (1) the country of registration, (2) the

registration number, (3) the title, design and description, (4) registration date, (5) expiration date, (6) the expiration date of any possible renewal thereof, and (7) with respect to all rights therein granted by the defendant to Francaise, Limited or others state; (A) the date, (B) name of guarantee or other user, and (C) nature of contents of each agreement or writing relating to the grant or direction of such rights."

[fol. 810] "Answer: The list of trademarks and trade names called for by this category has been furnished to the plaintiff by the defendant."

I would like to have marked for identification——

The Court: I believe you said you offered it?

Mr. Derr: Exhibit 149, that is the answer to Interrogatory 8.

[fol. 811] Mr. Derr: I would like to have marked for identification as Government's Exhibit 150 the file wrapper from the Department of Commerce of the United States Patent Office of the trade mark "Timken".

The Court: That is the actual trade mark registration?

Mr. Ketterer: Yes, it is the file wrapper certified by the Patent Office and also shows the registration under the

[fol. 812] Act of July 5, 1946, on the supplemental register.

I offer Government's Exhibit 150 in evidence.

The Court: It may be received.

Mr. Derr: I should like to have marked for identification as Government's Exhibit 151, a letter of March 18, 1948, from Frank Dow, the Acting Commissioner of Customs, to Mr. John F. Sonnett, Assistant Attorney General, Department of Justice.

(Document above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 151.)

I should like to have marked for identification as Government's Exhibit 151-A, the file wrapper, content, and certified copies of five letters mentioned on the cover from the Treasury Department of the United States of America.

(Document above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 151-A.)

I should like to have marked as Government's Exhibit 151-B the excerpts from the Customs Regulations for 1943

which were referred to in Government's Exhibit 151 and enclosures thereto.

[fol. 813] (Document above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 151-B.)

I offer Government's Exhibits 151, 151-A, and 151-B in evidence.

Mr. Day: What number is this letter from somebody in the Treasury Department of Customs to John F. Sonnett, Attorney General of the Department of Justice?

Mr. Derr: 151.

Mr. Day: We want to object to that.

[fol. 814] Mr. Derr: As I understand it, Mr. Day, you are willing to stipulate this file wrapper was obtained from the Treasury Department, Bureau of Customs, in accordance with special request made by the Department of Justice?

Mr. Day: Yes, we will stipulate, that if that is the fact we will stipulate that and be glad to.

Mr. Derr: We withdraw 151, leaving 151-A and 151-B in evidence.

The Court: All right.

[fols. 815-817] Your Honor, the Clerk reminds me 151-A and 151-B were not formally offered. I now make that offer.

The Court: They may be received.

[fol. 818] Mr. Derr: That closes the Government's case. We now rest, subject to these matters of course to be taken up later.

Mr. Day: If the Court please, we have a motion here which we would like to file with the Clerk. It is a motion by defendant to dismiss the case at the conclusion of evidence offered by plaintiff, signed by counsel, and reads:

"Now comes The Timken Roller Bearing Company, de-

[fols. 819-820] fendant, and, without waiving its right to offer evidence in its behalf in the event this motion is not granted or is taken under advisement by the Court, respectfully moves the Court, at the conclusion of the presentation of the plaintiff's evidence, to dismiss this case and to enter judgment for the defendant herein upon the ground that, upon the facts and the law, the plaintiff has

shown no right to relief. This motion is made pursuant to Rule 41(b) of the Federal Rules of Civil Procedure." [fol. 821] The Court will take your motion under advisement at this time and you may proceed with your defense.

[fol. 822] TUESDAY, March 30, 1948—2:00 P. M.

Mr. Nitschke: If the court please, we are ready to put in those appendices which we referred to this morning.

Mr. Derr: Your Honor, through an oversight this morning, with all the confusion we had about the documents at the end, I also neglected to read into the record Government's Interrogatory No. 12, and the defendant's answer thereto, and I should like to do it at this time.

Government's Interrogatory 12 reads:

"State the manufacturers or producers of vehicles in the United States authorized by the defendant to import bearings manufactured by them into the territory allocated to Limited and Francaise under paragraph 6 (c) of the tripartite agreement."

The defendant's answer to Government's Interrogatory 12 is:

"No manufacturers or producers of vehicles in the United States have been authorized by the defendant to import bearings manufactured by them into the territory allocated to Limited and Francaise under paragraph 6 (c) of the agreement entered into on November 28, 1938, be-[fol. 823] tween the Defendant, Limited and Francaise, styled the tripartite agreement by the plaintiff."

I should like to have marked for identification as Government's Exhibit 153 a document entitled Appendix A, Exports of Bearings to British Timken Limited, Birmingham, England, by The Timken Roller Bearing Company.

The Court: That's Exhibit 153-A?

Mr. Derr: No, Exhibit 153, sir. This includes the information for the years 1928 through and including 1947.

(Document last above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 153.)

Mr. Derr: I should like to have marked for identification as Government's Exhibit 154 document entitled Appendix

B, Exports of Bearings to Francaise Timken, Asnieres, France, by The Timken Roller Bearing Company. This document includes that information for the years from 1928 through and including 1947.

(Document last above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 154.)

[fol. 824] Mr. Derr: I should like to have marked for identification as Government's Exhibit 155 a document entitled Appendix C, Steel Sales to British Timken Limited, 1928-1947.

(Document last above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 155.)

Mr. Derr: This document includes this information for the years 1929, 1930, 1931, 1932, 1933, 1937, 1938, 1939, 1940 and 1946.

I should like to have marked for identification as Government's Exhibit 156 a document entitled Appendix D, Steel Sales to S. A. Francaise Timken. This document includes this information for the years 1930, 1931, 1939 and 1940.

(Document last above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 156.)

Mr. Derr: I should like to have marked for identification as Government's Exhibit 157, a document entitled Appendix E, Summary of Purchases from British Timken Limited——

The Court: From?

[fol. 825] Mr. Derr: Yes, your Honor, from British Timken Limited by The Timken Roller Bearing Company of tapered roller bearings. This document includes the information for the years 1945 and 1946.

(Document last above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 157.)

Mr. Derr: I should like to have marked for identification as Government's Exhibit 158 a document entitled Appendix F, Purchases from British Timken Limited purchased by Timken Roller Bearing Service & Sales Limited, and appearing below that in parenthesis is "formerly Timken

Roller Bearing Company, Ltd." This document includes——

The Court: Now, I'm sorry, I didn't understand that. Purchases from British Timken Limited by Timken Roller Bearing——

Mr. Derr: By Timken Roller Bearing Sales & Service, and then in parenthesis below that it says "formerly Timken Roller Bearing Company, Ltd." I assume that's done because it embraces two concerns.

The Court: I see.

Mr. Derr: This includes the information for 1928 [fol. 826] through 1947.

(Thereupon the document last above referred to was marked by the Clerk, for identification, Government's Exhibit 158.)

Mr. Derr: I should like to have marked for identification as Government's Exhibit 159 a document entitled Appendix G, Total Sales on Which Commissions Were Paid by British Timken Limited to The Timken Roller Bearing Company. This document includes that information for the years 1928 through 1947.

(Thereupon the document last above referred to was marked by the Clerk, for identification, Government's Exhibit 159.)

Mr. Derr: I should like to have marked for identification as Government's Exhibit 160 a document entitled Appendix H, Sales by the Timken Roller Bearing Company in British Timken Limited Territory on which Commissions Were Paid. This document includes the information for the years 1928 through and including 1947.

(Thereupon the document last above referred to was marked by the Clerk, for identification, Government's Exhibit 160.)

[fol. 827] Mr. Derr: Sales in dollars for each year from 1928 to 1947, inclusive, of tapered roller bearings and components by The Timken Roller Bearing Company to British Timken Limited are shown on Government's Exhibit 153. I offer Government's Exhibit 153 in evidence.

The Court: Exhibit 153 may be received.

Mr. Derr: Sales to British Timken South America Limited and to the various governmental purchasing agencies are not included in the figures given in Government's Exhibit 153.

The Court: What are not included now?

Mr. Derr: Sales to British Timken South America Ltd. and to the various governmental purchasing agencies. Total sales in dollars——

Mr. Ketterer: If the Court please, in connection with that last statement by counsel for the Government, since we prepared those figures I think we ought to explain why that was, that the sales that went to England and other places in the world too were handled during the war by the British Government purchasing agencies first and then handled through Lend-Lease, and it was impossible for us to determine what sales went to exactly what parties, since they were handled through the governmental agencies in [fol. 828] Washington. That's the reason that does not appear in those charts.

The Court: I see.

Mr. Derr: Total sales in dollars for each year from 1928 to 1947, inclusive, for tapered roller bearings and components made by the Timken Roller Bearing Company to French Timken are shown in Appendix B, Government's Exhibit 154. I offer Government's Exhibit 154 in evidence.

The Court: Exhibit 154 will be received.

Mr. Derr: There were no sales from the Timken Roller Bearing Company to Fischer Bearing Company of tapered roller bearings during the period 1928 to 1947.

The total sales in dollars for each year from 1928 to 1947, inclusive, for steel made by the Timken Roller Bearing Company to British Timken Limited are shown in Government's Exhibit 155. I offer Government's Exhibit 155 in evidence.

The Court: Exhibit 155 may be received.

Mr. Derr: The total sales in dollars for each year from 1928 to 1947, inclusive, of steel made by the Timken Roller Bearing Company to French Timken are shown in Govern-
[fol. 829] ment's Exhibit 156. I offer Government's Exhibit 156 in evidence.

The Court: Exhibit 156 may be received.

Mr. Derr: The total purchases in dollars for each year from 1928 to 1947, inclusive, of tapered roller bearings by the Timken Roller Bearing Company from British Timken Limited are shown in Government's Exhibit 157. I offer Government's Exhibit 157 in evidence.

The Court: Exhibit 157 may be received.

Mr. Derr: Government counsel has been advised by counsel for the defendant that the information appearing in Government's Exhibit 157 has been broken down by purchases, customs, clearances, charges, etc., and other miscellaneous expenses, and certain of these payments were shown on Timken Company's books for 1946 although the bulk of the purchases were made in 1945. Counsel for Timken Company further advised that the picture is somewhat distorted, that the Timken Company does not know how they can accurately allocate the extra charges. Counsel further advised that there were no purchases in years other than 1945 and 1946, there were no purchases made by the Timken Roller Bearing Company from British Tim-
[fol. 830] ken Limited of ball and straight roller bearings or bearing components. There were no purchases by the Timken Roller Bearing Company from French Timken in any category. There were no purchases from Fischer Bearing Company in any category.

The total purchases in dollars for each year from 1928 to 1947 of ball and straight roller bearings made by the Timken Roller Bearing Company of South America from Fischer Bearing Company were as follows:

For 1946, $3,831.79.

For 1947, $22,569.71.

Counsel for the defendant have advised that this was based on a conversion rate of $4.04 per pound.

The Timken Roller Bearing Company of South America did not purchase any tapered roller bearings or bearing components from Fischer Bearing Company and did not purchase any from British Timken Limited or French Timken.

The total purchases in dollars for each year from 1928 to 1947, inclusive, of bearings by the Timken Roller Bearing Sales & Service, Ltd., from British Timken Limited are shown in Government's Exhibit 158. I offer Govern-
[fol. 831] ment's Exhibit 158 in evidence.

The Court: Exhibit 158 may be received.

Mr. Derr: Counsel for the defendant advise that the records in this particular schedule are not complete, and that they have no record of any purchases prior to 1931. From 1931 through 1938 the records were kept in Canton and much of the detail is not available. The records shown on the Appendix are the debits to the account on the ledger labelled "British Timken Inventory." Counsel further advise that generally speaking these debits are purchases, subject to small adjustments. From 1939 to 1947 defendant's counsel further advise that the records were kept at Toronto, and that the figures have been presented to them and are considered to be accurate.

Now, counsel for the defendant advises it is impossible for them to break down the type of bearings as between tapered, roller bearings, ball and straight roller bearings. They do say, however, that all from 1939 on were tapered roller bearings, and they believe only one purchase of ball bearings was made and that in 1934.

The total sales in dollars for each year from 1928 to 1947, inclusive, of bearings made by British Timken Limited on [fol. 832] which payments or commissions were made to the Timken Roller Bearing Company, either in the form of a percentage of invoice prices or in an amount based upon the difference in invoice price and the price normally charged to the Timken Roller Bearing Company for such bearings, is set out in Government's Exhibit 159. I offer Government's Exhibit 159 in evidence.

The Court: Exhibit 159 may be received.

Mr. Derr: In connection with that exhibit, your Honor, counsel for the defense have advised that it is impossible for them to ascertain how much of those sales were tapered roller bearings and how much were ball and straight roller bearings. They further advise that in a few cases it would be impossible to determine the percentage upon which the commission was calculated, but that they have used the same percentage which they have been able to substantiate for commissions paid by Timken to British Timken Limited.

So far as defense counsel know, French Timken and Fischer Bearing have never paid any commissions to the Timken Roller Bearing Company. In some cases French Timken might have shipped bearings into this territory,

but the commissions were paid to British Timken, and for that reason it is impossible for defendant and its counsel [fol. 833] to ascertain any such shipments.

The total sales in dollars for each year from 1928 to 1947, inclusive, of tapered roller bearings made by the Timken Roller Bearing Company on which payments of commission were made to British Timken Limited, is set out in Government's Exhibit 160. I offer Government's Exhibit 160 in evidence.

The Court: Exhibit 160 may be received.

Mr. Derr: Defendant's counsel have advised that the Timken Company did not sell any ball and straight roller bearings in British Timken territory. So far as they know, no commissions were paid for either the tapered roller bearings or ball bearings to French Timken or Fischer Bearing Company. So far as they have been able to determine, no commissions were paid by the Timken Roller Bearing Service and Sales Ltd., or Timken Roller Bearing Company of South America to British Timken, French Timken, or Fischer Bearing Company.

Thank you, your Honor, I think that clears the problem we had this morning. I understand defense counsel will stipulate that the matters that have been read into the record are accurate based upon information which they supplied the Government.

Mr. Ketterer: Yes, that is correct.

[fol. 834] Mr. Day: May the record show that Defendant's motion to dismiss may be considered as having been filed after all this additional evidence?

The Court: Yes, Mr. Day. I wanted the record to show that.

Mr. Day: Thank you.

[fol. 835] DEFENSE

Mr. Day: Now, your Honor, we would like to offer in evidence on behalf of the Defendant certain parts of the deposition of Michael Bruce Urquhart Dewar, part of which has already been read by counsel for the Plaintiff.

(Thereupon the following questions and answers of the deposition of Michael Dewar were read by Mr. Day:)

"Q. Mr. Dewar, you have already stated your name and your address and your business. Where were you born?

A. Chaltenham.

Q. Where did you get your education?

A. Rugby School and Cambridge University.

Q. Now will you tell us briefly, and to some extent chronologically the events of your business career?

A. After taking an engineering honors degree at Cambridge, I went to Vickers in Sheffield and worked there for a period of years. I then joined a firm of textile manufacturers who had works in Yorkshire and in New England, and I worked for them for several years up to the outbreak of the 1914 war. After about a year of the war, I was seconded from my regiment to the Ministry of Munitions [fol. 836] and I served the Government as Deputy Director General of Shell & Gun manufacture. After the war was over, I joined a firm called Leeds Forge Company, who were the origin of the Pressed Steel Car Company. I stayed with them until I joined the Metropolitan Carriage Wagon and Finance Company of Birmingham, England, who were the largest subsidiary company of Vickers. I was Managing Director of that Company. In 1925 or 1926 I was made Vice Chairman of Wolseley Motors, which was another subsidiary of Vickers, Vickers at that time being in considerable financial difficulties, and I was told that my job in life was to try and save as much money as I could for Vickers out of the Wolseley Motors organization. Wolseley Motors had as a subsidiary Company a company called British Timken, of which I became Chairman in March, 1927.

Q. You have been connected with British Timken Limited ever since that time?

A. Yes, I have.

Q. What is your present position with British Timken Limited?

A. I am Chairman and Chief Executive Director of the [fol. 837] Company.

Q. You say you took an engineering degree in college?

A. Yes. I am also a member of a considerable number of engineering societies, including the SAE in the United States.

Q. Were you connected as a Director or otherwise at this time with Companies other than British Timken?

A. Yes. I am connected with electric power supply companies, shortly to be nationalised, and a machine tool company, Cincinnati Milling Machine Company, and several other companies.

Q. While you were connected with Vickers, what, if anything, did you have to do with the trade that Vickers had in countries other than Great Britain?

A. I forget the exact title, but I was a Director of Vickers on their Commercial Board, as opposed to their Armaments Board, and I was Chairman of the Committee of all their subsidiary companies dealing with the sales of all their companies all over the world.

Q. What was the business of Vickers?

A. A caustic commentator once remarked that Vickers [fol. 838] made everything from rag dolls to battleships. They made sewing machines, forgings, waterproofs, motorcars, machine tools, electric generators and turbines—everything.

Q. And their business was how far flung in scope?

A. World wide—everywhere.

Q. You spoke of Wolseley Motors. What was its business?

A. The manufacture of passenger automobiles entirely.

Q. The passenger automobiles carried what name?

A. Wolseley.

Q. When was it that you first obtained any knowledge of British Timken?

A. When I first was asked to take charge of Wolseley Motors."

(Thereupon the following questions were read by Mr. Day and the following answers by Mr. Ketterer, from the deposition of Michael Dewar:)

"Q. And you have fixed that time as when?

A. 1925 or early 1926.

Q. Did you learn at that time in what business British Timken was engaged?

A. Yes.

[fol. 839] Q. What did you learn about that?

A. British Timken was a company which owned practically no assets. The plant and machine tools belonged to Wolseley Motors and the machines were actually in-

stalled in part of the Wolseley Motors' factory. British Timken had an agreement with Timken Roller Bearing Company on patents and the territories covered.

Q. What did you learn when you looked into the affairs of Wolseley Motors as to whether or not they owned the stock interest and, if so, how much of British Timken?

A. You must bear in mind this is quite a long time ago and I may be wrong about one or two figures; but in principle the share capital of British Timken was owned entirely by Wolseley Motors, but it was pledged to the bank to support an overdraft which was guaranteed to Wolseley Motors by Vickers.

Q. Then is it true that Wolseley Motors owned the stock of British Timken?

A. Yes, entirely.

Q. And Vickers owned the stock of Wolseley?

A. That is so, yes.

Q. You were Chairman of a Committee, as I understand [fol. 840] you—if I am wrong you will correct me—of Vickers having to do with the liquidation of Wolseley. Is that right?

A. Not entirely. There was a Committee assisting Vickers in a financial reorganization which covered the whole of the Vickers group. My endeavours covered only a much smaller part of the Vickers Group which consisted practically of the Birmingham district and Glasgow.

Q. Then I understand from you that Vickers was in some financial difficulty at that time itself. Is that right?

A. Yes, that is so.

Q. You have said something about Vickers having business branches in various countries. State whether or not, while you were connected with Vickers, you had occasion to travel to those branches and into those countries?

A. Yes. We had an office in New York. We had offices in almost every capital city in the world. We had even registered companies, Vickers (Australia) Limited, Vickers (New Zealand) Limited, Vickers (France) Limited, and so on.

Q. State whether or not, while you were connected with Vickers in the capacity you have stated you had occasion [fol. 841] to gain knowledge as to the manner of transact-

ing business in these foreign countries and between the foreign countries?

A. Certainly, yes.

Q. Were you a member of a Commission representing your country, Great Britain, that made a visit to America about 1926?

A. Yes, I was.

Q. Will you tell us what that Commission was?

A. It was appointed by the British Government to go to the United States to study and if possible to find the reason why the production per head per man hour in the United States was so much higher than the production per man hour in Britain. That was to cover all industries and not only just one industry.

Q. Can you recall any of the other members of that Commission?

A. Ernest Bevin is now the most prominent member left of that Commission.

Q. While we are on that subject, during the last world war, were you located for some time in America?

A. Yes. I was in Washington for the British Government from July 1940 to May 1943.

[fol. 842] Q. In what capacity?

A. I went originally as head of the Tank Mission and I stayed on as Deputy Director General of the British Purchasing Commission which was ultimately called the British Supply Mission.

Q. You were located in Washington?

A. In Washington, yes.

Q. Going back now to the Commission that was created in 1926, you did visit America?

A. Yes.

Q. Before you left on that Commission, had you looked into the Affairs of British Timken somewhat?

A. Yes, I had.

Q. In connection with the position you held with Vickers, as you have already stated?

A. That is so.

Q. When you came to America in 1926 with the Commission, state whether or not you visited the plant of the Timken Roller Bearing Company at Canton?

A. Yes, I did.

Q. What was the purpose of that visit?

A. The purpose of that visit was that we had between British Timken and the Timken Roller Bearing Company [fol. 843] a definite comparison as to productivity per man hour between British workers and American workers, and I was very anxious to see that as part of my work on this British Government mission, and also when I got back to endeavour to reduce the cost of production of British Timken so that British Timken could make more profit for Vickers.

Q. What was British Timken manufacturing at that time?

A. Taper roller bearings.

Q. What was Timken Roller Bearing Company manufacturing? I am going to call that company "American Timken' from now on.

A. Taper roller bearings.

Q. How long did you stay in Canton, if you remember way back 21 or 22 years?

A. It was not more than a few days. I could not tell you exactly.

Q. You have already stated, as I understand you, that the purpose of comparing cost of man power production between the British bearing industry and the British industry generally in America, was in connection with your membership of this Commission?

A. Yes.

[fol. 844] Q. While you were in Canton do you recall seeing any official of American Timken?

A. I met Mr. H. H. Timken who was the President at that time. I cannot remember at this date the others that I met.

Q. Do you recall whether or not on that trip you talked to Mark Lothrop?

A. Yes. I must have done because we had corresponded before. Mark Lothrop had been over in England.

Q. Do you recall whether or not you had a conversation with Mark Lothrop on that visit as to costs?

A. Yes, certainly on costs.

Q. About how long after you visited the Timken plant in connection with your work generally for the Commission did you return to England, if you remember?

A. It would be within six weeks or so. I was away for nearly three months at that juncture on that trip.

Q. On that trip did you have any talk with anybody of American Timken upon the subject of your acquiring, or their acquiring, an interest at any time in British Timken?

A. No, none.

[fol. 845] Q. Prior to the time you came home, while on the visit, had you conceived any such idea yourself?

A. No, none at all."

(Continuing to read from the deposition of Michael Dewar:)

"Q. I am now going to hand you a paper marked 'Defendant's Exhibit D.1' which purports to be a letter dated 4 Central Buildings, Westminster, S.W.1. What was that?

A. My office.

Q. In connection with Vickers?

A. Yes.

Q. That is in London?

A. Yes.

Q. Addressed to Mr. M. Lowthrop. As a matter of fact, there was no "w" in his name?

[fol. 846] A. No, there was not.

Q. 'Timken Roller Bearer Company, Canton'. I ask you if you recall sending the original of that letter?

A. Yes, I remember this.

Q. I now hand you 'Defendant's Exhibit D.2' purporting to be a letter from Mr. William Dallow to you dated January 28, 1927, British Timken Limited, and it says up on the right-hand side of the letterhead 'Common Lane, Ward End, Birmingham.' Do you remember receiving that letter?

A. Yes.

By Mr. Nitschke: May we have the date of the first letter?

By Mr. Day: Yes. It is February 11th, 1927.

Q. I now hand you 'Defendant's Exhibit D.3' consisting of six pages, the first of which is a letter dated March 30th, 1927 to you from the Timken Roller Bearing Company with the name J. F. Strough in the left-hand corner 'Secretary and Treasurer' on the right-hand corner under the

place where you would expect to find the signature, this being a photostat of a carbon. Who was Mr. Strough?

A. As far as I knew Mr. Strough, he was Secretary and [fol. 847] Treasurer of the Timken Roller Bearing Company of Canton, Ohio.

Q. What was Mark Lothrop's connection with the Timken Roller Bearing Company?

A. He was the next man to Mr. Henry Timken; whether at that time Mark was the President or Deputy to Mr. H. H. Timken, I do not know.

Q. Is H. H. Timken dead?

A. Yes.

Q. Is Mr. Strough dead?

A. Yes.

Q. Is Mr. Lothrop dead?

A. Yes.

Q. Is Mr. Herman Ely also dead?

A. Yes.

Q. I hand you now 'Defendant's Exhibit D.3' consisting of this letter and attached to it pages which have to do with costs, comparisons and figures and computations. Did you receive the original of that letter in due course?

A. Yes, I remember that.

Q. Please understand when I say 'Did you receive this letter' and hand you a photostat I am asking you whether you received the original of it.

A. I presume I received the original.

[fols. 848-849] Q. These exhibits that I have asked you about 'Defendant's Exhibits D.1., D.2., and D.3' refer generally to the matter of costs, do they not?

A. Yes.

Q. Costs of what company?

A. The comparative costs of the Timken Roller Bearing Company, Canton, Ohio, and British Timken Limited, Ward End, Birmingham, England.

Q. Do you know whether or not those letters were exchanged and that information was exchanged pursuant to the talk you had with Mr. Lothrop when you were in Canton?

A. Yes, certainly."

Mr. Day: Now, your Honor, I would like to offer in evidence the exhibits marked in the deposition D. 1, D.2, and D.3.

[fol. 850] Mr. Day: Defendant's Exhibit 1, your Honor, is a letter dated February 11, 1927, from Mr. Dewar to Mr. Lothrop, Timken Roller Bearing Company.

(The document referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 1.)

[fols. 851-853] Defendant's Exhibit 2 is a letter dated January 28, 1927, to Mr. Dewar from William Dallow, written from Commons Lane, Ward End, Birmingham, on the stationery of British Timken Limited.

(The document last above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 2.)

Mr. Day: Defendant's Exhibit 3 is a letter dated March 30, 1927, to Mr. Dewar from Mr. J. F. Strough, Secretary and Treasurer of The Timken Roller Bearing Company, and has attached to it some figures.

(The document last above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 3.)

Mr. Day: I would like to offer those in evidence, Defendant's Exhibits 1, 2, and 3.

The Court: They may be received.

[fols. 854-855] The Court: Would you be kind enough to identify Dallow?

Mr. Day: Dallow was an officer of British Timken, at least he was an employee, holding a position of what?

Mr. Ketterer: Secretary.

Mr. Day: Secretary of British Timken when Mr. Dewar was with British Timken, and when he came over to see the business at the Timken plant in connection with this commission back in 1927.

Mr. Ketterer: In 1926, it was.

Mr. Day: 1926, yes.

[fol. 856] We will continue reading from the deposition.

(The following questions read by Mr. Day and the following answers read by Mr. Ketterer:)

"Q. Will you fix as nearly as you can after 21 or 22 years the date when you first conceived the idea of your [fol. 857] acquiring an interest in British Timken?

A. Early 1927, very soon after this correspondence.

Q. At that time you were engaged in the work for Vickers which you have already described?

A. Yes.

Q. You were familiar at that time, were you not, with the business operations of British Timken?

A. Yes.

Q. Did you know at that time that there was in existence an agreement between American Timken and British Timken?

A. Yes.

Q. Were you familiar with the terms and provisions of that agreement?

A. In general, yes.

Q. Did you know that it had certain provisions as to territory and certain provisions as to royalty and trademark, and things of that kind.

A. That is so.

Q. And you were familiar with those?

A. Yes, in general.

Q. When you were in Canton on the Commission, did you go through the plant of the American Timken?

[fol. 858] A. Yes.

Q. Did you see what they were doing and how they were doing it in the manufacture of taper roller bearings?

A. Yes.

Q. Did you acquire some knowledge from your examination of the plant in your trip through it?

A. Yes, a great deal.

Q. As to the extent generally of their operations?

A. Yes.

Q. You have stated that you believed that it was early in 1927 that you first conceived the thought of your becoming connected in some way with the business of British Timken and you have stated that you had knowledge of

the terms and provisions of the contract it had with American Timken?

A. Yes.

Q. You have also stated that British Timken was making taper roller bearings?

A. Yes.

Q. What kind of taper roller bearings was British Timken making at that time?

A. The same kind as the American Timken Company.

Q. They were Timken roller bearings, were they?

A. They were taper roller bearings made to the designs [fol. 859] of Timken.

Q. Did you acquire knowledge at that time that the Timken taper roller bearings which British Timken was making were being made under a license agreement with American Timken?

A. Yes.

Q. Did you know at that time how long that license agreement had to run generally, either at that time or shortly thereafter?

A. Before I came to the conclusion that I should like to be interested in British Timken, I certainly studied that point.

Q. I think there is some reference in exhibits which we will offer here, with which I think you are perhaps familiar, that the license agreement had about eighteen months to run. Would you say that was about right?

A. Yes, about right.

By Mr. Nitschke: From what time?

By Mr. Day: As I understand it from the time that these talks were had between Mr. Dewar and Mr. Ely. If that is not right, we can get it right without any difficulty on both sides.

Q. What plant did British Timken have at this time in 1927 that we are talking about now?

[fol. 860] A. None.

Q. You say 'None.' Just what do you mean by that?

A. I mean absolutely none.

Q. Will you explain your answer as to why you say 'None'?

A. I have already mentioned it. The British Timken was a company with no actual physical assets. It leased from Wolseley Motors the buildings and the machine tools on which and in which Timken Roller Bearings were made.

Q. Where was that building situated?

A. On the outskirts of Birmingham.

Q. Will you describe the building?

A. It was a modern steel structure about 40 feet bays. I was there only about a few months ago, so I know it quite well.

Q. How much of the building did British Timken occupy or had they occupied?

A. I should say under a hundredth part of the total area of Wolseley Motors.

Q. Did I understand you to say that they had leased that plant from Wolseley?

A. Yes.

Q. Was Wolseley making anything on the same premises [fol. 861] as were occupied in part by British Timken at that time?

A. Yes, motorcars.

Q. About how many persons were employed by British Timken at that time?

A. 300 to 350.

Q. You stated, as I understood you, that they leased their equipment from Wolseley?

A. Yes.

Q. Can you tell in general what that equipment consisted of briefly because we do not want a detailed description of it now.

A. Machines by names?

Q. Generally, what kind of machinery was it?

A. Four-spindle Acmes, single spindle Gridleys, grinding machines for grinding between centres.

Q. See if I understand you correctly. Before the financial difficulties that befell Wolseley and Vickers and British Timken, the plant you have briefly described had been operated by British Timken under lease from Wolseley. Is that right?

A. Yes.

Q. And the equipment that you have to some extent described was also leased by British Timken from Wolseley? [fol. 862] A. Yes.

Q. When you stated a while ago that they had no plant, as I understand it that was because of the financial difficulties of Vickers and the financial difficulties of Wolseley?

A. No. The fact was that British Timken owned no assets other than a certain amount of goodwill and had made a very good profit. But its manufacturing operations were carried out by Wolselely Motors under agreement.

Q. And whatever equipment and plant British Timken had, it had under lease?

A. They had under lease up to about this time that we are talking of.

Q. What kind of bearings were being made? What bearing size was being made by British Timken?

A. Motor-car and motor-cycle sizes; in other words, the relatively small ones.

Q. How many sizes of bearings were being made by British Timken at that time, if you know?

A. Very few compared to the number made by the American Timken Company.

Q. Can you give us any notion of how many?

A. 50 or 60, I should say.

Q. That would be your best recollection at this [fol. 863] time?

A. Yes.

Q. Can you give us any recollection as to how many sizes were being made by American Timken at that time?

A. Several hundreds.

Q. I hand you now 'Defendant's Exhibit D.4' which is a letter from you to Mark Lothrop dated March 10th, 1927, and ask you to examine it and tell us whether you recall it and generally what it says.

A. Yes.

By Mr. Day: Do you want to see this?

By Mr. Nitschke: No, not now.

By Mr. Day: If you want to see any of our exhibits before we question the witness on them or offer them in evidence, we shall be glad to give you the opportunity so to do.

Q. It says here in the first paragraph: 'Last week I was elected Chairman of the British Timken Company and I have been examining the position very closely.' That was the week before the week that included March 10th, 1927?

A. Yes.

Q. There are numerous other statements in the letter [fol. 864] to which we will not refer expressly at this time, but I wish to call your attention particularly to the last paragraph of the letter on page 3: 'I have also been thinking of making an offer to Vickers for the Timken business as it is so much outside their own lines now that they have so little association with the motor car trade. I fancy that the total capital that would be required to take it over would be about 300,000 pounds. I do not know whether your company would care to be interested if I were to make such an offer, either permanently or on the basis of the money loaned being repaid out of profits.' Do you recall writing that to American Timken?

A. Yes.

Q. State whether or not this was written at about the time you first conceived the idea of your being connected with the business of British Timken?

A. I was already connected with the business of British Timken.

Q. But I mean individually?

A. As an individual?

Q. As an individual or as a part owner.

[fol. 865] A. Yes.

Q. State whether or not, so far as you know, that statement in this letter was the first suggestion from either you or American Timken of the possibility of the two of you becoming connected with the business of British Timken as owners.

A. It certainly was I am quite certain.

By Mr. Day: I offer that in evidence."

Mr. Day: That's a letter dated March 10, 1927, from Mr. Dewar to Mr. Lothrop. I offer that in evidence as Defendant's Exhibit 4.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 4.)

The Court: It may be received.

Mr. Nitschke: Your Honor, I would like to make an objection to the admissibility of that document and to the admissibility of subsequent evidence of this sort in this case. It is the Government's view that the offenses which have been charged in this case, agreements to restrain trade, divide territories and fix prices, are of the kind that cannot be justified. There is no excuse for it, and the only evidence which the defense can properly offer in this case is evidence that they did not engage in that offense, that they did not enter into those agreements, that they did [fol. 866] not enter into the conspiracy to restrain trade. But it is not proper, and there is no justification for those agreements, and, therefore, any evidence on that subject is irrelevant. If your Honor would bear with me for a moment, I would like to state my argument a little more fully on that point.

Mr. Day: May I ask, with the Court's permission, do you expect now to argue the proposition that we are not entitled to offer any evidence at all except evidence which shows we did not sign the agreements?

Mr. Nitschke: That you did not enter into the conspiracy which we charge here.

Mr Day: Well, the conspiracy is something else. I understood him to say that he objected to our offering any evidence except that we didn't sign the agreements.

Mr. Nitschke: Well, I don't consider that the case involves just the agreements. I think it involves other things besides that, but I think you can justifiably put in evidence to show that you did not do a thing, such as the foreign agreements and cooperation against third parties. But I don't think you can put in evidence to justify the agree- [fol. 867] ments.

Mr. Day: Well, of course, I don't want to interrupt Mr. Nitschke, your Honor. He has a perfect right to state his objection. Maybe he better do that, and then I will have something to say. But I do want to say this, that if we are going to have an argument at this time in the trial as to our right to show our basic defenses, then, of course, we want to be heard at quite considerable length, because this might involve a large part of the whole case. But I don't want to anticipate.

The Court: Is it your thought to have that matter presented to the Court now, Mr. Nitschke?

Mr. Nitschke: Yes, I would like to present the Government's position on that point, your Honor, with respect to the relevancy of this document and others which I know from the deposition are going to follow.

The Court: Well, of course, I have had no occasion to examine these documents and that is the reason why, when it was offered, before you objected I said that the exhibit will be accepted, or the offer of the exhibit will be accepted.

Mr. Day: I wonder, if your Honor please, whether this testimony couldn't be taken under objection? We have a situation here where if we have to argue all of the reasons [fol. 868] why we believe the defense to which this evidence relates should be received, we will be required in performing our duty to our client, to make just as complete an argument as perhaps we would make if this Court had before it all of the evidence. We have no desire not to argue it if your Honor wishes to hear us at this time, but under the rule your Honor can hear it under objection, if you so desire, and it seems to me, that in view of the fact that we have witnesses here from outlying points who are ready to testify, that it might expedite the orderly trial of this case if this testimony were taken under objection and exception, just the same as our motion for dismissal has been taken under advisement. The reason for that is this—your Honor knows these rules—Rule 43 is one rule, and that rule provides, as your Honor knows, that in actions tried without a jury the same procedure may be followed, that is, a statement as to what the evidence will be, the old-fashioned offer of proof, except that the Court shall take and report the evidence in full unless it clearly appears that the evidence is not admissible on any ground, or that the witness is privileged.

Now, if we are going to have an argument now as to whether any of this evidence supporting this joint venture [fol. 869] defense, because that's what that relates to is admissible, then your Honor, I take it, will either let it in provisionally or finally, or you will sustain an objection to it and rule it out, in which event upon our request your Honor would take the evidence notwithstanding the fact

you sustain the objection, unless it clearly appears that the evidence is not admissible on any ground.

Now, the only point I am trying to make is that it would expedite the trial of this case, it seems to me, if this evidence were taken under objection and exception, the same as our motion was, because if we are going to argue right out now at this stage of the trial the question of whether or not we are entitled to offer evidence on the joint venture defense, obviously, in the performance of our duty to our client we want to make a full presentation of that to you with our reasons and our authorities, and I assume the Government will want to do the same thing. So your Honor will have presented to him, at least on that phase of the case, the same question which you would have if all the evidence went in, with the situation existing under the rule that in any event the evidence would not be entirely excluded unless it was not admissible on any ground and that clearly appeared.

[fol. 870] The Court: That's the very rule I had in mind, and that is the reason I thought I would hear from Mr. Nitschke to determine whether or not under that rule I may or may not receive the evidence which you are now seeking to offer. If you wish to argue the proposition now, bear in mind that the question that I have before me particularly is with reference to the provisions of Rule 43(b). It think we will take a fifteen-minute recess and then I will hear from you on that subject. I do want to say to you before we do take the recess that I am very much inclined to the view that in a matter of this nature, where it may become apparent, even though the Court would feel that your position is well taken, that the defense might be entitled to make its offer of proof of all of the evidence, which they seek to offer, it might be far more advisable to proceed rather than to engage in lengthy argument at this moment.

Mr. Nitschke: I appreciate that, your Honor.

The Court: If you will just bear that in mind in getting whatever argument you wish to make to the Court together, I will appreciate it. It must be borne in mind that in cases of this nature where there is no jury the Court is obliged, unless it appears to the Court, as the rule indicates, that the evidence is not admissible on any ground,

[fols. 871-882] and the Court is firmly convinced that it should not be received, that is the only time when the Court is justified in excluding it, and even though the Court does exclude it, I see no method for this Court to bar the right of the Defendant to offer that testimony so that the matter may be properly reviewed.

[fol. 883] The Court: Isn't the position of the defense not that they are seeking to show justification for restraint, but to show that there was no restraint?

Mr. Nitschke: Well, we have no objection to them showing there was.

The Court: I understood from the opening——

Mr. Day: That there is no restraint upon United States commerce, interstate commerce, or commerce with foreign nations. Whatever the provisions are in the contract they are legal provisions.

The Court: That is what I meant to say. I believe that to be the defense. I fully appreciate the significance of your argument and the significance of the cases to which you have made reference. I am firmly of the opinion at this time, however, that I will receive the evidence or will receive the evidence over the objection of the Department, and will rule on all of these questions, which are questions of law, and as a matter of fact the ultimate questions of law that the Court will have to apply to the facts in this case, and that no harm can come either to the Government or to the defense by receiving this evidence. At the proper time the Court will then be enabled, as I said, to apply the law as the Courts have decided to the facts presented in this case, I believe that it is far better at this [fol. 884] time to proceed and receive the evidence over your objection than to exclude it at this time or to listen to lengthy arguments without even having the opportunity to closely examine the documents that you have introduced into evidence and to examine the documents that will be offered by the defense.

I want to point out one thing to you very definitely, and that is this, that you men who have presented the Government's case, of course, are fully familiar with your case. You must realize, however, that you have presented numerous agreements, numerous documents here which were given to the Court by way of exhibits, and the Court

has not even had an opportunity to examine those. So that for the Court at this time to sustain the position that you are arguing would be doing it without the adequate and the complete opportunity to examine all of those documents and to examine all of the exhibits you have offered in support of your position. To say it briefly, then, and finally, I believe it is far better at this time to receive all of this evidence over the objection of the Government, and I will hear at length from both you and defense counsel and then be in position to apply the law to the facts as they were presented.

[fols. 885-888] Mr. Nitschke: I will be permitted to make specific objections from time to time on some of the evidence?

The Court: I have no doubt you will. In order to avoid any difficulty along that line it may be assumed your objections are made to all of the testimony which seeks to show the reasonableness of the restraint, or to show any justification for the restraint, or to show any justification for price fixing or reasonableness of price fixing.

Mr. Nitschke: Thank you, your Honor.

The Court: Will that take care of your record?

Mr. Nitschke: Yes, that is fine.

[fol. 889] (Questions read by Mr. Day and answers by Mr. Ketterer, as follows:)

"Q. I hand you 'Defendant's Exhibit D.5', purporting to be a cablegram dated March 28th, 1927, from yourself to Mr. Lothrop, Timken Roller Bearing Company, Canton, and ask you if you remember sending that cable?

A. Yes, I do.

Q. This says: 'Would you be prepared to extend your agreement with British Timken for ten years if I take over the British Company subject to modification of terms of sublicenses from us to other European countries as sug-[fol. 890] gested in my letter stop I have to make up my mind within next ten days stop should much like to do it but do not think it wise without a ten years arrangement with you stop should like to have arrangements to lower royalty on very large accounts on same basis as we have with Ford. Dewar.' When you referred to a ten year ar-

rangement, what did you have in mind, an extension of what?

A. The existing agreement subject to the modification as mentioned in there.

Q. Between American Timken and British Timken?

A. Yes."

Mr. Day: Now, we offer in evidence the cablegram which we just read in the question, and ask that it be marked Defendant's Exhibit 5. It is Deposition D.5.

(The document above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 5.)

The Court: It may be received.

[fol. 891] (Reading of deposition continued:)

"Q. Now I hand you 'Defendant's Exhibit D.6' purporting to be a cable from Canton, Ohio, March 29th, 1927, from Timken, which means American Timken, to yourself. Did you receive that?

A. Yes, I did.

Q. It reads: 'Replying your letters and cable we are willing to give consideration to ten-year term of license and reduction in foreign royalty. We also have written you today fully about manufacturing costs. We feel your costs can with our cooperation be reduced twenty-five per-cent or more. We would be more interested however in joining with you in purchasing company from Vickers and making the necessary investment. Do you plan to give your full time to British Timken. Can you inform us what net earnings have been also total assets and liabilities. If we can come to substantial agreement on major matters could you come here at this time our expense to close deal [fol. 892] incase we could not send representative to England? Timken.'

A. Yes."

Mr. Day: Now, we offer in evidence the cablegram which we just read in the question, and ask it be marked Defendant's Exhibit 6. It was marked D.6 in the London deposition.

The Court: It may be received.

(The document above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 6.)

(Reading of deposition continued:)

"Q. I now hand you a cablegram dated March 30th, 1927 signed Dewar to Timken, Canton, Ohio—that is American Timken—and ask you if you recall sending that cablegram?

A. Yes.

Q. It reads: 'Your telegram twentyninth net profits before paying income tax 1922 pounds sterling 33000 1923 33000 1924 37000 1925 43000 1926 63000 last balance sheet 30 September 1926 plant 3000 debtors 39000 stocks 42000 cash 46000 liabilities shares 50000 sundry creditors 18000 profits 63000 works and plant are leased from Wolseley stop Can purchase plant 35000 and suitable works 25000 all installed can purchase complete business 260000 with [fol. 893] profit from last September stop Matter extremely urgent other negotiations by Vickers in hand stop Am prepared devote all necessary time to Timken but consider undesirable sever my connections which are material benefit in obtaining orders stop What amount are you prepared to invest essential that company has British control of ordinary capital I am prepared to put up approximately half. Dewar.' To what did you refer when you said: 'Undesirable sever my connections which are material benefit'?

A. I thought it was unwise for me to give up all my connection with the other companies with which I was interested because they were materially beneficial in contacts to help in the sales program of British Timken. Might I comment on one word in that cable. The word 'plant' in this country means machine tools. In the United States, from my recollection, one talks of the plant as being the whole shooting match. I differentiate between plant and works; in other words, machine tools and buildings in the United States all come under one word 'plant'.

Q. You say here 'essential that company has British control of ordinary capital.' What did you mean by [fols. 894-895] that?

A. I meant that the control of the company, vis-a-vis the British consumers of tapered roller bearings, the Government included, would be a British controlled company.

Q. And why did you believe that?

A. Why did I suggest it?

Q. Yes.

A. Because, in my experience, foreign controlled companies always met in this country with greater sales resistance than British controlled.

Q. Jumping ahead just a moment, when Mr. Ely came over and you talked to him about this matter, did you make the same suggestion to him as you are just telling us?

A. Yes, certainly."

Mr. Day: Now, we offer in evidence the cablegram which was just read in the previous question, dated March 30, 1927, and which was offered in evidence at the deposition as Defendant's Exhibit D.7.

The Court: It may be received.

(The document above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 7.)

[fol. 896] (At 9:45 A.M., March 31, 1948, the trial was resumed.)

Mr. Day: I think we did not offer Defendant's Exhibit 7 yesterday. It was identified, they tell me, but was not offered. Is that right?

The Clerk: Yes.

Mr. Day: I would like to offer Defendant's Exhibit 7.

The Court: It will be received.

(The following questions read by Mr. Day and answers by Mr. Ketterer:)

"Q. I hand you now a cable dated March 31st, 1927, to yourself signed 'Timken' and ask if you remember receiving that?

A. Yes, I remember that.

Q. It reads: 'Replying your cable we are willing to become interested to extent of one-half or more of amount necessary to acquire and reorganize business. We can

have representative in England in about ten days authorised to close deal. Shall we send him?'

A. Yes."

Mr. Day: Now, we wish to offer in evidence Defendant's Exhibit 8, which is the document I just read as being em-
[fol. 897] bodied in the question.

The Court: It may be received.

(Reading continued.)

"Q. Then 'Defendant's Exhibit D.9' is a cable from you to Timken, Canton marked 'Received April 2nd'. I ask you whether you remember cabling Timken 'Delighted see representative as soon as possible'?

A. Yes."

Mr. Day: I offer that document as Defendant's Exhibit 9. It is marked Defendant's Exhibit D.9 in the deposition.

The Court: It may be received.

(Reading continued.)

"Q. Then 'Defendant's Exhibit D.10' is a cable from you to Timken dated April 3, I think it is: 'Please cable date and steamer your representative leaving Dewar'. Do you remember sending that?

A. Yes."

Mr. Day: I want to offer that cable as Defendant's Exhibit 10. It is D.10 attached to the deposition.

The Court: It may be received.

[fol. 898] (Reading continued.)

"Q. Defendant's Exhibit D.11 is a cable dated April 4th, 1927 to you from Timken—that is American Timken. Do you recall receiving that?

A. Yes.

Q. That reads: 'Cabled Saturday to Duncan our lawyer with Stibbard Gibson to advise you Ely sailing Friday steamer Homeric and also asked Duncan to begin preliminary negotiations with you.'

A. Yes."

Mr. Day: I want to offer that in evidence as Defendant's Exhibit 11; it was D.11 attached to the deposition.

The Court: It may be received.

(Reading continued.)

"Q. I hand you Defendant's Exhibit D.12 purporting to be a letter dated April 4th, 1927, to you. The carbon is signed 'Secretary & Treasurer', but over in the corner it says 'J. F. Strough.' I ask you if you remember getting that?

A. Yes.

Q. This has to do with Mr. Ely sailing on the Homeric. It states: 'Mr. Ely was formerly Vice President & Treasurer of this company for a great many years, and of course [fol. 899] carries with him the proper credentials to represent and act for us in the pending negotiations with you and with British Timken.' State whether or not you in your negotiations and talks with Mr. Ely you did believe that he was a duly appointed representative of American Timken?

A. Yes, I am sure he was."

Mr. Day: I want to offer in evidence that document as Defendant's Exhibit 12, from Strough, Secretary & Treasurer of the defendant to Mr. Dewar, dated April 4, 1927.

The Court: May I ask at this point whether Mr. Strough was Treasurer at that time and is no longer connected with Timken?

Mr. Day: Yes, that is right. He is dead now.

The Court: That is the reason his name is not included in this list?

Mr. Day: Yes. I said:

"I do not think it is necessary to read the rest of the letter and I offer it in evidence and ask that it be attached to the deposition."

(Reading continued.)

"Q. I have here Defendant's Exhibit 13, consisting of two [fol. 900] pages, which purports to be a letter dated April 11th 1927 to you from A.J.M. Duncan. Do you recall receiving that? (Same handed).

A. Yes, I remember that.

Q. Who was, and who is Mr. Duncan?

A. Mr. Duncan was the British lawyer of the Timken Roller Bearing Company of Canton, Ohio, and he is now

a Director of British Timken. He is also British Timken's legal adviser at the present time.

Q. He was, and still is, a member of the law firm of Stibbard, Gibson?

A. He is the senior partner.

Q. And he is the Mr. Duncan to whom reference was made in the Exhibit about which I just asked you?

A. That is so.

Q. There are some longhand notes on Defendant's Exhibit 13. Are those in your hand-writing, or are those in the hand-writing of somebody else?

A. No, they are not mine.

Q. I will read Defendant's Exhibit 13: 'Dear Mr. Dewar, There are one or two points which I think we might possibly be making some progress with before the representative of the American Company arrives here. I refer to the [fol. 901] following:— (1) Do you propose to form a new Company, or do you propose to work with the existing Company? (2) Will there be any change in the name of the Company? (3) Do you propose a public company or a private company? (4) Some alterations in the existing Articles of Association, or new A.A., will be needed. Which do you propose?"

[fol. 902] (Continuing reading.)

"(5) What do you propose for the share capital of the new company? (6) Will all the shares be of one class? If not, what will be the preferential rights? (7) Transfers; do you propose to have a simple clause that no transfer can be registered without the consent of the Directors? (8) You have already mentioned to me what you propose in the case of one of the parties wishing to sell his shares; as to the other party having the refusal of them at a price to be fixed? (9) What do you suggest as the number of Directors? (10) I presume that you will wish to leave over the final selection of the first Directors until the American Company's representative arrives. (11) Have you any suggestion to make as yet with respect to Director's remuneration? (12) The same with respect to Directors' qualification. (13) The appointment of Directors will require consideration so as to secure ade-
[fol. 903] quate representation for the American Com-

pany. Have you any ideas on this subject? (14) There is also the question of rotation, retirement and removal. Yours faithfully, A.J.M. Duncan.' I have not read the longhand words on that. Did you discuss the matters referred to in that last Exhibit D.13 with Mr. Duncan?

A. Yes.

Q. You considered all these questions with him?

A. Yes, all of them.

Q. And did you give Mr. Duncan your ideas as to the answers to that so far as you were concerned?

A. I did, yes."

Mr. Nitschke: I would like to interpose a further objection at this time to that testimony and to the further testimony that he gives with respect to the financial arrangement and the affiliation between the defendant and its co-conspirators.

We believe that the law is clear that the relationship between the conspirators in a conspiracy does not have any effect on the alliance and combination between them to restrain trade.

[fol. 904] I would like, if I might, to just call your Honor's attention to the language of the Supreme Court in a very recent case of United States vs. Yellow Cab Company 332 U.S. 218, decided last year, where at Page 227 the Court said:

"The test of illegality under the Act is the presence or absence of an unreasonable restraint on interstate commerce. Such a restraint may result as readily from a conspiracy among those who are affiliated or integrated under common ownership as from a conspiracy among those who are otherwise independent. Similarly, any affiliation or integration flowing from an illegal conspiracy cannot insulate the conspirators from the sanctions which Congress has imposed. The corporate inter-relationships of the conspirators, in other words, are not determinative of the applicability of the Sherman Act. That statute is aimed at substance rather than form."

I particularly wanted to call your Honor's attention to that case because on the facts it is almost identical with one phase of this case. In that case the Yellow Cab Company, a company manufacturing taxi cabs, had several subsidiaries operating fleets of cabs, and drivers operating the

cab service in various cities. The parent company, Yellow [fol. 905] Taxi Cab Company defendant in that case, required its operating subsidiaries to buy their cabs from the parent in exclusion of buying them from any other manufacturer of taxi cabs. The Court found that was unlawful and that there was no immunity granted in the restraint involved by virtue of the fact that there was a parent-subsidiary relationship.

Now, in this case we don't have, of course, the parent-subsidiary relationship. We don't even go that far but we do have the situation where the British and French Companies constitute a substantial market for tapered roller bearings manufactured in this country, but under the terms of the agreement they are prohibited from dealing in bearings other than Timken bearings. The result being that by virtue of this conspiracy British and French Timken must buy any tapered roller bearings that they need for their requirements, beyond what they can produce themselves, from the defendant, and other manufacturers in this country are excluded from that market.

We believe, therefore, that we should interpose an objection to the testimony relating to the affiliation or the relationship, financial stockholdings, and otherwise between the defendants.

The Court: Mr. Nitschke, doesn't this objection you are [fol. 906] now making fall in the same category as the other one? In the ultimate determination of the issues in this case if the Court should arrive at the conclusion that there was restraint and that there was a violation of the Sherman Antitrust law, that the defense offered here would not constitute a defense, then in the ultimate determination of the question the very matter which you are discussing will have to be determined. Personally, I see no difference between the objection which you made yesterday and the objection which you are making to this testimony today. That is, it seems to me it is the identical objection. In other words, I am of the opinion that the Court ought to receive it over your objection and if, to repeat myself, if, on the final determination of the case the Court should arrive at the conclusion your contentions are correct, no possible harm can come by the introduction of this testimony.

Mr. Nitschke: Well, I just don't want your Honor to misunderstand me, I felt I should state our objection. I understand your Honor's position, I am not urging you change it.

[fol. 907] The Court: I think it is correct and quite right that you call it to my attention but I did want to ask you whether or not you felt that this objection was in any wise different than the overall objection that you made to all of the testimony that was sought to be introduced. That is, your objection yesterday was to the effect that all of the testimony that is sought to be introduced does not constitute a defense. That is, the Government having, in your mind or your argument, having established a conspiracy in restraint of trade, that any defense that may be given to show the reasonableness of this thing or all of the other matters raised in the defense do not constitute a defense.

Mr. Nitschke: That is correct.

(Continuing reading.)

"Q. Now I hand you Defendant's Exhibit D.14, which is a letter from Stibbard, Gibson to the Timken Roller Bearing Company, and ask if you can examine that with relation to and in association with, Exhibit D.13, and tell us whether Exhibit D.14 accurately records the answers you gave to Mr. Duncan to the questions in Exhibit D.13?

A. Yes."

The Clerk: I haven't had 13 yet to mark.

Mr. Day: Will you mark 13 and 14, please?

[fol. 908] Defendant's Exhibit 13 was Exhibit D.13 in the deposition and 14 was Defendant's Exhibit D.14.

I think I will ask your Honor to examine D.13, which has certain questions and answers written in longhand. It is difficult in just reading the exhibit to show how that took place.

(Exhibit handed to Court.)

(Reading continued.)

"Q. Do you recall that Mr. He-man Ely did come over to London?

A. Yes.

Q. You have already stated that you regarded him as the representative of American Timken?

A. Yes.

Q. As near as we can figure out, from the correspondence, he reached London about the 12th or 13th April, 1927, and do you recall that you had conferences with him concerning the matters that are referred to in these Exhibits, and upon the possibility or probability of you and American Timken becoming interested in British Timken?

A. Yes.

Q. We are going to offer in evidence a document which is styled 'Heads of Agreement', signed by you and American Timken under date of May 16th, 1927. That is approximately a month, as to date of signing, after Mr. Ely came over to London. How frequently during that inter- [fol. 909] val of about a month did you talk to Mr. Ely?

A. Almost daily.

Q. Where did you talk to him, generally?

A. At my office in London, and Stibbard Gibson's office, and down in Birmingham.

Q. What was the occasion of his going to Birmingham?

A. He came to look at the Wolseley Motors Factory, and to see what the operation of the British Timken Company was like.

Q. State whether or not, during those conferences, you discussed, as you saw it, many or all phases of British Timken.

A. Every phase; I was vitally interested then.

Q. As you saw it, every phase?

A. Yes.

Q. When you had those talks with Mr. Ely, was anyone also present at any of them?

A. Two of the Directors of Vickers were present at certain times, and another man who was the Chairman of the Committee that was endeavouring to re-organise Vickers, but most of the discussions were really between me and Mr. Ely with the help of Mr. Duncan of Stibbard Gibsons.

Q. I hand you a document now consisting of nine pages marked Defendant's Exhibit D.15. It is styled 'Heads of [fol. 910] Agreement' and 'British Timken Limited'. It is signed 'M.B.U. Dewar' and 'He-man Ely, for the Timken

Roller Bearing Company'. It is dated May 16th, 1927, and I ask you if you identify that document. (Same handed)

A. Yes.

Q. Is that your signature to it?

A. Yes, it is.

Q. And Mr. Ely's signature to it?

A. I cannot swear to Mr. Ely's signature, but I know he signed it.

Q. He signed it, and you signed it—you know that?

A. Yes.

Q. There is also a signature here to a rider. Do you recognise your signature and Mr. Ely's signature, to the rider, and recall that they were signed by you and by him?

A. Yes.

Q. You are familiar with the terms of these Heads of Agreement?

A. Yes.

Q. We have had occasion, as Counsel for American Timken, to talk to you about it within the last few days here in London, have we not?

A. You have, yes.

Q. And discuss certain provisions with you concerning it?

[fol. 911] A. Yes.

Q. State whether or not in your discussions with Mr. Ely, the various matters covered in these Heads of Agreement were talked about.

A. Yes.

Q. Do you recall anything being said in those conferences upon the question of the name 'Timken'?

A. Yes.

Q. What was said, and who said it?

A. Mr. Ely was always very insistent that the name 'Timken' should be kept as far as humanly possible the property of the American Timken Company; that it should never be hyphaned or associated in any way with any other name, but should always be distinct, and the property of the American Company.

Q. You stated that Mr. Ely was insistent. Do you mean by that, that that is what he said, or the substance of what he said, in these conferences with you?

A. It is the substance of what he always said.

Q. Including what he said at these conferences?

A. Including what he said at the conferences, yes.

Q. It says that 'an Agreement shall be entered into between the American Company and the Company.' 'The American Company', of course, is American Timken, is not it?

[fol. 912] A. Yes.

Q. And 'the Company' is—what? British Timken?

A. British Timken.

Q. 'Extending for ten years the terms of the existing agreements between them subject to modifications and generally upon such terms and conditions to be mutually agreed'. The existing Agreement which was therein described was—what?

A. It was the existing Agreement between British Timken and the American Timken Company.

Q. There are some provisions in here, are there not, concerning the control of the business operations of British Timken?

A. Yes.

Q. Can you state what was said upon that subject in your conferences with Mr. Ely?

A. As I had mentioned before, and mentioned at this time also, to Mr. Ely, it was my contention that the control of this Company should be British. Mr. Ely was prepared to agree to that provided certain protection was given to the American Company in the event of my control turning out to be bad. In other words, if the profits of the Company fell below a certain percentage, then the control of the Company would automatically revert to them. Also, if I were to go mad, or die, or be incapable of operating for six consecutive months, then also the con-

[fol. 913] trol would go to them.

Q. Do you recall what, if anything, you said to Mr. Ely as to why you thought the control of the business of the Company should be in your hands?

A. I told Mr. Ely that I was convinced that it was much better for a British Company operating in Britain to be operated by a Briton, on account of the knowledge of conditions and of sales resistance, and from my own point of view I was regarded as something of a salesman on the Continent of Europe and in the British Empire.

Q. State whether or not you discussed with Mr. Ely the subject, or question, of British control of operations in connection with British employees and British workmen and so forth.

A. Yes. My own personal experience in the reverse direction, with a Company operating in the United States, was that we insisted on employing American citizens and American Directors, and the whole operation was conducted by American citizens. In my opinion the same thing applies to a Company in Britain; it is much better to look after British workmen with British foremen and British superintendence, rather than with Americans, who are not aware of the local conditions.

Q. There are provisions in these Heads of Agreement having to do with the transfer of shares by the holders [fol. 914] of the stock. Do you recall any conversation with Mr. Ely upon that general subject?

A. Yes, I do.

Q. Can you tell us what, as you recall, was the substance of what was said?

A. It was a mutual arrangement; I did not want to have the Timken Roller Bearing Company suddenly selling their shares to someone else, say General Motors, whom I did not know, and as far as I remember, Mr. Ely was very anxious that the Timken Roller Bearing Company should have an option on my shares in the event of my wanting to sell them.

Q. And was that provision in the Heads of Agreement?

A. Yes; it was carried out in our continuing agreement.

Q. I notice in this rider that there is some provision concerning what should be the rights of the parties in the event of your death. Do you recall that being discussed?

A. Yes. It was a question of fixing the value, as far as I remember—some means of fixing the value of my share interest."

Mr. Day: I now offer in evidence the Heads of Agreement as Defendant's Exhibit 15. It was Defendant's Exhibit D.15 in the deposition.

[fols. 915-923] The Court: It may be received.

I offer Defendant's Exhibits 12, 13 and 14, if I inadvertently omitted to do so.

[fol. 924] (Continuing reading from deposition of Michael Dewar:)

"By Mr. Day: I now ask that there be marked for identification a cable from Mr. Ely to American Timken dated April 19th, 1927. We expect to offer this in evidence later. I want to call your attention to this statement in this cable: 'Dewar objection to American control solely on account of restricted sales stop. Product made by foreigners tho produced here is unpopular stop. All letter heads must carry list of Directors and nationality if other than British stop. Under foreign control feels his investment in jeopardy stop. Might protect us by conditional option on his stock Have not discussed this stop. Dewar willing to [fol. 925] make entire investment personally with fair ten year contract but prefers us as partners account our interest thereby in profits. Stop. Can buy cheaper than first figure given stop. Dewar apparently keen on reducing cost.' I will ask you whether or not you recall that in your talks with Mr. Ely you said anything upon the subject of not wishing American control?

A. Yes. That cable conveys my sentiments then, and now, and will continue to do so.

Q. I will ask you whether or not, in your conversation with Mr. Ely, you stated to him the matters that he has set forth here in his cablegram home to his Company?

A. Yes. The exception is the first few words, which I am afraid I do not understand.

Q. It says: 'Dewar objection to American control solely on account of restricted sales'.

A. I do not know what he means by 'restricted sales', I am sorry, but after that, I am entirely in agreement.

Q. Do you remember whether or not in your discussions with Mr. Ely anything was said along the line of American control of the Company having any effect on the sales of this product in England?

A. Yes. If that is what the wording means, I agree.

Q. Regardless of what it means, did you talk about that? [fol. 926] A. Yes, certainly we did.

Q. Can you tell us what you said on that, in substance, as nearly as you can remember?

A. I think I mentioned this before today, but it is the same comment, that a foreign company foreign controlled

meets with greater sales resistance in this country than a British Company, British controlled.

Q. Sales resistance from whom?

A. From the local inhabitants, the British.

Q. 'Product made by foreigners tho produced here is unpopular'. You did state that, in substance, I think?

A. Yes.

Q. Then it says here: 'Under foreign control feels his investment in jeopardy'. Did you state that to Mr. Ely?

A. Yes.

Q. Did you tell him why you believed your investment would be in jeopardy in those circumstances?

A. Because I did not think we should be successful.

Q. Then there is a statement here: 'But prefers us as partners'. Do you remember stating that, in substance, to Mr. Ely?

A. Yes."

Mr. Day: I want to offer in evidence as Defendant's Exhibit 16, which was Exhibit D-16 in the deposition, this cablegram which I think has been read in the questions [fol. 927] propounded.

The Court: It may be received.

(Thereupon the cablegram above referred to was marked by the Clerk, for identification, Defendant's Exhibit 16.)

(Continuing reading from deposition of Michael Dewar:)

"Q. Here is another letter, marked 'Received May 2nd—1927, I assume—from Mr. Ely to American Timken, 'Attention J. F. Strough', which we have marked for identification and expect to offer in evidence at the trial of this case. I ask you whether or not in your discussions with Mr. Ely you discussed any or all of the three plans I am now going to read to you as described in this letter by him? '1st. Our complete control of British Timken or its successor, without other stock holders, other than qualifying directors' shares, and this is the plan I would recommend if there was available in our organisation the proper person or persons to spend a year to two years reorganising plant, sales, etc. capable of cantacting properly in Germany, and starting there a small company, and making en-

tirely new arrangements in France. The present arrangement is most unsatisfactory'. Did you discuss that with Mr. Ely?

[fol. 928] A. Yes. I discussed the French arrangement and the German arrangement, but I am certain I never discussed the possibility of complete American control, because I just should not have bothered with it. What is the good of discussing something one cannot agree to?

Q. You did not discuss it?

A. No, I am sure I did not.

Q. '2. Our control'—that is American Timken?

A. Yes.

Q. 'with a working minority of British interest. This also requires time in making proper and suitable connections, and would be probably the best plan, if Mr. Dewar, or a man of his type were available. To my straight questions to Mr. Dewar on this set-up, he said 'No' without qualification'. Do you remember that?

A. Yes.

Q. That did take place in the conversation?

A. Yes, that did.

Q. '3. British control of new Company, only so long as British control operates Company with satisfactory profit and dividends. This is the plan I now recommend, and will cover in more detail'. Do you remember that was discussed?

A. Yes, it was discussed and finally operated.

Q. Referring to page 3 of this letter, it says: 'Subject [fol. 929] to your approval we have agreed on major points as follows: That we will together treat with Vickers for British Timken's shares, and it is agreed that we must buy them considerably under the figure first given. That if satisfactory figure is agreed upon, some changes should be made in British Timken's Articles of Incorporation to take care of the new deal. That British Timken must clear the Timken name in Germany. To do this they will probably have to buy off Prausnitzer. The proposed capital authorised: £200,000 divided into 100,000 A. stock; divided into 100,000 B. stock. Both A. and B. Stock are equal as to dividends and in liquidation, and the cost of A. and B. shares shall be the same, but B. stock is to control the Board

and manage the Company'. Do you recall that was discussed?

A. Yes.

Q. 'If 12½ per cent. is not earned and paid in dividends on both stocks for a period of one year, then A. stock controls Board and Management'. Do you recall that that was discussed?

A. Yes, correct.

Q. That 12½ per cent. was changed, I think, to 15, was it not?

A. It was ultimately changed to 15, yes.

Q. 'Proposed Division of Stock: A. Stock 100,000. Timken takes and pays for 55 per cent of amount [fol. 930] issued. Dewar takes and pays for 45 per cent of amount issued. B. Stock £100,000. Timken takes and pays for 45 per cent of amount issued. Dewar takes and pays for 55 per cent of amount is-ued'.

A. That was altered.

Q. That was changed?

A. Yes.

Q. As set forth in the Heads of Agreement?

A. I cannot remember when exactly.

Q. 'Of the total we each then have 50 per cent and our investment would be equal. So long as 12½ per cent earnings are made and 12½ per cent dividends are paid, B. Stock has three Directors and A. Stock two Directors, for publicity A. Directors should probably be Britons of Timken choosing and representing Timken. The Company should be a private Company, then earnings are not published. Neither party shall sell his shares without first offering the other party, at a price agreed to by public accountants appointed by each party, and they failing to agree, by a third accountant chosen by the other two. Timken interest must be safeguarded by fair option on Mr. D's stock, in event of Mr. D's death or incapacity. Mr. D. desires agreement that he remain a Director as long as he is a stockholder, and this seems fair'. Those matters were [fol. 931] discussed?

A. Yes, they were.

Q. 'Of course a new ten year license agreement must be drawn, covering complete interchange of ideas, methods, etc. etc. It must cover royalty, make mutually satisfactory

arrangements as to the service business, arrange for Timken supplying rolls and cages and many other details that it seemed unnecessary to discuss in detail, until we could agree fully on a new set-up'. Were those things discussed to some extent?

A. Yes, they were.

Q. 'As an alternative, if Timken does not wish to be a partner, Mr. D'—that is Mr. Dewar—'will put up all the money, provided, of course, a satisfactory ten year contract is agreed upon, and if this should be done, then Mr. D. might form a public company, and sell some preference shares, giving small bonus of common stock keeping the balance of common stock for himself'. Was that discussed?

A. Yes, it was.

Q. 'I do not think, however, you would care for this arrangement, and Mr. D. very much wants us as partners, on account of our interest then in the profitable operation of the Company'. Did you discuss that to that effect with Mr. Ely?

[fols. 932-942] A. I did."

Mr. Day: We want to offer in evidence Defendant's Exhibit 17. It is a letter from Mr. Heman Ely to Timken Roller Bearing Company marked "Received May 2nd," it must be 1927. It's blurred here, but that must be the date. That's deposition Exhibit D-17.

(Letter last above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 17.)

[fol. 943] (Continuing reading from deposition of Michael Dewar:)

"Q. Here is Defendant's Exhibit D.18, which is a cablegram from Mr. Ely, I assume, though I do not see any signature to it, to the American Timken Company: 'May 5th 1927. Dewar proposes leasing suitable plant for a year or two until needs are definitely determined. Rental probably less than present plant and more suitable located in Birmingham district'. Do you remember discussing that?

A. Yes, we did.

Q. You have already told us this morning about the situation of British Timken as to a manufacturing building?

A. Yes.

Q. When you were there discussing with Mr. Ely leasing a suitable plant, what did you mean by 'plant'?

A. Building.

Q. And did you lease a plant at that time?

A. We did—almost immediately afterwards, even if not at that date.

Q. Where was that plant located?

A. About a mile from the other—a little more in Birmingham.

Q. And that was leased from whom?

A. From Vickers.

Q. Does British Timken still have that plant?

[fol. 944] A. It does. It purchased it.

Q. When did it buy it? About when?

A. About 1932 or 1933, I think.

Q. Then it says: 'No definite opinion price Vickers will accept until start trading. Some additional investment necessary Can better advise on this after visit to Birmingham'. By the way, did you and Mr. Ely go to Birmingham?

A. Yes, we did."

Mr. Day: I want to offer in evidence as Defendant's Exhibit 18 the cablegram dated May 5, 1927, from Heman Ely to Timken Roller Bearing Company. That's marked D-18 in the taking of the depositions.

The Court: It may be received.

(Cable last above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 18.)

Mr. Day: It has been suggested I read it, and I will read it with your Honor's permission. It states:

"Dewar proposes leasing suitable plant for a year or two until needs are definitely determined rental probably less than present plant and more suitable located in Birminham district stop no definite opinion price Vickers will [fol. 945] accept until start trading stop some additional investment necessary can better advise on this after visit to Birmingham next Tuesday."

I offer just the part that I have read and not the other part, if I may, your Honor.

The Court: Very well.

Mr. Day: The last part that I offer is where the cable states "Can better advise on this after visit to Birmingham next Tuesday."

We offer the cable up to that point.

The Court: All right.

(Continuing reading from deposition of Michael Dewar:)

"Q. Without offering this cable at this time, did you have a discussion, which we will come to later, with Mr. Ely concerning the German situation?

A. Yes.

Q. And Mr. Prausnitzer?

A. He was the German situation.

Q. Are you familiar in a general way with the offer that was made to Vickers in the name of Mr. Ely?

A. Yes.

Q. For the purchase of the stock of British Timken?

A. Yes.

[fol. 946] Q. I have here Defendant's Exhibit D.19. One paper is a letter headed 'London, May 12th, 1927', and signed 'Heman Ely', addressed to Sir Mark Jenkinson. It has to do with confirming an offer to purchase the stock of British Timken. Also a letter of May 12th, 1927, addressed 'Dear Mr. Ely', signed by 'Mark Jenkinson', having to do with the offer and acceptance in connection with that transaction. You are familiar in a general way with the fact that that is the way it was done?

A. Exactly, yes.

Q. Do you know who put up the money?

A. I put up my share, and the Timken Roller Bearing Company put up their share.

Q. Do you remember how much you put up and how much they put up?

A. Yes, exactly £47,500 was put up by me, and £52,500 by them."

Mr. Day: I want to offer in evidence as Defendant's Exhibit 19 the letter to Sir Mark Jenkinson from Heman Ely dated May 12, 1927, and attached to it is a letter to Heman Ely from Mark Jenkinson dated May 12, 1927.

(Document above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit [fols. 947-948] 19.)

[fol. 949] (Continuing reading from deposition of Michael Dewar:)

"Q. This is a cable from Mr. Ely to American Timken dated May 12th, 1927, having to do with arranging for the transfer to his order of £52,500 to cover the purchase money put up by American Timken, saying that 'Dewar and our offer of two pounds per share for all of British Timken shares has been accepted', and then dealing with certain other matters having to do with the purchase of that stock. If there is no objection to that, I would like to offer it at [fols. 950-951] this time.

By Mr. Nitschke: I have no objection with respect to its authenticity.

By Mr. Day: Then you have no objection to our putting it in with Mr. Dewar on the stand, though it was not addressed to him?

By Mr. Nitschke: I reserve my rights to object to its admissibility."

Mr. Day: I would like to offer Defendant's Exhibit 20, this cable, dated May 12th, 1927, from Mr. Ely, deposition Exhibit D.20.

The Court: It may be received.

[fol. 952] Mr. Day: Cablegram from Mr. Ely to Timken Roller Bearing of May 12, 1927.

Mr. Nitschke: I don't have a copy of the last one.

The Court: These copies do not contain the last portion.

Mr. Day: I think there are two cables and the May 12th one, the last one we have here reads:

"Please arrange immediate transfer to my order funds to amount fifty two thousand five hundred pounds to cover purchase fifty two and half per cent British Timken capital stock night letter cable details follows."

You say you do not have this? We will give you a copy.

Mr. Nitschke: No, I do not.

Mr. Day: We would like to offer that in evidence.

The Court: It may be received.

(Continuing reading from the deposition of Michael Dewar:)

"Q. I have here a letter to Mr. Ely under date of May 14th 1927, signed by Mr. Dallow. Who was Mr. Dallow? [fol. 953] A. Mr. Dallow was a Director of Wolseley Motors and a Director of British Timken.

Q. After you and American Timken acquired the stock of British Timken what, if any, connection did Mr. Dallow have with British Timken?

A. Mr. Dallow was a Director and he was also the Manager of the first works we had.

Q. In this letter, which has been marked Defendant's Exhibit D.21 Dallow states to Ely: 'As requested by Mr. Dewar, I enclose inventory of plant which it is proposed should be purchased from the Wolseley Company, showing the year of purchase.'. Then there are some other parts of the letter referring to other items. Do you recall the preparation of that inventory?

A. Yes, I do.

Q. And is the inventory of the plant and so forth, which is a part of this Exhibit, the one that was prepared at your request? Is that it?

A. Yes, that is the one.

Q. That is an inventory of what?

A. Machine tools.

Q. Machine tools as of what time?

A. 1927.

Q. Machine tools acquired by whom?

[fols. 954-955] A. These were the property of Wolseley Motors. Wolseley Motors was then, as you know, purchased by Morris and the machine tools were purchased ultimately from Wolseley Motors, the owner of which was Morris.

Q. Who was Morris?

A. He is an automobile manufacturer. His present name is Lord Nuffield.

Q. And he bought Wolseley Motors?

A. Yes, from Vickers.

Q. They were engaged in the manufacture of Wolseley car?

A. Yes, and they are now.

Q. You bought these items here from Morris, is that it?

A. From Morris, yes—technically from Wolseley Motors."

Mr. Day: I would like to offer in evidence now as Defendant's Exhibit 21 a letter to Mr. Ely from Mr. Dallow, dated May 14, 1927, and attached thereto an inventory of plant to which the letter refers.

The Court: It may be received.

[fol. 956] Attached to that is an "inventory of plant, and so forth, agreed by Mr. Darrow and Mr. Boden to be included in purchase by the Timken Company from Wolseley, March 31, 1927." And then it says in writing "Also plant the property of Timken Co." Then there is a "List of plant." I won't take the time to read that, it is an enumeration of grinders and different kinds of machinery, big long inventories here, I won't take the time to read it. I want to offer it all in evidence.

The Court: It may be received.

Mr. Day: Then I said:

"These two pages I hold have to do with the letter from Ely to Sir Mark Jenkinson of May 16th, 1927, and a reply from Vickers Limited. They have to do with the waiving of certain conditions and I offer them in evidence and ask that they be attached to the Depositions."

They have already been offered in evidence.

(Continuing reading from the deposition of Michael Dewar:)

"Q. At the time of these negotiations and the time these heads of agreement were signed up by you and American [fol. 957] Timken, British Timken were making tapered roller bearings, were they not?

A. Yes."

The Clerk: Those things have not been offered.

Mr. Day: All right, I will offer them. These are two short letters, I think they refer to the long ones.

Those are Defendant's Exhibits 22.

The Court: What is 21?

Mr. Day: 21 is the letter of Mr. Ely, of May 14, 1927. These other two will be Defendant's Exhibit 22, just the

same as they were in the depositions. The one is letter from Herman Ely to Sir Mark Jenkinson, May 16, 1927, and reads:

"I have your letter dated the 12th instant. I am now prepared to waive the first three conditions in my letter of the same date and to complete the purchase forthwith so that it will only rest with Messrs. Vickers to give effect to the fourth condition when required."

The other part of the exhibit is a letter from Vickers Limited to Mr. Ely:

"We beg to acknowledge receipt of your letter of even [fol. 958] date, addressed to Sir Mark Webster Jenkinson, waiving the first three conditions stated in your letter of the 12th May 1927, with which we are in agreement."

(Continuing reading from deposition of Michael Dewar:)

"Q. At the time of these negotiations and the time these heads of agreement were signed up by you and American Timken, British Timken were making tapered roller bearings, were they not?

A. Yes.

Q. Was anybody else making tapered roller bearings in England or on the Continent at that time?

A. No.

Q. Then would it be fair to say in your opinion that in that territory British Timken was pioneering?

A. Yes, certainly.

Q. As to the market for anti-friction bearings in Great Britain at that time what was the situation of that market as to the kind of anti-friction bearings that were involved?

A. They were almost all ball-bearings. The introduction of tapered roller bearing- had hardly begun.

Q. Were tapered roller bearings used or could they be [fol. 959] used to replace ball-bearings?

A. Yes.

Q. You have stated that at that time there were no companies or manufacturers making tapered roller bearings except British Timken. Were there other manufacturers in England making ball-bearings?

A. Yes, there were plenty—three or four anyway.

Q. Will you name them?

A. The Hoffman Manufacturing Company, Ransome & Marles Bearing Company, Skefko Ball Bearing Company, and there were two other small ones whose names I forget —they do not cut any ice anyway.

Q. Skefko is sometimes called 'SKF', is it not?

A. Yes.

Q. Is that a Swedish company?

A. Yes.

Q. You were familiar with the anti-friction bearing market in the United States, were you, in 1927?

A. Superficially, yes.

Q. You were familiar, of course, with all of the activities of British Timken, were you not?

A. Yes.

Q. Have you an opinion as to whether or not in 1927 British Timken could have sold tapered roller bearings in [fols. 960-966] the American market?''

Mr. Nitschke: Your Honor, I wish to object to that question and to further questions on the same line of testimony on the grounds that where a conspiracy to restrain trade has been charged it is immaterial and irrelevant whether or not the factor or possibility of restraining trade is present.

[fol. 967] The Court: I will receive the evidence. The objection will be overruled.

(Reading continued from the deposition of Michael Dewar:)

''Q. Have you an opinion as to whether or not in 1927 British Timken could have sold tapered roller bearings in the American market?

A. I was sure they could not.

[fols. 968-976] Q. From 1927 on you have been connected with British Timken, have you not?

A. Yes.

Q. And during that time have you had knowledge of the market conditions in Great Britain and America in tapered roller bearings and anti-friction bearings generally?

A. Yes.

Q. What would you say whether or not at the present time and in 1946 and 1947 British Timken could sell or could have sold anti-friction tapered roller bearings upon a commercial basis in the United States?''

Mr. Nitschke: I wish to object to that question.

[fol. 977] The Court: I will receive this testimony. I am not going to label it for what purpose it is received and I am going to repeat again that ultimately the question of whether or not the Government is entitled to succeed in [fols. 978-979] this action will be decided upon the law as it applies to the facts that are presented. I don't believe that any great harm can come from the introduction of the testimony, if after it is received the Court interprets the law correctly and brushes aside such factual matters as are of no consequence insofar as the established law is concerned.

I will receive the testimony.

Mr. Nitschke: Your Honor, on the question as to relief, the Government hasn't attempted in its case to put in the facts which would form the basis for your Honor's granting appropriate relief should we prevail in the case. I assume if the time should come when that question was raised that I would have the opportunity of presenting whatever additional facts were needed to show that our requests for relief were proper.

The Court: Of course, this is an injunction suit, it is an action in equity and the Court isn't going to stop the lawsuit at a certain point without considering all questions that should be considered.

I will receive the testimony and your objection will be overruled at this time.

[fol. 980] (Thereupon, the following questions were read by Mr. Day and the following answers by Mr. Ketterer from the deposition of Michael Dewar:)

"Q. What would you say as to whether or not at the present time and in 1946 and 1947 British Timken could sell or could have sold anti-friction tapered roller bearings upon a commercial basis in the United States?

A. It would be quite impossible.

Q. Will you tell us why you make the answer that to do that would be quite impossible?

A. (1) We could not compete in price, not at the present rate of exchange anyway; (2) we are so far behind the requirements in this country that there is no surplus;

Q. And you are speaking of that, as I understand it, regardless of whether or not there was an agreement?

A. Oh, yes, the agreement just makes no odds.

Q. (Mr. Nitschke): I did not catch the last word of that answer.

[fol. 981] A. Whether we had an agreement or not makes no difference, because we have not anything to export.

Q. (Mr. Day): You say you have not anything to export. I also understand you to say that British Timken could not ship bearings into America upon a competitive basis now, even if you did have them to export?

A. Yes, that was my first statement. The second was that we had not got any.

Q. I now hand you a document marked Defendant's Exhibit D. 23 purporting to be an agreement executed as of 1st day of January, 1928, between the Timken Roller Bearing Company and British Timken Limited. When I have been referring to British Timken of course I mean British Timken Limited. I ask if you recognise that as being the agreement?

A. Yes, I do."

[fol. 982] Mr. Day: It is already in evidence as Government's Exhibit 12, and will you please mark it also as Defendant's Exhibit 23? It's the agreement between American Timken and British Timken dated as of January 1, 1928.

(The agreement referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 23.)

(Continuing reading from deposition of Michael Dewar:)

[fol. 983] "Q. I will ask you whether or not this Agreement, to the extent that it covers matters referred to in the heads of agreement of May 16th, 1927, was, as you understand, carrying out those heads of agreement?

A. Entirely, yes.

Q. In manufacturing business what is generally understood by the phrase 'know-how'?

A. The phrase has even reached Great Britain.

Q. What does it mean?

A. It means knowledge of materials to use and methods to use in the manufacture of any specific product to make it as cheaply in manner and in material as possible.

Q. I notice in this agreement there is a provision for a royalty to be paid by British Timken to American Timken?

A. Yes.

Q. What discussions did you have with American Timken as to the reason and basis for the royalty?

A. We felt at that time that the American Timken Company had a right to payment for services rendered in addition to anything they might achieve from the Company in the shape of dividends.

Q. I ask you whether or not the trade name also entered into that?

[fols. 984-988] A. Yes, the trade name was included.

Q. And any patent rights entered into it?

A. It covered all the patent rights and what you described just now as 'know-how.'.

Q. And the trade names?

A. And the trade names.

Q. I notice that Paragraph 4(a) of this Exhibit says: 'The American Company will from time to time advise and instruct the British Company in the manufacture of bearings and particularly in connection with the quality of the steel used and its composition and analysis the method of case hardening the machinery and processes for grinding gauging sizing quenching die working forging upsetting forming sorting plating and other operations and in connection with any special tools and machinery.' What did the American Company do after this contract of January 1st, 1928, by way of furnishing information along the general line and co-operating and rendering services a'ong the general line described in that paragraph?''

Mr. Nitschke: Your Honor, I object to that question.

[fol. 989] The Court: Well, I believe I have understood your contention, either yesterday or the day before, when you expressed the opinion that all the defense is permitted to show here is that they did not enter into the agreement in restraint of trade, and that no other evidence is admissible.

Mr. Nitschke: That's right.

The Court: Your objection is in no wise different from that one, is it?

Mr. Nitschke: No, except I wanted it specifically applied to this particular type of testimony regarding know-how.

The Court: The objection will be overruled.

[fol. 990] (Continuing reading from deposition of Michael Dewar:)

"Q. —What did the American Company do after this contract of January 1st, 1928, by way of furnishing information along the general line and co-operating and rendering services along the general line described in that paragraph?

A. Apart altogether from written help in the shape of cutting times, grinding times and the number of pieces per hour and so on, they sent us over mechanics, tool room superintendents, screw machine operators and so on to try and put our output on the same basis as the output at Canton.

Q. How frequently would those American Timken men come over?

A. In the early days we had one or two every year who stayed for some time—one of them stayed for six or seven months, I remember.

Q. Can you describe generally what they did while they were over here?

A. They tried to get us to manufacture bearings as cheaply as they could at Canton, modified our methods of using our screw machines and reduced the tolerances we [fol. 991] had on the parts before they were hardened so as to make them easier to grind, introduced us to new machines and so on.

Q. And that has kept up for how long?

A. It is still going on; we got a new machine the other day, a machine designed by the Timken Roller Bearing Company.

Q. What would you say, occupying the position you have with British Timken and being an engineer yourself, as to the value of the co-operation that British Timken got from America. Timken along the lines suggested by that paragraph in the contract and of your own knowledge?

A. It is difficult to conceive that we could have started without that.

Q. And if it did assist you in starting, as you have just

suggested, state whether or not it has been of great value or not to you throughout all the years? By 'to you' I mean 'to British Timken'?

A. 'Me' is British Timken. It has been of very great advantage.

Q. And is still now?

A. And is still now, yes.

Q. You have stated, I think, as to the assistance rendered by American Timken as to manufacture and proc-
[fol. 992] esses. State whether or not anything was done by American Timken along the line of applications?

A. Yes, in our early days and even in new applications today the American Timken give us all the information they have at their disposal and they have spent a very great deal of money on certain applications which we have just adopted, say on locomotives and things like that. We just take their experience and their de igns and just put them nearly straight in.

Q. From an engineering standpoint what do you mean by 'application'? Here we are talking about application of tapered roller bearings.

A. You are talking about application of anti-friction bearings to machine tools, to every conceivable form of rolling motion.

Q. Have the British Timken representatives visited America and American plant over the years?

A. Yes, often.

Q. Outside of yourself, and I will ask you about yourself later, have other representatives of British Timken gone over to America?

A. Yes, considerable numbers.

Q. And when they went over there for what purpose did they go and in so far as you know what did they do when
[fol. 993] they got there?

A. They went over to study the methods of operation that were actually functioning at Canton and the experimental research department at Canton, where they were always experimenting with new ideas, and to look and see how they were getting on with new applications on things like locomotive connecting rods and so on.

Q. When they got back to England again would they report what they saw over there?

A. They did, yes.

Q. Did you know whether the ideas and methods that they learned over there were to some extent at least adopted by British Timken?

A. I think the answer is in general, yes, we have benefited greatly from those visits.

Q. And that is continuing right up to the present time?

A. Yes, we had four men over there at the time of the Machine Tool Exhibition in Chicago last fall.

Q. Did you from time to time go over to America and visit the Timken plant at Canton?

A. I did.

Q. Did you learn anything of advantage to British Timken by those visits?

A. I think so.

[fol. 994] Q. State whether or not British Timken maintained or does maintain a research department.

A. Yes, we do.

Q. How extensive is it?

A. I should think it is probably about one-fifth of the size that Canton have.

Q. Have you any idea of the expenditure of American Timken in connection with its research department?

A. Yes, only from hearsay.

Q. We can show that otherwise if you do not know it of your own knowledge. In carrying on the operations of British Timken state whether or not you relied upon the research department information you received from American Timken?

A. Yes; I cannot say entirely, because there are differences in conditions between this side of the Aflantic and the other.

Q. I do not mean entirely, but was it of value to you?

A. Yes, of great value.

Q. I am going to hand you Defendant's Exhibit D.24, an agreement of April 20th, 1928, between British Timken Limited and yourself and ask you if you recognise it?

A. Yes, that is the first one."

Mr. Day: Now, we would like to mark that as our Ex-
[fols. 995-1000] hibit 24. It was D.24 in the deposition and we want to offer it in evidence.

(The agreement above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 24.)

[fol. 1001] (Thereupon the following questions and answers were read from the deposition of Michael Dewar:)

"Q. After January 1st, 1928, or at least after the heads of agreement were signed up, did British Timken make any purchases of equipment or plant or other things of that kind?

A. Yes, a great deal.

Q. Can you tell us in a general way what they did acquire, just briefly?

A. Up to what date?

Q. Up to 1934, let us say?

A. I should think we at least trebled the size of the place. I can get actual figures if you want them.

Q. We will have the figures, but did the business of British Timken increase after 1934?

A. Yes, it flourished very greatly.

Q. From 1928 to 1934, how closely did you keep in touch with the business?

A. Entirely closely, very closely, daily.

Q. And you have at all times?

A. Yes.

Q. State whether or not after you severed your connection with Vickers and became connected with British Timken, British Timken became your life-work?

A. Yes, it did.

[fol. 1002] Q. Defendant's Exhibit D.25 is a letter of June 7th, 1929, from Timken Roller Bearing Company to yourself. Do you recognize that?

A. Yes, I remember that.

By Mr. Day: That provides that the existing license agreement between the Timken Roller Bearing Company and British Timken Limited shall be amended to the effect that such Agreement shall continue in force for fifteen years, instead of ten years. It also provides that the compensation of Mr. Dewar from British Timken Limited, then provided by contract to be 3,000 pounds per year shall, as from January 1st 1929 be increased to 5,000 pounds per

year. We offered that in evidence and ask that it be attached to the depositions."

Mr. Day: Now, I understand that letter is already in evidence.

Mr. Rudolph: Yes, that's Government' Exhibit 17.

Mr. Day: We would like to offer it as efendant's Exhibit 25.

The Court: It may be received.

(The document mentioned above was marked by the Clerk, for identification, Defendant's Exhibit No. 25.)

[fol. 1003] (Continuing reading from deposition of Michael Dewar:)

"Q. Do you recall coming to America in 1934 on business connected with British Timken?

A. Yes.

Q. Who came over with you, if anybody?

A. Mr. Pascoe.

Q. Who is Mr. Pascoe?

A. Mr. Pascoe has been my colleague and he has been a Director of British Timken since 1930. He is now Managing Director of the Company.

Q. What is your office now?

A. Chairman.

Q. I think I did ask you that.

A. You did.

Q. When you came to America did you confer with some of the American Timken folks?

A. We did.

Q. Where did those conferences take place?

A. They took place mostly at Canton.

Q. Can you recall who were there, as representing or connected with American Timken?

A. Mr. H. H. Timken, Mr. A. C. Ernst, and Mr. W. R. Timken sometimes. They were the principals. I would not like to say how many of the others, from time to time, [fol. 1004] were there.

By Mr. Nitschke: Could I ask which W. R. Timken that is?

Q. (Mr. Day) That is W. R. Timken senior?

A. Yes.

Q. I have here a document marked Defendant's Exhibit D.26. It is typewritten and is headed on the first page 'British Timken'. I ask if you know what that is?

A. This was a document prepared by myself, with the help of my colleagues, which was in the shape of what diplomatically, I think, is called an aide memoire, for discussions.

Q. This was produced from what files?

A. I have no idea. It is my own I expect.

Q. It came from American Timken, probably, Mr. Ketterer says, but you identify it?

A. Yes, rather.

Q. When you came over to America and talked to the American Timken representatives upon this occasion, did you show them that memorandum?

A. I think so, yes.

Q. Was there a suggestion made at that time that there be stock in British Timken sold to the public?

A. Yes, the suggestion came from me.

[fols. 1005-1006] Q. Was that the first suggestion, do you know, along that line?

A. I think so, yes; I do not remember discussing it before.

Q. There is a heading here 'British Timken,' 'Placing B.T. Shares on the market,' 'Control' and there are other headings dealing with other subjects. Did this set forth some of the reasons why you were in favour of additional stock?

A. Of stock being sold?

Q. Yes.

A. Yes, it did."

Mr. Day: I want to offer in evidence now and have marked as Defendant's Exhibit 26 this document which is headed "British Timken," consisting of several typewritten pages. It was offered in evidence in the deposition taken, as D.26. I would like to offer it now as our Exhibit 26.

The Court: It may be received.

(The document above referred to was thereupon marked by the Clerk, for identification, as Defendant's Exhibit 26.)

[fol. 1007] Mr. Day: We offer our Exhibit 26 in evidence.

The Court: It may be received.

(Continuing reading from deposition of Michael Dewar:)

"Q. When was it that the additional stock was sold?

A. I think the following year to that.

Q. 1935?

A. Yes, I think it was 1935.

Q. Do you remember how much stock was sold?

A. Yes, half the existing Common Stock—Ordinary Shares, in this country.

Q. Do you remember whether or not the Company was changed from a private Company to a public Company?

A. Yes, it became a public Company.

Q. Can you tell from memory the number of shares that were sold? You can refresh your recollection as to anything from this document D.26, if you wish.

A. I do not know that even this will be correct as to the ultimate arrangement. I think half the shares were sold.

Q. How many shares would that be?

A. Might I ask you to invite Mr. Pascoe to give testimony on that particular point, because he dealt with the whole share issue and I would much sooner not make mis-[fol. 1008] leading statements.

Q. Very well. Do you recall that there was a contract made in 1935 between American Timken and British Timken?

A. In connection with this issue of shares? There were several.

Q. Would you prefer that we asked Mr. Pascoe about that?

A. I am perfectly willing to be asked about that but you said 'a contract' and I was trying to think to which specific one you were referring.

Q. Do you recall that there was organized, in connection with the sale of stock to the public, a British Corporation known as The Timken Holdings Company?

A. Yes, certainly.

Q. What was the purpose of organizing that Company?

A. You will recollect that in the original British Timken, before the sale of stock, control of the Company was vested in me by virtue of dividing into 'A' and 'B' shares and giving the control to one or other class of share. When we sold half the Common Stock on the market it left obviously not enough to swing control, so the control was vested

in Timken Holdings and if the profits of British Timken Limited did not reach a certain figure, then the control of [fol. 1009] Timken Holdings was to pass from the control by my shares to the control by American Company shares.

Q. State whether or not the provisions in that regard, as a part of the organization of Timken Holdings were the same as in the original contract?

A. Yes, the object of Timken Holdings was to continue the implementation of that Agreement.

Q. And is that Timken Holdings contract still in effect?

A. Yes.

Q. So that the control of British Timken is now where?

A. With me.

Q. Under this agreement?

A. Yes.

Q. I will ask you whether or not, when you talked to the people in Canton concerning the sale of additional stock, and the manner of working it out, anything was said as to the importance of retaining control where it was prior to that time?

A. Yes. The formation of Timken Holdings was a sign that that was so, because that was what Timken Holdings were for. There is one thing: this was not a sale of additional stock. It was a sale of stock.

Q. On page 2 of this memorandum, D.26, heading 2, it [fol. 1010] says: 'Placing B.T. Shares on the market'. Reading the third paragraph it says: 'This could be done, as I have shown in a short memorandum, by the T.R.B.' (that is Timken Roller Bearing)' and myself selling shares on the British Market, while the control of the company could still remain between the T.R.B. Co., and myself, through the formation of a holding company, holding say 51% of B.T. share capital.' Was that discussed?

A. Yes.

Q. And that was done?

A. It only held 50%, but it was done.

Q. Do you recall in connection with the sale of the stock to the public about which we have been talking, some negotiations with the Brokers connected with the sale, upon the subject of extending the term of the contract between American Timken and British Timken?

A. Yes, I do very closely.

Q. Will you tell us what they said upon that subject?

A. They were of the opinion that we could not really expect to sell stock to the British public without a long term contract with the Timken Roller Bearing Company, particularly for the use of the name; in other words the goodwill of the Company rested largely in the association [fol. 1011] with the American Timken Company.

Q. And as a result (if such were the fact) of that position taken by the Brokers, what if anything was done to your knowledge as to extending the term of the then existing contract?

A. It was, I believe, extended to 30 years.

Q. So that the contract runs now how long, do you know?

A. Without refreshing my memory, I cannot tell you.

Q. After the stock was sold to the public, state whether or not the operations of British Timken continued along the same lines that you have already described?

A. Yes, exactly the same lines.

Q. You are not familiar, as I take it, with the terms of the 1935 contract sufficiently to testify about it?

A. The one with me personally?

Q. Between British Timken and American Timken?

A. I would prefer Mr. Pascoe to testify to that.

Q. Do you know whether or not any change was made in the existing contract by the terms of the 1935 contract as to Russia?

A. Yes, there was as to Russia."

Mr. Day: That contract is dated December 31, 1934, is it not?

Mr. Ketterer: Yes, I think it is.

[fol. 1012] Mr. Day: I think that the contract referred to in this case is 1935 but dated the last day of 1934.

(Continuing reading from deposition of Michael Dewar:)

"Q. Will you state what that was?

A. Previously, Russia had been British Timken territory and it was decided after a good deal of discussion that Russia should be a neutral territory because the Russians were at one moment in the mind to put their orders in England and the next moment in the mind to put their orders in the United States, so we thought the best way of sharing it was to have it neutral.

Q. And is that what you mean by saying Russia was neutral?

A. Well, perhaps!

Q. I will hand you now the Defendant's Exhibit D.27, an agreement between the Timken Roller Bearing Company, British Timken Limited and Societe Francaise Timken, and Defendant's Exhibit D.28, a supplemental business agreement between Timken Roller Bearing Company, M.B.U. Dewar Esq., and British Timken Limited. Will you look at those two documents and tell me if you identify them as being what they purport to be?

A. Yes.

[fol. 1013] Q. Now this one agreement, D.27, between the Timken Roller Bearing Company, (American Timken), British Timken and French Timken, has the three companies as parties to one contract?

A. That is so.

Q. Do you recall any discussion in which you participated, upon the subject of drawing up a contract that way?

A. The idea was to try and get into one legal document what was then contained in, I think, 3 or 4 different ones. The original agreement with France was made by British Timken only and that agreement you have there made the three of them parties to one agreement.

Q. Is there, do you know, any distinct difference by way of provision between this contract and the contracts which preceded it, the main contracts?

A. There was certainly nothing of any substance. There may be a variation in the words but the substance was the same.

By Mr. Nitschke: Which contract is that?

By Mr. Day: The business agreement of 1938 and the agreement of January 1st, 1928, and those which followed and supplemented that. Of course they show for themselves what, if any, differences there are.

[fol. 1014] By Mr. Nitschke: You are including both the original agreement and the supplemental agreement in the question?

By Mr. Day: No, I was not including the agreement between American Timken, M.B.U. Dewar and British Timken. I was including the three-party agreement and wish it to be so understood.

Q. I asked you before the intermission as to the attitude of the brokers in connection with the sale of stock to the public in 1935 upon the subject of an extension of the agreement between American Timken and British Timken.

A. Yes.

Q. Do you recall whether or not anything was said by the brokers as to such an extension bringing about a better acceptance of the Timken product?

A. We, I think, assumed that we should be better off as the result of that and that must include improved sales.

Q. Do you recall whether they said anything about it?

A. No, I would not recall.

Q. Reference has been made to the fact that there are territorial provisions in some of these contracts we have been talking about. What was the policy of both companies under this agreement in the event that one of them was [fol. 1015] more able to make a sale in a given territory than the other?

A. We had a common enemy in the Swedish S.K.F. who had begun the manufacture of tapered roller bearings, and our general policy was that if a tapered roller bearing was sold it had got to be a Timken and not a S.K.F. To us it was really immaterial whether it was made in the United States or whether it was made in Great Britain or France, provided it carried the name 'Timken'. We used to sell at the request of the American Company in the Argentine and the American Company has sold at our request in our territories.

Q. For the purpose of getting the Timken bearings sold?

A. Getting the Timken bearings sold, yes.

Q. Did S.K.F. begin the manufacture of tapered roller bearings?

A. Yes. I think it would have been about 1930 when they really came to the conclusion that they had lost something by not having tapered roller bearings in their repertoire.

Q. And they started to make them?

A. Yes.

By Mr. Nitschke: Are you referring to the British S.K.F. Company?

[fol. 1016] By The Witness: When I say 'S.K.F.', I am afraid I shall be referring to SK.F Sweden, S.K.F. Eng-

land, S.K.F. France and S.K.F. Germany. As far as we are concerned, it is all one; European S.K.F. I am afraid I do not know enough about the American S.K.F.

By Mr. Nitschke: I just wanted to know which Company started to make tapered roller bearings in 1930.

By the Witness: The S.K.F. in Gottenburg, Sweden, the S.K.F. in England, at Luton, the S.K.F. Company in Paris, called C.A.M., and the S.K.F. people in Germany. They all started at the same time.

Q. (Mr. Day): I asked you this morning whether, back in 1927, anyone was manufacturing tapered roller bearings in Great Britain except British Timken, and you said you did not think there was anybody. Has it occurred to you that there was somebody?

A. Yes; you are quite correct. There was a Company called Bock which had a very small Works in Glasgow. It was a subsidiary or an affiliated Company to the American Bock Corporation. It was so small that it was never really of any competitive danger to us, or of any sales danger. I would like to add that it went out of existence [fol. 1017] very shortly afterwards.

Q. The questions and answers have brought us up to 1938. I think you testified this morning that you became connected with the war effort in 1940?

A. Yes. You mean official war effort?

Q. Yes. I mean in connection with the Government.

A. Yes.

Q. I want to refer now, if I may, to the French Timken situation. Without going back to it by actually referring to it, it is a fact, is it not, that the heads of agreement of May 16th, 1927, between you and American Timken provided for the organization or creation of Continental Companies?

A. That is so, yes.

Q. Do you know what, if any, French Company was selling Timken roller bearings prior to 1927?

A. The Societe Mecanique de Genevilliers—S.M.G.—was making and selling Timken roller bearings in France.

Q. Do you know the arrangement between British Timken and S.M.G. in that regard?

A. Yes. I am not closely conversant with the details

of the contract, but the general arrangement was a royalty one and that S.M.G. had the name 'Timken'.

Q. Do you know whether or not S.M.G. was manufacturing Timken tapered roller bearings?

[fol. 1018] A. They were manufacturing in a very desultory and rather crude way.

Q. What was the situation as to the trade name in France?

A. It was rather difficult, because it did not appear that if the contract with S.M.G. was cancelled we should be certain of getting the name back.

Q. Do you know whether or not the name had been registered in France?

A. I believe it had.

Q. By S.M.G.?

A. By S.M.G., yes.

Q. What was the extent of the manufacture by S.M.G. of Timken tapered roller bearings?

A. Trivial.

Q. What discussion did you have with Mr. Ely before the heads of agreement were signed up, generally, upon the subject of the situation in France?

A. That it was extremely unsatisfactory, but we were rather in a cleft stick, because if we decided to terminate with S.M.G., we wanted to be quite sure we should get the name back; I mean, that the Timken organization would get the name back and not leave it in the hands of someone else.

Q. When you say 'the name', you mean the name 'Timken'?

[fol. 1019] A. Yes.

Q. Do you know whether or not S.M.G. was a ball bearing manufacturer?

A. Yes.

Q. Do you know whether or not the market for bearings in France at that time was predominantly a ball bearing market?

A. Almost entirely.

Q. Can you recall now anything else that was said between you and Mr. Ely upon the subject of organizing a Company in France?

A. We decided that it would be much better to organize

our own Company in France, and we proceeded to do so.

Q. State whether or not anything was said about having your own Company manufacture bearings in France.

A. Yes.

Q. Was anything said about the importance of having a Timken organized Company manufacture the Timken tapered roller bearings in France?

A. Yes.

Q. What was said upon that subject?

A. It was agreed that it should be a Timken Company owned and operated by the Timken Roller Bearing Company of Canton and myself.

[fol. 1020] Q. You say the company was organized?

A. Yes. It is in operation today.

Q. It was organized as a corporation under the laws of France?

A. It was; a corporation of limited liability.

Q. By whom was the capital provided?

A. By the Timken Roller Bearing Company and myself.

Q. Why was it necessary, if such was the fact, to have your bearings manufactured by a French Company?

A. There was the problem of duty, there was the problem of sales resistance to foreign corporations—and the French are particularly anxious to have, or were then, products used in their engineering industry made in the country—and also the automotive industry at that time was looking very much to America for its designs. Citroen had decided that he was going to use tapered roller bearings in his car, and we decided that here was an excellent opportunity to make them in France for Citroen.

Q. Can you give us some notion as to the size and importance of Citroen as a manufacturer of automobiles at that time?

A. He was the biggest manufacturer in France. Citroen was probably making a quarter.

Q. Did you get a contract with Citroen?

[fol. 1021] A. We did.

Q. After you organized your French Company, did it start operations, manufacturing operations?

A. Yes.

Q. What, if anything, was done by the British Company

by way of assistance to the French Company and cooperation with the French Company?

A. The British Company did towards the French Company what the American Company had done towards the British Company, provided all the know-how and the men, and so on, to start them up.

Q. Do you know whether or not the American Company also directly participated in that assistance?

A. Yes, they did. When British Timken had American technicians over, they always went to France, and they do still to this day. We started in France by importing unground components from England and from America and grinding them in France, some of the components from England and some from America. We still import from America, too.

Q. Is it a fact that both the British Timken and American Timken co-operated with French Timken and assisted French Timken materially?

A. Yes.

Q. In the matter of manufacturing processes?

[fol. 1022] A. Certainly.

Q. Did they also assist them in the matter of manufacturing applications, if that is the proper term to use?

A. Yes, they did.

Q. I will ask you whether or not, in your opinion, the cooperation and assistance provided French Timken by British Timken and by American Timken was essential to the success of French Timken?

A. Certainly.

Q. You say that cooperation and assistance has continued right along?

A. Yes, very closely.

Q. And is continuing now?

A. Yes.

Q. I hand you Defendant's Exhibit D.29, an agreement, it is here recited, made as at the 16th June, 1928, between British Timken and the French Timken. Do you recognize this as a copy of that agreement? It says 'The Common Seal of British Timken Limited was hereunto affixed in the presence of' M.B.U. Dewar and others, signed on behalf of the French Timken with the French name by a man

named Seward. Do you recognize that as being the agreement? (Exhibit handed to the witness).

[fol. 1023] A. Yes.

Q. This was the agreement between British Timken and French Timken which preceded the agreement of 1938, ten years later, between American Timken, British Timken and French Timken, was it not?

A. That is so, yes."

[fol. 1024] Mr. Day: I think we have this straightened out now, your Honor. Defendant's Exhibit 26 is this typewritten memorandum, and that was D.26 attached to the deposition. We offer that in evidence.

The Court: It may be received.

Mr. Day: Defendant's Exhibit 27 was Government's Exhibit 26, and deposition exhibit 27.

[fol. 1025] We offer this Defendant's Exhibit 29, which is a contract between British Timken Limited, and French Timken, dated June 16, 1928.

The Court: That is the agreement between British and French Timken?

Mr. Day: Yes, your Honor, dated 1928.

We offer Defendant's Exhibit 28, which is the agreement [fol. 1026] between American Timken, British Timken, and Mr. Dewar.

The Court: That is the agreement of November 29, 1928. That will be received.

Mr. Day: And Defendant's Exhibit 27, we offer that also.

The Court: That will be received.

Mr. Day: These exhibits, as your Honor knows, when we took the deposition, were attached to the Order and marked, and of course both sides now are offering them as exhibits in this trial.

I am on page 52.

(Reading of deposition of Mr. Dewar resumed:)

"Q. You stated a while ago that this S.M.G., to the best of your recollection, had registered the name 'Timken'; is that right?

A. That is so, yes.

Q. After the French Timken was organized, what dealings took place between S.M.G. and French Timken? What happened in that regard?

A. We got the name back, but I would not like to say exactly how. I think that perhaps one of my French colleagues is more conversant with that, Mr. Augis.

Q. Is it true that in any event after French Timken was organized in the manner we have been talking about the [fol. 1027] name 'Timken' passed from S.M.G. to French Timken?

A. Yes, it did.

Q. What do you recall about the purchase of equipment and plant and buildings or the acquisition of them for French Timken after it was created?

A. We rented buildings at that time, some of which we have since bought, some of which we still rent, and we purchased machinery, some of which came from Canton, some of which came from England and some of which came from France.

Q. How many men are employed at French Timken now?

A. About 500.

Q. How many men were employed by S.M.G. in 1927 or 1928?

A. On tapered roller bearings?

Q. Yes.

A. A couple of dozen, I should think; perhaps not as many.

Q. How many were employed by S.M.G. on ball bearings in 1928?

A. I am afraid I would not like to commit myself. Mr. Lemarie can give you that information.

Q. Something is said in the heads of agreement (without referring to it by getting it out of the exhibits) about the situation in Germany as to British Timken at the time that [fol. 1028] you had had your discussions with Mr. Ely?

A. Yes.

Q. What was the German situation as of that time?

A. During the first World War a man of the name of Prausnitzer had registered for himself the name 'Timken', I believe in 1916; anyhow, during the period of the war. He was a German citizen.

Q. What was his relation to British Timken?

A. His relation previous to the first World War had been that he was a representative of Vickers in Germany and he did sell what Timken tapered roller bearings were

sold in Germany; so that when the 1914/18 war ended we found Prausnitzer in Germany owning a small company which, for short, I will call D.T.G., German Timken Company, and we were totally unable to wrest the name from him, because it was his own personal property, the name of Timken.

Q. That is, the trade mark 'Timken' was registered in Prausnitzer's name?

A. Yes. It belonged to Prausnitzer.

Q. Then what was done with relation generally to Germany?

A. We set out to form a company exactly in the same way as we had in France, the idea being to import parts [fol. 1029] from England and the United States and finish them and assemble in Germany. We did this and we carried on till, I think, 1934, when the Hitler position became rather acute and we decided that we would get out from underneath as soon as possible, and we shut down and came out.

Q. Was that the end of the German enterprise?

A. That was the end of the German enterprise; but, in order to enable us to get the German Timken Company under control of Timken again, we had to pay Prausnitzer, I think not in cash, but we gave him a 20 or 25 per cent interest in the German Company and a salary as manager of it.

Q. Then Prausnitzer assigned——

A. Prausnitzer assigned his Company to us.

Q. So that the trade mark which had been registered in the name of Prausnitzer passed to the German Timken; is that right?

A. Yes, that is right.

Q. In 1934 do you know what happened to the trade mark 'Timken' in Germany?

A. I presume the trade mark still belongs to the Deutsche Timken Gesselschaft.

Q. Do you know whether or not it was acquired by British Timken?

[fol. 1030] A. No, I do not know.

Q. Was the operation of French Timken affected by the second World War?

A. Yes, slightly. The machines were lubricated with water for the best part of four years.

Q. I have here a cablegram that we can mark Defendant's Exhibit D.30, May 12th, 1927. That is while you were negotiating with and conferring with Mr. Ely?

A. Yes.

Q. It says: 'Tuesday in Birmingham today active negotiations Vickers stop First conference solicitors both sides Thursday.' Inasmuch as we are now dealing with the German situation, I call your attention especially to this: 'Prausnitzer matter complicated since rights were given under original contract and British Company has agreed in supplemental contracts to restore name which in this case they are powerless to do without Prausnitzer consents stop Careful search being made for all records in the case stop We and Dewar can better treat with Prausnitzer than Vic-ers if in accord on other items as Prausnitzer than to be a party to bigger business in Germany stop At present all sales to Germany are made thro Prausnitzer stop Believe he will release name for some small prospective interest in future business.' Does that set forth some of [fol. 1031] the things with relation to Germany and Prausnitzer that you and Mr. Ely discussed in your conferences?

A. Yes; I think that sets out practically what I have told you."

Mr. Day: Now, this is a cable from Ely to American Timken dated May 12, 1927. It has already been read. That will become Defendant's Exhibit 30. I would like to offer it in evidence.

The Court: It may be received.

(Reading from the deposition of Michael Dewar continued:)

"Q. After the liberation of France during the last World War, did you visit France?

A. Yes. I was flown over twice by your United States War Department and United States Navy Department.

Q. From where—here?

A. Here, yes.

Q. To France?

A. Yes.

Q. What was the object of that mission?

A. To try and get the French Timken Company going again to provide tapered roller bearings for American transport vehicles.

Q. Did you go over?

[fol. 1032] A. Yes, I did.

Q. And do all you could in that direction?

A. Yes.

Q. I think I have reached the end of the direct examination. You have been talking about dates and matters that had to do with transactions that now are 20 years old, some of them. I assume that if any of those dates are matters of record, we will refer to the record for them; is that right?

A. Most certainly. As I told you, there are some dates which one would always remember, like one's birthday and so on, with which one was vitally concerned. In this case I have been vitally concerned in a good many dates.

By Mr. Day: That concludes the direct examination, of course on the understanding that, if at any time before we are all through, something else occurs to us that we should ask by way of direct, we will do so; but, for the time being, that is our direct examination."

Mr. Nitschke: Your Honor, we would like to offer now our cross examination on this part of Mr. Dewar's testimony. The part of Mr. Dewar's testimony that affected our affirmative case we have already put in. The portion which we will offer in cross examination begins on page 124 [fol. 1033] of the transcript. My examination of Mr. Dewar.

(Questions in examination of Mr. Dewar read by Mr. Nitschke and answers by Mr. Dedman:)

"Q. Do you have your own application department?

A. Yes.

Q. Which develops bearings for various uses on machine tools, trucks and automobiles and things of that sort?

A. Yes.

Q. And have you developed applications in your research department which have been put in use?

A. Oh, yes.

Q. And you have persuaded customers that they were

desirable and persuaded them to buy tapered roller bearings?

A. Yes—and necessary.

Q. Were all of those applications transferred to the American Company—in other words, did you make your know-how known to the American Company?

A. Yes.

By Mr. Day: When you say 'transferred,' do you mean communicated?

Q. (Mr. Nitschke) Yes.

A. Yes, certainly.

[fol. 1034] Q. Did you ever receive any applications or any proposals or designs for applications from the American Company which were objected to by British manufacturers, or which you could not use in selling to British manufacturers?

A. Only in those cases where the engineering practice of the two countries is so different that it makes them impracticable.

Q. So that there were some applications received from American Timken which you could not use?

A. And vice versa.

Q. In which case you used your own application, or one of your own designs?

A. Yes.

Q. You also mentioned that tapered roller bearings are interchangeable with ball bearings. Is that true in all cases, Mr. Dewar?

A. No—oh, no.

By Mr. Ketterer: I object to the form of that question. He did not say that to begin with.

Q. (Mr. Nitschke): You correct me if I am wrong, Mr. Dewar, and tell me what you did say with respect to interchangeability.

A. I believe you asked me if in certain cases they were interchangeable.

[fol. 1035] Q. You mean, Mr. Day asked you?

A. Yes, Mr. Day; that is right—only there are many cases where they are not interchangeable, and certainly the design has to be modified to make them interchangeable.

Q. So that a manufacturer of a truck who has dies and

equipment set up for manufacturing an axle and a wheel of a certain size may find he often requires himself to change the design of his axle and wheel in order to change from a straight roller bearing to a tapered roller bearing—is that what you mean?

A. I do not mean he has to change anything quite as much as that, but the thing would have to go through his drafting office again and be redrawn, and the machining would be different.

Q. He could not just take the ball bearing out and in the hole place the tapered roller bearing?

A. No, he could not.

Q. Can you do that in some cases or in no cases?

A. Well, I should say in almost no cases, because the tapered roller bearing is in two parts. The ball bearing is one and cannot come to pieces by itself.

Q. So it would not be an appropriate engineering practice to sell tapered roller bearings for replacement of ball bearings?

[fol. 1036] A. No. There is one special case where there is a ball bearing was made in two loose parts; that is in the front wheel of General Motors cars, Chevrolet.

By Mr. Ketterer: I think that question is somewhat equivocal. Are you talking about replacement of bearings in equipment originally designed to take roller bearings, or are you talking of the installation of tapered roller bearings in equipment at the time of its original design?

By Mr. Nitschke: I was talking of both.

Mr. Ketterer: Well, there is some difference between the two.

Q. (Mr. Nitschke): Do you think on Mr. Ketterer's suggestion that you should change your testimony in any way, or modify it?

A. No, not at all. I think, from an engineering point of view, I am quite satisfied with my own answer.

By Mr. Nitschke: Well, I am satisfied with it."

Mr. Nitschke: Then, your Honor, there are some further questions in connection with my affirmative case. I go now to page 130 of the transcript where I read the cross examination of Mr. Dewar on the date that Mr. Day's questions were continued, starting with the last four questions.

[fol. 1037] The Court: Is that included in any of these looseleaf books?

Mr. Nitschke: No, it is not.

Beginning with the fifth question from the bottom of page 130 of the transcript.

(Questions read by Mr. Nitschke and answers by Mr. Dedman, as follows:)

"Q. (Mr. Nitschke): I am now returning to what Mr. Day calls my cross-examination, Mr. Dewar. What is the distinction in England between a private company and a public company?

A. A private company does not have to publish its balance sheets publicly, and a public company does. There are other distinctions, but that is the fundamental one.

Q. On Thursday or Friday Mr. Day was questioning you and asking you whether the ideas and methods that you and your people had learned while observing American Timken's practice were to some extent at least adopted by British Timken, and I think you said the answer in general is Yes. I take it then that there were many ideas and methods which either you or the employees of British Timken observed being practiced by American Timken that were not adopted by British Timken?

A. Some, yes.

[fol. 1038] Q. There were some that were not adopted?

A. Yes.

Q. That is, American Timken throughout the period from 1928 to date controlled your managerial discretion in selecting methods of production?

A. No.

Q. In selecting bearing applications?

A. May I ask for a definition of 'control'?

Q. Have they insisted that you follow them?

A. No.

Q. I think I asked you with respect to methods of production and with respect to bearing applications?

A. Yes.

Q. I also asked you with respect to the design of the bearings?

A. No.

Q. That is true for ball and straight roller bearings?

A. Yes.

Q. And tapered roller bearings?

A. Yes.

Q. Was it true with respect to French Timken's methods?

A. Yes.

Q. And applications and designs?

A. Yes.

Q. You look a little quisical. What I am really indi-
[fol. 1039] cating is that certainly they did not insist on you following any of their methods with respect to ball and straight roller bearings?

A. They had not any. They had no methods, so that we could not follow them. That is why I was feeling that I did not understand the question.

Q. Has American Timken throughout the period from 1928 to date regularly inspected British Timken's methods of production—I will make this specific with respect to tapered roller bearings?

A. If by inspected you mean, sent a team of people to make an official inspection, no.

Q. That is what I did mean. Did you want to add something to that?

A. I wanted to add that we have always had the very closest cooperation, and we have sent people over there to inspect what the Timken Roller Bearing Company was doing so that if conditions in this country or in France were suitable, we could follow those methods.

Q. You meant by 'inspect,' observe their methods?

A. I did. We have had many people from Timken Roller Bearing Company who have told us that they have developed some new method for doing something and then suggest that we should send someone over to see it.

[fol. 1040] Q. But they have not, I take it, regularly inspected in the sense of checking?

A. No.

Q. And testing of your methods of production?

A. No.

Q. Nor have they had inspectors regularly allocated in your plant?

A. No.

Q. Or regularly visiting your plant to do that?

A. They used to have our bearings in their Testing De-

partment in America before we had a Testing Department of our own and run them to destruction for our benefit.

Q. How long ago is that? How long has it been since you have had your own Testing Department and have done that yourself, approximately?

A. Ten years.

Q. Throughout the period from 1928 to date. I asked you that question previously with respect to British Timken, that is whether they inspected and inspect. Did American Timken inspect or check regularly the French firm's methods?

A. I think you may take it that the same answers I gave for British Timken apply to French Timken.

Q. You think that is true in every case with respect to [fol. 1041] know-how?

A. I do, yes.

Q. Then I will not ask you anything further on that, unless you think there is any distinction.

A. No, I do not think there is any distinction.

Q. Throughout this period from 1928 to date have you given American Timken samples of each new type of bearing construction which you designed?

A. I think so, yes.

Q. Is that true of ball and straight roller bearings as well as tapered?

A. No.

Q. You think that is true in every case though in respect to tapered roller bearings?

A. Yes, I do.

Q. And throughout this same period from 1928 to date did you submit to American Timken for its advance approval every new engineering application which you developed?

A. No.

Q. And that is true, of course, for ball and straight roller bearings as well as tapered?

A. Certainly, yes.

Q. Throughout this same period from 1928 to date with respect to drawings and details of bearing applications [fol. 1042] which you have received from American Timken, has American Timken insisted that there be no mate-

rial departure from them by British Timken in its practice or in its production?

A. I cannot think of any insistence but——

Q. Well, let me put it this way.

By Mr. Day: I think you want to finish your answer, Mr. Dewar, you said 'but.'

Q. (Mr. Nitschke): I am sorry. I thought my question was not quite clear.

A. Fundamentally we must manufacture identical bearings for the sake of interchangeability.

Q. Then let me ask you the further question: When you have put into production, let us say, a new application which you have designed, have you always obtained American Timken's consent?

A. No.

Q. Before putting such new application into production?

A. No, we have not.

Q. As to the detail of processes and methods for manufacturing bearings which have been changes from your prior practice and which you have developed, have you always obtained American Timken's consent before making those changes?

A. No. We have informed the American Timken Com-[fol. 1043] pany of any methods of manufacture.

Q. But it was your own decision as to whether or not you would put those into effect?

A. Yes.

Q. And that is true of tapered bearings?

A. Tapered bearings.

Q. And, of course, of ball and straight roller bearings?

A. Yes.

Q. Or did you inform them of changes in bearing applications on ball and straight roller bearings?

A. No."

Mr. Day: Is the answer to that "Yes"?

Mr. Nitschke: "No." Here I think he said, "No," he did not inform them of changes in bearing applications.

Mr. Day: All right.

(Reading continued:)

"Q. Have British Timken and French Timken received any drawings or details of bearing application from American Timken on ball bearings?

A. Not to my knowledge.

Q. And straight roller bearings?

A. Again not to my knowledge.

Q. Have you received details of processes and methods from American Timken on ball bearings?

[fol. 1044] A. No.

Q. And straight roller bearings?

A. No.

Q. In other words with respect to ball bearings and straight roller bearings, if I may coin a phrase, you received don't know-how from American Timken?

A. I would not like to say that. There was a time when the American Timken Company, in order to help the war effort, did make a series of ball bearings for a short time.

Q. Some time during this last war?

A. Some time during the war, yes, so that we did have an occasional correspondence regarding ball bearings at that time, but that died a natural death with the end of the emergency.

Q. As a result of that you received no know-how from them on the manufacture of ball and straight roller bearings?

A. No, I should say we have not received any know-how, but I did not want the word 'not know-how' to appear as my considered opinion.

Q. Well, I will concede that.

A. Thank you.

Q. In practice, Mr. Dewar, throughout this period from 1928 to date have you exercised your own discretion in [fol. 1045] determining whether to adopt or reject any know-how communicated to you from American Timken?

A. Yes.

Q. During this period did American Timken communicate to you any secret processes?

A. Not that I am aware of.

Q. Did you ever take any oath of secrecy with respect to any of the information which you received from American Timken?

A. No.

Q. Did you put under an oath of secrecy any of your employees or officers who were aware of or utilising any of the know-how received from American Timken?

A. No.

Q. Has the public throughout this entire period been denied access from all parts of your plant where you have been using any know-how received from American Timken?

A. May I ask for a definition of the word 'public'?

Q. Any person except an employee of British Timken?

A. Oh no—we have had our competitors round.

Q. I believe you testified the other day that British Timken also in return gave its know-how to American Timken?

A. Yes.

[fols. 1046-1048] Q. Did French Timken give its know-how also to American Timken?

A. Yes, when there was any.

Q. In other words there was a mutual interchange of know-how?

A. Yes.

Q. Amongst the three companies?

A. Yes.

Q. Again on Thursday or Friday during Mr. Day's examination I believe you stated that it would have been difficult to conceive that you could have started bearing production without American Timken's know-how, and I take it you are referring to tapered roller bearing production?

A. That is so, yes.

Q. And not to ball bearing and straight roller bearing production?

A. No, that is so.

Q. Mr. Dewar, I refer you to defendant's Exhibit D.26 which you described as your Aide-memoire?

A. Yes."

[fol. 1049] (Continuing reading of deposition of Mr. Dewar:)

"Q. I call your attention to page 2, the sub-paragraph marked 'C'?

A. Yes.

Q. Where you said: 'Bearing makers can now obtain all details of the manufacture of taper roller bearings from machine tool makers'. Was that statement as true in 1938 as it was in 1934?

A. Yes.

Q. And today?

A. Would you mind asking the question again?

Q. I wondered if that statement is also true of 1938. I believe you testified previously that this was presented to the Timken people during your conference with them in 1934?

A. Yes.

Q. Which I think fixes the time when you made that statement. My question is whether or not that statement [fol. 1050] was as true in 1938?

A. Yes.

Q. And today?

A. Yes.

Q. I also call your attention to sub-paragraph 'D' where you said: 'Technical assistance now does not give B.T. the advantage over its competitors which it did in the past, and further manufacturing problems in England and the U.S.A. are different.' I ask you the same question: Was that statement true as of 1938 also?

A. Yes.

Q. And is it true as at today?

A. Yes, although with the resumption of closer technical relations between England and the United States, which were naturally broken during the war, the technical assistance from the United States if of very great assistance.

Q. I have here Government's Exhibit D.51, an agreement between the Timken Roller Bearing Company and the Electric and Ordnance Accessories Company which appears to have been signed on June 16th and July 16th, 1909.

By Mr. Day: Do you offer that in evidence?

By Mr. Nitschke: Yes.

[fol. 1051] Q. (Mr. Nitschke): And Government's Exhibit D.52, an agreement between the Timken Roller Bearing Company and the Electric and Ordnance Accessories Company Limited, also dated June 16th and July 16th, 1909; Government's Exhibit D.53, an agreement between the Timken Roller Bearing Company and Wolseley Motors Limited dated April 6th, 1920; another agreement between the Timken Roller Bearing Company and Wolseley Motors Limited dated April 6th, 1920; Government's Exhibit D.55, an agreement between British Timken Limited and the

Timken Roller Bearing Company dated January 1st, 1925; and Government's Exhibit D.56, an agreement between the Timken Roller Bearing Company and British Timken Limited dated December 31st, 1924. I offer all these in evidence. On Thursday or Friday last, Mr. Dewar, you told Mr. Day that you had examined the agreements between British Timken Limited and the Timken Roller Bearing Company which were in existence prior to 1928 when you first came into the Company. I think you used the word license agreement. I should like to show you these Government's Exhibits D.51 to D.56 inclusive and ask you if this group of agreements is what you are referring to as the agreements with which you are familiar and which were [fol. 1052] in effect prior to 1928?

(Government's Exhibits D.51 to D.56 inclusive handed to witness.)

A. I am afraid I cannot say that I am familiar with them at this time. It is many years since I saw these agreements. I assumed that those are the agreements."

"Q. If there was more than one agreement in effect at that time, you are referring to the whole group of them and not to any one specific license agreement?

A. Yes, quite correct."

Mr. Nitschke: The next part of the transcript I won't re-read, it is the portion we put in on the affirmative case relating to the purpose of the two agreements in 1938.

The Court: That was a matter concerning which there was considerable dispute?

Mr. Nitschke: Yes, your Honor.

I then go to the top of page 138 of the transcript, continuing with the question: (Reading)

"Q. Without finding the specific paragraphs, Mr. Dewar, I believe you stated—or it is true anyhow, is it not—that the Supplemental Business Agreements of 1938 had a clause in them requiring that when the agreements termi- [fol. 1053] nated British Timken gave up the trade mark 'Timken'?

A. Yes."

Mr. Nitschke: The record doesn't show it here but I believe it is true that Mr. Whitney at this point must have offered some objection to the way I was proceeding, and I said:

"I am doing it in this way because it saves time."

(Continuing reading:)

"By Mr. Whitney: How can you ask the witness what is in a written agreement you are holding in your hand?

"By Mr. Nitschke: I think he did testify that before.

"By Mr. Whitney: You can read it to him.

"Q. (Mr. Nitschke): I will refer to sub-paragraph 3C of the supplemental business agreement dated November 29th, 1938, between the Timken Roller Bearing Company, M.B.U. Dewar and British Timken Limited which is defendant's Exhibit D.28 which states: '(C) It is intended that if and when the business agreement shall be terminated so far as regards the British Company or the French Company the British Company in the former case if and so far as it may be requested in writing by the American Company and the French Company in the latter case if and so far as it may be requested in writing by the Ameri-[fol. 1054] can Company or the British Company shall cause the name 'Timken' to be eliminated from its corporate name and from the name of any person firm or company controlled by it and shall refrain and cause any person firm or company controlled by it to refrain from using the name 'Timken' as part of or in connection with his their or its name or as a trade mark or trade name or otherwise and shall refrain from any act calculated to obstruct or delay the requesting company in any steps which it may take with a view to establishing the right of the requesting company to the use exclusively so far as practicable of the said name in the territory of the requested company and so far as practicable shall assign or cause any person firm or company controlled by it to assign to the requesting company or as it may direct any trade mark or other rights in respect of the said name in its ownership or control.'

"In those circumstances, Mr. Dewar, do you know why British Timken registered the mark 'Timken' in England—I believe it was in 1939, was it not?

A. Yes.

Q. Do you know why that was done?

A. Because no one else was able to do it.

[fol. 1055] Q. And do you know why British Timken registered the mark in British Honduras?

A. I regret to say I cannot tell you.

Q. Or in British Guiana?

A. I am sorry; I have no recollection.

Q. (Mr. Nitschke): The only reason I asked about British Guiana was because it is American territory."

Mr. Nitschke: I believe that concludes the portion from my cross examination.

[fol. 1056] (The following questions and answers from the deposition of Michael Dewar read by Mr. Day and Mr. Ketterer:)

"Q. You were asked about certain agreements, Mr. Dewar, which have been marked for identification and introduced in evidence going back as far as the agreements in 1909 between the Timken Roller Bearing Company and the Electric and Ordnance Accessories Company Limited, and covering various agreements from that time up till perhaps 1924 and maybe after that. I think you testified in direct examination the other day that before you talked to Mr. Ely you were familiar with the existing contract between American Timken and British Timken. Do you know whether as a matter of fact before that time you had actually examined all these other agreements—do you remember that?

A. I do not think I ever examined the original E.C.A. [fol. 1057] agreement, but the other agreements—the more recent ones—I certainly had looked at and had explained to me by the Secretary of Wolseley Motors.

Q. And I think you said the other day that you were familiar with the provisions of the existing contract as of 1927 between American Timken and British Timken insofar as it related to territory and royalties and things of that kind?

A. Yes.

Q. You were asked some questions by Mr. Nitschke, concerning what we have been calling the know-how?

A. Yes.

Q. And information imparted to British Timken by American Timken from 1927/28 up to date. What, if any, information generally would youu receive—I mean British Timken when I say 'yon'—and did you receive from American Timken as to designs of tapered roller bearings?

A. In respect of any new bearing that was manufactured or proposed to be manufactured by the American Timken Company we received drawings of in England and France; and any bearing which we wished to make in England or France which was not in production in the United States we sent to Canton because Canton controlled the nomenclature of bearings, what we call the symbol numbers of them, so that all the drawings that were made by the three [fol. 1058] Companies could be interchangeable in every way and also bear the same symbol number.

Q. And is that true from the beginning up to the present time to some extent?

A. Practically to every extent with the exception of possibly a short period during the war when communication was not too easy.

Q. And when you received information and drawings from American Timken as to design of bearings what, if anything, did you do with them for British Timken, or what did British Timken do?

A. Well, we followed those dimensions on the design entirely.

Q. Now you stated something a moment ago to the effect that the method of manufacture had to be identical in order that the bearings might be interchangeable?

A. I did not mean that the methods of manufacture had to be identical because they are not entirely identical. The results of the methods of manufacture has to be identical and is identical.

Q. That is identical having in mind the bearings manufactured by British Timken and the bearings manufactured by American Timken—is that right?

A. Yes, and the French Timken Company.

Q. And French Timken also?

A. Yes.

[fol. 1059] Q. You were asked as to whether or not the inspectors from the American Timken Company actually inspected and checked the bearings manufactured by Brit-

ish Timken. Will you state whether or not—perhaps you have already covered this, but I want to ask you again in the light of Mr. Nitschke's examination—American Timken's representatives and skilled men did visit the plant of British Timken?

A. Yes, they certainly have visited the plant of British Timken.

Q. And I think you said the other day that when they made those visits they stayed for some considerable periods of time?

A. They did, yes.

Q. While they were in British Timken's plant did they examine the methods of manufacture in detail?

A. Yes, in great detail.

Q. Do you know whether or not there were over the years a great number of written communications exchanged between American Timken and British Timken concerning designs of bearings by American Timken?

A. Yes, I should think almost daily.

Q. And is it or is it not a fact that throughout the years in question here American Timken was advised by British Timken as to methods of manufacture and what was going [fol. 1060] on in the plants of British and French Timken with relation to making bearings?

A. Yes.

Q. If I do not include French Timken in my questions please understand that I mean to include French Timken.

A. I understand.

Q. And if I had mentioned French Timken in connection with a few of the questions I have been putting to you your answer would have been the same, would it?

A. It would, yes.

Q. Was there any difference along the lines of what we are talking about now in what was done between American Timken and British Timken and what was done between American Timken and French Timken?

A. Most of the correspondence with French Timken is done by British Timken, not by American Timken direct, but the effect is the same.

Q. You were asked by Mr. Nitschke whether anybody was sworn to secrecy and I think you stated 'No'?

A. I did, yes.

Q. Do you know whether or not the information that British Timken and French Timken received from American Timken as to designs and methods of manufacture and things of that kind was received because of the relationship which existed and the contracts which existed between [fol. 1061] the companies?

A. I am sure yes, quite sure.

Q. I think you stated, either in cross-examination or in answer to the questions I am putting to you now, that there may have been a little difference in the exchange of information during the war. What do you mean by that?

A. We were not permitted to entrust to the ordinary mail our drawings of things like airscrew bearings which might have been of very considerable value to the enemy. They were sent often I am aware by the British Government departments through what we call the 'bag', the official diplomatic channels, so that we did not have the responsibility of avoiding capture by the Germans. But that was the cause of the difficulty in transmission of all information.

Q. There was a period of time during the war, as you have already testified, when you were in America in an official capacity and not in Great Britain at all?

A. That is so, yes.

Q. I will ask you whether or not in your opinion, over the years in question, American Timken did furnish and provide to British Timken and French Timken its information and learning and the results of its research and operations concerning designs and methods of manufacture of bearings?

A. They furnished every conceivable piece of informa-[fol. 1062] tion that you can think of in connection with those points.

Q. I will ask you whether or not the information thus imparted by American Timken to British Timken and French Timken was used by those companies?

A. It certainly was.

Q. Going back now to 1927 I will ask you whether or not, prior to the arrangements that were made between you and American Timken, as you have already described in your evidence, British Timken was in a position to manufacture any bearings?

A. Would you mind repeating the question?

Q. I will make it tapered roller bearings. I will ask you whether or not going back to 1927, at the time that you had your talks with Mr. Ely, British Timken was, in your opinion, in the circumstances which existed then and under the conditions that existed then, in a position to manufacture commercially tapered roller bearings?

A. It was manufacturing tapered roller bearings.

Q. I mean if it had not had the relation with the Timken Company?

A. No, I should say not.

Q. You stated, in answer to a question by Mr. Nitschke this morning, as I understood it, that competitors sometimes were let into your plant. What did they do when they got there?

[fol. 1063] A. They were taken round by me.

Q. Just shown generally through the plant?

A. Yes.

Q. When they came through the plant did you give them any intimate details of designs or methods of manufacture or did you just take them through the plant generally?

A. We took them through the plant generally. I would like to add that the Timken Roller Bearing Company have been kind enough to take some of our English competitors through their plant too.

Q. When these representatives of competitor companies were taken through the plant of British Timken were they shown designs and machines and things of that kind?

A. They certainly were not shown designs. They may have observed machines, but they were walking round the factory fairly quickly, which does not enable one to do more than see how well run it is in general."

Mr. Day: I think we have already read the re-direct on 144 and 145.

Going now to Page 154.

(Reading)

"Q. Going back to another phase of the case, I want to ask you one more question which occurs to me. You were asked by Mr. Nitschke upon the subject of 'know-how' whether American Timken insisted on a carrying out of [fol. 1064] its ideas and so forth and so on. I think you

stated in substance that they did not insist. Did you so state?

A. That is so, yes.

Q. State whether or not it was the attitude and practice of your Company, regardless of insistence by the American Company, to heed and follow out, so far as practicable in England, the suggestions made by American Timken?

A. It certainly has been. Where there have been any differences they have always been argued."

Mr. Day: That concludes our re-direct. Mr. Ketterer thinks I did not offer something the other day, I think I did. If I find I did not I would like to at some time offer it.

Mr. Nitschke: Then there is re-cross of Mr. Day's re-direct, continuing on Page 154.

(Questions read by Mr. Nitschke and Answers by Mr. Dedman from the deposition of Michael Dewar as follows:)

"Q. Do you know when the Michelin Company bought Citroen?

A. I am afraid I cannot tell you the date.

Q. Approximately?

A. I am afraid I have no idea. I daresay Mr. Augis will be able to tell you when he comes to give evidence.

Q. You say that whenever there is any difference of opinion on the use of 'know-how' that had been submitted [fol. 1065] to you by American Timken it was argued. I think you used that expression?

A. Yes

Q. Did you ever decide not to use it?

A. When I said 'argued' I meant that it was a subject of discussion as to whether we should or should not, and in every case that I can call to mind where we have not adopted it, it has been with the knowledge, and I presume the consent (although not necessarily in writing) of the American Company. You will understand there are some cases where Nature will not let us. We have no natural gas in this country. In Canton they use whole processes which employ natural gas. We have not any natural gas so we cannot employ those processes. It is that kind of thing.

Q. You felt that you could make the decision to reject the use of the 'know-how' if in your opinion, as an engi-

neer and as the manager of the company, it was not advisable to use it?

A. Yes, I feel that under our agreements I should be quite entitled to do that, although I should regard it as a very grave decision at which to arrive."

Mr. Day: (Reading);

"Re-Direct Examination by Mr. Day."

[fol. 1066] "Q. I have one more question. You said something a moment ago about arguing, as you expressed it, or discussing differences, if any arose, as to methods of manufacture and things of that kind between you and American Timken. Did any differences in that regard have any effect upon the end products actually turned out?

A. None at all, nor have we ever had any differences of opinion.

Q. Except as you have described?

A. I do not think I described any differences of opinion.

Q. Then you have not had any differences of opinion as to the end product turned out?

A. No, never.

Q. My attention has been called to an Exhibit that has been introduced in evidence here by us, the Defendant, and it consists of that memorandum that you took over with you to America, as I recall it, in 1934 when you and Mr. Pascoe went over there.

A. Yes, I remember.

Q. Will you state whether or not that set forth some of the reasons that you intended to use and did use in presenting your side of the matters discussed with American Timken on that visit?

A. Yes, certainly. You mean it was rather sales talk?

Q. Well, I did not say that.

[fol. 1067] A. You implied it. I am prepared to admit it up to a point."

Mr. Nitschke: (Reading)

"Q. You do not mean those statements were not true?

A. No, I do not. I think Mr. Day was perhaps thinking I stressed them a little more than I should have done."

Mr. Day: (Reading)

"Re-direct examination by Mr. Day.

Q. I do not mean to imply that. All I meant to imply was that these were statements which you took over with you that you had prepared before you went for the purpose of presenting them to American Timken?

A. Yes.

Q. I did not mean to imply they were not true. Everything in them is true, is it not?

A. Perfectly true, yes.

Mr. Nitschke: Just a few more questions in re-cross examination:

(Reading)

"Q. You said there were no differences of opinion as to the end products between you and American Timken.

A. I said the end product is always the same and that no difference of opinion had arisen. I think I was asked, if I remember correctly whether we had ever argued and fought. What I intended to imply was that we had argued [fol. 1068] and come to an agreed decision as to what British Timken should do or should not do.

Q. I take it that you are referring to tapered roller bearings?

A. Yes, certainly.

Q. You perhaps received no opinions at all from American Timken as to the end product, speaking of ball bearings and straight roller bearings?

A. I have never asked them."

Mr. Nitschke: That concludes the deposition of Mr. Dewar.

[fol. 1069] Mr. Ketterer: If the Court please, we want to call Mr. Hess now as a witness.

The Court: All right.

Thereupon the Defendant called as a witness in its behalf

DONALD P. HESS, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF DONALD P. HESS

By Mr. Ketterer:

Q. Will you state your name, please?

A. Donald P. Hess.

Q. Keep your voice up, Mr. Hess, so the Court and everybody can hear what you have to say.

Where do you live, Mr. Hess?

A. Springfield, Massachusetts.

Q. What is your present occupation?

A. I am the President of the American Bosch Corporation.

Q. How long have you been connected with the American Bosch?

A. Since 1938.

Q. Has it always been in the capacity as president of that company?

A. Yes, sir.

Q. Were you ever at any time connected with the Timken Roller Bearing Company in Canton, Ohio?

[fol. 1070] A. Yes, sir.

Q. What was the date of your first connection with that company?

A. In the spring of 1919.

Q. And what was the nature of your first connection with the Timken Roller Bearing Company?

A. I was Assistant Factory Manager.

Q. And you worked at what plant?

A. At the Canton plant.

Q. And then what was the next job that you had with the Timken Roller Bearing Company?

A. In 1921 I went down to Columbus, Ohio, as the General Manager of that plant.

Q. That is, the General Manager of the Columbus plant of the Timken Roller Bearing Company?

A. That is right.

Q. And how long did you stay there as the Manager of the Columbus plant?

A. Until 1927.

Q. And what is or what was being made at that time at the plant of the Timken Roller Bearing Company at Columbus?

A. Small size tapered roller bearings.

Q. You said you had been Assistant Factory Manager in Canton. What was being made in the Canton plant of the Timken Roller Bearing Company when you were there?

A. A complete size of tapered roller bearings as well as [fol. 1071] steel.

Q. Now, you say you left the Columbus plant in 1927 as Manager of it, and where did you go then?

A. I went back to Canton in the capacity of Assistant to the President.

Q. And you remained on the job of Assistant to the President of the Timken Roller Bearing Company for what period?

A. From 1927 to 1936.

Q. At which time you left the employ of the company?

A. That is right.

Q. And there was an interval of two years between the time of your termination of your connection with the Timken Roller Bearing Company and the time you became President of American Bosch. Were you connected, directly or indirectly, during that period with the Timken Roller Bearing Company?

A. No, sir.

Q. Now, I am going to ask you, Mr. Hess, about some things that have occurred a good many years ago, back in 1927, and times of that kind. You have had no connection with the bearing industry since you left the company in 1936?

A. No, sir.

Q. And none with the Timken Roller Bearing Company?

A. No, sir.

[fol 1072] Q. And I take it you will give us your best recollection about facts and dates to the best of your ability?

A. I will.

Q. Now, as Assistant to the President of Timken Roller Bearing Company, Mr. Hess, I will ask you whether you had occasion to make a trip to England, France and Germany in the year 1927?

A. I did.

Q. Do you recall about when in 1927 it was you went to Europe?

A. In June of 1927.

Q. How long were you there?

A. As I recall I was there about two months.

Q. Did you visit the plants of any companies manufacturing anti-friction bearings while you were there?

A. Well, I visited the British plant and the French plant and the German plant.

Q. Now, did you make any report as of that time of what you observed at those plants?

A. I did.

Q. And in general, before referring specifically to the report, I would like to ask you just what was the purpose of your going to those plants in 1927?

A. Well, we had just made these European investments, the one in particular in British Timken, and I was sent [fol. 1073] over there to be of help to them in making tapered roller bearings like we made or as close to it as possible.

Q. Now, you said you had made some investments in the foreign countries, British Timken especially. Are you familiar with the nature of the relationship between the American Timken Company and Mr. Dewar?

A. Yes, sir.

Q. And it was of what nature?

A. Well, we considered ourselves partners in this enterprise. We had a majority of the stock and he had a minority of the stock.

Mr. Ketterer: If the Court please, we have combined here a set of the exhibits we propose to offer for your convenience in following the testimony of Mr. Hess.

The Court: They are increasing in volume.

(Thereupon report was marked by the Clerk, for identification, as Defendant's Exhibit 31.)

Q. Mr. Hess, I hand you some photostat sheets that have been clipped together and bearing for identification the mark Defendant's Exhibit 31. On the outside cover appear the words "Report on British Timken Submitted by D. P.

Hess, August 1st, 1927". I ask you if you can identify [fol. 1074] that?

A. I can, sir.

Q. And it is what?

A. A report I made after my visit to Europe in 1927.

Mr. Ketterer: I would like to offer this as Defendant's Exhibit 31.

Mr. Nitschke: I take it I still have my same objection.

The Court: Yes, it is taken over the objection of the Government.

Q. Now, Mr. Hess, I would like to go over this report and read it and ask you some questions about various parts of it as we go along.

Q. On the first page of this report, under the heading "Manufacturing Plant". "At the present time we are occupying a modern type of one-story building leased from Wolseley Motors at an annual rental of $20,000. This rental covers the use not only of the property but also of [fol. 1075] all the machinery used therein for making our bearings with the exception of that for the manufacture of cages. However, we do own in the British Timken name the following machinery which was purchased during the year 1926: 2 No. 3 Cincinnati centerless grinders; 2 No. 2 Cincinnati centerless grinders and 3 10-inch internal grinders Churchill type."

I would like to ask you, Mr. Hess, whether that was the situation as to the equipment that you observed when you were over there?

A. That is correct.

Q. (Reading) "The Wolseley Motor Company has recently been purchased, in receivership, by Mr. Morris of Morris Motors, who is planning to continue the manufacture of the Wolseley car and who requested that we give up our lease on the building we now occupy. This lease has 19 years to run but we have complied with Mr. Morris' request and are arranging to vacate this property on October 31st of the current year. We have also agreed to purchase from Mr. Morris all of the equipment now covered by the heretofore mentioned yearly rental for the sum of $160,000. We have no written agreement or any definite verbal agreement that we will obtain Mr. Morris' bearing

business as the result of taking this equipment off his hands other than the statement that he would be glad to [fol. 1076] consider us when we can quote prices of bearings more in accord with the prices he is now paying for ball bearings." In respect to that statement, Mr. Hess, I would like to ask you, Mr. Morris was the manufacturer of motor cars in England?

A. That is correct.

Q. When you say in this report that he was willing to consider giving the British Timken business in the event that the price of the British Timken bearings could be made competitive with ball bearings, what did that mean with respect to whether or not tapered roller bearings in competition with ball bearings were to be used to replace the ball bearings?

A. Well, it meant unless we could supply him with tapered roller bearings at a cost comparable to ball bearings he would not use our bearings.

Q. And in so doing replace the ball bearings in the applications in the motor cars where they had been used?

A. That is correct.

Q. Then continuing with this report (reading) "Frankly the purchase of this machinery was a mistake, as, with the exception of 22 Gridley automatics the entire list of [fol. 1077] machinery is obsolete as far as our present practice of manufacturing roller bearings goes. I immediately requested that this deal be held up but was advised by Mr. Dewar and Mr. Dallow, who are the executive managers of our British Timken business, that the deal had gone through and could not be changed."

You have characterized, in the language I have just read, the machinery that was purchased from Morris at that time as being obsolete. Was that in comparison with the machinery and equipment that was being used in the American Timken plant for the production of tapered roller bearings as of 1927?

A. That is correct.

Q. (Reading) "Mr. Dewar stated that it was necessary to purchase the machinery from Mr. Morris in order to keep his good-will and to have a chance for the Morris business, and also that if we did not do this, Mr. Morris might enter the roller bearing business himself. While

there may be some substance to the first statement, we must bear in mind, that, in the second regard, anyone using the present equipment for the manufacture of bearings would be at a great disadvantage in cost, and I explained to Mr. Dewar that we could have purchased at least 50 percent of a complete new bearing plant for the amount [fol. 1078] that was paid for the obsolete equipment from Morris."

Now, did that reflect the opinion that you had as to the possibility of Mr. Morris going into the tapered roller bearing business with that equipment?

A. Yes.

Q. (Reading) "We have just completed transactions covering a lease for 13 years on the plant originally used by the Electric Ordnance Company, and wherein the manufacture of Timken Bearings originally took place."

Now, by that you meant the plant of the Electric and Ordnance Accessories Company Limited, who were originally Aston lessees back as far as 1909?

A. Yes.

Q. (Reading) "This plant is known as the Aston Plant, and is located in the heart of Birmingham. It will give us approximately 100,000 square feet of manufacturing space in a three-story plant 35 years old, and which is not nearly as well suited for our business, but which will give us approximately twice the floor space as the plant we now occupy. This Lease provides for an option to cancel every two years after three years of occupancy, and we are paying an annual rental of $10,000.00. However, we must bear in mind that in our new location we will be forced to carry our own depreciation and other charges, which heretofore [fol. 1079] have been covered in our lease from the Wolseley Motor Company, so that the apparent saving of 50 percent in annual rental does not hold good, as depreciation charges will almost entirely wipe out this difference. This means, in summary, that we shall have obtained for practically the same annual expenditure a building giving us about twice the floor space now occupied, of which we will only need at the present time, one-third of the space available, or, we will use practically all of the entire ground floor. The main drawback to this building is the fact that it must be completely wired for our use, and the estimated

cost on this work is about $30,000.00. We shall incur an additional expense in moving, such as rehanging lineshafts, countershafts and locating machinery, of another $30,000.00 so that at least $30,000.00 will have to be charged into operating expenses, which could have been avoided had we maintained our present quarters."

When you say "maintained the present quarters" did you mean the plant at Wolseley Motors where the machinery and equipment was used?

A. That is correct.

Q. And did you inspect this Aston plant that you have described here having been taken under lease at that [fol. 1080] time?

A. I did, sir.

Q. "The writer also requested that this transaction be held up," by "writer" that's yourself?

A. That's correct.

Q. "and that a strenuous effort should be made to obtain a modern factory building where electric conduits, etc. were installed. I was advised here again by Mr. Dewar and Mr. Dallow, that they had been searching for such a place for the past three months without being able to find it. This statement does not check with that of Mr. Ellis, works engineer, who confidentially advised me that an ideal building about a mile distant from our present plant had been available but which has since been sold."

And when you say "from our present plant" you are referring there, I take it, to the Aston plant, the one that was then under lease?

A. I don't recall whether it was the Aston or the Wolseley plant just from your reading it there.

Q. In any event, you were told there was another plant that might be available?

A. That's correct.

Q. "He flatly states that the move to Aston is not at all desireable, and he opposed it as much as he could. [fol. 1081] It might be well to state here that Mr. Loader, shop superintendent, also stated that, in his opinion, we could have found much better plant facilities, and also that it was a grave mistake to purchase the equipment from Wolseley Motors. This plant at Aston which we have

purchased, was formerly occupied and owned by a subsidiary of Vickers, Limited, known as the Blick Works, who manufactured porcelain insulators, and who used only a small part of this plant. Mr. Dallow, our Director at Birmingham, is also a Director of the Blick Works, and while he is very enthusiastic over the splendid deal that he made in leasing so large a plant for so little money, it is the writer's opinion that he was entirely too conscientious in seeing the Blick Works plant have a tenant. Please bear in mind that both Mr. Dewar and Mr. Dallow are very familiar with the writer's criticism of these two transactions."

You explained that to Mr. Dewar and Mr. Dallow at that time, did you?

A. Yes, sir.

Q. Now, on the third page of the report:

"At the present time our British plant is making both "V" type and "F" type cones, but only approximately [fol. 1082] 15% is changed over to "F" type production."

Now, I would like for you, Mr. Hess, to take this bearing which has been introduced in the record here as Plaintiff's Exhibit 3 and explain to the Court what you mean by "V" type and "F" type cones (handing Plaintiff's Exhibit 3 to witness)?

A. Well, it's rather hard to do in an assembled bearing like that, but it is the shape of the end of the roller and the shape of the rib of the cone, you see, in the "V" type as compared with the "F" type. The "F" type is approximately flat on the top of the roll and the rib is undercut. The "V" type has a slight taper on the end of the roll and the rib is not undercut.

Q. In respect of these two types of bearings, what had been done at American Timken Canton plant in respect of changing from "V" type to "F" type or vice versa?

A. Well, for many years at Canton we had made the "F" type bearing—or the "V" type bearing, and the "F" type bearing was an improvement over the "V" type, and we hadn't at that time, as I recall, completely changed over.

Q. Was that program just finished about 1927, of changing over?

A. I would think so.

Q. Then continuing with the report:

[fol. 1083] "This is due to the fact that they have never been sold on the "F" type bearing, and as a result have been unwilling to adopt it. The writer was successful, however, in showing them the advantages of this type of bearing, and they have agreed to make a complete change-over by January 1st, 1928."

Was that the understanding that you worked out with Mr. Dewar and Mr. Dallow when you were over there, that they would change over to that other type of bearing?

A. Yes, sir, that's correct.

Q. Going on with the report:

"Furthermore, the present design of the "F" type was not satisfactory, in the sense that they had departed from the location of the undercut as we use it, taking this undercut entirely on the rib itself, thus decreasing the rib area very noticeably. This was also changed at the writer's request, and they will follow our method in exact detail."

And that was the understanding you worked out with them?

A. That's correct.

Q. "British Timken have also departed from us in the taper of their rolls, with the corresponding changes in cone tapers, but they have retained the same cup tapers [fol. 1084] that we use."

When you say "cone tapers" and "cup tapers", looking again at this Plaintiff's Exhibit 3, will you point out the area that you refer to when you refer to the cup taper and the cone taper of the bearing?

A. This particular area here (indicating).

Q. On the inside?

A. Of the cup.

Q. The inside of the cup?

A. And you can't see that here in this assembled bearing, but it's the outside diameter of the cone itself.

Q. The outside diameter of the cone, which is also tapered?

A. That's right.

Q. And by "tapered" you mean that there is a slope in layman's language, in it?

A. Yes.

Q. That may be an insult to an engineer.

"The idea in this was to standardize and decrease the variety of rollers from the taper standpoint, and their present practice compares with ours as follows:"

And then follows in the report "British Timken modifications to rollers making constant angle, Existing cups unaltered," and then a series of numbers showing the degree of taper, the various series of bearings, comparing [fol. 1085] American and New British Timken standard for the various series of bearings.

Then going on with the report:

"It was decided that in view of the complications such as would be incurred in changing back to our taper design, and its effect on the "F" type program completion, that British Timken will continue to use the tapers they have set up insofar as possible, and the limiting factor will be the ability of the hardened rolls that we send them, to clean up in the grinding operation. In other words, if our rollers will not clean up with their tapers, they will change over and follow our tapers in every detail."

Now, what do you mean by "cleaning up our rollers to follow their tapers"?

A. That's removing the stock from the hardened roller prior to the grinding operation.

Q. So that it would do what?

A. So that you get a good, clean grinding finish on the roller after they have been ground.

Q. And the taper then of the roller will correspond with what?

A. With the drawings.

Q. And the taper of the cups and cones?

[fol. 1086] A. The same way, with the drawings.

Q. "A rather hurried study of this problem indicates that there is sufficient stock of our rollers to clean up practically all part numbers."

By that, again, you mean the rollers could be ground to useable condition?

A. That's correct.

Q. On the next page appears under the heading "Cages":

"The cages are now purchased complete from Wolseley Motors, and the equipment is owned and operated by Wolseley Motors in their own shops."

Now, am I correct in interpreting that language, that you mean as of 1927 when you were there the British Timken Company was not making its own cages?

A. That is correct.

Q. And it did not own the equipment that was necessary to make the cages?

A. That is correct.

Q. The cage part of the assembly of a tapered roller bearing is this metal component that separates the rolls and holds them in place, is that correct?

A. Yes, sir.

Q. "However, we have since purchased this equipment, but, regardless of this fact, British Timken will purchase all [fol. 1087] cages from us at our cost plus 75%."

Was that the arrangement you worked out with them initially?

A. That is correct.

Q. Why was it desirable to purchase the cages from American Timken rather than have them made with this equipment that had been purchased from Wolseley Motors?

A. We could give them a better cage and more adaptable to the use of their bearings.

Q. And what if anything did that have to do with the matter of cost of producing the cages with that equipment?

A. Well, otherwise they would have had to invest their own money in cage equipment, and that would save them some monetary investment at that time.

Q. "These cages will in all probability carry a 33-1/3% duty, as it was the opinion of British Timken that the spreading operation was not of sufficient importance to have cages lacking this operation, placed in the classification of "Raw and Process Steel."

You mean by that that in buying cages from America there would be a duty of 33-1/3% involved on the cages?

A. That is correct.

Q. Under the heading "Summary of Product" it states:

"Summarizing this individual part situation, we shall [fol. 1088] receive purchase orders from British Timken for approximately eight and one-half million hardened rolls annually, and about eight hundred thousand finished cages annually. This will save British Timken about 30% in their present cost of rolls and cages."

Did you mean by that that American Timken would receive orders like that?

A. Yes, sir.

Q. Under the heading of "Material" it states:

"At the present time British Timken are using four different kinds of steel, namely (a) low carbon chrome alloy, (b) high carbon chrome alloy, direct hardening, (c) low carbon mild steel, (d) stainless steel. The major part of their production is made from the first classification, low carbon chrome alloy, but about 25% of the rollers are made from direct hardening steel. This is due to the fact that several years ago they were having considerable trouble with defective material in rollers, and at that time changed over to direct hardening steel for several of their customers. This practice is still in use. The low carbon mild steel is used for the Ford bearings now manufactured, and the stainless steel is used in a few instances for customers requesting this kind of material. They are paying [fol. 1089] the following prices for their materials."

Then follows in tabular form a comparison of British Timken costs with the costs of American Timken, and for tubing the British cost is 12 cents per pound, and under the heading "Canton Cost" the cost is shown at 6 cents per pound. Bars (cups and cones), 8 cents for Britain and 5-1/2 cents for Canton. Bars for rolls, 9 cents for Britain, and there is no figure in the column for the American Timken cost. Cage stock, 6-1/2 cents per pound for Britain, and the Canton cost is 3-1/10 cents. Gas, 465 B.T.U., 54 cents per 1,000 cubic feet for Britain, and the Canton cost is 45 cents per thousand cubic feet of 1,000 B.T.U.

Now, in respect of tubing, what part of the tapered roller bearing assembly is made from tubing?

A. The cup and the cone.

Q. The cup and the cone are both made from tubing?

A. Yes, sir.

Q. There is a reference here made to the use of bars for cups and cones also. Was British Timken using solids in its manufacturing operation for the production of cups and cones, as well as tubing?

A. Yes, sir.

Q. And what is the fact as to whether or not that is a less [fol. 1090] or more expensive operation than the use of tubing?

A. More expensive.

Q. And what form does steel take for the production of rolls?

A. Well, it can be in bar form or in wire form, as we call it.

Q. If you use bar, is that more expensive than if you use wire?

A. Yes, bars—I would have to qualify that a bit. Bars are used on screw machines and coil stock is used on heading machines.

Q. And the practice at American Timken at that time was what in respect to the production of rolls?

A. To make them on heading machines, using coiled wire.

Q. Instead of bars?

A. Correct.

Q. Now, cage stock, what sort of material, in what form, do you use that for the production of cage?

A. The strip steel.

Q. Now, what do you do with the gas, what is gas used for in the production of tapered roller bearings?

A. Heat treatment.

Q. And by heat treatment you mean what?

A. Carburizing and hardening.

Q. There will be a reference later in this report to the [fol. 1091] carburizing process, and I would like for you to describe to the court what you mean by the carburizing process.

A. That's impregnating into the product itself a case of certain thickness so that when it's quenched in water or oil it becomes hardened.

Q. And the part of it that is so treated, what is that, the outside or inside?

A. The outside.

Q. And this case that you say you want to produce, this hardened area that you want to produce by the carburizing process, that is on the outside area of the cup, cone and rolls?

A. That is correct.

Q. There is nothing done of that kind so far as the cage is concerned?

A. Right.

Q. You say that is by a carburizing process?

A. Yes, sir.

Q. I would like for you to explain in a little more detail, without being too technical, what you mean by the carburizing process.

A. Well, in Canton we used what was called gas carburizing. Now, in some types of furnaces they use it to heat the furnace and place the product in carburizing pots.

[fol. 1092] Q. How is the product packed in those pots?

A. In bone meal.

Q. And the bone meal that the product is packed in in this carburizing process performs what function?

A. That impregnates a higher carbon content to the product itself.

Q. And it's this impregnation of the higher carbon content into the outer area of the part that gives the hardness that you try to get, is that correct?

A. That's correct.

Q. Now, going on with this table that appears on Page 4, it shows electricity in Britain was 1-1/2 cents per kilowatt and in Canton .0075 per kilowatt. Fuel, coal, $5 per ton at British Timken and $3.75 per ton at American Timken. Fuel, oil, 7-1/2 cents per gallon in England and in the United States 5 cents per gallon, at American Timken. Water was 1 cent per thousand gallons in England and 2 cents per thousand gallons in America.

Now, did those differences in the cost of British Timken materially over the cost of American Timken have anything to do with the cost of the product that they ultimately produced in the form of tapered roller bearings?

A. Yes, sir.

[fol. 1093] Q. How did that affect that?

A. It made them more costly.

Q. Going on, on Page 5:

"During the year 1926 the following material was consumed: Bars, for cups and cones, 100 tons; bars, for rollers, 140 tons; tubes, for cups and cones, 300 tons; forgings, 300 tons."

Were those the figures as to production and consumption of steel that were given to you as having been used during the year 1926 by the British Timken Company?

A. Yes, sir.

Q. Is that a large or small quantity in respect of the amount that was being used during the same period by American Timken?

A. Very small.

Q. Have you any idea at the present time how many bearings in millions were being produced by the American Timken at that time? If you don't, why, we will show it otherwise.

A. I don't have the slightest idea.

Q. "In order to facilitate the heat treating problems and the various other problems entailed in the handling of four different grades of steel, it was decided to standardize on one kind of steel, that is, low carbon chrome alloy, and use [fol. 1094] this for everything."

Who reached that decision to standardize on low carbon chrome alloy for the production of tapered roller bearings in England?

A. All of us at British Timken, together with myself.

Q. By "all of us" you mean Mr. Dewar and yourself?

A. Well, and the shop people and the metallurgical staff and the engineering staff.

Q. And that was the decision that was jointly given and jointly arrived at?

A. That's correct.

Q. "It was further decided to purchase all tubing from us, at a price of $.095 F.O.B. Canton, or approximately $.105 at Birmingham."

When you say "purchase the tubing from us" was that from American Timken?

A. That is correct.

Q. Theretofore had there been any sales by American Timken to British Timken of tubing, to your knowledge?

A. Oh, there might have been some small ones. I don't recall.

Q. But not in quantity.

A. No.

Q. "As will be noted, this is a direct saving of approximately 10 percent, but will be a much greater saving, as [fol. 1095] we can supply tubing where forgings are now being used."

Going back again, that was one of the matters that you discussed a few minutes ago when we talked about the advantage of using tubing as against solids in the production of parts?

A. That is correct.

Q. "Details will be given later in this report. So far, they have been unable to purchase or even get prices on our nickel molybdenum steel, for the reason that it is apparently very difficult to obtain molybdenum in England, and also is very costly. The writer explained the qualities of this particular type of steel and its superiority over the chrome alloy in roller bearing use, and this had additional influence on their deciding to purchase all tubing from us."

Was that a factor that was being considered by all of you jointly in the discussion about the type of steel that would be used and the purchase of tubing from American Timken?

A. Yes, sir.

Q. Under the heading "Production" it states:

"At the present time British Timken are manufacturing [fol. 1096] 3,000 bearings a day, with a force of 460 people in the plant and 70 people on their office payroll, including Sales and Engineering Departments."

Could you give us some approximation of the number of people that were then employed by American Timken for the production of bearings?

A. I'm afraid I can't.

Q. Do you know how many were in the Columbus plant when you left there in 1927?

A. Yes, I think we had about 1500 there at that time.

Q. And that was a larger or smaller plant than the Canton plant?

A. Oh, much smaller.

Q. "This production is the highest they have ever attained, and is 50 percent greater than the average 9 months' production from October 1, 1926 to June 30, 1927, amounting to 2,000 pieces daily. This increased production has been warranted almost entirely by increased sales in the commercial vehicle and motorcycle field. Details of these matters will be given under the 'Sales' heading later in this report."

Now, the next heading in the report is on the subject of "Screw Machines", and before reading what appears here in respect of the use of screw machines, will you [fol. 1097] tell the Court briefly what part of the production of tapered roller bearings is handled on screw machines?

A. The cup and the cone, and in a very few circumstances the rollers.

Q. And they are made from tubing?

A. The cup is made from tubing, the cone is made from tubing. The rollers, substantially, from wire as I explained before, and in some few instances from bars. That's the American practice I'm explaining to you.

Q. Yes, and that was the practice that was being followed by American Timken in 1927?

A. That is correct.

Q. For your cups and cones, the size of the tubing, as I understand it, almost approximates the size of the cup or cone in the size you want to produce?

A. That's right.

Q. In contrast with that what other methods are used for the production of cups and cones?

A. Well, they can be made from bars, they can be made from forgings, they can be made in some cases from stampings.

Q. Going on with the report:

"At the present time our British Plant is using Acmes and Gridley automatics for their bar and tube work, and [fol. 1098] Potter & Johnson and Gisholt Chucking Machines for their forging work."

From that is it correct to assume that they were using the forging process for producing cups and cones, as well as the screw machine process?

A. That is correct.

Q. "Production on all of this equipment is very much slower than ours, as evidenced by the following figures." Then under the heading of "Screw Machine Comparisons" you have various part numbers. Canton, on Part No. 14120, Type of Machine Acme No. 56, 60 pieces per hour; British Timken on the same part number on an Acme No. 56, 29 pieces per hour.

Were those figures that you got at that time in your visit to the British Timken plant?

A. Yes, sir.

Q. Then looking at Part No. 419 in the table, it shows Canton produced with a Gridley 3¼" 17 pieces per hour, and on the same part number and with the same machine British Timken produced 12 per hour. On Part No. 09074, production on Acme No. 56 was 67 per hour in Canton, and on the same part number with the same equipment, British Timken was producing 33 per hour. On Part No. 412, on a Gridley 4¼", the American production was 21 per [fol. 1099] hour and British Timken production was 10 per hour.

That reflected information that you had obtained from British Timken in respect to the operation of their screw machines?

A. That is correct.

Q. "The quality of work is about on a par with ours. A large part of the slowness of British production is explained by the fact that they are considerably handicapped, due to inadequate raw material. All part numbers up to and through the 200 series are made from bars, and tubes are used for the larger sizes. However, in order to keep raw material inventories down to the extent of limiting sizes of tubing for different cups and cones, it is the practice to make a large number of cups and cones from the same size of tubing, with the result that in many cases a great deal of excess stock is removed."

Now, is it correct to say that they used tubing to make a great variety of sizes, and in the grinding operation it took to remove a sufficient part of the metal to reduce the large sized tubing to a smaller size that they wanted to achieve?

A. No, not necessarily in the grinding operation. That was done in the screw machine operation.

Q. In the screw machine. But you say here that "it is the practice to make a large number of cups and cones [fol. 1100] from the same size of tubing."

A. Yes. Let me explain that to you. We might have a tube with a 3-inch diameter, and they would try to make probably six or seven sizes from that. Our practice had been that instead of having one tubing we had 3-inch, we might have 2-7/8, another of 2-3/4, and one of 2-1/2, and so on, which was machined to the size of the finished ground piece.

Q. And as a consequence in America it was not necessary to take as much metal off of a tube as it was in England?

A. That is correct.

Q. And, of course, the use of that process of removing more metal increased the cost?

A. That is correct.

Q. "I was further advised that the quality of tubing is very uncertain, and ranges in hardness from 150 Brinnell to 250 Brinnell."

What do you mean by Brinnell 150 to 250?

A. That's the measurement of the hardening of a product, a piece of tubing.

Q. Is that range of 150 to 250 a rather large range to cope with in grinding operations or cutting operations?

[fol. 1101] A. In cutting operations, very large.

Q. "and that, as a result of this condition, they slow down the machines to keep the tools in a fairly satisfactory condition. Mr. Loader, Superintendent, stressed this point very much, and stated that if he were given material similar to the kind we were using, that he could equal our unit production in almost all cases, but that his general overall efficiency in the Screw Machine Department would be lower than ours, on account of the great number of changes he was called upon to make."

What do you mean by the great number of changes he was called upon to make?

A. Well, he could never run as many pieces at one time as we at Canton could run. He would have to change his machine set-up in his operations.

Q. And by machine set-up you mean what?

A. Delay in changing the tools necessary for making the product.

Q. You mean by the tools the cutting tools that are used?

A. That is correct.

Q. So that because of what they call in the production department shorter runs, there were more times when the [fol. 1102] machines were down and not actually producing, because of the necessity of changing the cutting tools on the equipment?

A. That is correct.

Q. "As an indication of this latter problem, the writer made a study of the product sold from October 1st, 1926 to June 30th of the current year, and finds that during this interval 38 percent of the cones sold were in quantities of less than 50 pieces for the entire period."

How did that compare with the product of American Timken in respect of production?

A. Well, that's a rather hard one to answer. I don't recall that we ever at Canton had to make pieces in quantities of 50 at a time. We made them in quantities of thousands at a time.

Q. And that, of course, had a very decided bearing, did it, upon the cost of the product?

A. That is correct.

Q. And eliminates the time lost in tool changes in the equipment?

A. That is correct.

Q. "This of course complicates the manufacturing problem at British Timken, particularly in the Screw Machine Department, and the remedy for this will be dealt with later in this report. All automatic screw machines, both [fol. 1103] multiple and single spindles, are operated on a basis of a man and a helper to 6 machines. The Potter & Johnson chucking machines are operated on a similar basis; the Gisholts are operated one man per machine. At the present time 31 different parts are made from forgings on these chucking machines, and machine times compare with ours as follows."

What do you mean by chucking work?

A. Well, a forging is put on a chucking machine rather than on a bar machine for actual machining purposes.

Q. And what process is done on the chucking machine when you put a forging on it?

A. The same as on a bar machine, it removes metal from the piece too, from the forging.

Q. In comparing this in the tabulation you show in Canton two operations on Part No. 6552, using a Gridley machine, 4 pieces per hour; in British Timken 3 operations on a 6552 cone, using a Potter & Johnson, 2 pieces per hour. At Canton, 2 operations on a 6520 cup on a Gridley machine, 5 pieces, with 4 machines to 1 man; at British Timken 3 operations on the 6520 cup, using a Gisholt, 2 pieces per hour. In Canton for the 5520 cup, on a Cleveland automatic, 10 pieces per hour with 4 machines to one man; [fol. 1104] British Timken, from forgings, on the 5520 cup, using the Gisholt machine, 2 pieces with 1 machine to 1 man per hour.

Those were also figures that you obtained in respect of production at the British Timken plant in 1927?

A. That is correct.

Q. "British Timken has just purchased the following used machinery from Wolseley Motors: "6 Potter & Johnson, automatics at $1500 each; 3 Gisholt lathes at $1,000 each, a total of $12,000. These machines are now being rebuilt at an estimated cost of $200 each. Here again it would have been far more advisable to have purchased modern machinery, such as Gridley Single Spindles with the necessary tooling, and for the amount invested we could have purchased four of this type of machines, which would have handled, with adequate forgings, more production than the heretofore mentioned Potter & Johnson and Gisholt equipment."

In other words, was it your conclusion then that even if these machines they had bought were rebuilt they still would not be in a modern condition by comparison with what was being used at American Timken?

A. Yes, sir.

[fol. 1105] Q. "This was explained to Mr. Dallow, who of course, had no knowledge of this type of equipment, but with which Mr. Loader, Shop Superintendent, was acquainted.

The writer discussed with Mr. Loader the question of speeding up present Acme Automatics, as they were cutting a very thin chip and seemed to be under no handicap due to the material situation heretofore described. Mr.

Loader was quite reluctant to do this, but with the help of Mr. Drissner, of the National Acme Company, we finally persuaded him to try one machine. This was done, and after four days' operating conditions he was satisfied that all of this type of equipment could be speeded up 30 percent, and he further agreed to do this at the earliest possible moment. Mr. Loader is very enthusiastic about using our tubing, and feels confident that he can reach our productive times on various part numbers as soon as he has a complete supply of our material."

Now, this discussion that took place about speeding up the Acmes, did you participate in that?

A. Yes, sir.

Q. And your purpose in persuading the superintendent of British Timken to speed up the Acme Automatics was what?

A. To lower cost and increase production.

[fol. 1106] Q. And did they follow the suggestion that you made in that regard?

A. Yes, sir.

Q. "The methods now used for the machining of forgings are very obsolete, and we can, through the use of tubing, replace forgings now used on 23 part numbers."

That had an effect on cost too, did it not?

A. Yes, sir.

Q. And would also have an effect on increasing production, would it not?

A. That is correct.

Q. "However, in order to do this, at least 2 large, single spindle automatic machines of 6½" to 7" capacity should be purchased. They now have one 6" Cleveland Automatic but in order to take advantage of tubing in place of forgings, they will need two additional machines. Furthermore, two single spindle chucking machines of the Gridley type should be purchased, one for the inside operations and one for the outside operations."

By inside operations and outside operations you refer to the inside and outside of the cups and cones of the roller bearing assembly?

A. That is correct.

[fol. 1107] Q. "The commercial vehicle end of our business is growing very rapidly, and it can be readily seen

from the figures heretofore submitted, that their present method of making these cones and cups on Potter & Johnson and Gisholt lathes is simply throwing money away."

Why did you say that, that they were throwing money away by the use of these two types of equipment?

A. Because the costs were so high and they could make them much cheaper in other ways.

Q. What effect did the high costs have upon the competitive situation of the British Company?

A. Well, they had to charge higher prices constantly.

Q. "Furthermore, one small 2" fast automatic of the Cone or Acme type should be purchased for the manufacture of the smaller bearings, such as the 09070 series and the 1100 series which is used on motorcycle work. We have been unable to obtain the Ford replacement business, due to high costs, and it is the writer's opinion that with adequate screw machines of a modern type we can materially reduce our costs in this operation."

Now, do you know whether or not they did ultimately purchase the type of equipment that you recommended here?

A. I think they did.

[fol. 1108] Q. "Summarizing the general screw machine situation, the following action should be taken:

All Acme Automatics on cups and cones should be speeded up at least 30 percent.

The following equipment should be purchased:

2 Cleveland Single Spindle Automatics, 1 2" Cone or Acme Automatic, 2 4¼" Single Spindle Gridley Automatic Chucking Machines, total investment $16,000.

In the manufacture of rollers they are now using roll automatics similar to ours, but it was decided to purchase all rollers from us, in a hardened condition, and I quoted a price of our cost plus 75 percent F.O.B. Canton. No duty will be incurred, as this class of material will come under the classification of "Raw and Process Materials." However, sufficient material is on hand and on order to cover their roll needs until approximately January 1st, 1928."

Now, when you say "purchase all rolls in a hardened condition", was it necessary to perform any other opera-

tion on them after they arrived at the British Timken plant?

A. Yes, they had to be ground to the various sizes.

Q. And that was the reason they could be classified so that they could be shipped duty free, as raw and process [fol. 1109] materials?

A. I don't know whether they could be brought in duty free or not.

Q. Well, you say here "no duty will be incurred, as this class of material will come under the classification of Raw and Process Materials."

A. Apparently that was correct.

Q. Under the heading "Carburizing", and that was the process you described, the process you discussed a little while ago:

"Our British Plant is using at present eight pot type carburizing furnaces, four of which are fired by gas, and the remaining four by coke. These furnaces are used on cups and cones, with bone-meal as an energizer in the ratio of one part new meal to three parts old meal. The time of product in the furnaces is about the same as ours for this type of work, but there was considerable variation in quality. The writer examined fractures from day to day, in which this variation reached a strone 1/32, and in a few cases reached 3/64."

What do you mean when you say you examined fractures, [fol. 1110] and they reached 1/32 or 3/64?

A. Well, it's a practice in heat treatment to examine the internal condition of the product by breaking it in several pieces.

Q. That's the fracture part, and what is the 1/32 or 3/64 you refer to?

A. That's the depth of case.

Q. That is the depth of this hardened area on the outside of the component that you are trying to harden in the carburizing process?

A. And in the hardening process.

Q. And in the hardening process.

A. Yes, sir.

Q. "This part of their work was not receiving the atten-

tion it deserved, and I requested that this be given better supervision, which was done, and will be described a little later on in this report. Roll carburizing is done with small gas type furnaces, similar in general design to our furnaces, but built very crudely by British Timken many years ago. These furnaces hold 100 pounds each, and the product was being quenched in water from 50 to 75 degrees Fahrenheit. Fractures also showed considerable variation here, and I was told that these small gas furnaces were not [fol. 1111] very satisfactory. At my request, the quenching medium was changed to oil."

Now, you referred above here to the fact that they were quenching the product in water at 50 to 70 degrees Fahrenheit, and you recommended a change in the quenching medium to oil. Will you tell the Court what you mean by the quenching process?

A. Well, when the product comes out of the furnace it's red hot, and it goes into either water or oil to give it its finished hardness, and the practice in the United States at that time——

The Court: Water or oil, did you say?

The Witness: Water or oil.

A. (Continuing) The practice in England at that time was to quench in water, which is a very severe shock to the piece itself, and I suggested that oil be put in in lieu of water, which gives a much better product than they were getting.

Q. "At my request, the quenching medium was changed to oil. Due to the fact that Mr. Morris, when he takes over the present plant, does not wish to give up the carburizing furnaces, it was necessary for us to place orders for new furnaces. As a result, six pot type furnaces were ordered [fol. 1112] and are to be installed at the Aston Plant by October 1st. These furnaces are approximately the same as ours, costing $800, but will be gas-fired and of a modern design. I requested that they be made high enough so that our obsolete nichrome carburizing pots could be used. This was not possible, except by breaking off the legs of our nichrome pots, which will be done if we decide to sell them our pots."

Do you mean by that that American Timken had some carburizing pots that they had used?

A. That's right.

Q. And had they been discarded for any reason?

A. They had been discarded for a change in method.

Q. What was that change in method?

A. We had gone to the gas carburizing process rather than the bone-meal process for rollers.

Q. So that these michrome pots which could be used on the type of process they were going to use in England had been discarded by American Timken?

A. That's right. I don't think they used them. You might read on there.

Q. "Due to the fact that the gas available in Birmingham was a B.T.U. content of 460 to 480, it is impossible to use gas carburizing furnaces."

[fol. 1113] In other words, the furnaces that we were using, gas furnaces, were for natural gas with 1,000 B.T.U. content and couldn't be used there, is that correct?

A. That is correct.

Q. The next heading is "Hardening". Going on:

"Cup and cone hardening is done on a stationary hearth type of furnace, a good deal like the standard heating furnace used in a forge shop. Four of these furnaces are in use, all gas-fired, and with pyrometric control. Quenching is done in exactly the same way we used ten years ago, namely, using a tank with a hand-operated quenching plate, on which are inserted plugs of the cast iron type. They also have two roll-retort furnaces which are used for roll hardening. However, due to the lack of equipment, rolls are receiving only one treatment, and only fair results are being obtained."

Will you explain to the Court the difference between the hardening process as it was used by American Timken and as being used by British Timken at the time you went over there in 1927?

A. Well, on the cups and cones they were using a process that, as I say in that report, we had discarded ten years before, and we had changed over our methods and were [fol. 1114] constantly improving them, and they apparently never knew about that.

Q. And the hardening process that they were using in respect of the cones, was it more costly than the process used in American Timken?

A. Yes, sir.

Q. And did you explain the advantages of changing the hardening method?

A. Yes, sir.

Q. Then following is a comparison of cup and cone hardening times. On Part No. 5720, in Canton, on the Rotary Hearth Furnace, 120 pieces per hour; British Timken, on cup 5720, Stationary Hearth, 27 pieces per hour. In Canton, on 319 cone, on the Rotary Hearth, 185 per hour; and British Timken on the 319 cone on the Stationary Hearth, 40 pieces per hour.

Were those figures that you accumulated at the time of your visit in 1927?

A. Yes, sir.

Q. "The writer was very much disturbed——"

The Court: Where were these figures obtained from?

The Witness: At British Timken's plant, their Statistical [fol. 1115] Department.

Q. Were they obtained for any particular purpose at that time, Mr. Hess?

A. Yes, for comparison purposes, to see what we could do to increase their production and lower their costs.

Q. "The writer was very much disturbed by the inefficiency of the entire Heat Treating Department, and especially of the fact that practically no fractures were being made from the hardening furnaces."

What do you mean by saying practically no fractures were being made?

A. Well, it had been our heat treating practice to make very many fractures, running into hundreds of pieces each hour, and examine the structure of them. I found that British Timken, I think I mention there, made very few per day, very few pieces per day were being fractured.

Q. Going on with the report here you say:

"The first two days I was there, only three fractures had been made, and only one of these fractures showed even a fairly good satisfactory heat treatment. Supervision of this department is not good, and has been handled by the Wolsel-y Motors through their metallurgists. Our superintendent, Mr. Loader, disclaimed all responsibility except that for the past 60 days, and it is very evident he

[fol. 1116] knows practically nothing about this branch of the business, other than the labor element. I explained to both Mr. Dewar and Mr. Dallow that we were in real trouble in this department, and that intelligent supervision must be installed at once. As a result a metallurgist by the name of Evans was hired from Wolseley Motors, and I was pleased to find he is thoroughly familiar with our work, and also he realized our wretched practice in this department. He promised me that if I would obtain permission for him to spend all of his time in the Heat Treating Department, he would materially improve it, even with its present poor equipment, within 30 days time."

Was this change of personnel and the employment of a new metallurgist done at your suggestion?

A. Well, I would say it was done largely through my criticism of the operations there, but I don't recall suggesting Mr. Evans. I don't believe I ever knew him before.

A. But you did suggest that a new man should be put on the job?

A. That is correct.

Q. "I obtained this permission from Mr. Dewar, and, as a result, quality should be somewhat better in the very [fol. 1117] near future. To give an indication of this department, we are heat treating approximately 6,500 cups and cones and 40,000 rolls a day, on a three 8-hour shift basis, using a total of 30 men.

The following equipment should be installed in this department at once, and upon such a basis I am very confident this force can operate one shift, with a minimum number of ten men.

6 Carburizing furnaces, 2 Rotary hearth furnaces, 1 Rotary retort furnace, cup and cone plug type, 1 Rotary retort furnace, cup and cone drop type, and 3 quenching machines at $700 each, a total investment of $14,900."

Were those recommendations as to equipment that you made to replace the obsolete equipment that was in use in the heat treating department when you went there in 1927?

A. Yes, sir.

Q. Do you know whether those recommendations were followed out by the British Company?

A. I think they were.

Q. "This department will be greatly aided in its operation, first by the elimination of four different kinds of steel which are now being used, which will be done at once, and secondly, by the use of our nickel molybdenum steel [fols. 1118-1119] with its resulting heat treating practice, and third, by eliminating any roll hardening due to obtaining hardened rolls from us."

The next heading is "Back Face Grinding." It states:

"Due to the demands of the British trade, our cups and cones are ground on both faces on a vertical type of machine, similar in design to the Heald Grinder used in our tool-room. The quality of the work is very good with regard to the flatness, although the surface finish is inclined to be slightly rougher than ours. Production times compare as follows."

Before looking at that table, will you point out to the Court what part of the component parts of the tapered roller bearing are ground in the back face grinding operation that you have reference to?

A. This is the part here on the cup (indicating).

The Court: That's the outside surface?

The Witness: Yes, that's this surface, it's perpendicular, and the same way on the cone. It's this surface here and here, this face (indicating).

[fol. 1120] By Mr. Ketterer:

Q. Referring again to Page 10 of the report, the table that has to do with production in respect of Back Face Grinding, type 419 cone, made on a machine of Canton's own design, production of 300 each face per hour; and in England, on the same type cone, 200 pieces, each face, per hour. On the part 3320, cup, on a machine of the American Timken design, a production of 300 pieces per hour and on the same part number of cup on a P & W machine in England 143 pieces.

Under the heading "Internal Cone Grinding" it states:

"The present method of grinding cone bores is to use machines similar to our old B & S and Modern types. Quality is very good, as all bores are held to .0006 and my inspection showed that they seem to have very little trouble with either a 'bell mouth' or 'taper' condition. Men are

used to operate these machines, but production is very slow, as will be noted in the following comparative figures."

What did you mean by that a 'bell mouth' or 'taper' condition?

A. Well, that is one of the difficulties of grinding cones internally, you usually develop that unless you are grinding [fols. 1121-1126] them very accurately and very good.

[fol. 1127] Mr. Ketterer: Going on with the reading: "The present method of grinding cone bores is to use machines similar to our old B & S and Modern types. Quality is very good, as all bores are held to .0006 and my inspection [fol. 1128] showed that they seem to have very little trouble with either a 'bell mouth' or 'taper' condition. Men are used to operate these machines, but production is very slow, as will be noted in the following comparative figures."

Then follows a table with respect to pieces produced per hour with respect to cone grinding of the Part 419, on the Canton type Heald machine of 87 pieces per hour; and in the British Timken plant of the same part number on a B & S machine of 7 per hour. Then under the Part 09074 on the Canton Heald machine 95 per hour; and with British Timken on a B & S machine 15 per hour.

Then under the heading "External Cone Grinding" it states:

"This operation is done on machines similar again to our B & S External Grinder, and here again production is very slow, but surface finish is good, and I saw no chatter whatever in this operation."

What do you mean by "chatter"?

A. The roughness in the grinding.

Q. "Comparison of production is as follows: External Cone Grinding, Part No. 419, Canton with machine of own design 124 pieces per hour, British Timken with B & S machine 17 per hour, on Part 09074 with the Canton ma- [fol. 1129] chine of their own design 195 per hour and on the same part number with a B & S machine 40 per hour."

Now, on "Rib Grinding". Will you point out on this bearing marked Plaintiff's Exhibit 3 what part or what area is involved in rib grinding?

A. I will point to it but you cannot see it. That is covered by the end of the rollers. That is called the rib

(indicating) possibly you can see through that thin section there.

Q. "Rib Grinding is done on a very light machine, using a solid non-expanding arbor, and while eccentricity limits are .001, I found approximately 10 percent of the product ran as high as .0015 in eccentricity. Production here is also slow, in accordance with the following comparisons."

Then on Part 419, Canton machine of their own design 150 (F type) per hour; the British Timken Churchill machine 40 (V type) per hour; on Part 09074 on Canton machine of their own design 150 (F type) per hour; and in the British Timken Churchill machine 67 (V type) per hour.

"I advised British Timken that as soon as we had de-
[fol. 1130] veloped a satisfactory external cone and rib machine we would send a machine to them for trial and observation."

Do you remember whether that was later gotten?

A. I don't recall.

Q. (Reading) "Only one inspections is used at British Timken, and this is done after the rib grinding operation. Scrap figures for the month of May, compared with our practice, show the following results: Comparison of Scrap (All Operations). Canton 'To man', 5.4% 'Not to man', 1.7%, a total of 7.0%. On British Timken 'To man' 4.0%, 'Not to man' .3%, total 4.3%."

What do you mean by that expression "To man" and "Not to man"?

A. Well, in some cases in grinding they find the defect is the fault of the man himself, inability to do the job, and in other cases it is the fault of the machine or the arbor in which the thing is made.

Q. The first item shown "To man" is the result of the operator, and the other one "Not to man" of the machine?

A. That is correct.

Q. (Reading) "When I reached Birmingham an order had already been placed for one Internal Heald Cone Grinder, at the price of $5,000. Three more of these ma-
[fol. 1131] chines were optioned at the same figure, which I advised was entirely too much to pay for these machines. The sales representatives for the Heald Company were called in, and after considerable negotiating they reduced

the price of the machines on option, $500 each, but refused to reduce the price of the machine now on order."

Did you participate in those negotiations?

A. Yes, sir.

Q. (Reading) "At my request they called the Heald Machine Company to equip the machine on order with Timken Bearings, and all machines in the future will be so equipped. Delivery of this machine was promised for September 1st-15th, and in order to avoid the dealy which would have been incurred through British Timken experimenting with spindles, etc., the writer cabled the Canton Plant to forward one internal cone machine completely set up, with extra emery wheels and spindles. This made a decidedly good impression on British Timken, and Mr. Dewar in particular was very grateful for our help in this regard.

In the Cone Grinding Department we should order the following machinery at once:

[fol. 1132] 3-Internal cone grinders @ $4,500 each—$13,500. (Now on option)

These three machines for internal cone grinding, will, in conjunction with the two machines available, be sufficient for all of British Timken's present production on one shift, provided they can reach our production figures on this operation. This, in my opinion, is quite possible.

Internal Cup Grinding.

This operation is done on machines similar to our Moderns and B & S, with resulting slow production, as evidenced by the following figures."

Is it correct to say the American Timken at that time was not using that type of machine for internal cup grinding?

A. I don't recall just what was the situation at that time.

Q. Well, then the comparison is found in the table:

"Internal cup grinding comparison". On the Part No. 1730, on the Heald type machine, production at Canton was 90 pieces per hour; on the British Timken B & S machine 24 pieces per hour; On Part 3320, the production by American Timken on the Heald machine was 53 per hour and the British Timken on the B & S machine 9 per [fol. 1133] hour.

A. Do you mean were we using the Heald grinders at Canton?

Q. Yes.

A. Oh, surely.

Q. But you say they were using machines similar to your Moderns and B & S which were not Heald.

A. They used all kinds of grinders. There were the Modern grinders to grind the internal cone, and the Brown & Sharpe, which were the B & S, and the Heald grinder, which were all doing the same operation.

Q. (Reading) "Surface finish is very good, and all cups are held to a stand of .006 high and .000 low.

British Timken were not familiar with our Heald Internal Cup Grinder, and as a result, the writer cabled for one of these machines to be shipped to them."

Was that done?

A. Yes.

Q. (Reading) "This will be put into production as soon as it arrives. For this operation the following equipment should be ordered at once:

4—Heald Sizematic Internal Cup Grinders @ $4,500 each—$18,000.

[fol. 1134] With this quantity of machines it is felt all of British Timken production can be handled on one shift. Reasons for not operating two shifts will be given later in this report."

Under the heading "External Cup Grinding".

"This operation is done on Landis External Grinders at a slow production rate, but with fairly good quality and the surface finish is good, and limits for size and out-of-round are held to .001. At the present time British Timken have one O. D. Centerless Cup Grinder in use, which is operating very satisfactorily. Production time on these 'O.D.' machines is as follows:

External Cup Grinding Comparison. Part No. 1730, on the Cincinnati Centerless 400 (4-pass) pieces per hour; on the British Timken Cincin-atti Centerless 120 (5-pass) pieces per hour."

What do you mean by 4-passes as distinguished from 5-passes?

A. That is the number of times the product itself goes between the emery wheels on the machine. That is purely a question of good practice.

Q. As to whether or not you placed the part in contact with the emery on the grinding machine four times or five [fol. 1135] times in the grinding cycle?

A. That is right.

Q. Now, in Canton, on the production of the 3320 on the Norton machine, 300 pieces per hour and British Timken on the Landis machine 21 pieces per hour.

"They are giving their cups five passes, and the examination of the produc. showed that all of these cups were being held within a .0006 limit, and that the surface finish was fairly satisfactory; the only objection in this latter regard being a slight roughness, which of course was of no great importance. British Timken had ordered an additional external cup grinder from Cincinnati Centerless, at a price of $7,800, compared with our price for a similar machine of $6,500.

This additional machine will give Britsh Timken, so I was advised, sufficient equipment to handle all of their cup production on one shift. The writer does not agree with them on this point, as they will have considerable changes to make, with a resulting decrease in machine efficiency. However, no recommendations for further equipment of this kind will be made, in view of the heretofore mentioned British statement.

At this point it should be stated that the writer was very [fol. 1136] blunt in his criticisms, both to Mr. Dewar and Mr. Dallow, of the British Timken purchasing policy with reference to machine tools. I requested that in the future no purchases should be made of any kind of machinery without first discussing it with us and ascertaining in particular the prices we have for such equipment. It apparently is not the British attitude to be what we term 'close buyers', and I spent a great deal of time getting this idea across to them. In most cases it was not possible to go back over past transactions, but I was assured by Mr. Dallow that he would be very careful in this regard in the future, and both Mr. Dewar and Mr. Dallow agreed to purchase absolutely nothing of a major nature without consulting with us in advance."

You say you were connected with the Timken Roller Bearing Company until in 1936. Did you maintain contact with them from 1927 until 1930 at various times?

A. With the British Company?

Q. Yes.

A. Yes.

Q. Was that procedure followed of consulting with the American Company when any major purchases of equip-
[fol. 1137] ment were made?

A. Yes, sir.

Q. (Reading) "Only one cup inspection is used, and results compare with ours as follows:

Comparison of Scrap (All Operations)."

In Canton 'To man' 3.4%, 'Not to man' 3.5%, total 6.9%; in British Timken 'To man' 4.7%, 'Not to man' .1%, total 4.8%.

"Roll Grinding"

"The present method of grinding rolls is on machines somewhat similar to our old roll grinders, and these machines are of a semi-automatic nature, operated by girls, so that one girl is required for each machine. Production is very slow, and surface quality is about the same as ours. The taper on the rolls I examined was very good, but 'out-of-round' ran from .0002 to .0004. This type of machinery is obsolete with British Timken, as they are now using three Cinc-nnati Centerless Grinders for this operation. All rolls are given two passes at a production rate of 60 and 45 per minute. At present two girls are operating these three machines, with the aid of a lineman. Quality of product is practically identical with ours, to the extent that they are having a difficult time in overcoming a
[fol. 1138] slight chatter."

Is that the same thing you described, slight roughness?

A. Yes, sir.

Q. (Continuing reading) "But 'out-of-round' and taper was very good. I was unable to obtain any definite figures with regard to rejections for taper, as all of the rolls were being mixed with similar rolls ground on both types of machines; but the total taper rejections were .5%. British

Timken have placed orders with the Cincinnati Centerless Grinder Company for the following additional equipment:

3-No. 2 Centerless Grinders for rolls @ $5,375 each—$16,125.

Delivery about September 1st, 1927.

This compares with our price for similar equipment of $4,400 each. This equipment will be sufficient to handle all British roll production on one shift, according to Mr. Loader. I explained to him in this regard that he would probably have to operate two shifts, as the hardened rolls that we would supply him would be made on the headers and have about .025 to remove, whereas his present rolls [fol. 1139] have only .010 to .012. He said he thoroughly understood this, and was prepared to make any necessary changes in his production plan, even to the extent of giving additional passes should he feel the same was necessary. No recommendation will be made for the purchase of any additional roll grinding equipment, as the writer feels the present equipment is ample.

The end grinding of rollers is done on a very small machine, similar to the Woods Grinder we formerly used, where the roll is placed in a collet and fed up to the emery wheel. This applies both to the "V" type and the "F" type roll now in use. British Timken are very desirous of obtaining a Keller Grinder from us, but the writer explained to them that this machine was obsolete with us, and as soon as our new machine had progressed far enough along, we would be glad to forward one to them.

Scrap rejections for rolls are running as follows."

In Canton "To man" 0.0% "Not to man" 0.1% total 0.1%, in British Timken "To man" 2.4% "Not to man" 1.0% total 3.4%.

Then there is under that (a) referring to the Canton, [fol. 1140] "Covers past three months—centerless grinders, 3-pass roll.

Here again it was not possible to separate the rejections for the centerless ground rollers from the other rolls, but I was told that centerless rejections were materially less, and Mr. Loader stated that he would have his total rejections so that they would compare very favorably with ours."

I would like to ask you with respect to the prices of

rolls on so-called centerless grinders, as I understand from what we have read, British Timken was using another method of grinding rolls which did not involve the use of centerless grinders, is that correct?

A. I think some of their rolls were ground on what we call center machines, not centerless machines.

Q. On center machines?

A. Yes.

Q. As to the cost in production, without going into the technical difference between center and centerless, how would that compare?

A. Well, the centerless is very much lower in cost.

Q. (Reading) "Inspection. British Timken inspection methods are quite thorough, but rather badly managed [fol. 1141] as far as organization of the Inspection Department goes. For example, their Inspection Department consists of 38 girls and 19 men. A careful analysis by the writer convinced me that this work could be done with approximately 30 perople, of which 90 percent would be girls. This information and details were given to Mr. Dallow, our director at Birmingham, who assured us that the would take the necessary action to accomplish this end. They do not use any cone hole gauging machines or cup stand machines, nor O.D. cup gauge machines, but sufficient equipment along this line will be built at once. Cones are not size-gauged, but this operation is eliminated due to the very slow external grinding, where uniform cone sizes are obtained. Roll inspection for taper is done on a small hand gauge at the same time the rolls are given visual inspection. Roll gauging for size is done on a home-built machine, with the principle of passing the roll automatically between two hardened and ground plates, reaching an apex. Drawings of this machine are in our hands, and a detailed explanation can be given by the writer.

Production on these gauging machines runs about 600 pieces per hour, and in view of our contemplated changes [fol. 1142] in gauging practice, the writer made no recommendation covering the change in this equipment."

Now, under the heading "Assembly, Testing, Packing".

"British Timken use men on the assembly bench, and at present, assemble 3,000 cones daily with 9 men. Their as-

sembly practice differs from ours, to the extent that the rolls and cages are assembled and immediately closed in on small hand presses by the assembler, who also places the equivalent cup with the assembled cone. The product is then passed through a very crude sound testing machine, which is nothing more than a small drill press operated by a boy. No test pieces were available, and this boy's judgment, backed by Mr. Loader, are the limiting elements for this test."

Will you tell us what you mean by sound testing bearings?

A. That is to determine the degree of quietness the bearing has when it revolves.

Q. (Reading) "Assembled cones are measured for stand in cup by one man, who in turn passes them, still accompanied by the cups, to a girl, who slushes and sends them to the Shipping Department."

[fol. 1143] The slushing operation is what?

A. Putting oil on them.

Q. For what purpose?

A. Shipping purposes.

Q. That is to prevent them from rusting?

A. Yes.

Q. (Reading) "All product is shipped in individual containers, and in boxes which compare in size with ours, to the extent of being just twice as heavy, and considerably over-built with regard to re-enforcement pieces, etc. It might be well to remark here that there is no reason in the world why this assembly cannot be done by girls, as well as the succeeding inspection operation, and I was assured by Mr. Dewar that this change would be made when we move to the new plant at Aston. Furthermore, the earnings of these assemblers are out of all proportion to the rest of the plant, as will be noted later on in this report, under the heading of 'Payroll and wages'. Stocks of finished non-assembled cones and assembled cones are handled in exactly the same manner as ours, with the exceptions heretofore mentioned, that all single cones are packed individually with the corresponding cups."

[fol. 1144] "Payroll and Wages."

"At the present time British Timken shop payroll is running $40,000 monthly, and shows an average hourly earning rate of $.36. The general office and departmental payroll, including the Sales Department, but excluding the salaries of Mr. Dewar, Managing Director, and Mr. Nallow, Dircetor at Birmingham, runs $6,700 monthly. All major departments are operating three shifts. The day shifts operate on a 47-hour a week basis, at the rate of 8 to 9 hours per day. The Heat Treating Department operates three 8-hour shifts six days per week. All major operations are on piece-work, and payroll figures show that approximately 65 percent of the shop force is on a wage incentive basis of some kind, and develop an average hourly rate of $.40 per hour.

The wage situation in England is controlled by the unions to the extent that hourly rates are set up for each occupation, and to which all manufacturers agree. The unions also set and control conditions of employment along the line that 47 hours is the normal working week, and any time over this is considered extra time and paid on a varying scale, such as time and a half and double timm, which [fol. 1145] in turn is controlled as follows:

All time after 5:45 P.M. must be paid at the rate of time and one-half, and all Saturday afternoon or Sunday time is considered overtime and is paid at the rate of double time. All night shift operators are paid at the rate of time and one-third. (This makes night shift operation very expensive and to be avoided.)

Piece-work is permitted and used in England, under the condition that all piece-work rates shall develop earnings not least 33-1/3 per cent higher than the union hourly rate for such occupation or work in which the piece-work is used. Furthermore, no changes in the piece-work rates can be made unless there is a definite change in the method of manufacture. As an example, to change the camming and the tooling on an automatic to speed up the work is not considered a definite change in method, and no change in a piece-work price is permitted. However, if the product was originally made, for example, on a No. 56 Acme and changed over and manufactured on a 2-inch Acme, this would be considered a change in method, and the resulting

decrease in piece-work rates could be made. There is still [fol. 1146] standing in British union labor agreements a clause to the effect that men will not earn over a certain amount, but this is no longer in force, and everyone earns all he can.

There is now in use in England a plan of wage payment which is an outgrowth of the war, known as the National Wage Advance, hereinafter referred to as N.W.A. It appears that during the war these N.W.A.'s were made periodically by the government in the form of a certain amount to be added to the weekly wages of each employee. No varying amount was given, based on a 47-hour week for day workers (and amounts to approximately $3.15 per week to night workers), regardless of the amount of earnings made in their regular routine work. As a result, for the lower-paid workers this so-called bonus amounts to approximately 30 percent of their wages, and drops down for the higher-paid workers to about 20 percent. Please understand that the employer has no control over this particular feature of wage payment. Just before the writer left England, the engineering unions, which we would call in our country machinists unions, had succeeded in obtaining an increase amounting to $.50 per week. They had originally asked for a $5.00 per week increase, but were vig- [fol. 1147] orously fought by the manufacturers, who finally compromised on the 50-cent rate increase. This takes effect August 1st.

Labor unions are accepting the use of production machinery, and while they still cling in principle to the old theory of limited production per man, I was advised everywhere in England that this had been abandoned, but had not been officially abandoned in any published statements up to this time. However, the situation in Birmingham, not only in our plant, but in two others that the writer visited, viz., the Hardy-Spicer Universal Joint people and the Wol-sely Motors people, all stated that production machinery was accepted by the unions in every regard. This same statement was made at the Gillette plant, which is located 20 miles south of London, and in which plant all American machinery and American methods are now in use.

However, in our British Timken plant the method used

when installing new machinery, is to place the new machines in a separate room away from the general production routine, where all tests are conducted and piece-rates figured. After an interval of from three to six months the [fol. 1148] machines are then transferred to the production line and immediately accepted by the employees, regardless of the fact of how many are dropped from the payroll as a result of the higher rate of production per machine.

One of the outstanding labor situations in England is the wide employment of boys and young girls. Anyone reaching 14 years of age can go to work, but it was my observation that enforcement of this regulation was very lax, and it seemed to me that boys of 10 and 12 years of age working in plants was very common. It is a very distressing sight to see little, slight, slender lads trying to lift heavy pans, etc., and our plant at Birmingham is no exception to the rule. Of course, this has a very decided advantage in low labor costs, as evidenced by figures set forth a little later on in this report. All of these boys, incidentally, are used for secondary operations, such as chamfering, etc., whereas girls are used both on roll surface and roll end grinding, and in the usual inspection departments, etc."

He then shows a comparison of wage rates between British Timken rates and the Canton rates. I don't think I shall take the time to read that. I don't think that is [fols. 1149-1150] necessary or particularly pertinent to the matter we are interested in here.

[fol. 1151] Under the heading of "Comparison of Wage Rates" there appears on page 18 a comparison of British rates and earnings with rates paid in the Canton plant, and the average earned rate on different types of operations. Under the heading "Automatic operator" the hourly rate shown for British Timken is 24 cents, and the average earned rate is 59 cents, to which is keyed a footnote (a) which says: "Earnings per hour include day rate plus N.W.A. award plus piece-work earnings."

At Canton the hourly rate for automatic operator is 47 cents and the earned rate is 91 cents, to which is keyed [fol. 1152] a footnote under (b) which says, "Earnings per hour represent departmental average." Under the

heading "Automatic helper" the British rate is shown as 18 cents and the earned rate 45 cents; in Canton the hourly rate is 42 cents with an earned rate of 55 cents. Under the heading "Chamfering, etc. (boys)" the hourly rate as shown in England is 12 cents, the earned rate 16 cents; the hourly rate in Canton is 40 cents with an average earned rate of 52 cents. Under the heading "Heat treating (fireman)", the hourly rate in England is shown as 22 cents and no earned rate; the hourly rate in Canton is shown as 55 cents and no earned rate. Under the heading "Heat treating (operator)" the hourly rate in England is shown as 20 cents and no earned rate; and in Canton the hourly rate is shown as 45 cents and no earned rate. Under the heading "Cone grinders (lineman)" the hourly rate in England is shown as 24 cents, with an earned rate of 52 cents; in Canton the hourly rate is 65 cents, and 78 cents is the average earned rate. Under "Cone grinders (operator)" the hourly rate in England is 19 cents and the average earned rate is 51 cents; the hourly rate in Canton is 50 cents with an average earned rate of 76 cents. Under the heading "Cup grinders (lineman)", in England the average hourly rate is 24 cents and the earned rate is 52 cents; in Canton the hourly rate is 65 cents and the average [fol. 1153] earned rate is 78 cents. Under the heading of "Cup grinders (operator)" the hourly rate in England is 24 cents with an earned rate of 52 cents; in Canton the hourly rate is 50 cents and the earned rate is 76 cents. Under the heading "Roll grinders (lineman)" the hourly rate in England is 24 cents, the earned rate 52 cents; in Canton the hourly rate is 65 cents with an earned average of 77 cents. Under "Roll grinders (female operator)" in England the hourly rate is 14 cents with an average earned rate of 21 cents; in Canton the hourly rate is 50 cents and the earned rate 77 cents, and to that is keyed a footnote under (e) which says: "Represents male operator."

Under the heading "Inspectors (male)", in England the hourly rate is 21 cents with no earned rate; in Canton it is 44 cents, with no earned rate. "Inspectors (female)", in England the hourly rate is 14 cents with no earned rate; in Canton the hourly rate is 29 cents with no earned rate. "Assemblers (male)", in England the hourly rate is shown

as 20 cents with an average earned rate of 65 cents; in Canton the hourly rate is 25 cents and the average earned rate 40 cents, with the word "female". "Assemblers (male)," in England the hourly rate is 20 cents with an earned rate of 65 cents; and in Canton 25 cents and 40 cents.

[fol. 1154] "Storekeepers, stockmen," the hourly rate is 18 cents in England, and no earned rate; in Canton the hourly rate is 50 cents with no earned rate. "Toolmakers," in England the hourly rate is 24 cents with an earned average rate of 50 cents; in Canton the hourly rate is 65 cents and the average earned rate $1.05. "Laborers," in England the hourly rate is 16 cents with no earned rate; in Canton the hourly rate is 40 cents. "Millwrights," in England the hourly rate is 24 cents with no earned rate; in Canton, 50 cents hourly rate, with no earned rate. "Electricians," in England the hourly rate is 24 cents with no earned rate; in Canton the hourly rate is 55 cents with no earned rate.

"Office clerks (male)," in England $65 per month, and in Canton, $115 per month. "Office clerks (female)," $35 per month in England, and $60 per month in Canton. "Stenographers (female)," in England $40 per month, and in Canton $85 per month.

Q. Now, going on to page 19 of your report, Mr. Hess, it states:

"There is no question but that we can reduce British Timken costs 20 percent, and the writer is convinced that if they will use just a little American aggressiveness in the handling of indirect labor, they can increase this figure to 25 percent. During my visit with them we made a very [fol. 1155] thorough study of this factor, and made detail costs of the following part numbers."

Then there is a list of part numbers that I will omit. I don't think there would be any purpose served in reading those.

"In setting up these costs we used revised manufacturing practices in the following manner:

"Our screw machine times were used, but discounted 25 percent to make up for the various changes necessary in British Timken production. This condition can be aided

materially by British Timken purchasing from us, if we care to sell, cones, made in the green, in the sizes where they have only small requirements."

Will you tell us what you mean by cones in the green?

A. Cones after the first machining operation on the screw machine.

Q. And before any carburizing or hardening operation?

A. That's correct.

Q. "This will be done by British Timken if we so decide.

"Carburizing and hardening times used were those of present British Timken practice, which as heretofore stated, can be materially reduced at least 33-1/3 percent. In the grinding operations our productive times were again used, less 25 percent for all internal operations on both cups and cones; and the present British productive times [fol. 1156] for centerless cup grinding were used, but no change was made in the present British productive time on the O.D. and rib grinding operations of cones. The prices quoted by the writer for both cages and hardened rolls were used, and the centerless roll grinding times used, were predicated on the 3-pass principle, but with productive time 25 percent slower than ours. The saving incurred by using our raw material to the extent of 10 percent lower price per pound was taken into consideration, but we did not take into consideration the fact that the screw machines can be materially speeded up using our material, and further, no consideration was made of the fact heretofore mentioned, that tubing can be used for 23 parts now manufactured from forgings.

"The part numbers set up herewith, represent over a nine months period, 20 percent of the total production, and are fairly indicative by size, so that the writer feels that, when we say we can reduce British costs by 20 percent, I am very conservative, and that this figure can be increased to between 25 and 30 percent by making machinery investments heretofore recommended, but which will be summarized a little later on.

"British Timken methods of computing costs are done on the usual shop order basis, that is, the cost of these [fol. 1157] shop orders is figured individually. Mr. Dallow

is a very keen cost man, and keeps well-posted on any variation, etc., up or down, in their costs. Overhead charges are now runnning around 130 percent, and administrative, including sales overhead, runs 20 percent, but include our royalty, which will run from 10 to 12 percent of the administrative charges. Details with reference to the computation of British costs are in the writer's possession, but are too voluminous to set up in this report."

Then under the heading "Personnel" it states:

"Mr. Dewar, as Managing Director of the British Timken Company, has his headquarters in London, and spends, so far as I was able to determine, one day each week at Birmingham. He advised me that in the very near future he will have terminated all his other connections and will be in a position to spend all of his time in the development of the Timken business. There is no question but that Mr. Dewar is tied up with a very powerful industrial group in England, headed by Mr. Dudley Docker. This group controls and manages a great variety of industries, ranging from street railway companies to paint works, and is also connected all over the world through the export sales of the Metropolitan Carriage, Wagon & Finance Company, builders of railroad cars. It is my impression that Mr. [fol. 1158] Dewar is Mr. Docker's right-hand man, and I know positively that Mr. Docker will be interested financially in the Timken Company, and may even ultimately be on the Board of Directors. Mr. Dewar is trying to arrange this at the present time. Naturally, the influence in our behalf which can be expended by Mr. Docker, should prove very beneficial to us. The writer's impressions of Mr. Dewar were that he is very capaole along the sales lines, and has considerable more aggressiveness than the average Britisher. He is a keen thinker, and his only drawback in my opinion is that his judgment is not of the best, especially in the expenditure of money. All the time I spent with him, he endeavored to impress me with the fact that he wanted to go very slow in the expenditure of funds, but at the same time, as heretofore outlined in this report, his past actions do not bear out these statements. He is exceedingly optomistic as to our prospects, and states that there should be no question but that we can sell

2,000,000 bearings in England, with a decrease of 15 to 20 percent in our selling price. Generally summarizing Mr. Dewar's capabilities, I would say that we are very well represented, and our British Timken interests will be more capably managed than at any time in its history. However, we must be prepared to watch this very closely and keep thoroughly in touch, particularly with its finan- [fol. 1159] cial and purchasing divisions.

"Mr. Dallow, who Mr. Dewar has appointed as a director at Birmingha-, was formerly an accountant, and is very capable along lines of cost work and general detailed expenditures. He knows very little about the bearing business and as a result, is considerably handicapped. He does not have the vision or aggressiveness of Mr. Dewar and, in the writer's opinion, is not capable of handling the management of our business if Mr. Dewar should die or become seriously ill. Upon inquiry I gave this same statement to Mr. Dewar, and he assured me that I was in error, but that, to give us a feeling of protection, he would agree to have Mr. Docker take over the active management temporarily of our affairs if anything should happen to him. While I was still in England, Mr. Docker agreed to do this.

"Mr. Loader, Shop Superintendent, is of course well-known to us, and is a good mechanic, but he is typically British, slow-moving and of egotistical nature. He feels he has a severe grievance against the British Timken Company, to the extent that none of his recommendations were ever followed, and that from the remuneration point of view he has been sadly neglected. I was quite successful during the time I was with him, in changing his attitude in these respects, and before I left he assured me that he felt very much better and would start anew to put Timken [fol. 1160] bearings as far as he was concerned, to the point of meeting American practice in every regard, and exceeding it in many cases.

"Mr. Wood, Automotive Engineer, has been with the British Timken Company for 14 years, and is fairly capable as far as the writer could judge, but at the same time I feel that we would be greatly benefitted by having a considerably higher grade type of man in this particu-

lar place. Mr. Dewar does not agree with me in this respect, and feels Mr. Wood is quite capable.

"Mr. Ellis, Works Engineer, has been with the British Timken Company for nine years, and has charge of all shop engineering, as well as industrial work. While he is very slow-moving and positive in his actions, I feel he is a good man as far as the shop is concerned, but that he is entirely unsuited to handle the industrial engineering from any other standpoint than from that of merely checking and approving layouts. He has no sales ability whatsoever.

"Mr. Hobley, Sales Manager, has been with the company approximately ten years, and is thoroughly versed in taper bearing conditions in England. He is not blessed with a very quick or active mind, but at the same time, I feel he has a better knowledge and insight regarding our business than any other man in the organization. I further believe that with the right kind of leadership, Mr [fol. 1161] Hobley will develop very rapidly, and will make us a valuable man.

"Summarizing the general attitude of the entire British Timken staff, I would say that it is rather disorganized, due to the entire lack of leadership during the past two years, but that they all have great confidence in Mr. Dewar, and all like him very much. There still is considerable divergence of opinion in the organization as to policies, etc., but this, I think, is a natural outgrowth of the heretofore mentioned lack of strong leadership, and I believe this condition will be capably corrected by Mr. Dewar.

"Manufacturing Summary:

"Summarizing the entire manufacturing practice at British Timken, we face the following conditions:

"1. British Timken will purchase all hardened rollers and cages from us, starting about January 1st, 1928. The reason for this delay in starting is due to the fact that materials are now on order and in process covering their production for the balance of the year.

"2. British Timken will purchase all tubing from us, at a price of $.095 Canton, which will give them a net saving in raw material costs of at least 10 percent annually

($20,000.00). This will be greater, dependent on the use of tubes replacing bars as heretofore described. Purchase [fol. 1162] orders will start coming through at once for tubing, but only in small quantities, as practically all material needed for the balance of the year is now on order with English manufacturers.

"3. The following equipment should be purchased at the earliest possible moment and put in operation in our British plant:

2-6½" Cleveland Single Spindle Machines at $2500 each;
2-4¼" Gridley Forging Machines at $3,000 each;
1-2" Acme or Cone Automatic Screw Machine;
2-Rotary Hearth Furnaces at $1,000 each;
1-Rotary Retort Furnace (Drop Type);
1-Rotary Retort Furnace (Plug Type);
3-Quenching Machines at $700 each;
4-Internal Heald Cup Grinders at $4500 each;
1-Internal Heald Cup Grinder (coming from Canton);
1-Internal Heald Cone Grinder (coming from Canton);
A total of $53,100.

"Equipment now on order:

2-No. 2 Centerless Roll Grinders at $5375 each;
1-No. 3 Centerless Cup Grinder;
1-No. 72 Heald Internal Cone Grinder;
3-No. 72 Heald Internal Cone Grinders (option only), at $4500 each;
[fol. 1163] 6-Pot Type Carburizing Furnaces at $800 each;
Total $47,225.00."

Now, I would like to ask you, Mr. Hess, in this summary of items that have been described here, were they the result of joint conferences between you and Mr. Dewar and Mr. Dallow in respect to the condition of the British Company?

A. Yes, sir.

Q. And arrived at as a result of joint discussion?

A. That's right.

Q. Under the heading "Financial" the report goes on:

"At the present time our financial situation is fairly satisfactory, but by the end of November we shall be over-

drawn at the bank approximately $136,000. It is the practice in England to overdraw rather than to have credit extended through the use of commercial paper, etc. This large overdraft is developed through unusual charges in October amounting to the following:

"Purchase of roller bearing equipment from Wols-ley Motors, $129,600;

"Machine tool purchases (this also includes motors for the Aston Plant), $60,000;

"Dividends, $60,000;

"Total, $149,600.

[fol. 1164] "Mr. Dewar has made the necessary arrangements at our bank to carry this overdraft as long as necessary, and he expects to pay a rate of 4¾ percent. However, we face an income tax payment in February of 1928 for approximately $77,000. Furthermore, we have made no provision under these circumstances for the purchasing of any machine tools other than those on order and on option. As explained previously in this report, an investment of $53,000 is badly needed along this line, to aid in the reduction of our costs.

"The entire financial situation was discussed at length with Mr. Dewar and Mr. Dallow, and I explained to them our attitude of incurring overdraft obligations without discussing the matter with us, and that we were not at all in favor of having overdrafts at any time.

"Summarizing the financial situation, it is recommended that we pass payment of the dividend due in October, amounting to $60,000 on the condition that this entire fund be reinvested in machinery for the plant. Mr. Dewar is entirely satisfied with such an arrangement, and the matter is up to us for consideration at this time."

Do you recall now whether or not that step was taken?

A. I don't.

The Court: I didn't hear the answer.

[fol. 1165] The Witness: I don't.

Q. "With the investment for this equipment, we shall be in a position to start aggressively at once, widening our market in England, details of which will be given under 'sales'."

Under the heading of "Sales" the report goes on:

"Automotive Production:

"At the present time there are being built in England annually about 200,000 pleasure cars and about 25,000 commercial vehicles, and 500,000 motorcycles. Total registration in the United Kingdom is approximately 1,000,000 automotive vehicles. Like in our country, production of cars is gradually being centralized in strong hands, so that at the present time the three largest builders in England are as follows:

"Morris and allied interests (Wolsel-y) 78,000 annually;

"Austin, 50,000 annually;

"Clyne, 10,000 annually.

"These three manufacturers represent approximately 65 percent of the total production of pleasure and commercial vehicles, and unfortunately our bearings are used in only 8,000 of this total, being in the Wolsel-y car, which has just been purchased by Morris.

"Our sales problem in obtaining this volume business [fol. 1166] is dependent first on reduced costs, and, second, the consideration of Mr. Morris to abandon the use of ball bearings in his cars regardless of the fact that he is an active director in Ransom & Marels, ball bearing manufacturers.

"With reference to the first condition, it has been our practice in the main to quote bearings at 70 percent off list, as compared with ball bearing manufacturers quoting 85 per cent off list. I was advised that these list prices are practically identical in the popular sizes. We do have taper competition in England, both from SKF and Bock. Up to six months ago Mr. Dewar had a price agreement with SKF to the effect that we would both quote the same prices on bearings; but this was cancelled by Mr. Dewar. In the writer's judgment this was a very wise cancellation, as SKF in England make both ball and roller bearings, and while on the one hand they would maintain prices on the taper bearings, they would quote ball bearings at such prices as to prohibit the use of taper bearings. They have since tried to renew this agreement twice with Mr. Dewar, but have been unsuccessful. Bock competition is

practically dead, and we have not met it for some little time.

"Bearing Application: The British Timken sales and [fol. 1167] engineering policy has not been very aggressive along the lines of laying in small taper bearings to replace ball bearings, and while I was given very many reasons why this was impossible, it is my personal observation that our efforts have not been successful for the main reason that we were laying in entirely too large a type of bearing to replace ball bearings, rather than to sell the manufacturer on the idea of changing his layouts and using smaller taper bearings. This matter was discussed at great length with Mr. Dewar, Mr. Hobley, Sales Manager, and Mr. Wood, Automotive Engineer, and it was decided to start anew in this regard, and the writer forwarded to our Canton Engineering Department full drawing details covering installations in both the Morris and Austin cars for modernized taper bearing installations.

"British Timken are very anxious to have our suggestions in this regard, and Mr. Dewar in particular feels that in the case of the Austin we can surely get this business if we can show them where they can install taper bearings even for the same price as ball bearings. The Morris situation is pretty complicated, due largely to his connection heretofore mentioned, with the ball bearing manufacturer, but we do have some leverage in this respect, in view of the fact that we have purchased all our roller bearing equip- [fol. 1168] ment from him. Just how strong this leverage will prove to be is very uncertain, but Mr. Dewar feels if we can quote the same prices as ball bearings, we shall get this business. The question of obtaining Clyne business is dependent entirely on price, and with lower manufacturing costs with resulting lower sales prices, we should be able to obtain all of this business.

"Sales Analysis: The following figures will give some indication of British Timken sales for 1925 and 1926:

"Analysis of British Timken Sales"

And under the heading "Bearings" it shows 256,568, with a value of $538,305.60, or a per bearing value of $2.40. Under October 1, 1925 to September 30, 1926, it shows 38

per cent, and the corresponding period in 1924-1925, 49 percent.

"Motorcycles, 103,529 bearings," a value of $49,119, or per bearing 54 cents, and under October 1, 1925 to September 30, 1926, 13 percent. Corresponding period 1924-1925, 5 percent.

"Home service, 74,180 bearings," with a value of $141,170.40, or per bearing $2.16. Under the column October 1, 1925 to September 30, 1926, it shows a figure of 11 percent, and the corresponding period in 1924-1925, 17 percent.

[fol. 1169] "Overseas, 216,629 bearings," a value of $380,007.60, or per bearing value $2.01. Under the column October 1, 1925 to September 30, 1926, 33 percent, and the corresponding period in 1924-1925, 25 percent.

"Industrial, 9,308 bearings," value $17,526.60, or per bearing $2.16. Under October 1, 1925 to September 30, 1926, 1-½ percent, and the corresponding period in 1924-1925, 4 percent."

Now, do you remember, Mr. Hess, this heading of "Home service"? What type of sales did that cover?

A. That was sales, as I recall it, directly in England itself.

Q. For service purposes?

A. For service purposes.

Q. As distinguished from bearings for original installation?

A. Yes, sir.

Q. And the overseas item that appears in this list I have just read, what type of sales did that cover?

A. That was sales of bearings for service purposes outside of England proper.

Q. And in the last column appears "Industrial Sales," what type of sales did that cover?

A. Well, that's what we called in those days sales for machine tools and mine cars and various industrial applications, hoists, cranes, and things like that.

[fol. 1170] Q. Now, to your knowledge, what if anything had the American Timken Company done prior to 1927 in regard to developing sales in the industrial field?

A. Well, we had expanded that very largely in this country.

Q. The percentage that is shown here for the period of October 1, 1925, to September 30, 1926 of the number of sales for industrial was 1-½ percent. Would that be high or low by comparison with what American Timken was doing in the same field?

A. Extremely low.

Q. The total number of bearings sold for the period shown for 1925 and 1926 is 660,214 of all classes, with a total value of $1,126,129.20.

"From the analysis given above, it will be noticed that Home Service Sales Service has fallen 6 percent during the year 1926. Our Sales Department was unable to explain this, but it is the writer's opinion that some of this drop in sales can be attributed to the rather long prices we are getting in our service business. Discounts quoted in the past have never exceeded 40 percent, and there is no question but that competition has gotten a foothold, not only in England proper, but in English territory.

"When I arrived in England it was both Mr. Dewar's opinion and Mr. Hobley's that we in Canton were making a [fol. 1171] great mistake in selling service bearings at 50 percent off list, and they were quite resentful of the fact that we had been selling bearings at such prices into British territory. This problem proved quite a serious one, and British Timken were flatly unwilling to make any changes in discounts to their dealers, being entirely satisfied with the present progress of service sales.

"Upon receipt of Mr. Browers' letter, showing that Bock, during 1926 had sold approximately $50,000 worth of products in British territory, the complexion of the situation entirely changed, and it was decided to change discounts to British dealers from 40 percent to 50 percent, and in some cases 55 percent off list."

That was discussed with Mr. Dewar, was it?

A. Yes, sir.

Q. "It was further agreed in this matter that British Timken would revise their list prices to correspond with our list prices. It so happens in this regard that on the smaller popular sizes their list is higher than ours, but on the larger sizes where they have no competition whatsoever, their list is lower than ours. This point was quickly

grasped by Mr. Dewar, and they will follow our practice in every respect along this line.

"A general picture of the use of Timken bearings in [fol. 1172] both pleasure cars and commercial vehicles is set up as follows:

"Total pleasure cars manufactured, 200,000;

"Cars manufactured using Timken bearings in both front wheels, 29,000, or 14 percent;

"Cars manufactured using Timken bearings throughout, 23,000, or 11 percent;

"Cars manufactured using Timken bearings in either front wheels or rear wheels, 19,000, or 9 percent;

"Commercial vehicles manufactured, 25,000;

"Commercial vehicles using Timken bearings in both front and rear wheels, 20,000, or 80 percent;

"Commercial vehicles using Timken bearings throughout, 5,000, or 20 percent.

"The figures set forth herewith cover only wheel and rear drive installations, and do not take any transmission installations into consideration, as we have made no installations in transmissions."

By that you mean that British Timken made no installations in transmissions?

A. That's right.

Q. "Bearing Manufacture: At the present time there are being manufactured in England approximately 7,500,000 bearings of all types, such as ball, straight roller and tapered roller bearings. Of this total we manufac- [fol. 1173] ture 660,000 or 8-½ percent.

"The three largest makers of bearings are as follows:

"Hoffman Manufacturing Co., Ltd., 3,000,000;

"Ransome & Marles Bearing Co., Ltd., 2,000,000;

"Skefko Ball Bearing Co., Ltd., 1,500,000.

"It should be understood that all of the heretofore mentioned figures, not only with relation to bearing manufacture, but to automotive manufacture, are estimates furnished by the British Timken Sales Department. There are no statistics covering the automotive industry in England, other than those showing total registration.

"During 1927 our business in the commercial vehicle

field and the motorcycle field has improved, and at the time I was in England we were having great difficulty in making deliveries for truck bearings. I was advised by Mr. Hobley, Sales Director, that he felt our business in 1927 along this line would be double that of 1926, but he was unable to give me any definite figures in this regard.

"The motorcycle business in England is very large, 500,000 being produced annually, and, if we can lower our selling prices we shall get the bulk of this business, as apparently ball bearings, especially in larger motorcycles, [fol. 1174] do not stand up.

"The Ford replacement business has been largely obtained by SKF, and we recently lost an order for 5,000 sets of bearings due to higher prices. Here again, lower selling prices, which can be made with lower manufacturing costs, should get this business for us.

"British export sales, classed heretofore as overseas sales, will be even greater in 1927 than in 1926, the particular reason for this being that we have considerably broadened our sales in Germany. Details of this will be given later in this report under the heading 'Germany'.

"Industrial: The industrial sales activity in England has been rather negligible up to this time, as evidenced by figures heretofore set forth, showing such sales as one and one-half percent of our total for the year 1926. However, during the past six months interest in this line has greatly increased, and Mr. Ellis, Engineer in charge of this work, is now keeping three men busy making layouts, etc. He is handicapped considerably in this regard, due to lack of industrial bearing experience, and we must supply them with every possible aid, based on our past five years experience in industrial work."

That was the experience you referred to a little while [fol. 1175] ago when I asked you what had been done by American Timken in the industrial bearing field prior to 1927?

A. Correct.

Q. "The entire British Timken organization has an entirely new feeling about industrial work, which, up to the time I arrived, was being considered as a very small sideline. I explained to them our progress along this line, and

our future prospects, with the result that they plan to go aggressively after everything in this respect."

Under the heading "Railway" the report states:

"The railroad field in England has shown practically no interest in our bearings, but great interest has been shown in Germany, and which will be dealt with later on in this report.

"Apparently the limiting factor in the use of our bearings in England is the typical British reluctance to try anything new. The freight cars in England are practically nothing more than wagons, weighing 12 and 18 tons. These cars cost approximately $500 each, and I was advised by Mr. Dewar that they only are in transit about one and one-half percent of the time. All of the other time is used at terminals or as storage vans on side tracks. The passenger coach situation, so I was advised by Mr. Dewar, is complicated by the fact that in all of the larger cities, such as [fol. 1176] London, Birmingham and Manchester, it will be impossible to lengthen the station platforms to use longer trains, and that he did not feel he could at this time show sufficient advantage in savings to obtain any orders. The writer does not agree with Mr. Dewar in this respect, and I believe that he will become more enthusiastic when he sees our progress when he comes to this country in October. We have, however, obtained an order to equip six underground (subway) railway cars in London, with our bearings as soon as we are in position to do so. British Timken are now preparing layouts which they will forward to us for approval and suggestion in the very near future."

Under the heading "Summary" the report states:

"Summarizing the sales situation now existing at British Timken, the following recommendations are made:

"First. Reduce selling prices to automotive manufacturers by quoting discounts of 80 to 85 percent off list, so that we can get volume production, even at a narrower margin of profit. Mr. Dewar concurred in this idea, and it should be understood that with the new manufacturing equipment now on order and to be purchased, we can still

maintain a very good margin of profit, even revising our discounts as herein outlined.

[fol. 1177] "Second. Supply to British Timken at the earliest possible moment, experienced automotive engineering counsel.

"Third. Send to British Timken an experienced man from our sales staff, who is capable of organizing in conjunction with Mr. Hobley, a strong sales staff, not only in England, but on the continent as well, covering both automotive and industrial sales. This may not be necessary if Mr. Hobley will, in his visit in September, assimilate American methods to such an extent that he can train his own staff."

Now, Mr. Hess, in going through this lengthy report of what you observed and discussed at British Timken in 1927, I notice that there were many places, in going through the report, where you used the first person pronoun and the plural possessive first person pronoun in referring to the British Timken plant as "our plant," and saying "we have done so and so." For example, on the first page you say "We have complied with Mr. Morris' request," and you say "We are occupying a modern type of one-story building." Why did you use the first person in referring to the operations over there?

A. Well, we felt we were in this whole operation together, Dewar and ourselves, as partners to try to develop [fol. 1178] the sale of Timken bearings in Europe.

Q. From the examination that you made of the market in England and on the continent at that time, will you tell the Court whether or not that was, in the anti-friction bearing business, predominantly a ball bearing market or was it a tapered roller bearing market, or how was that?

A. Well, through all of Europe in those days it was very predominantly a ball bearing market. Tapered bearings had not been developed to any great extent whatsoever, but they were receiving very large attention at that time.

Q. And the process of developing the market in the anti-friction bearing field for tapered roller bearings involved what in respect of ball bearings, the displacement of them, or what?

A. Almost entirely in Europe it was a matter of displacement, although in new types of equipment that was or-

dered we would offer to lay them in at the same time that the ball bearings were considered, but in those days there wasn't very much new production being built. Our major problem was to displace ball bearings with the use of tapered bearings.

Q. And that was the competitive situation with which you had to deal in the European market?

[fol. 1179] A. That is correct.

Q. Now, I don't know whether I asked you this morning or not whether you went to France, but if I didn't I will ask you now. Did you go to France?

A. Yes, sir.

Q. In 1927?

A. Yes, sir.

Q. And did you make an inspection of the plant over there where Timken bearings were being produced?

A. I did.

Q. Did you prepare a report on the production and what you saw in the plant in France?

A. I did.

Mr. Ketterer: I will have this marked for identification Defendant's Exhibit 32.

(The report referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 32.)

Q. Mr. Hess, I hand you some photostatic sheets that have been marked for identification Defendant's Exhibit 32, and ask you if you can identify that document?

A. That's the report I wrote after my visit to France.

Q. In 1927?

A. Correct.

[fols. 1180-1187] Mr. Ketterer: We offer, if the Court please, Defendant's Exhibit 32 in evidence.

[fol. 1188] Mr. Ketterer: Now, referring to this report which has been marked for identification as Defendant's Exhibit 32, under the heading "France" and "representation" it states:

"At the present time our bearings are being manufactured by the SMG Company, who are the second largest ball bearing makers in France, and who, at this time, are making approximately 100 taper bearings daily.

"Their plant is a quite modern four-story affair, and they manufacture wherever possible, cups and cones with the trepanning method from direct hardening steel. Machining times which the writer has available, show that their practice is in many cases 20 percent better than the present British practice, and there is no question in my mind but that they are more aggressive, particularly from a manufacturing standpoint, than British Timken."

The Court: Mr. Ketterer, will you forgive me for interrupting you at this point? I was somewhat puzzled by some figures in the former report, and I want to be sure that the figures are correct. There was a statement made on page 5 with reference to production that at the present time British Timken is manufacturing 3,000 bearings a day with a force of 460 people in the plant and 70 people on the office payroll including sales and engineering departments. Is that correct, the 500 people make 3,000 bear-
[fol. 1189] ings in one day?

Mr. Ketterer: Yes, I think that's correct.

The Court: That would mean approximately six bearings made by one person a day.

Mr. Ketterer: You mean, your Honor, that you think that is high or low?

The Court: I just want to know whether that is the correct figure. I'm not expressing an opinion either one way or the other.

Mr. Ketterer: That is the correct figure on what British Timken was doing at that time.

The Court: That is the correct figure?

The Witness: Yes.

The Court: What type of bearings were they? Are they bearings that are various sizes, including some bearings that run into sizable sums of money, or what kind of bearings are they?

The Witness: Well, they would vary, your Honor, from a bearing as big around as that (indicating), to one about five or six inches in diameter.

The Court: At an average cost of about how much?

The Witness: Well, I can't tell you in cost, but I think it stated the selling prices in there.

[fol. 1190] The Court: There were some figures in here about cost.

The Witness: Yes, the selling price. I think it showed $2.00 a bearing, as I remember it.

The Court: $2.00 a bearing?

The Witness: Something like that, in there.

The Court: That's why I wanted to know if those figures were correct. It seemed to indicate that one person, if you divide it up, if it's capable of such division, is responsible for manufacturing approximately six bearings a day at $2.00 a day, which would be $12.00 total production per day.

Mr. Ketterer: Correct.

The Court: Is that what those figures bear out?

Mr. Ketterer: Well, that would be the average if you average out in that fashion.

The Court: If you can average them out on that basis?

Mr. Ketterer: That's correct.

The Court: I am simply taking the volume of output per day and dividing it by the number of people who are responsible for manufacturing 3,000 bearings a day.

Mr. Ketterer: Well, the figure——

[fol. 1191] The Court: Am I correctly informed that the average cost of those bearings is $2.00?

The Witness: Your Honor, I would have to look up the selling price——

Mr. Ketterer: On page 25, if the Court please, there is the table which shows the average selling prices of the bearings, and in the automotive field it was $2.40; for motorcycles, which are very small sizes, it was 40 cents; for home service bearings, it was $2.16, for overseas bearings, $2.01, and for industrial bearings, $2.16. That was the average.

The Court: Very well.

Mr. Ketterer: Continuing with the report:

"The quality of their bearings seems excellent, with the exception that they do not grind the end of rollers.

"Labor: The labor situation in France is about the same as in England, as far as wages paid are concerned, but there is no union domination in any respect. The general practice in France is to run either one or two 9-hour shifts, and girls are used on all classes of machines in conjunction with men. Usually 10 percent additional wage is paid to night-shift operators.

"Sales: Sales for the past two and one-half years have been as follows:

"(SMG), manufacturing, 1925, $22,150; 1926, $22,000; [fol. 1192] 1927, $25,300.

"For service, 1925, $48,300; 1926, $70,236; 1927, $63,000."

The last figure for 1927, according to the note opposite the numeral "1927" is based on the first six months.

"It will be noted from the foregoing that this year's sales show a slight decrease in the service division, but this was explained by Mr. Winsberg, Sales Manager, as being due to a falling off in service demands from American manufactured trucks.

"The SMG Company have made practically no attempt to develop industrial sales, and they advise me that their reason for this is they have no information from British Timken along this line.

"Costs and Prices: The writer found it very difficult to get any information from them. I spent considerable time with Mr. Almy, the President, Mr. Winsberg, Sales Manager, and Mr. Durignier, Works Manager. Upon asking for their costs, etc., I was given their manufacturing costs by Mr. Durignier, showing a shop overhead of approximately 400 percent on direct labor. I questioned this fact but was told that the same overhead used for ball bearings is used in the computation of tapered bearing [fol. 1193] costs, but in a careful study of their plant I was unable to find wherein any such overhead was developed. Upon asking Mr. Almy for a verification of this figure, he claimed that he did not know what it was. He also declined, upon the same basis, to give me any figures at all as to their sales expenses. I requested this same information from Mr. Winsberg, who told me that they did not care to give us this information at the present time, but would be glad to discuss it with us at the time the contract was renewed. I questioned Mr. Winsberg particularly as to the prices quoted for tapered bearings, as compared with ball bearings, and was given the following figures:

"319-313 Tapered Bearings, price each $1.32;
Ball bearing price each 76 cents;
"339-333 Tapered bearing price each $1.52;
Ball bearing price each 88 cents;

"357-353 Tapered bearing price each $1.60;
Ball bearing price each 84 cents;
"344-333 Tapered bearing price each $1.48;
Ball bearing price each 84 cents.

"At the present time the only French competition we have is supplied by the SKF Company, who have a plant in France, but who are doing very little at this time. I [fol. 1194] was unable to obtain any figures with reference to their production.

"The French situation as regards British Timken is in bad shape. The feeling toward British Timken is very bitter, and one must understand the French nature to be able to find any ground for such a feeling. The SMG Company blame their lack of development in tapered bearing sales entirely onto the fact that British Timken has failed to supply them with information relative to the latest and newest methods of manufacture, and that they deliberately withhold from them every possible amount of data relative to sales development work. While the writer does admit that British Timken have been very lax in their transactions with the SMG Company, I also feel that the present French feeling is largely uncalled for.

"The French Company have never received any drawings or data relative to the 'F' type of bearing, nor any information with reference to the use of centerless roll grinders, Heald internal grinders, etc. All of this information has come to them from machine tool representatives, and of course they resent this fact considerably. At the present time in their plant they are using a few 'Terromatic' internal grinders on ball bearings, and also have one internal Heald cone grinder on which they started to grind cone bores a few days before I reached there. They [fol. 1195] also have one centerless cup grinder which they are using on ball bearing cups at the present time. They plan to try this machine on tapered cups at the earliest possible moment.

"They are very anxious to obtain all possible data with relation to our methods of manufacture, but the writer was forced in every way possible to avoid giving any detailed information. This is due to the fact that our contract ex-

pires next year, and Mr. Dewar feels it will be very unwise to renew it with SMG."

Q. Now, the contract that you refer to there, Mr. Hess, is that, or was that a contract between British Timken Ltd. and Societie Mecanique d'Genevilliers?

A. Yes, sir.

Q. That was a contract to which American Timken was not a party in any respect, is that correct?

A. That's right.

Q. And in the discussion that you had with the SMG people in 1927, as I understand it, you and Mr. Dewar had talked about the advisability of extending the contract with SMG after that expiration date?

A. Yes, sir.

Q. In this report you state: "The writer is inclined to [fol. 1196] agree with him in this regard, as the manufacture and sale of tapered bearings and ball bearings do not mix; and the only successful way to handle this situation is, in my opinion, to manufacture our own bearings in France."

Now, is it correct that SMG in 1927 was a large ball bearing manufacturer?

A. Yes, sir.

Q. Did you visit their plant?

A. Yes, sir.

Q. Have you any recollection as to its approximate size?

A. No, I haven't.

Q. As to the number of people employed?

A. No, I don't recall.

Q. How did it compare in size with the British Timken plant that you visited?

A. I can't even tell you that.

Mr. Ketterer: Proceeding further with the report as to the situation in France as developed by Mr. Hess on his visit there in 1927, on page 3.

(Reading:)

[fol. 1197] "Whether this will be feasible or not, must be thoroughly studied, as considerable depends on the French tariff situation, which changes almost daily. To give an example of this condition, while I was in Paris I

was given three different tariff rates by the SMG Company, and received still a different rate in England.

"At the present time Mr. Dewar is investigating the possibilities of cancelling the French agreement at once, so that we shall not lose an entire year's time in getting started making our own bearings in France. As is probably known, the SMG Company have written a letter asking for a renewal of the contract on their own terms, which incorporate a much smaller royalty, etc. They also expressed the opinion that they might undertake the manufacture of tapered bearings themselves, and of course this is a possibility.

"The writer wishes to recommend the following:

"First: That the present French contract with British Timken be not renewed, and

"Second: That we be prepared to invest, through British Timken, whatever may be necessary to at least perform finishing operations in France, should the present tariff situation be in effect at the time the contract expires. Or, [fol. 1198] if a contrary tariff is in effect, to prepare to manufacture completely in France at least the popular sizes in bearings."

Q. Now, Mr. Hess, in connection with the recommendations that appear at the end of that report, first as to the renewal of the contract between French SMG Company and the British Timken Company, was that or was it not renewed?

A. It was not.

Q. In other words, the recommendation that you made here, the first one, was carried out?

A. That is right.

Q. And that, again, was by agreement between you and Mr. Dewar?

A. Well, at that time I don't believe we made the decision to cancel it, at the time when I was there.

Q. But ultimately that was done?

A. That is right.

Q. Now, the second recommendation involved the possibility of an investment in the establishment of an entirely new plant in France. Tell the Court whether or not that was done.

A. That was done, but I can't recall offhand just when it was done. I don't believe it was in 1927.

Q. Regardless of the date, for the moment, it is a fact, [fol. 1199] however, that Mr. Dewar and American Timken joined in financing the establishment of a new plant in France?

A. That is right.

Q. Do you remember the name of the French Company under which the plant was established?

A. French Timken.

Q. Well, the French name, to refresh your recollection, was Societe Anonyme Francaise Timken?

A. That is right.

Q. That was an entirely new corporation?

A. Yes, sir.

Q. Now, was it disassociated completely from the SMG Company?

A. Yes, sir.

Q. Was it established in the same plant as the SMG Company?

A. No, sir.

Q. And what if any equipment from SMG Company was taken over by the new French Timken Company?

A. I don't recall that any was taken.

Q. Now, who provided the funds for the establishment of this new French Timken Company?

A. I think Mr. Dewar supplied some and we supplied some.

Q. By "we" you mean American Timken?

A. That is right.

Q. Did I ask you whether or not the plant that was established by the new French Timken Company was at [fol. 1200] the same location as the SMG plant?

A. It was not.

Q. What is the fact as to whether or not a plant was rented or purchased for this new company?

A. I don't recall whether we rented or purchased at the time, I think we rented.

Q. Where did the equipment come from that went into the new plant, was it purchased?

A. I think some was purchased in France, I think we

sent some from America, and I think British Timken sent some.

Q. So that it was an entirely new operation regardless of whether it was in 1927 or 1928, it was an entirely new operation from and after the time it commenced?

A. That is correct.

Q. Do you know what happened to the SMG plant in which this manufacturing operation you described in this report was taking place, do you know what happened to that plant?

A. No, I don't.

Q. As to whether or not it was later purchased by any other company?

A. No, I don't know that.

Q. I will ask you, Mr. Hess, whether or not in 1927 you also visited Germany?

[fol. 1201] A. Yes, sir.

Q. And as a result of the visit that you made to Germany did you make a report of what you learned there in respect of the situation involving anti-friction bearings and Timken bearings?

A. I did.

(Report marked by the Clerk, for identification, Defendant's Exhibit 33.)

Q. I will hand you, Mr. Hess, some photostatic sheets that have been clipped together and marked for identification Defendant's Exhibit 33, and ask you if you can identify them?

A. That is the report made by me with reference to my visit to Germany in 1927.

Mr. Ketterer: I will offer Defendant's Exhibit 33.

The Court: It may be received.

Q. Now, referring to the report of your visit to Germany in 1927, under the heading "Sales Representation", you stated:

"At the present time, all business done in Germany is handled by Deutsche Timken Gesellschaft, which is located in Berlin, and which is exclusively a sales organization operating under the direction of a certain Mr. Prausnit-

[fol. 1202] zer."

Now, I want to ask you, Mr. Hess, whether up to 1927, at the time you visited there, there were any manufacturing operations being conducted in Germany by any company making Timken bearings?

A. No, sir.

Q. And the operation that was under the direction of Mr. Prausnitzer, was that exclusively a selling operation?

A. That is correct.

Q. (Continuing reading:) "All bearings sold in Germany are made in England and quoted F.O.B. Birmingham to Mr. Prausnitzer, who in turn adds on the usual charges for freight and tariff, which, as he explains, amounts to 15 percent. He then further stated that he adds 15 percent for his profit. Unfortunately, the writer found upon investigation that this is not always done, and in one instance I checked and found the profit ran as high as 25 percent, and in still another instance only 10 percent had been added for freight and tariff. It should be understood that British Timken exercises no supervision over and have no knowledge of the prices quoted by Mr. Prausnitzer to our German customers. He makes no reports as to the sales he loses, and he has no records along this line.

[fol. 1203] "This gentleman is about 55 years old, and his experience has been of rather a varied nature along the following lines:

"He formerly sold machine tools for the Gridley people, and has the occupation of a consulting engineer. During the war he acted in this capacity for the German government, in the manufacture of all vehicles, airplanes and such allied articles. His ability seems above the average as far as the selling of Timken bearings is concerned, as he was very anxious to advise me, and there is no question but that he has done so far a splendid job, as will be shown later on in this report.

"He is very well acquainted with a certain Mr. von Gontard, who is the head of the D W F Company, manufacturers of ball and tapered bearings; and he was quite enthusiastic in describing to me a plan he had worked out for the D W F Company to act as selling agents for Timken bearings. His ideas were very visionary, and I believe originated in the mind of Mr. von Gontard. I told

him that we were not very keen about such an arrangement, but that the entire matter would be handled by Mr. Dewar.

"Mr. Prausnitzer was very anxious to have me look over several sites for establishing manufacturing operations in Berlin, which I accordingly did; but it so happened [fol. 1204] that three of the plants I was taken to, were owned by the D W F Company, and I was quoted rental prices of approximately $2.50 per square foot, which I explained to them was nothing but nonsense. I told them that we would probably consider paying $.25 per square foot, and furthermore, that we would under no consideration manufacture in old, worn-out buildings such as Mr. Prausnitzer and the D W F people had been offering. They further stated that they were convinced that they could get a plant such as we desired for the price we wanted to pay, if I would take the time to spend another day with them, which I declined to do."

Now, at that point I would like to ask you, Mr. Hess, if when you visited Berlin in 1927, you had under consideration the establishment of a manufacturing operation in Germany?

A. That is correct.

Q. Why was it you wanted to establish a plant in Germany?

A. Because we felt that the German market would demand bearings manufactured in that country rather than imported from any other country.

Q. What was the basis of your belief in that regard?

A. Our knowledge of the German market.

Q. Were there any particular facts that come to your mind now that influenced your decision in that re- [fol. 1205] spect?

A. I think one was the railroad business, as I recall it.

Q. Were the railways owned by the German government?

A. Yes, sir.

Q. What was the fact as to whether there was in Germany at that time an extensively developed ball bearing industry?

A. There was a large ball bearing industry at that time.

Q. And how were ball bearings used in Germany in respect of tapered roller bearings?

A. Well, there were many more ball bearings used than tapered roller bearings.

Q. Did any company or had any company to your knowledge up until the time you visited Germany in 1927 made any especial effort to develop the sale of tapered roller bearings as against ball bearings?

A. Well, as I recall, several companies made tapered roller bearings but I frankly don't recall to what extent they had tried to develop their sales.

The Court: I am afraid I don't follow that. They certainly didn't manufacture them just for the fun of it.

The Witness: No, but in a great many cases their big line of activity was ball bearings and they considered tapered bearings more or less of a nuisance.

[fol. 1206] The Court: Oh, I see. You are comparing it to developing a market for ball bearings rather than tapered bearings?

The Witness: That is right.

By the Court:

Q. In other words, as I understand it, they had devoted their efforts to developing ball bearings and the market for ball bearings in the anti-friction field as against tapered roller bearings?

A. I think, if I might, I could give a little picture of Europe. Europe in those days was considered almost entirely a ball bearing market. The tapered bearing was an American type of bearing, originated in America.

By Mr. Ketterer:

Q. (Continuing reading:) "As is probably known, the Timken name is registered in control of Mr. Prausnitzer, and while he has a contract to give up his rights to this name under certain conditions, I was advised by Mr. Dewar that in his opinion this contract cannot be enforced, and he would have to come to some terms with him."

When you say "The Timken name was registered in control of Mr. Prausnitzer," did you mean by that the trademark?

A. Yes.

Q. And that registration had been taken out by Prausnitzer under his individual name?

[fol. 1207] A. Yes, sir.

Q. (Reading continued:) "Mr. Prausnitzer is inclined to be very talkative, and based on the contact I had with him, there is some question in my mind as to his veracity and honesty of character under certain conditions.

"He has made a proposition to Mr. Dewar to relinquish his rights to the Timken name under the following conditions:

"A German Timken Company to be organized, with a capital stock of $50,000.00 of which he is to be given in stock $12,500.00. He is to be the managing director of this company, on an annual salary of $3,000.00 plus a bonus of 3 percent of total sales. It is further agreed that in any increase in capitalization up to $100,000.00 he is to be given his pro-rata share on a 24 percent basis. It is the writer's personal feeling that these terms are entirely too high, and while I feel that we are in a way at the mercy of Mr. Prausnitzer, I also feel very confident that the proposition herewith set forth is merely an asking proposition, and that we can do considerably better. Mr. Dewar is planning to discuss this with us upon his visit to this country."

Now, before you went to Germany had you discussed with Mr. Dewar the situation - respect to the mark "Timken" in [fol. 1208] Germany and the fact Prausnitzer had registered it in his name?

A. Yes, sir.

Q. Did the proposition that you have described here of giving Mr. Prausnitzer approximately 25 per cent of a company to be organized in Germany, was that discussed with Mr. Dewar before you went to Germany?

A. I don't recall that I had that data from Dewar or from Prausnitzer first, I don't remember now.

Q. But did you talk to Mr. Prausnitzer about it, too?

A. Oh, yes.

Q. So that the matter of the organization of a company to clear up the ownership of the trade-mark "Timken," was something that was discussed both with Mr. Dewar and Mr. Prausnitzer when you were in Europe in 1927?

A. That is my recollection.

Q. (Reading continued:) "Mr. Dewar claims that Mr. Prausnitzer is very well regarded in Germany, but from my personal contact with him, I am inclined to think that

he must be watched very carefully, and I so advised Mr. Dewar.

"Automotive: Figures given me by Mr. Prausnitzer show that there are approximately 225,000 cars now being built in Germany annually. From what information I could [fol. 1209] get from other sources, this figure is high, and the production figure is probably nearer 150,000. There are approximately 319,000 cars registered in Germany at this time. The largest builder is Opel, building 60,000 cars annually, and the next largest builder is Damler-Benz, building 30,000 cars annually.

"Both of these concerns are using F & S tapered bearings in the front wheels, and a mixture of straight roller bearings and ball bearings in the rear wheels and rear drive applications."

Do you know what the initials "F & S" stand for?

A. Fichtel & Sachs.

Q. Who were they?

A. They were a bearing manufacturer in Germany.

Q. (Reading continued:) "It was impossible to obtain from Mr. Prausnitzer any idea in detail as to prices that we would have to make to further broaden our sales in Germany. However, I did obtain the list prices quoted by the F & S Company, together with their discounts, which were reputed to be given to manufacturers and service dealers. A rather hasty comparison of their lists with British Timken lists shows them to be low in the popular sizes to an extent of 10 per cent."

[fol. 1210] "Analysis of German Sales

"(Through British Timken)

	1925	1926	1927 (")
Manufacturing	$33,000.00	$12,000.00	$53,000.00
Service	7,300.00	6,000.00	17,300.00
Total	$40,300.00	$18,000.00	$70,300.00

(") Based on first 6 months

"Mr. Prausnitzer made very broad statements as to our possibilities, should we reduce our selling prices 20 per-

cent, but the writer does not feel it advisable to set forth any of these statements, as I am inclined to believe he is over-optomistic and cannot be relied upon along this line.

"The decrease in sales in 1926, I was told, was due to two things. First, the demoralization of German industry, and secondly, Mr. Prausnitzer was seriously ill for six months; and as he has no assistants or sales representative, our sales fell off considerably.

"Competition: It must be borne in mind that we face very severe competition in Germany. At the present time the following manufacturers are making roller bearings exactly similar to ours:

"F & S—production 4,000 daily (Estimated by Mr. Prausnitzer);

[fol. 1211] "S K F—production 3,000 daily (Estimated by Mr. Prausnitzer);

"D W F—production 1,000 daily (Estimated by Mr. Prausnitzer)."

Do you know what "DWF" stands for?

A. Not any more.

Q. (Continuing reading:) "While the above figures look very high, and there is no doubt they can be discounted at least 30 percent, we should understand that this production has been developed with the past two years, and is being aggressively pushed at this time. British Timken has very materially felt the competition of F & S in export sales, and we have heard of some of their sales in our South American territory. All of these manufacturers make ball bearings as well, and I was told are very well fixed financially.

"Mr. Dewar has told me that our severest competition will come from the F & S Company, who are very well equipped to manufacture and sell on a very lost cost basis.

"Labor: It might be well to state that the labor situation is quite different in Germany than anywhere else. Everyone is working and there is no question about how long anyone shall work or any union domination.

[fol. 1212] "Labor rates are approximately 15 percent lower than in England.

"German Manufacture: The writer was very much impressed with the layouts and organization of the DWF

factory, located just outside of Berlin, through which I was taken. I was refused permission to go through the F & S plant in the south of Germany, and neither was I permitted to see the ball or roller manufacturing in the DWF plant. Mr. Prausnitzer stated that the German manufacturers have not the slightest fear of British or French competition, and have set their goal to stop American competition, particularly in exports. This statement the writer believes to be true, because nowhere in England or on the continent did I meet such a very evident feeling of duplicating and copying American practices as in Germany. From my observations there are more American motor cars in Berlin than there are in London and Paris added together, and everywhere you go you receive the most kindly attention from the German people.

"Industrial Sales: The industrial sales field in Germany is developing very rapidly, and British Timken during the time I spent with them, received 10 inquiries from Germany along this line. I was advised by Mr. Prausnitzer that [fol. 1213] our competitors in Germany have not as yet attempted to sell the industrial field with tapered bearings, being entirely content to sell ball bearings. This means that we have an opportunity at present to develop this field, but it cannot be done by one man, and Mr. Dewar has arranged to employ a young German engineer at British Timken for a period of three months training, and then send him back to Germany as a sales representative. While this idea is good, the writer feels an older man with at least some selling experience should be obtained, as time is an important element and three months is not very long for a total stranger to learn our product from the industrial standpoint.

"The railroad field in Germany has a real future, as evidenced by the fact that the SKF Company recently received an order for $500,000.00 worth of bearings to be used on fast freight car service between Berlin and Cologne. We had presented a bearing for test some six months before, but, according to British Timken, this bearing, No. 942-933, failed in test due to defective grease. This information was not given me originally by British Timken, but was developed while I was in Berlin with Mr. Prausnitzer, who in turn was unable to give me any de-

tails whatever as to the length of service, loads, etc. He [fol. 1214] did say, however, that in obtaining the order the SKF Company guaranteed the bearings for two years without lubrication. It was also impossible to ascertain what price was paid for them, although I asked Mr. Prausnitzer, if at all possible, to get this information.

"It might be well to state that in order to obtain this business it would be necessary for us to at least perform the finishing operations on such bearings in Germany."

I would like to stop at that point and ask you why you made that statement in your report, "It would be necessary for us to at least perform the finishing operations on such bearings in Germany," if you were going to get that business?

A. Well, as I recall at that time the Government of Germany, which owned the railroads demanded a certain percentage of German labor content in the manufacture of the bearings. I don't recall now what percent. From that report it could not have been a hundred percent.

Q. It was on that basis you expressed that view?

A. That is right.

Q. (Reading continued:) "Summary: Summarizing the German situation, the writer does not wish to make any [fols. 1215-1223] recommendations other than to straighten out the sales situation to the extent that British Timken will, at the earliest possible moment, quote direct selling prices to German customers through Mr. Prausnitzer, and that they will exercise detailed control and supervision over him.

"The question of manufacturing bearings in Germany is very complicated, due to two things:

"First, our increasing sales seem to show that we can manufacture in England and still pay the prevailing tariff rates with fairly good success.

"Second; should we manufacture in Germany, we will be called upon in all probability to join the association of German ball and roller bearing interests, who have interlocking price agreements, and who pool all patents and methods. Should we refuse to join this association, we of course face the possibility of having to fight very strenuously to maintain our standing which we now have.

"The writer is planning to make a very careful study

of the tariff situation, but it is necessary to obtain considerable further data before this can be done, as the information supplied by Mr. Prausnitzer must be thoroughly checked."

[fol. 1224] Mr. Day: We now offer the deposition of Frederick John Pascoe of Broom Hill, Spratton, Northamptonshire, England, Managing Director of British Timken, Ltd., aged 54 years, being duly and publicly sworn and examined on the part of the Defendant, doth depose and say as follows:

Direct examination by Mr. Ketterer. This is on Page 157.

(The following questions read by Mr. Day and answers by Mr. Ketterer from the deposition of Frederick John Pascoe.)

"Q. Will you state your full name, please?

A. Frederick John Pascoe.

Q. Where do you live?

A. Broom Hill, Spratton, Northamptonshire.

[fol. 1225] Q. Will you give us a description of your education and early business connections?

A. I was educated at Exeter School and Cambridge University, where I took an Engineering Degree—Mechanical Sciences Tripos, to be exact. At the end of the war—

Q. You mean the first World War?

A. Yes, in 1919 I first went into industry by joining the Leeds Forge Company. My job there was in the nature of an apprenticeship. I spent some few years with the Leeds Forge Company in Leeds. I afterwards came to London and spent a little time in their London office. Following that I joined the Electric & Railway Finance Corporation in the capacity of Personal Assistant to the Chairman. There I was mostly engaged in financial business, new issues, underwriting, investment work, and a certain amount of technical work. I afterwards became Secretary of the Electric & Railway Finance Corporation. While with them I was associated with one or two other Companies. In 1930-1931 I first became interested in British Timken and French Timken, being invited by Mr. Dewar to join the Boards of those Companies. During the period from 1930 up to 1938, a year before the war, I became progressively more interested in and progressively spending more time in the service of British Timken, until in 1938 I severed my connection, [fol. 1226] which by that time had grown rather thin, with

the Electric & Railway Finance Corporation and became a full-time Director of the Timken Companies, British Timkin and Francaise Timken.

Q. Have you continued since 1938 to devote your full time to the business of British Timken and French Timken?

A. Yes, and during the war, from 1940 to 1943, Mr. Dewar was in America for the British Government and I was for that period the chief executive Director of the Timken organization in this country. On Mr. Dewar's return I was appointed Managing Director, when my duties were general supervision and direction of the Company's affairs, subject to the instructions of Mr. Dewar as the chief executive Director.

Q. You started the description of your business career in 1919 following the end of the first World War. Did you participate in the first World War?

A. Yes, I was a soldier from August, 1914, until March, 1919.

Q. During the period from 1930 or 1931 when you say you first became a Director of British Timken and devoted part of your time to its affairs, with increasing attention to its affairs, until 1938, what is the fact as to whether or not you have kept in touch with the anti-friction bearing industry in England and on the Continent?

A. During that period?

[fol. 1227] Q. Yes.

A. Yes, I travelled on the Continent for Timken in that period. I went to Russia; I went many times to France; I went three times to the United States of America in that period upon Timken affairs.

Q. So that it is correct to say that you have kept abreast of the situation in respect of the anti-friction bearing industry in England and on the Continent during the period of from 1930 or 1931 down to the present time?

A. Certainly.

Q. In the course of the testimony that has been given up to the present time there has been a reference to a phrase 'bearings for original installation'. I wish you would define for us what is meant in the anti-friction bearing industry by that phrase?

A. Bearings for original installation are when any manufacturing Company is manufacturing a machine tool or rolling mill or a motor car, and we sell them Timken bear-

ings—sell their drawing office the idea of Timken bearings—and that equipment is then put on the market. We should describe that as original installations as opposed to service sales.

Q. And by 'service sales' you mean what?

A. Bearing might wear out and you would need a replacement. To get into the vehicle field, take a tractor [fol. 1228] bearing. A tractor bearing after being hammered about in a tractor needs replacement. The bearing takes all the work in a tractor, and, therefore, the bearing can wear out and has to be replaced. That is a replacement sale, which is carried out, of course, in a different manner from original equipment sales.

Q. During the period of 1930 till the present time who has maintained the sales organization for the sale of Timken tapered roller bearings in England and on the Continent of Europe and in the British Empire?

A. British Timken; in France, Francaise Timken.

Q. I would like you to describe for us what sort of sales effort is necessary to effect the sale of anti-friction bearings for original installations?

A. The effort required is an effort by a technical engineer, or, as we call them, sales engineers, who maintain a very close contact with every Company manufacturing any equipment whatsoever in which we think a tapered roller bearing can be engineered or fitted, and that contact is maintained with the design departments, the drawing offices of the Companies manufacturing equipment.

Q. Has British Timken, to your knowledge, maintained that sort of contact in England with the design offices of manufacturers of machine tools, automobiles and tractors?

A. Most certainly; I do not think there is a drawing of- [fol. 1229] fice, a design office, of any manufacuring Company in the country that has not been visited by our sales engineers.

Q. And has any service of that kind been performed in England or on the Continent or in the British Empire by the American Timken Company, to your knowledge, from 1930 down to the present time?

A. No. There might be one exception when we might be following American advice or when we are going into some new application and we were looking to America for guidance. We may on one or two occasions while the American

engineer was instructing us have taken the American engineer to visit people so as to bring out quite clearly that the American technical experience was behind us.

Q. In such cases has the sales engineer of British Timken accompanied the sales engineer from the American Company?

A. Always.

Q. Based upon your experience in the anti-friction bearing industry, how essential do you regard it that the sales effort for original bearing installations be handled in the countries in which the manufacturing work is being done?

A. I regard that as essential, because one of the first questions you are asked when you are trying to persuade someone to adopt a design embodying an anti-friction bear- [fol. 1230] ing is: 'Where are these bearings manufactured? Where do we go for advice? Where do we look for service?'

Q. Has that been your experience in the anti-friction bearing industry from 1930 down to the present time?

A. Invariably.

Q. You said something a while ago about having gone to Russia at one time?

A. Yes.

Q. In connection with possible sales of anti-friction bearings. What, if anything, did you observe while you were there in respect of the activities of the Russians?

A. The first thing I saw, or the first thing I suffered was a disappointment. I hoped to get large orders out of Russia; instead of that I found them building a factory.

Q. And for what reason?

A. They were building a factory to make their own bearings.

Q. Do you remember when it was that you made that trip to Russia?

A. I think 1931. It was 1930 to 1932, anyhow, and I am pretty certain it was in 1931.

Q. Will you state whether or not the view you have expressed as to the necessity of having bearings manufactured in the country in which the ultimate manufacturing operation is being performed influenced the establishment of a plant in France by the American Company and Mr. Dewar?"

Mr. Nitschke: I'm going to object.

[fol. 1231] The Court: Read that question again.

(Question reread by Mr. Day.)

Mr. Nitschke: I would like to note for the record I have my continuing objection to this type of testimony. I would like to also point out that the agreement dividing territeach other's territories as well as selling in each other territories.

The Court: I will receive this testimony, as well as the other testimony that has been received, over the objection of the Government, and will, of course, take care of it when the question is passed on with respect to the law that was urged in support of your position.

(Answer read by Mr. Ketterer.)

"A. I say it has always been our experience that when a country becomes industrialized there is a great desire, a great pressure, to establish a bearing plant in that particular country. I have seen that over the whole of my experience even down to the present day. That is due to the natural desire of every country to manufacture as much as possible to become self-supporting in manufacture, and it is due to the fact that if you want to sell a bearings, to persuade people to adopt it, a customer likes to think that [fols. 1232-1233] that bearing is being manufactured somewhere nearby so that he has ready and quick attention in the matter of technical advise or service of the bearing."

[fol. 1234] (Reading of deposition of Frederick John Pascoe continued):

"Q. You have just indicated that that has been your experience even recently. Can you give any example of any recent experience that you have had in respect of the establishment of bearing plants in other countries on the Conti-

[fol. 1235] nent or elsewhere?

A. Yes, there is a very recent one. I had a letter which I saw on Saturday from a group in Holland, and they want to establish now a bearing factory in Holland which will supply Holland and the Benelux countries. They asked us whether we would be interested in assisting in the establishment of that factory, whether we would be interested financially, and told us that the group behind it were a pow-

erful manufacturing group who had received indications of full support from the Government. That was the latest one.

Q. Have you had any other inquiries in respect of the establishment of factories in any other countries on the Continent within the last several years?

A. We have been asked whether we would be interested in assisting in the establishment of a factory in Spain. We have been asked about Australia. We have been asked about South Africa. We were actually asked about Brazil.

Q. Going back to the replacement business, what has been your experience as to sales for replacement purposes going back to the Company who provided the bearing originally that was placed in the equipment when it was first manufactured?

A. What usually happens with a service sale is this. Take a service sale to a tractor, for instance. If a bearing breaks [fol. 1236] down the man will take it into the nearest garage, and they will take out the broken bearing, clean it up and see whose name is on it. They will see 'Timken,' and will say: 'Right, we had better get another one from them.'

Q. Has that been your experience in connection with the sale of replacement bearings in England, on the Continent and in the British Empire generally?

A. Yes, it is easier to get the sale if you provide the original equipment.

Q. What sort of sales organization has British Timken maintained in England and on the Continent, outside of France, and in the British Empire generally, to handle the subject of replacement sales?

A. You are referring to replacement sales only?

Q. That is right.

A. We have an organization which we know as the Service Sales Department, and that Service Sales Department has a considerable staff who go round visiting our distributors. We sell those replacement bearings through distributors. We have several distributors, and they in turn have branch offices or sub distributors throughout the country, our idea being to see that there shall be no place where a replacement bearing is wanted where there is not a rapid and quick connection with British [fol. 1237] Timken. We maintain stocks of bearings for that purpose so that if anyone wants a particular bearing

we can supply it quickly. It is rapidity of sales which helps considerably. These people go round making quite sure that people know where to apply when they want a Timken bearing. That is the organization in England.

Q. Prior to the war Germany was one of the most highly industrialized nations in Europe?

A. It was.

Q. Was there a considerable market for anti-friction bearings in Germany?

A. There was.

Q. What is the fact as to whether after 1934 when the operations of the German Company were suspended British Timken was able to make any substantial volume of sales for original installations in Germany?

A. It did not do a large business. We sold one or two large bearings, we got one or two orders for large rolling mill bearings from Germany, but we did not do any large volume of business in Germany.

Q. To what extent was that failure to do any substantial amount of business in Germany the reflection of the absence of a bearing manufacturing plant in Germany?

[fol. 1238] To try to do any sales in Germany we were up against the Skefko and Fischer Companies in Germany who had very large manufacturing plants. We found it very difficult to sell bearings in Germany.

Q. Based upon the opinion that you have expressed here as to the necessity of a bearing manufacturing plant in the country in which the manufacturing of equipment is performed, have you an opinion as to whether or not an American bearing manufacturing company could have come over to England or to a country on the Continent and on a substantial scale sold bearings for original installations in England or any Continental country from 1930 down to the present time?

A. I think some companies have tried, but they have not got very far. I think there were several reasons why they did not get very far, or would not get very far.

Q. Will you give us those reasons?

A. One reason is that anybody trying to sell bearings against us now from any other country would be subject to, say, our talking and supporting the 'Buy British' campaign, and the 'Buy British' campaign even before the war was very important. People used to advertise and say:

'The All-British Motor Car,' and we certainly supported that. Another reason in the special case of tapered roller [fol. 1239] bearings why any American Company could not sell very many here was the fact that we were in such close touch with all the manufacturers, with our sales engineers up and down the country. We could not just say: 'Would you like a bearing from us?', we had to engineer the bearings into the equipment, which we did.

Q. Now I would like to ask you this question: were you familiar with the types of anti-friction bearing which were used in Europe and in England in 1930 and immediately prior to 1930?

A. Will you say that again?

Q. Were you familiar with the types of anti-friction bearing that were used in Europe and in England in 1930 and prior to 1930?

A. I think I had the general familiarity with bearings that any man trained as an engineer might be expected to have, but prior to 1930 I was not in the Timken business so I had nothing like the detailed knowledge I have acquired since.

Q. Beginning in 1930, what is the fact as to whether there were more ball bearings used than any other type of anti-friction bearing, or were there less ball bearings used than any other type of anti-friction bearing?

[fol. 1240] A. There were far more ball bearings used. The ball bearing companies in England then were very well known. The Hoffman Company was a very well known company, and Ransome & Marles was a very well known company. This is in England I am talking about at the moment."

The Court: Pardon me, that answer was "There were more ball bearings"?

Mr. Ketterer: That is correct, your Honor. As a matter of fact, the witness said far more ball bearings used.

(Continuing reading from deposition.)

"Q. What about the situation on the Continent?

A. In Germany not many tapered roller bearings were used. I say that with some confidence, because even in recent years, years that came within my experience, the

tapered roller bearing had not made the progress in Germany that it had made in this country.

Q. To what, Mr. Pascoe, do you attribute the fact that there was not the same amount of progress made in Germany in respect of the development of sales of tapered roller bearings as was made in England or in France?

A. Because we came out of Germany. We started there, but we were unable to continue.

[fol. 1241] Q. And in respect of England and France, what had happened in respect of the development of the sales of tapered roller bearings?

A. In England and in France the establishment of British Timken in England and Francaise Timken in France has meant that the percentage of tapered roller bearings manufactured and used, the percentage of the total number of anti-friction bearings, has increased progressively. More particularly has it increased since British Timken was under the Chairmanship of Mr. Dewar.

Q. State whether or not the operations of the British Timken Company and of the French Timken Company in the markets in which they have sold bearings can properly be characterized as pioneering operations in the form of tapered roller bearings in those markets?

A. We certainly have, because our task has been the whole time to persuade users of anti-friction bearings, or users of any bearings, whether anti-friction or not, to use a tapered roller bearing, in many instances throwing out the ball bearing and in many instances putting in an anti-friction bearing where none existed before.

Q. What is the fact as to whether there has been compe-
[fol. 1242] tion with the ball bearing industry in connection with this development of a market for tapered roller bearings on the part of the British Timken Company and the French Timken Company?

A. Whether there has been competition?

Q. With the ball bearing industry.

A. The tapered roller bearing is, to a very large extent, a competitor of the ball bearing. In fact, we are all the time seeking to influence the design department of people manufacturing equipment using anti-friction bearings to reject the ball bearing in favour of the tapered roller bearing.

Q. Has that been going on constantly over the years?

A. Yes. In my experience, it definitely has.

Q. To what extent has the growth and the development of the British Timken Company been reflected in your success in competing with the ball bearing industry in this replacement program that you have described? To what extent has the success of the development of the British Timken Company and the French Timken Company been reflected in the extent to which you have replaced ball bearings in some measure?

A. Our success as a Company, of course, has been mostly due to the fact that we have replaced ball bearings by tapered roller bearings. In other words, the application [fol. 1243] in which tapered roller bearings are used now, where previously ball bearings were used, greatly exceed the number of applications where no anti-friction bearing is used. We are constantly forcing out the ball bearing.

Q. At our request, have you had prepared from the files and records of British Timken some figures showing the amounts of capital expenditure made by the British Timken Company from varying dates during various years since 1927?

A. Yes.

Q. The turnover of tapered roller and ball bearings since 1921?

A. Yes.

Q. And the employees of the British Timken Company since 1928 down to the present time?

A. Yes.

Q. I will hand you three sheets of paper that have been clipped together and marked for identification Defendant's Exhibit D.31 and ask you if you can identify those. (Exhibit handed to the witness).

A. Yes. These were prepared on my instructions and under my supervision during the past week. They are the figures.

Q. Were they compiled from the records of the British Timken?

[fol. 1244] A. They were compiled from the Company's books.

Q. The first sheet has the heading on it 'Capital Expenditure'. What do the figures in the right-hand column, under the heading 'Totals' represent?

A. This is the total capital expenditure incurred by us each year. It represents the amount we capitalized as capital as opposed to any expenditure on revenue. It represents money which we had spent in new machine tools and equipment and, to a certain extent, alteration of buildings, but mostly the figure is machine tools.

Q. Are those totals in dollars or in pounds?

A. Pounds.

Q. The second sheet has the heading. 'Turnover of Tapered Roller and Ball Bearings' and the figures in the right-hand column, under the heading of 'Totals', represent what?

A. They are our actual turnover of tapered roller and ball bearings, by British Timken. The ball bearings come in to a very small extent, as British Timken did not manufacture many ball bearings and after 1940, of course, there are no ball bearings in at all. These are our total sales values."

[fol. 1245] (Continuing reading from deposition.)

"Q. I was just going to ask you whether the phrase 'Turnover' is the equivalent of 'Sales'.

A. Sales. It is the sales value, with the exception of 1947, which is shown as estimated because we have not quite finished our records for December, but the final figure will not vary from that by more than perhaps £1,000 or so in £2,000,000.

Q. Have you excluded the sales that originated from the Fischer plant in those totals?

A. There are no Fischer sales in those totals at all. They are British Timken.

Q. Exclusively?

A. Exclusive of Fischer.

Q. The third sheet on this Exhibit marked Defendant's Exhibit D.31 has the heading 'Employees, works and Staff'. [fols. 1246-1248] They show what?

A. They show the total number of employees of British Timken, excluding Fischer Bearings, of course, and are divided into the employees and staff, the staff meaning, generally speaking, the office staff, which would include draftsmen, sales engineers, accountants, etc."

Mr. Day: We would now like to offer in evidence as our next exhibit, which would be Defendant's Exhibit 34, the three sheets which were marked Defendant's Exhibit D-31 in the deposition.

The Court: It may be received.

(Thereupon the document above referred to was marked by the Clerk, for identification, Defendant's Exhibit 34.)

[fol. 1249] (Continuing reading from deposition.)

"Q. Now I am going to ask you to what extent have sales of tapered roller bearings been made by American Timken in the territory of the British Timken Company from 1930 down to the beginning of the last World War, to your knowledge?

A. During those years the sales of American Timken Company in our territory would be sales to us.

Q. In respect of sales for original installations, under [fol. 1250] what circumstances did you ask American Timken to supply bearings for original installations in your territory?

A. Our practice in an original installation was that when our sales engineers visit and go round to the designers of other Companies and they were designing any equipment, we should advocate the inclusion of a tapered roller bearing. There are tapered roller bearings—and there still are—manufactured in America that are not manufactured by us, but that would not prevent us in any way, would not have any influence on our anxiety to get that particular bearing which was not manufactured by us incorporated in a design if it was the best bearing. Once it had been incorporated in a design and we received orders for it, we very often then asked America to supply the first few bearings, so that there would be no hold-up in the production of the equipment, and they supply the first few bearings. That would give us time to tool up and to make the bearings ourselves if the market showed signs of warranting our making them. It may have been, of course, that there were just one or two bearings required which were never required again. Then we would not make them. We would buy them from America.

Q. If there was a repeat order, so to speak, on a bearing [fol. 1251] for which you got an order in the fashion that

you have just described of any size, what was your practice thereafter in respect of such repeat orders?

A. We would tool up to make them, if the orders appeared to us to warrant it. If the orders were small, we should buy them from America and then sell them ourselves over here.

Q. Will you state whether or not that was your practice during the period I have indicated, from 1930 to 1938?

A. It was and is, to the best of my knowledge.

Q. Were there any other sales made by the American Company in the territory that was set aside for the British Timken Company during that period for original installation, aside from the ones that you have described, that you can recall?

A. There was during the war.

Q. I am excluding the war period for the time being.

A. Then I do not recollect any sales of American bearings into our territory other than bearings that we should have purchased ourselves.

Q. How about Ford? Were there any sales made to Ford during that period from 1930 to 1938?

A. The Ford practice was then to buy bearings from their parent Company in Detroit and, whereas Timken bearings may have come in via Detroit, I do not remember [fol. 1252] the Ford Company in England ever placing a direct order with American Timken.

Q. Immediately after the war started in 1939, was that practice altered in any respect?

A. After the war started?

Q. Yes. Was the practice of buying bearings from the American Timken for original installation altered in any respect?

A. I do not remember that it was, except, of course, the British Government placed orders for bearings.

Q. Were the instances in which you asked American Timken to supply bearings greater or less after the war started in 1939?

A. After the war started we placed very large orders in America for components, very large orders for steel, and we placed orders for bearings with America, very substantial orders.

Q. That was after the war started?

A. After the war started, during the war; and machine tools.

Q. Prior to the time that the war started in 1939, did you follow any importations of bearings by any other American bearing manufacturing companies, whether they were ball bearing companies or whether they were tapered bearing manufacturers, into England or on to the Continent, as to whether they were large or small, or what did you observe [fol. 1253] about them?

A. I know that American manufacturers of bearings other than Timken had agencies in this country, but I did not run up against many American bearings in this country at all from any company.

Q. Did you receive reports from time to time by your salesmen of the competition that they had on orders in this country or on the Continent for original installations?

A. Yes. I used to read the salesmen's reports.

Q. Did you follow those reports?

A. Yes.

Q. And from that or any other source did you ever observe that any American bearing company sold any substantial number of bearings prior to the war for original installation either in England, in the Empire, or on the Continent of Europe?

A. I certainly did not run up against any serious importations of bearings into England before the war. I am not aware of any large importations into the Continent, although I do not speak with quite so much confidence about what happened on the Continent as I do about what happened in England. As regards British territory, other than, say, Australia and South Africa, I should like to say there were not any importations."

[fol. 1254] Mr. Nitschke: That isn't the way it reads here.

Mr. Day: It should be "I should not like to say."

Mr. Ketterer: I beg your pardon.

(Continuing reading.)

"I should not like to say there were not any importations. The best thing to do is to go back to instances. Take South Africa, for instance. When we were fighting for bearings where, very often most of the competition came from the Skefko Company. That was a competition which we had to

face mostly. I am quite content with my previous answer. I am not aware of any large importations, although it is quite possible there may have been importations into those countries.

Q. For the replacement business in England or on the Continent, did you have any reports from salesmen or did you otherwise learn of any substantial importations of bearings into England or to the Continent by any American bearing manufacturers?

A. I never heard of any large importations into England by any American manufacturers, although, as I said before, I must speak with more confidence about England than I do about the world generally.

Q. Now I would like to direct your attention to the situa-
[fol. 1255] tion that has prevailed since the war. Since the war, what procedure is it necessary to follow before there can be importation of bearings into England?

A. If any company wanted to import bearings into England now, the first thing they have got to do is go to the Ministry of Supply and get permission, get what is known as an import license, which in effect is a license to enable them to spend the dollars. When that happens now, when you apply for an import license from America, whether it covers a machine tool or a bearing or anything else, it is extremely difficult to get these licenses, owing to the dollar position.

Q. What showing has to be made by any person applying for a license to import bearings since the war?

A. If any users of bearings go to the Ministry of Supply now and say 'We want to buy some bearings from America', the first thing they will be asked is: 'Cannot you get them from British sources?' It may be they would say: 'No, we cannot get them'. If they were tapered bearings, they may say: 'No; we cannot get them from British Timken, because British Timken now cannot give us delivery, because their capacity is not enough'. Then, after saying that, the next thing that would happen would be that the officials of the Bearing Division of the Ministry of Supply would refer to us and say 'We have a request for an import license from
[fol. 1256] Company AB of so many thousand tapered roller bearings and they claim that you cannot promise them any delivery of these bearings within some very long period. Is that the case?' If we say 'Yes, that is the case', then

they might get the import license. They probably would get it. We should be asked our opinion about it, of course, and we are frequently in contact with this Department. Our general attitude has always been, if we cannot supply from our factories—and we cannot meet the demand from our factories now; our capacity is not big enough to meet the demand—we say: 'Yes; we cannot meet that demand, but we are increasing our capacity as rapidly as possible'. We are doing so, as the Ministry well know, with their encouragement, even more than their encouragement, and we say: 'Of course, we shall one day be in a position, when our capacity has increased, to meet this demand'. So we welcome the importation under those conditions, because by the time the next order comes along, our capacity will be large enough to meet it.

Q. What, if any, effort do you make in connection with the request for import licenses to direct sales of that kind to American Timken?

A. Very often when the import license is applied for, the [fol. 1257] user will apply for the import license and make the case to the Ministry and then we should import bearings from American Timken. There has been very little direct importation. It has usually been guided that way. Sometimes we might apply for the license.

Q. What, if any, effect, in your opinion, has that procedure had upon the volume of imports from American Timken into this territory? Has it resulted in their making more sales or less sales than otherwise would have been made?

A. More sales, because naturally we have directed all our orders for tapered roller bearings and directed as many orders as we could direct to the Timken Roller Bearing Company. There is only one real instance to my knowledge where the orders have not gone direct to the Timken Roller Bearing Company.

Q. Will you tell us what that is?

A. That is the Ford Motor Company, Dagenham. We have imported—and, indeed, we are importing ourselves from the Timken Roller Bearing Company at this moment—bearings for the Ford Company at Dagenham. Also, they themselves have placed, naturally to our full knowledge, through the procedure I have previously described, substantial orders for bearings with the Ford Company of Detroit. That is the only instance I know of any quantity of tapered

[fol. 1258] roller bearings coming into this country other than through ourselves.

Q. Are you acquainted with a motor car manufacturer in this country named Vauxhall?

A. Yes.

Q. They are connected with what American Company, if any?

A. General Motors.

Q. Do you know whether or not the Vauxhall Company imports any anti-friction bearings from any General Motors subsidiary, such as New Departure or Hyatt, in the United States, or do they use British-made parts?

A. To a very large extent, anyhow, I know they use bearings made by the Skefko Company. I particularly know that, because during the war we supplied components—and, indeed, bearings—to the Skefko Company which were destined for the Vauxhall Company; and we know, of course, that the Vauxhall cars and the vans that go about this country are full of bearings made by the Skefko Company.

Q. Now, in the figures that you have compiled here and which we have submitted in this Exhibit marked Defendant's Exhibit D.31, you show the sales of bearings from 1921 down through 1946 and 1947 estimated. Can you tell me what percentage of the anti-friction bearing business the British Timken Company does in them?

[fol. 1259] A. Today?

Q. Yes.

A. It is a question of an estimate, but my estimate would be that we must be doing now something of the order of 90 per cent of the total business.

Q. That is the tapered roller bearing business?

A. The tapered roller bearing business.

Q. How about the anti-friction bearing business?

A. You have got to estimate on figures here which are not available to us, but I should say it certainly exceeds an eighth of the total business. I am putting that low down, because I am quite confident it exceeds an eighth. That is the minimum I would listen to. On the other hand, it is quite possible that it goes up higher, quite considerably higher. It is only an estimate we can make on that.

Q. What would be your maximum estimate?

A. At the moment?

Q. Yes.

A. Of tapered roller bearings to the total? I would put my maximum at 20 per cent.

Q. Have you kept yourself informed about the exchange of data and information that came from the American Timken Company to the British Timken Company?

A. Yes, and more particularly since 1938/39.

[fol. 1260] Q. In questioning you about this data business, I would like to break down the exchange of data between that that relates to bearing applications, sizes and dimensions, as distinguished from data that has to do with manufacturing methods and practices. As to the matter of the first classification, bearing dimensions and bearing sizes and bearing applications, will you tell us generally what exchange of information and data has taken place between the American Timken Company and the British Timken?

A. On the design of bearings as distinct from the method of making them?

Q. That is right.

A. On the design of bearings, we follow American Timken extremely closely. A bearing, to give it a number, 3984/3920, which is a cone and a cup, manufactured in America and the bearing 3984/3920 manufactured in England are the same bearing."

Mr. Ketterer: Mr. Day, at this point it seems to me we ought to point out to the Court that the bearings that have been introduced here in evidence by the plaintiff, one being marked Plaintiff's Exhibit 3, and the bearings that were brought here from England manufactured by British Tim-[fol. 1261] ken, and one from France manufactured by French Timken, the latter being Plaintiff's Exhibit 136, and the English bearing being Plaintiff's Exhibit 135, are all bearings having the numbers that are referred to in the testimony of Mr. Pascoe.

Mr. Day: Yes.

(Continuing reading from deposition.)

"Q. To achieve that end, do you receive any drawings from American Timken showing the dimensions and tapers and sizes of these various numbers of bearing that are manufactured?

A. Yes; we receive the fullest information. If a new bearing is developed in America, a new size, they immediately send all particulars of the design and in what way the design departs from another bearing, in case they are

altering a design, but our Bearing Design Department follows the designs as they originated in America. If, on the other hand, we are designing a bearing for some particular application ourselves—that is to say, a bearing which we do not find the American Timken Company would make—we should forward that design in an early stage to America, so that they can see it, and we should say to them 'Give this a symbol number'. That is to say, although the bearing [fol. 1262] is designed by us, they would give it a symbol number and we should sell it under that symbol number.

Q. Is the symbol number the number under which the bearing is sold in the anti-friction trade thereafter?

A. Yes.

Q. Is the same number employed on the bearing whether it is sold by American Timken or whether it is sold by British Timken or whether it is sold by French Timken to the extent that the three Companies or any two of them manufacture the same bearing number?

A. A bearing of the same dimensions is sold under the same symbol number.

Q. I will ask you to state whether or not those bearings bearing the same symbol numbers are interchangeable whether they are made by the American Company or whether they are made by the British Company or made by the French Company.

A. They are certainly interchangeable. At this moment the Ford Company is importing and we are importing bearings to make up our lack of capacity now. We might have an order for delivery of 50,000 of a particular size. We still make 25,000 of them, import the other 25,000 from America, and that 25,000 bearings would go down to the user and he would fit them. It does not matter where they [fol. 1263] are made. He probably would not notice where they were made when he was fitting them then.

Q. To what extent have you adhered to that practice of making the various numbers interchangeable whether they were made by one Company or the other in the years that you have been connected with the British Timken Company?

A. We have always adhered to it. I have never known any other practice.

Q. On the question of manufacturing methods, have you received from time to time information from American

Timken as to manufacturing methods and machines and tolls?

A. All the time we are constantly receiving this information. We get it, whether we ask for it or not, and when we particularly require it, we ask for it. Again and again when we are up against some technical problem here, the answer is: 'Well, let us find out what America do about this'. That is on a manufacturing process, you are talking about.

Q. Is that a matter of occasional enquiry, or is it a matter of constant enquiry?

A. The stream of information backwards and forwards is constant and very considerable, although it suffered some [fol. 1264] diminution during the war.

Q. That was by reason of what?

A. By reason of the fact that we were told to be very careful indeed what we entrusted to the post; but, on the other hand, arrangements were made by us by what was known as the Bearing Control that if we wanted to send anything to America, they would take the documents and drawings and they would arrange for it to be sent to America.

Q. Was this relationship between the American Timken Company and the British Timken Company of any especial advantage to the British Timken Company in respect of the war effort during the war?

A. It was invaluable, for many reasons. My first recollection of the war effort was when our capacity had to be expanded. We expanded more particularly in one department than another, so we were able to buy partly-finished components from America and complete them into bearings. During the war, when we were bombed, we were bombed once and lost millions of rollers, partly finished rollers, and it looked as if our production was going to be very seriously curtailed. So then, all we had to do was say to America 'Send in half a million 302 rollers, three-quarters of a million 502' and some other figure of some other roller, without bothering to tell them dimensions or anything else. [fol. 1265] We simply said 'Send a 302 roller of this particular grade' and they came in. Our association with America during the war also was that when we were required to establish a dispersal factory, which we were told to do, and told to do it as quickly as we possibly could, we

got some machine tools from America. We not only got machine tools sometimes direct from the American Timken Company, sometimes machine tools which they obtained for us from manufacturers, but those machine tools came in tolled up in many instances, tooled ready to produce a new size, so that when they arrived we put them down in the line and they could start producing without having to wait for the delay for us to measure them up and go into all the drawings and tooling jigs, which we should have done in ordinary circumstances. Our association with American Timken was very valuable in the matter of steel when Sweden was cut off, because, with our association with the American Timken and our close relation and the fact that we talked the same language, at all times we were asked to collect the orders from all the other bearing manufacturers for steel which were placed in America. When it came to placing orders for our own steel in America, of course, it was extremely simple, because our methods were so similar and the components we manufactured were so similar that [fol. 1266] we used to say very often to them: 'Send in some tube to make a certain bearings, so much tube.' We might give the dimensions, but the most important point was: 'This tube is required to make a 3984 bearing'. One of the greatest advantages, in my opinion, was because we in this country, under American guidance, had developed the manufacture and sales of exactly similar bearings. The American Timken Company, of course, were the second source of supply for those bearings for British Timken and very often when we had a bearing to make which was, we will say, a very vital bearing and we were the only source of supply, we and the British Government placed orders in America for that bearing. We made some ourselves and we placed another order in America. If I went on, I could think of lots more directions in which they were of the very greatest assistance during the war.

Q. The S.K.F. Company in their ball bearing sizes used what system of measurement in England and on the Continent—inch or metric?

A. Ball bearings, metric dimensions.

Q. What would have happened if the American Company, acting in conjunction with Mr. Dewar, had not commenced the development of tapered roller bearings in England and in the European market in respect of bearing sizes?

[fol. 1267] A. In tapered roller bearings the Skefko policy all the time has been to develop the sale and manufacture of what is known as the I.S.A. range of bearings. They are bearings made to metric sizes, to metric tolerances, and are of different internal dimensions to the bearings that we manufacture and America manufacture, which we know as the inch sizes, and, of course, these bearings were not largely made in America. Perhaps a few sizes were. One reason why the Skefko Company did not get the greater portion of the British trade even before the war and particularly now was that they relied so much on importations from Sweden and did not follow the policy that we did of manufacturing as soon as the demand became large enough. If we had not developed the manufacture of these inch sizes and Skefko had obtained a large portion of the market, which they undoubtedly would in I.S.A. sizes, when emergency arose, as it did during the war, very often through a bomb on our factory, bearings could not have been quickly obtained from America. There would have been a long delay before American Companies could have tooled up to make them.

Q. The second sheet in this Exhibit that has been marked Defendant's Exhibit D.31, shows a constantly increasing sale of bearings by British Timken. I want to ask you [fol. 1268] what has been the effort, if any, of the British Timken Company in respect of reducing production cost since you have been with the company?

A. After all, that is one of the main tasks of the management of the company, to keep on reducing costs as far as we possibly can and improving methods of manufacture to do that.

Q. To what extent has the know-how that has come from the American Company in respect of production methods and machines and practices been effective in assisting you in reducing cost and increasing production?

A. We have got very considerable assistance from the American Company in that matter, particularly in regard to their development of tooling and machine tools generally to manufacture. It was the American Company that first developed the centerless grinding of rollers as opposed to grinding between centers, which made an enormous difference to our cost of production, and the whole time the question of improvement of methods to reduce cost of production is the subject of constant discussion and indeed corre-

spondence between the American Company and ourselves.

Q. Have you undertaken to compare from time to time during the period of your connection with the British [fol. 1269] Timken Company the cost of production in America with the cost of production in British Timken plants here?

A. Yes.

Q. That comparison has shown what, generally, in respect of the production of bearings?

A. Generally speaking, it has shown that the American Timken Company can manufacture more cheaply than we can.

Q. The reason for that is what?

A. One of the reasons is that the American Timken Company have larger orders of particular size than we have. For instance, they very often have got orders for tens of thousands of bearings of one size per week, produced every week. They can keep machines tooled up and they can generally, through having these long runs of particular sizes, make more detailed investigations into the best methods of manufacturing those bearings than we could do when we have such a large number of changeovers, as we call them. Where we are manufacturing in tens of thousands of a size, the American Company are manufacturing in 50 thousands of size.

Q. What has been the effect upon the general price level of the bearings that you have manufactured in comparison with the price level of the bearings that American Timken has manufactured during this period? Has your level been [fol. 1270] higher or lower than the price level of American Timken?

A. Our price level is higher than that of the American Timken Company.

Q. I would like to ask you this question: since you became connected with the British Timken Company in 1930 has there ever been a time to your knowledge when you could have sold in America in competition with the American Timken Company?

A. Never—never had a hope.

Q. Was there any other factor involved in respect of selling in America in competition with the American Timken Company aside from the price factor, such as tariffs?

A. You mean to sell against the American Company?

Q. Yes.

A. There are tariff walls you have to leap to begin with, and of course I do not think we could ever possibly have sold the bearing in America, apart from the cost of production, if we were in competition with American Timken. They were manufacturing in the country, and it has always been our belief that to build up a really big sale in a country you have to manufacture in that country.

[fol. 1271] Q. Now in respect of importation into England, have there been any tariffs, Customs Duties, imposed upon the importation of anti-friction bearings into England?

A. There have been, yes.

Q. And have they been a factor in connection with the possible importation of any bearings into England from American sources?

A. Yes, they have been a factor. I mean tariff walls are a factor; if they were not a factor they probably would not be there. In other words, tariffs have made it more difficult for manufacturers in one country to sell bearings in another country.

Q. I am not sure whether I asked you this question or not, but if I did you can answer it. To your knowledge have any other American bearing manufacturers other than American Timken made any substantial sales in England since you have been connected with the British Timken Company, either for original installations or for replacement purposes?

A. Any other Company than American Timken?

Q. That is right.

A. I think I answered that by saying No.

Q. Now I have asked you about the sales effort that the British Timken Company has expended in England and on [fol. 1272] the Continent in respect of the sales of tapered roller bearings. I want to direct your attention now to the sales of bearings by British Timken in various parts of the Empire, especially Australia. Who has been the representative of the British Timken Company in Australia?

A. In Australia we have had an agent, Kemsley & Co., and we have had distributors in Australia. We have also maintained technical engineers in Australia and have also sent people from this country from time to time to Australia I think that covers it.

Q. How long have you maintained that sales force, engineering force, in Australia?

A. For some years. I do not think I can remember when we first started. I think my first memory of Australian business was sending two engineers from here, two representatives. That would be in the very early days. Then we appointed technical representatives on the spot in Australia. We have maintained two there for a long time, many years. At the moment we have one, because we have the other one back at our factory training him."

[fol. 1273] (Continuing reading.)

"Q. Do you expect to return him to Australia?

A. When he has been trained technically he goes back to Australia.

Q. Who has borne the expense of the sales effort in Australia that you have described?

A. We have at our end.

Q. Has any other sales effort been expended to obtain business for Timken bearings in Australia aside from what you have exerted?

A. No, we have done it all.

Q. Has the business in Australia been replacement business or sales for original installations?

A. It has been both.

Q. Percentagewise, can you give us an estimate as to what the greater part of it is: original installations or replacement business?

A. I think possibly we would have the information, but I do not remember, except that I can say a good deal of it is original installations. I know that by the work of our technical representatives out there whose reports I read, but I do not remember in my head the division.

Q. What, if anything, happened after the war started in [fol. 1274] respect of Australia?

A. Australia needed a great many more bearings; they started a great deal of manufacture themselves. The orders originally all came to us. We could not meet the whole of the demand, and an arrangement was made then whereby the Timken Roller Bearing Company received orders direct from our distributors in Australia. That was for two reasons: first of all, our capacity then was almost entirely occupied, and also it was safer to send bearings from Amer-

ica to Australia than it was from England to Australia. Generally speaking, the main question, in my opinion, was one of capacity. We had not got the capacity to meet the demand, more particularly for original equipment, that arose in Australia, so this arrangement was made whereby American Timken supplied bearings direct, and they were serviced by our engineers out there; we maintained our engineers out there.

Q. The obtaining of business during that period in Australia was the result of whose effort?

A. It was ours, British Timken's.

Q. Are you familiar with a Company called Bearings Service Company?

A. Yes.

[fol. 1275]) Q. What position have they occupied in respect of British Timken in Australia?

A. They have been distributors in Australia and they have been handling all our bearings. All bearings that we send there are sent to those distributors, to one or other of their offices, in as far as they cover Australia. I think we have one distributor who is not under the control of Bearings Service, but generally speaking they collected the orders and forwarded them to us, and we sent the bearings out to their instructions, and they acted as distributors.

Q. To your knowledge did Bearings Service ever approach American Timken with a request that the contract between American Timken and British Timken be broken at any time during the war?

A. To my knowledge they certainly did not, and I should be astonished that they had even without my knowledge; it would be an unheard of thing.

Q. And is Bearings Service still the distributor for British Timken in Australia?

A. Yes, in a great part of Australia.

Q. To what extent, if at all, have orders for tapered roller bearings bearing the name 'Timken' been placed with American Timken since the war has been over?

[fol. 1276] A. Direct from Australia?

Q. Either through British Timken or direct from Australia, if you know?

A. Since the war, of course, we have largely resumed our place as the manufacturer for Timken bearings which have been used in Australia and in Africa, although orders have

still been placed by Bearings Service with American Timken since the war ended.

Q. And the reason for that has been what?

A. Because when the war ended we had quite large orders from America, and then again our capacity in this country was not great enough to meet the total demand, the demand at home and the demand from Australia. We could not give the delivery, so we made an arrangement whereby Bearings Service placed an order with the Timken Roller Bearing Company for bearings.

Q. To what extent has that practice followed the principle about which Mr. Dewar testified a day or two ago, that in the administration of the contract between American Timken and British Timken you have generally adhered to the principle that you were always anxious to get Timken bearings in wherever it was possible to do so?

A. We have certainly followed that principle, because the Australians are saying to us: 'We want so many bearings, [fol. 1277] and we want them quickly.' We say: 'Our delivery is prolonged.' They say: 'What can we do?' We say: 'Well, you must get them from America.'

Q. Has that been done in any territory or in any part of the territory in which the British Timken Company have operated, other than Australia, since the war, to your knowledge?

A. I should think it probably has. It is a principle which we should unhesitatingly follow should we be unable to give the delivery required. I do not remember at this moment whether from Africa, for instance, an order was placed direct with America, but I can quite imagine it would have been by arrangement with us. We should unhesitatingly follow the principle.

Q. Is it correct that the British Timken Company commenced the manufacture of ball bearings some time after 1930?

A. Yes.

Q. Do you recall when the decision was reached?

A. I do not think I remember when that was decided; I think it might have been 1933, but I do not think I remember accurately the date.

Q. Irrespective of the date when it was started, do you know the reasons that dictated the reaching of that decision?

A. Well, to strengthen our position in the market generally.

[fol. 1278] Q. How would that strengthen your position in the market?

A. Sometimes someone would want to buy taper bearings and ball bearings and we would say: 'We will supply all the bearings for this particular motor car, because we can supply the ball bearings as well'. Another reason why the manufacture of ball bearings even today strengthens our position is this: we are primarily taper roller bearing manufacturers, but we manufacture ball bearings now, and as we see orders for ball bearings we go and get them, which can easily be replaced by taper roller bearings. We have a much greater influence in replacing them if we have got the order for the ball bearings than if somebody else had got the order for the ball bearings.

Q. What percentage approximately of the British Timken business has been ball bearing business?

A. Are you including Fischer bearings now?''

Q. Before you had any connection with the Fischer plant to what extent was the ball bearing business a factor in the anti-friction business of the British Timken Company?

A. We were very small in ball bearings.

Q. The product of the Fischer plant represents approximately what percentage of your business today?

A. I should say we were nearly three to one. Our turn-[fol. 1279] over given here for the last year is £2,750,000. I think the Fischer business was somewhere under a million pounds.

Q. Now I want to go back to the sales of bearings that are made in the territory that is set aside for operations of British Timken in the 1938 contract. When bearings are sold by American Timken in that territory what, if any, commission is paid to the British Timken Company in respect of those sales?

A. Sales by American Timken into our territory?

Q. That is right.

A. The only payments of any size were payments on Australian business. They were the only payments of any real size that I remember.

Q. And that was payment for what purpose?

A. They did not pay us a commission when they sent bearings out there. They supplied the bearings at a price

which we indicated to them as being the price level. Then we asked the American Company to invoice the bearings at that price and give us the difference between that price and the price which they would have invoiced to us had they supplied the bearings to us. We were very anxious to get that price difference, because we had to maintain our technical force in Australia, although were not getting the business. The business was going to America and we were [fol. 1280] maintaining the technical engineers in Australia. Therefore, we said: 'This is Australian business and we want a contribution to the cost of maintaining those engineers'. I think that was the arrangement.

Q. Were those payments in any sense penalty payments?

A. No, they were what we demanded to meet our costs in Australia. We did not see why we should maintain the engineers and indeed why we should, as we expected to have to do and indeed did towards the end of the period, have to make payments to our agents to compensate them for the fact that they did not get any commission on bearings supplied from this country. So we had a considerable expense in Australia and we made that arrangement with America.

Q. Has that same procedure been followed in any other territories outside Australia where sales have been made in circumstances where you have, for one reason or another, not been able to make delivery?

A. I cannot think of one. I can only say I should certainly follow that principle. I cannot think of one at the moment—I cannot think of any.

Q. Now I want to direct your attention to the situation in respect to French Timken. You recall when the French Company was established?

[fol. 1281] A. Yes, I think it was established a year or two before I joined it.

Q. That is before you joined British or French Timken?

A. Before I joined French Timken. I joined French Timken about 1930 or 1931. I have forgotten which came first of my Directorships, French or British.

Q. Do you know upon what order or orders the French Timken organization was originally predicated?

A. I remember the situation as it existed when I joined the Board, because at Mr. Dewar's request I spent some

little time in my very early years as a Director in France investigating the position and forming my opinion as to the state of affairs of the Company at that time.

Q. Will you describe the state of the French Timken affairs when you made that investigation?

A. In those very early days I remember that French Timken was certainly passing through a very critical phase. I remember investigating, not only the financial position as it existed when I joined, but also what the probable financial position would be. I remember we lost a lot of money.

Q. Can you tell us approximately what that was?

A. Yes, the figure was—I heard it given by Mr. Dewar this morning—a figure of 7 million francs or 8 million [fol. 1282] francs. That was the loss.

Q. Out of a share capital of what?

A. About 20 million francs—yes, we had lost getting on for half our capital.

Q. That was the situation you found as the result of your investigation?

A. May I alter my last answer slightly? When I say I am certain we had lost nearly half our capital, I am not quite sure, thinking it over, whether our capital was as much as 20 million francs at that time. If I had to modify my answer by looking at the facts, I think the 20 million francs would be modified downwards rather than upwards.

Q. As a Director of the Company, after you had made that investigation, what, if any, recommendation did you make in respect of the situation of the French Timken Company?

A. I remember thinking we were up against it in France, and I thought we had better do something about it. At that time the question arose as to some sort of an arrangement with SKF who had just given us a pretty knock through their taking over control of our best customer and taking all the orders away from us. That meant to say we lost a great proportion of our orders and we were looking in a pretty rocky position then. I am not going to say that I made a suggestion of that sort, but what I want to say [fol. 1283] is that I certainly supported wholeheartedly the suggestion that was made and that was acted on, that we should have some form of truce (as I think it was described) with the CAM.

Q. Is there any agreement as to price or territory, or

anything of that sort, in effect, with CAM at the present time?

A. No.

Q. And there has not been, I understand, since the beginning of the war?

A. Since the beginning of the war.

Q. Now I asked you, Mr. Pascoe, about the know-how that had been made available from time to time to the British Timken Company. I want to ask you whether similar know-how was made available to the French Timken Company by American Timken?

A. It was available but it mainly came through British Timken as far as I remember.

Q. That is in the administration of the Company, that was handled through the British Timken Company?

A. I should say it mainly came through, though there is an exchange of views or correspondence between France and America.

Q. Would that information which has been made avail- [fol. 1284] able involve machine tools, methods and practices and also information as to bearing applications?

A. Yes, the information that is made available to France is essentially the same as is made available to England, whether it comes direct from England or whether it comes direct from the Timken Roller Bearing Company.

Q. To what extent has there been any exchange of personnel between the French Timken Company and American Timken or between French Timken and British Timken?

A. You mean visits from personnel?

Q. Yes.

A. There have been frequent visits between the Companies.

Q. And have technical representatives from the American Company visited French Timken as well as British Timken?

A. Yes.

Q. What is your opinion as to whether or not the success of the French Timken Company in designing the development of tapered roller bearings in France was the result of the know-how that came from American Timken directly or indirectly through British Timken?

A. The development of the tapered roller bearing in France owed tremendously to the association with the

Timken Roller Bearing Company and the interchange of technical details as to methods of manufacture, machine [fol. 1285] tools, applications—in fact everything else.

Q. I should like to ask you one further question, Mr. Pascoe. What is your belief as to whether or not the development of tapered roller bearings in England, France and on the Continent and in the Empire has been the result of the efforts of Mr. Dewar and the American Timken Company together to prosecute the development of the tapered roller bearings in that territory?

A. Well, the development of the tapered roller bearing has been the result of the efforts of Mr. Dewar and the Timken Roller Bearing Company. Had that development between Mr. Dewar and the Americans not been associated —if it had not been started, had not been developed—then the development of sales of tapered roller bearings in this country, and indeed in France, would have been very much slower. In fact we had the example of Germany where we know there is not very much tapered roller bearing development because, as I say, we are not there. We started out there but we were driven by force of circumstances out of the country and there is nothing like the same percentage of tapered roller bearings to the total in Germany as there is in this country, and indeed in France. In fact we have seen lists of machine tools that are found in the German plants; and in one particular plant—one of the largest [fol. 1286] manufacturers in Germany—they were going to distribute their machine tools, and I had a good look to see if any of them were of any special use for tapered bearings, and I could not see any in the end.

Q. You described a while ago the process that has to be followed at the present time as to the importation of bearings into England, whether tapered roller bearings or straight roller bearings. Does that same process have to be followed with the importation of machine tools?

A. Yes, that same process has to be followed with the importation of anything. You have to have import permits, and more particularly in my experience is that the case with both machine tools and bearings. If we want to import a machine tool from America we place an order with the agent of the American manufacturer here and he applies for an import license. The next thing we hear is that we have to go up and make some representations. We are then

faced, as I have been on several occasions during this last year or two, with the machine tool experts of the Ministries who try to prove to us that the machine tool we want from America, although it cannot be manufactured here, something nearly as good can be manufactured here, and [fol. 1287] that we should content ourselves with buying a British made machine tool rather than go to America for the American machine tool. It is a matter of great difficulty —very great difficulty—in getting permission to buy from America.

Q. Has the same problem as to currency control in respect to importations of bearings or equipment arisen in France?

A. Yes. We have not got any dollars."

Mr. Day: That is all the direct examination.

Mr. Nitschke: Continuing with the cross-examination.

(Questions read by Mr. Nitschke and answers by Mr. Dedman:)

"Q. Mr. Pascoe, who were the technical representatives of British Timken in Australia in 1939/40?

A. Fall and Gibson—Gibson certainly in 1940. I cannot remember whether Fall had gone out then or not, but certainly Gibson was our representative. Fall went out while Gibson was there. Gibson then left us and we are now training another one.

Q. Do you know when the Michelin Company acquired the interest in Citroen?

A. I can only fix it by saying that that happened, I should have said, either just before or very soon after or about [fol. 1288] the time that I was joining the Company. In other words it was in the early 1930's.

Q. Was it early in 1930—

A. In the early 1930's. I do not remember the exact date.

Q. It was before 1935?

A. Oh, yes.

Q. That S.K.F's control of Citroen was eliminated?

A. S.K.F's control of Citroen was eliminated? I am sorry; I do not follow.

Q. Mr. Dewar testified to the fact that S.K.F. had some financial control or hold over Citroen?

A. Yes.

Q. And that ceased—I am not sure that he said it ceased, but he did say that Michelin took over Citroen; and my question is whether or not at the time Michelin took over Citroen any financial control which S.K.F. had over it ceased?

A. I do not know. I want to make it quite clear that my answer was that I remember the fact of S.K.F's control, great influence, over Citroen. I do not remember when Michelin came in.

Q. Do you know whether or not they exercised their control after Michelin came in?

[fol. 1289] A. I do not remember that.

Q. You do not?

A. No, I do not.

Q. You do not remember whether they did or not?

A. I do not remember whether they did or not.

Q. I hand you Government's Exhibit D.33 which is the letter from Forsythe to Klinedinst that I used in attempting to find out what protective discount of 50 per cent off the American list meant with reference to prices charged by American Timken when it was selling in British Timken's territory."

Mr. Nitschke: Your Honor, this portion I think I put in in my affirmative case. I won't take the time to read it.

Continuing with the second question on Page 201 of the transcript: (Reading)

"Q. I believe you said that you exchanged dimensions with Timken. You received from them the blue prints and dimensions of their bearings, and you gave them the blue prints and dimensions of British Timken and French Timken's bearings—is that correct?

A. It is not correct insofar as it differentiates between the dimensions of a French Timken bearing and a British Timken bearing and an American Timken bearing. These [fol. 1290] tapered roller bearings we manufacture are essentially the same as those manufactured in America. We have built up gradually more and more sizes, and to a very large extent the new sizes which we put into operation are in the American bearings, already being manufactured by the American Company, and therefore they would send us the dimensions of the bearing. There have been instances where we have developed the bearing—there again this was

during the war—which had not been manufactured by the American Company. When we were manufacturing the particular bearing I have in mind, we certainly sent the fullest information to America to enable them to come to our rescue during the war when we were not able to produce all that was required.

Q. Whenever you developed a new bearing—say a metric size bearing—you gave American Timken the blue prints and dimensions of that bearing, is that correct?

A. We should do so if we developed a new bearing, yes.

Q. You did that?

A. Oh, yes.

Q. Was it your practice to give blue prints and dimensions of your bearings to your competitors also in many cases?

A. To give a drawing of our bearing to our competitors?

Q. And the dimensions—yes?

A. No.

[fol. 1291] Q. Did you ever have a case where a customer asked you to give your blue print and dimensions to another manufacturer so that he could produce a bearing of the same size, and so that the customer would have another source of supply?

A. I do not remember having been asked to give particulars of our bearing design to any customer, or to a competitor—although, of course, during the war we did lots of things. We supplied bearings to our competitors during the war.

Q. When a customer like Ford buys a bearing from you, do you not give him a blue print which shows him the dimensions of the bearing he is buying?

A. We should give Ford a blue print, but we should not necessarily give all the internal dimensions of the bearing. Our practice, if we are selling a bearing to Ford, would be that we should send them a drawing. We should say: 'Here is our bearing 3984. That is the bearing we are going to supply'. The Ford Company would take that, make their own copy of it, put 'Ford Motor Company' on it, and send it back to us. There is no secret about the external dimensions of our bearings at all.

Q. There is no secret about the external dimensions?

A. There is no secret about the external dimensions of a

bearing at all. We publish bearings; we publish catalogues which will show the bearing.

[fol. 1292] Q. And what is the difference between internal and external dimensions?

A. Well, we do not publish the included angle of the roller.

Q. Have you ever had it on a blue print which you gave to Ford?

A. Ever have the included angle?

Q. Yes.

A. I do not remember that we did.

Q. Would you refuse to give that to Ford if they asked you for it?

A. If anyone asked us for what I call the internal dimensions of our bearings, I should be very loth to give it to them.

Q. But you would give it to Ford?

A. No, I would not. I would say: 'Here is the bearing with the external dimensions. What do you want to play around with roller angles and everything else? We are making the bearing; you are concerned with external dimensions'."

Mr. Nitschke: I think that concludes the cross-examination.

Mr. Day: There is a little redirect of Mr. Pascoe on Page 213.

(Reading)

"Q. Mr. Pascoe, you were asked yesterday something about the loss that French Timken had sustained and which you examined at the time you made the investigation of the [fol. 1293] affairs of French Timken that you described yesterday. In your answer you indicated that there were some questions in your mind as to whether the share capital of French Timken was 20 million francs and indicated that you thought it might be more than that. Have you made any investigation to determine with more accuracy what the share capital of French Timken was?

A. I have been able to look at a Balance Sheet for 1934, I have not been able yet to look at a Balance Sheet for the earlier years. By 1934 the share capital was 10 million francs, the loan capital was 11,700,000 francs, and on that

our accumulated losses which were shown in the Balance Sheet under two headings, one 'Direct Losses' and the other under the heading of 'Development Account,' amounted to 8,700,000 francs. By far the greater part of that Development Account was a loss. Therefore our answer that our losses were 40 per cent as given yesterday is correct.

By Mr. Day: I would like to have the record show that the details given by Mr. Pascoe upon this question may be considered as also applying to Mr. Dewar's testimony in the same regard.

By Mr. Nitschke: As an amplification of what he said?

By Mr. Day: As an amplification or modification of what [fol. 1294] Mr. Dewar said upon the same subject.

By Mr. Nitschke: Yes.

Q. Can you give us the approximate number of bearing sizes that were being made by British Timken at the time you first became connected with the Company in either 1930 or 1931?

A. As an estimate, I should say we were making somewhere around 500 sizes.

Q. Can you give us similar figures for the number of bearing sizes being made at the present time by British Timken?

A. When you say 'at the present time,' you must cover a month or two, of course, not just to-day.

Q. Of course.

A. To-day we are making and prepared to make and tooled to make 3,000.

Q. Different sizes?

A. 3,000 distinct sizes."

Mr. Day: I think that concludes Mr. Pascoe.

[fol. 1295] Mr. Day: We now offer the deposition of Mr. Llewellyn Milford Ellis of Poppy Lane, Erdington, Birmingham, England, retired, aged 70 years being duly and publicaly sworn and examined on the part of the Defendant, doth depose and say as follows:

(Questions read by Mr. Day and answers by Mr. Ketterer:)

"Direct examination by Mr. Ketterer.

Q. Will you state your name?

A. My name is Llewellyn Milford Ellis.

Q. And you live where?

A. I live in Birmingham, 15 Poppy Lane, Erdington, Birmingham, England.

Q. You are employed by what company?

A. I am employed by British Timken Roller Bearing Company.

Q. Were you ever employed by a company known as The Electric and Ordnance Accessories Company, Limited?

A. Yes, I was for a number of years.

Q. When did you first commence work with The Electric and Ordnance Accessories Company?

A. In the year 1909.

Q. In what capacity were you employed by that company?

A. I was employed as jig and tool designer and plant lay-out draughtsman.

[fol. 1296] Q. You continued with that company for what period of time?

A. I continued with them until they were disbanded, which was somewhere about 1919. That is just after the end of the 1914/1918 war.

Q. With what company did you work after 1919?

A. All the time I was working with Vickers. The Electric and Ordnance Accessories was a subsidiary of Messrs. Vickers. I was simply transferred, after they disbanded Electric and Ordnance Accessories, to the Wolseley Motor Company which also was a subsidiary of Vickers.

Q. Then you went with what company following the Wolseley Motor term of employment?

A. With Wolseley Motors it lasted for a short time, a year, or it might have been a couple, when British Timken was organized and I automatically then became a member of the British Timken staff.

Q. Have you continued on the British Timken staff down to the present time?

A. Yes, that is so.

Q. And have you always worked in the same capacity as you were employed originally by the Electrical and Ordnance Accessories?

A. No. My responsibilities have greatly increased. They [fol. 1297] have been increased from time to time.

Q. What different positions have you held with the Electric and Ordnance Accessories, Wolseley Motors and Brit-

ish Timken over the years from 1919 down to the present time?

A. Well, to the end of the war, I held the position I mentioned, that is chief of the jig and tool design and plant. Afterwards, when the British Timken was formed and we broke away from the Wolseley Company, I still held that same position but in addition I was put in charge of the bearing design department and also the industrial application department.

Q. That continued for how long?

A. That continued to the commencement, or just after the commencement, of this last war; that is, about the end of 1939.

Q. Since 1939 what has been your position?

A. Since 1939 I took a less active part. My health, and so on, would not enable me to carry on as I had been doing. It was really a matter of drifting into the position of adviser to the Directors on the strength of my past experience. But I still took a supervisory position particularly in regard to bearing design.

Q. Now, going back to 1909, I want to ask you whether [fol. 1298] Electric and Ordnance Accessories was manufacturing tapered roller bearings when you commenced working there?

A. No, they were not when I first went there. I think it was just after I went there that they got instructions from Messrs. Vickers, of whom they were a subsidiary, to start the manufacture, that is to equip certain shops and start the manufacture of tapered roller bearings.

Q. What, if anything, did you have to do with that equipment of the shop for the manufacture of tapered roller bearings?

A. I had to lay out the shops; that is, I had the dimensions of the shops to begin with, and I had to lay out the different departments, Technical department, grinding department, inspection, and so on, allocating the space available, as far as possible, so that we could manufacture the whole bearing.

Q. Did Electric and Ordnance Accessories make any other products at that time?

A. Yes. They were doing quite a lot of electrical work, electrical motors, and ordnance work, that is fuse manufacture, Government ordnance work, and a number of lines in

electrical stuff, switch gear and electric motors, heating apparatus, fans, and so on.

[fols. 1299-1300] Q. Where was that plant located?

A. That plant was located at Aston, Birmingham.

Q. Is that the same place as the British Timken plant is located now?

A. Yes, that is the same factory.

Q. How much space was utilized in the Electric and Ordnance Accessories plant at the time you first laid out space for the manufacture of tapered roller bearings in 1909?

A. They started off with one fair sized shop. It would be I should say, about 200 feet by about 40 feet.

Q. That covered the entire operation as far as bearing manufacture was concerned?

A. Yes. The only thing done outside was a certain amount of press work for producing the cage which was made in another shop, in what we called the electric ordnance press shop.

Q. In other words, they made the cages?

A. Yes.

Q. How many people were working at that time on the manufacture of bearings?

A. We started off in the actual Timken shops with not more than about a couple of dozen people. That was rapidly increased.

[fol. 1301] Q. By 1919 or 1920, when Wolsely Motors came into the picture, how many people were involved in the manufacture of bearings, as you can recall?

A. In 1920 I should say it had increased to 350 or 400 people by that time.

Q. How many bearing sizes were being manufactured or assembled?

A. At that time?

Q. Yes.

A. At that time I should say we had got to about 60 or 70 definite sizes that we made.

Q. That is by 1920?

A. Yes, that is by 1920.

Q. Were they largely automotive sizes?

A. Yes, nearly all of them were. I think I can say all of them were automotive bearings.

Q. I believe you said the year or so after 1919 or 1920 British Timken organizatibn came into the picture?

A. Yes.

Q. What was that in respect of the Wosley Motors Company? Was it a subsidiary, or how was it panelled?

A. No. Actually Wolseley had very little to do with it except they did exercise a certain advisory position in regard to Timken just to begin with because that did not last long before Timken was entirely separated.

[fol. 1302] Q. Did you always remain at this Aston plant site?

A. No. We remained at the Aston site until about 1915. It was a little while after the war started when the plant was moved from Aston to what we called the Ward End Works. It was about a couple of miles nearer the outskirts of Birmingham."

[fol. 1303] Mr. Day: We are now resuming the testimony of the witness Ellis, on Page 207.

(Questions read by Mr. Day, answers read by Mr. Ketterer.)

"Q. When Wolseley Motors took over the manufacture in 1920, was anything else manufactured on the premises aside from bearings?

A. Well, taking the factory altogether, yes, because the Ward End factory covered a very considerable area and it was divided into one or two sections. The main factory building was occupied by Wolseley who started there the manufacture of certain types of small cars. Then the Timken plant was in a self-contained building entirely separated from the main Wolseley factory.

Q. And you remained at the Ward End plant until what date?

A. Until 1927 I think it was.

Q. Was that when the separation from Wolseley Motors was completed?

A. Yes. It was completed perhaps a month or two before we actually moved.

Q. Up until 1927 who owned the equipment, if you know, [fol. 1304] that was used in the manufacture of bearings at the Ward End plant?

A. In the first place I believe the equipment belonged to the Wolseley Company.

Q. Did they perform, up until 1927, any manufacturing operations for the bearing business?

A. Yes. They made the cages in the Wolseley press department.

Q. And that continued up until 1927?

A. Yes, approximately 1927.

Q. How many people were employed by 1927, to the best of your recollection, in the manufacture of bearings at the Ward End plant just preceding the removal from the Ward End plant?

A. I think it had increased to probably 500. It might even have been a little bit more than that.

Q. How many bearing sizes were you making by that date, if you can recall?

A. Perhaps 100 sizes by that time.

Q. In respect to their application, were they automotive, or were there any other applications?

A. Mostly automotive, although we had a certain amount of business, which was a growing business, for other applications, such as machine tools and mill equipment, and that [fol. 1305] sort of thing.

Q. From the time that you first were connected with the manufacture of bearings in 1909 first by Electric and Ordnance Accessories, then by Wolseley Motors, then by the British Timken organization down to 1927, what is the fact as to whether the mark 'Timken' was put on the bearings manufactured by that succession of companies?

A. The word 'Timken' was always put on. It was put on right from the very commencement and there never was a time to my knowledge when 'Timken' was not put on.

Q. In 1927 was there a removal of the plant from the Ward End plant?

A. Yes. I believe an arrangement was made whereby the new Timken Company, which had been organized, actually bought the plant that they were using which had been more or less leased to them by the Wolseley Company. So that from that date onwards it became absolutely the Timken property and it was removed from the Ward End Works. Just owing to circumstances, the old Aston factory happened to be empty and available and it was, therefore, taken over for the manufacture of Timken bearings, and the plant brought down there.

Q. That is in 1927?

A. Yes.

[fol. 1306] Q. In connection with the positions that you have described as having held with the British Timken organization from 1927 down to date, have you ever had any occasion to have anything to do with the exchange of manufacturing data from American Timken to British Timken?

A. Yes, quite a lot. I used to be in communication with the American Company almost every week, generally asking for information or for drawings or for something of that sort in connection with work that we had got in hand at the time.

Q. Has that information, or exchange of manufacturing data in respect of machine tools and machines, been considerable in your connection with it or otherwise?

A. Very considerable. In connection with all new sizes as they came along, we invariably got complete information in the form of fully dimensioned prints, and, in certain cases, if they were special bearings, there might be quite a bit of information given us in reference, say, to special limits and other particulars which it was necessary to observe, we will say, in connection with that particular class of bearing.

Q. Can you recall as to whether any representatives of the American Timken Company came to the British Timken plant during the years after 1927?

[fol. 1307] A. Yes, there were two or three. I do not know that I can recall their names. I remember there was a Mr. Shuler. There were two or three.

Q. Do you recall a Mr. Sloan?

A. Yes, definitely Mr. Sloan. We also had at least one representative who was not a member of the Timken Company, but I believe he came over at the instigation of the Timken Company from the New Departure Company, owing to the fact that he was able to give us certain technical information on the manufacturing side, particularly on forging.

Q. When you first moved back to the Aston plant in 1927, was all of the plant occupied with the operations of the British Timken Company?

A. Yes, entirely. There was nothing else handled there but the Timken bearing manufacture.

Q. Did you utilize all the floor space with the plant at that time?

A. Not to begin with. We had got several shops that were not occupied for several years after. As a matter of fact, when we went into the factory, we thought it was too big for us.

Q. Have you since that time filled it?

A. Yes, absolutely filled it and built extensions. We still [fol. 1308] are looking out for somewhere else to enable us to make all the bearings that we want to.

Q. How many storeys are there in that plant?

A. There is the ground floor and two others in the main block of buildings. Then there are one or two blocks which are simply ground floor buildings."

Mr. Derr: Your Honor, the Government would like to offer the cross-examination of the witness Ellis.

The Court: All right.

(Questions read by Mr. Derr, answers by Mr. Dedham.)

"Cross-examination by Mr. Derr:

Q. You made reference to the fact that on one occasion, at least, New Departure Company had sent a representative and given you certain information with respect to forging.

A. Yes.

Q. Do you know why the New Departure Company was called upon to give you that information rather than the Timken Company?

A. Yes. The New Departure Company have a very big forge department and they make practically all their bearing rings by the forging process, whereas Timken have no forge department at all. All their smaller size bearings are [fol. 1309] made from drawn tubing. We were using the forging department to a certain extent and therefore there was no one in Timken who could really give us the same expert advice that a man from the New Departure Company could.

Q. Would you please explain for the purpose of the record the differences in the forging of British Timken and the method used by the American Timken Company?

A. The American Company made their bearing rings from tubes. They were thick section tubes. I am talking about sizes up to about six inches in diameter. Over that

in America they used drop stampings for a certain range of sizes. But up to six inches in diameter, I believe American Timken used only tube which they themselves manufactured. We were not able to buy tube in this country over four-and-a-half inches in diameter. Therefore, there was a big gap which was filled by the use of stampings which we used to buy outside. But it was considered we should get a better ring by installing forging machines. We therefore put in two forging machines and, being new to us, we naturally came up against all sorts of difficulties, and to help us out, I think I am right in saying the Timken Company arranged for a man whose name I have forgotten to come from the New Departure Company where they had 60 to 80 machines of the type we were using.

[fol. 1310] Q. How long did British Timken continue to follow the technique of the forging system?

A. They continued to use the forging machines right up to within a year or two of the war. Then, owing to labour troubles chiefly, and the fact that we had only got three forging machines, it was decided that we should get our requirements made better by buying all our stampings outside instead of making just a few on our own forging machines and buying the rest outside. We had not sufficient capacity to make all we wanted by a long way.

Q. Speaking comparatively of forgings and tubings, is the steel that is used in those two systems identical?

A. Yes. The chemical analysis is identical.

Q. Is the heat treating the same?

A. The heat treating is exactly the same.

Q. During the course of your experience with the British Timken Company since 1928, have you not had occasion in many instances to obtain manufacturing information on production know-how from Bitish machine tool manufacturers?

A. No. If I rightly understand you, we bought various machines from British manufacturers. We invariably gave them either drawings or actual samples of the sort of thing we wanted to produce and asked them for their [fol. 1311] production times on the machine. Generally, also, we asked for general particulars of the type of tooling, and so on, that they would provide. I do not remember a single case where we found it economical to change

over to any suggestions made by British machine tool manufacturers from the methods that we used, which were practically identical with those used by Timken America.

By Mr. Derr: That is all."

Mr. Day: We now offer the deposition of Mr. Hobley, on Page 215.

(Questions read by Mr. Day, answers by Mr. Ketterer.)

"Walter Ernest Hobley of Churchill, Somerset England, retire, aged 58 years, being duly and publicly sworn and examined on the part of the Defendant, doth depose and say as follows:

Direct examination by Mr. Ketterer:

Q. Will you state your name, please?
A. Walter Ernest Hobley.
Q. Where do you live?
A. Churchill, Somerset.
Q. Are you presently employed?
A. Not at present.
Q. Were you formerly employed by British Timken, Ltd.?
[fol. 1312] I was for 32 years.
Q. When did you stop working for British Timken, Ltd.?
A. 1946.
Q. Did you retire at that time?
A. I did.
Q. Did you ever work for a Company known as Electric & Ordnance Accessories, Ltd.?
A. Yes.
Q. When did you start working for that company?
A. Early 1914.
Q. And you continued working for that company for what period?
A. Until British Timken was formed as a company in 1920.
Q. Then you continued working for British Timken for what period?
A. Until 1946.
Q. In what capacity were you employed by Electric & Ordnance Accessories?

A. In the sales office.

Q. Did you continue in the sales department of that company until British Timken came into the picture?

A. Yes.

Q. Did you continue in the sales department with British Timken until the time of your retirement?

A. Yes.

[fol. 1313] Q. I will ask you where the plant was located when you started working for Electric & Ordnance Accessories?

A. It was located at Cheston Road, Aston, Birmingham.

Q. And that is the same place as the British Timken plant is presently located?

A. Exactly the same place.

Q. Was it moved at any time from that location during the term of your employment?

A. It was moved about 1916 or 1917. I cannot say which, but during the first World War it was moved from Aston across to Ward End.

Q. In what plant was it located at Ward End?

A. In the plant of Wolseley Motors.

Q. Was any other manufacturing operation being conducted at the Aston plant aside from the manufacture of bearings?

A. Yes.

Q. What was being made there?

A. Electric motors and fuses, because it was war-time; fuses were made in large quantities there.

Q. What was the size of the operation in respect of the manufacture of bearings as to number of employees when you first started working in 1914 for Electric & Ordnance Accessories?

A. When I started I think there were about between 50 and 100 employees—that is engaged on the bearing business.

[fol. 1314] Q. That is right. By the time the British Timken Company was formed and continued the operation at Ward End, how many employees were there working for the British Timken Company, approximately?

A. It would have increased considerably; I should estimate two or three hundred.

Q. How many bearing sizes were being made when you

first went with the Electric & Ordnance Accessories Company?

A. Probably about 100.

Q. And by 1920 or 1921 when the British Timken Company intervened?

A. It had increased, perhaps to several hundred.

Q. I will ask you whether or not the bearings that were being manufactured first by Electric & Ordnance Accessories and later by British Timken bore the trade mark 'Timken' at all times, to your knowledge?

A. Always.

Q. Where were those bearings sold after the conclusion of the first World War, in what markets generally?

A. Our main business was with motor car manufacturers.

Q. In England or on the Continent, or where?

A. In England and also on the Continent.

Q. What is the fact as to whether there were sales generally made in most Continental countries after 1920?

A. I did not quite get that question.

[fol. 1315] Q. What is the fact as to whether there were sales made after 1920 in most of the Continental countries of Europe?

A. We supplied considerable numbers to the Continental countries through our agencies which had been hitherto fixed.

Q. What was the situation in respect of sales in various parts of the British Empire, such as Australia and New Zealand?

A. We appointed an agent in Australia and began business after 1920 in a small way, but it grew very rapidly.

Q. Now the operation of the British Timken Company until 1927 was under the general direction of what company?

A. Of Wolseley Motors.

Q. After 1927 was there any intervention by Wolseley Motors in respect of the operation of the British Timken Company?

A. None whatever; it was a complete severance.

Q. What, if anything, did you observe as to the development of the British Timken Company after 1927 in comparison with the development prior to that point?

A. We developed a great deal more rapidly after 1927 than before.

Q. Did that development continue until the time of your retirement in 1946?

A. It was developing all the time.

[fol. 1316] To your knowledge was there any technical information either as to bearing applications or manufacturing methods obtained from American Timken during the period from 1927 to 1946?

A. Yes, a considerable amount of technical information came through.

Q. Did you personally have any contact with American Timken during that time?

A. I had considerable correspondence with American Timken.

Q. And that had to do with what subjects?

A. Sales matters and technical matters."

Mr. Derr: Your Honor, the Government's Examination of the witness Hobley was offered as part of the Government's affirmative case.

Mr. Day: Page 220, "Redirect Examination (reading).

Q. In a question that was directed to you by Mr. Derr you were asked whether or not there was any commission paid to American Timken on sales in American Timken territory of ball bearings or straight roller bearings?

A. Yes.

Q. I believe you said you thought there was?

A. To the best of my recollection I think there was.

Q. Was it your job to handle the payment of commission to the American Timken Company on ar[illegible] sales made, or [fol. 1317] was that handled by anybody else?

A. It was handled by the Accounts Department.

Q. So that you might be mistaken about that?

A. Quite."

Mr. Derr: Your Honor, in order to preserve the continuity of this redirect-recross examination, I think the Government already read this as part of the affirmative case. There are only a few questions. Reading from Page 221 of the deposition. I shall read both questions and answers.

"Q. Did you get the consent of the American Timken Company to sell straight roller and ball bearings in Canada and South America?

A. I do not think the consent was necessary, because our agreement only covered tapered roller bearings.

Q. I show you again the Agreement dated 29th December, 1934, between American Timken and British Timken, Ltd. (Government's Exhibit D.29), and refer you to the first part of Paragraph 7. I also show you the preamble to this Agreement and ask that you please read it including the 'Whereas' clause.

(The witness studied the document.)

Q. Clause (b) of the 'Whereas' clause reads: 'The expression 'bearings' for the purposes of this Agreement means anti-friction bearings of all kinds'?

[fol. 1318] A. Yes.

Q. Does that refresh your recollection as to the limitations on the authority of British Timken under the Agreements to sell in American territory?

A. Yes. The arrangement, as I recall it, was that we could supply in the Timken Company's territory, they could equally supply in our territory, and a commission was payable either way."

Mr. Day: "Redirect examination by Mr. Ketterer.

Q. You have been asked about the matter of selling bearings by British Timken in American Timken territory, and a payment of commission on that. Reference has been made to provisions in one of the business Agreements between British Timken and American Timken. I want to ask whether you had anything to do with the making of that contract?

A. No, I had nothing to do with the making of it.

Q. Did you have anything to do with its administration?

A. Yes.

Q. What did you have to do with that?

A. Mainly this question of trading in each other's territory.

Q. And your best recollection about that now is what?

A. The whole object of that arrangement was that if clients in our territory insisted on buying bearings from [fol. 1319] America we would let them do so. If there were clients in the Timken Company's territory who wished to buy from Great Britain we would supply them. A com-

mission would be granted in either case. That was in order to combat competition; that was the whole basis of it.

Q. That is your best recollection of that?

A. That is to the best of my recollection.

Q. What is your best recollections now as to whether the consent of American Timken was asked for in respect of sales by British Timken in American Timken's territory of ball and straight roller bearings as distinguished from tapered roller bearings?

A. Well, I really cannot recollect whether we did make application to the Timken Company to supply ball bearings in South America or not, but we did supply them, I am sure of that."

Mr. Day: We now offer the dopsition of the witness Jean Lemarie of 11, Rue Parmentier, Neuilly sur Seine, near Paris, France, aged 53 years, being duly and publicly sworn and examined on the part of the Defendant, doth despose and say as follows:

[fol. 1320] (Questions read by Mr. Day; the answers read by Mr. Ketterer from the deposition of Jean Lemarie.)

"Q. Will you state your name, please?

A. Lemarie, Jean.

Q. Where do you live?

A. Neuilly sur Seine, near Paris.

Q. Do you have any connection with the French Timken Company?

A. I am Director General of French Timken."

Mr. Ketterer: If the Court please, I think in taking the depositions, counsel agreed that that should be Director General and not Managing Director.

Mr. Day: Director General, yes.

"Q. How long have you been Managing Director of the French Timken Company?

A. Since 1st January, 1946.

Q. Did you have any connection with French Timken before January 1st, 1946?

A. Yes, I was Director from February 1st, 1943.

Q. Were you ever employed by a company known as Societe Mecanique de Gennevilliers?

A. Yes.

Q. When were you employed by that company?

[fol. 1321] A. From the 1st July, 1919 to 1st October, 1920.

Q. In what capacity were you employed by the Societe Mecanique?

A. As Engineer in the works.

Q. At the time you were employed by the Societe Mecanique was that company manufacturing tapered roller bearings?

A. It was beginning.

Q. What kind of tapered roller bearings were they making?

A. What kind exactly.

Q. Were they marked with any trade mark?

A. They were marked 'Timken'.

Q. Have you any recollection as to the sizes, the number of symbols of bearings that were being made by the Societe Mecanique during the time you worked there?

A. I do not remember. I think there were a small number of sizes.

Q. I have here three sheets of paper that have been marked Defendent's Exhibit D.32. I ask you whether or not these were prepared under your directions from the records of the French Timken Company?

A. Yes."

Mr. Day: We would like to offer that in evidence, if the Court please, as Defendant's Exhibit 35.

[fol. 1322] "Q. I now hand you two other sheets of paper which have been marked for identification Defendant's Exhibit .32. I will ask you whether or not they have been prepared under your direction from the records of French Timken?

A. Yes."

Mr. Day: We would like to offer that in evidence also, your Honor.

[fol. 1323] "Q. At the time you were working for the Societe Mecanique in 1919 and 1920 did they make any type of anti-friction bearing, except tapered roller bearings?

A. They were making ball bearings.

Q. Did they continue to make ball bearings after 1920 to your knowledge?

A. Yes, they continued until 1930.

Q. What happened to that plant in 1930?

A. The shares were bought by Skefko.

Q. That was SKF?

A. SKF.

Q. Can you tell us approximately the amount of the total anti-friction bearing business done in France by French Timken today?

A. By French Timken in francs?

A. That is right.

A. 1947, 270 million francs.

Q. What percentage of the total anti-friction bearing business was done by French Timken?

A. Nearly 10 per cent.

Q. Are there any other companies operating in France today that manufacture taper roller bearings aside from [fol. 1324] French Timken?

A. Yes."

The Court: Pardon me. Is there any way by which you can agree as to the rate of exchange of francs in 1947?

Mr. Nitschke: We know what it was in February. It was 1/3 of a cent for a franc, approximately, but that was devaluated in February of this year. I think they're 118.

The Court: That's the reason I was asking, because of the devaluation of it. The figure of 270 million francs may be of some value if we know whether it was on the basis prior to the devaluation, or both prior and subsequent to it.

Mr. Nitschke: Well, the devaluation was in February, 1948, so I suppose this was before that.

Mr. Ketterer: If the Court please, the testimony was that, as a matter of fact, the devaluation was being talked about when we were over in London but had not yet become effective. At that time the rate was 119 francs to the dollar.

The Court: 119 francs to the dollar?

Mr. Ketterer: Yes.

"Q. Will you tell us what they are, please?

A. SKF, Rossi, Renault—I think that is all.

[fol. 1325] Q. Are there any companies in France engaged in the manufacture of other types of anti-friction bearings, such as ball bearings, today?

A. I do not understand the question, because all the other works are manufacturing ball bearings: SKF is manufac-

turing ball bearings, Renault is manufacturing ball bearings and Rossi is manufacturing ball bearings. I think Timken is the only one manufacturing only tapered roller bearings.

Q. As for bearing sizes, can you tell me how many bearing sizes French Timken makes today approximately?

A. 500 sizes.

Q. Are they measured in inches or are they partly in metric sizes?

A. No, a big part in metric sizes.

Q. What is the necessity of making metric sizes in the French anti-friction bearing market?

A. It is a necessity for all the companies who are controlled by the Government.

Q. Will you explain that a little further?

A. For the companies who are controlled by the official organization you have to use, if possible, metric sizes—I say 'if possible'.

Q. That is a requirement of the French Government?

A. Of the French Government.

[fol. 1326] Q. What part of the sizes that are made by French Timken today are metric sizes?

A. I think nearly a third part—not exactly a third; I think the metric sizes are 100, 110.

Q. About 100 to 110 out of 500?

A. Yes.

Q. Since you have been connected with the French Timken Company as Director have you observed any technical assistance that has been given to the French Timken Company by American Timken?

A. Yes.

Q. What kind of technical assistance have you gotten?

A. Last year the Timken Roller Bearing Company sent engineers and service men as regards the question of bearings for railways, for French engines built in the States.

Q. How many men came from American Timken last year to help in connection with that work?

A. Three or four.

Q. And they were in France for what period of time?

A. One was in France for a very long period, four months if I remember.

Q. How long were the others in France?

A. One week, two weeks, three weeks.

Q. As to machine tools have you had any assistance from [fol. 1327] American Timken in respect of machine tools?

A. Yes, we have received 16 machine tools since the end of the war.

Q. What is the fact as to whether those machine tools were essential to the operation of the French Timken Company?

A. They are essential.

Q. Who handles the sales effort of the French Timken Company in France?

A. The Sales Manager under the General Manager.

Q. And is he on the pay roll of the French Timken Company, on the staff of the French Timken Company?

A. Yes, he is on the staff of the French Timken Company.

Q. Do you maintain any distribution service in France for the handling of the sales of service bearings?

A. Yes.

Q. How extensive is that?

A. We have one manager and 25 employees as a sales service.

Q. Would it be possible, in your opinion, for an American Company to handle directly the sale of anti-friction bearings in France?

A. In my own opinion it would be quite difficult.

Q. Will you tell us why you have that opinion?

A. Because the conditions of sale are very difficult and the prices are fixed by the Government. Now since the 1st January the prices are free, but during all the war and [fols. 1328-1336] during all the post-war period the prices were fixed by the Government and you had to keep very close close contact with all the official services.

Q. By 'official services' you mean Government services?

A. Government services—and you know the French Government want to have the control of the bearing works.

Q. Is there any official policy of the French Government in that respect?

A. Yes, their official policy is to control the bearing works.

Q. Is there any policy of the French Government to your knowledge that has to do with the location of bearing plants in France?

A. You know just before the war the French law said that you had to place your bearing works in the south of France and during the war, but now the war is finished and there is no longer a regulation where you have to locate your bearing works.

Q. In respect of having plants located in France in the event of war has the French Government any policy on that?

A. Before the last war, yes, and during the last war but now I do not know."

[fol. 1337] Mr. Derr: Your Honor, the Government's examination of Mr. Lemarie consists of only a few questions, and with your permission I will read those.

(Thereupon the following questions and answers were read by Mr. Derr:)

"Q. Do you know what percentage of the French tapered roller bearing market Francaise Timken has today?

A. I do not know exactly.

Q. Could you make an approximation, as you did for Mr. Ketterer with respect to all anti-friction bearings?

A. I think perhaps it would be 80 per cent.

[fols. 1338-1341] Q. Does French Timken secure from American Timken blue prints and dimensions of the metric size bearings that it produces?

A. Not for the metric bearings, because the sizes and the dimensions of the metric bearings are fixed by ISA.

Q. What is ISA?

A. International Normalization Board—I do not know what the name in English is.

By Mr. Derr: International Standards Association?

A. Yes."

Mr. Day: We have those two exhibits now which we might offer, which were deposition Exhibits D-32, and which now becomes Defendant's Exhibit 35.

The Court: Will you describe that to me, Mr. Day, so that I will know what it is?

Mr. Day: Yes, I will, your Honor.

(Document referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 35.)

Mr. Day: We will offer that in evidence, and maybe it should be read.

[fols. 1342-1343] The Court: That exhibit will be received.

Mr. Day: The next exhibit, Defendant's Exhibit 36 was marked D-32 in the deposition, and also relates to Francaise Timken, and it is a tabulation of purchases from the Timken Roller Bearing Company, Canton, from 1933 to 1946, the first page, and the second page—well, that says something there in French that Mr. Ketterer perhaps can explain better than I can because he handled the French witnesses over there in London.

[fol. 1344] The Court: To December 31, 1947, yes. The second exhibit, Defendant's Exhibit 36, will be received.

Mr. Day: We now offer the testimony of Andre Bernard Jules Augis of 179, Avenue Victor Hugo, Paris XVI, France, Companies Director and Private Counsellor, aged 64 years, being duly and publicly sworn and examined on the part of the Defendant, doth despose and say as follows:

(Thereupon the following questions were read by Mr. Day and the answers by Mr. Ketterer:)

"Q. Will you state your name?

A. Andre Augis.

Q. Where do you live?

A. Paris XVIth Arrondissement, 179, Avenue Victor Hugo.

Q. What is your profession?

A. I am a lawyer by profession.

[fol. 1345] Q. Have you any official connection with the French Timken Company at the present time?

A. At the present time I am a Director of the French Timken Company.

Q. How long have you been a Director?

A. I was made a member of the Board at Bordeaux on the 19th June, 1940.

Q. Where was the German Army at that time when you were made a Director?

A. They were just arriving at Bordeaux.

Q. Have you continued to be a Director ever since?

A. Yes, since 1940 have always been a member of the Board of French Timken.

Q. Prior to 1940 had you performed any legal services for the French Timken Company as a lawyer?

A. Yes, since the inception of the company I have been advising Mr. Michael Dewar on legal and fiscal matters mainly, and I have always been associated with the development of the company because Mr. Dewar always kept me au courant with what was done as to French Timken.

Q. Can you tell me in whose name the trade mark 'Timken' was registered in France prior to 1928?

A. Yes, the trade mark 'Timken' was registered in the name of Societe Mecanique de Gennevilliers, a limited company established in France.

[fol. 1346] Q. I have here a Certificate of Registration that has been marked for identification Defendant's Exhibit D.34 and I ask you whether or not you can tell us what that is.

A. This is the official document delivered by the Registrar of Industrial Property and it is the only evidence which can be obtained in France as regards trade marks and what you call names used in the trade.

Q. What does that show in respect of the registration of the mark 'Timken'?

A. That shows, first of all, the identification of the mark and also it applies to certain trades which are specified on the Certificate.

Q. What does it show as to the name of the person or company who is the owner of the mark 'Timken'?

A. It is always the name of the company, of the owner; they do not say anything except to whom it belongs.

Q. But to whom does it belong as shown by the Certificate?

A. It is shown as the Societe Mecanique de Gennevilliers.

Q. Does it show the date on which that registration was obtained in the name of the Societe Mecanique?

A. Yes, it was registered on 17th February, 1921."

Mr. Day: We would like to offer that Certificate in evidence, if your Honor please.

[fol. 1347] (Defendant's Exhibit 37 marked by the Clerk on Government's Exhibit 37, as requested.)

[fol. 1348] Mr. Day: Continuing with the testimony of Mr. Augis. I think the last was we offered the Certificate, did we not?

The Clerk: That wasn't offered, Mr. Day.

Mr. Day: Well, I offer it, then, if it wasn't offered.

(Referring to Defendant's Exhibit 37.)

The Court: It may be received.

(The following questions were read by Mr. Day, and the answers by Mr. Ketterer.)

"Q. Did you have anything to do with a transfer of that trade mark in 1927 or 1928?

A. Yes—in France?

Q. In France, yes.

A. The mark 'Timken' was transferred by the Societe Mecanique de Gennevilliers to French Timken by a notarial deed which was made by the notary of French Timken.

Q. I hand you two documents marked for identification Defendant's Exhibit D.35A and Defendant's Exhibit 35B, and I ask you if you can tell us what they are?

A. D.35A is a deed of cession of the trade mark 'Timken' by Mr. Alby, an engineer who was connected with the Societe Mecanique de Gennevilliers. He received special [fol. 1349] power from the Company to transfer the mark to Societe Francaise Timken.

Q. Did you assist in the preparation of that document?

A. Yes, I did so.

Q. I understood you to say a while ago that it was referred to as a notarial instrument of transfer?

A. Yes, the notarial deed. To make the transfer valid in France you must have a written document. It may be what you call sous seing prives, a writing not before a notary, but generally it is done by the notary of the company for technical reasons to be certain they have the power to transfer the mark. That has been the case with Societe Francaise Timken, because the person who accepted the transfer for Societe Francaise Timken was appointed by a special meeting of the Board of French Timken which had been formed not long before. The document is dated 7th and 10th of August, 1928.

Q. What is the document that has been marked Defendant's Exhibit D.35B?

A. That is what we call a true copy or rather a sworn translation of the notarial document.

Q. Of the one that has been marked D.35A?

A. It is legalized before the American Consul in Paris."

Mr. Day: We would like to offer in evidence now, if the [fol. 1350] Court please, Defendant's Exhibits 38 and 39, marked in the deposition Defendant's Exhibits D-35A and D-35B.

The Court: Will you identify those, please? 38 is what?

The Clerk: Government's Exhibit 35A.

The Court: Disregard the numbers, but identify them.

Mr. Derr: These are already in evidence as Government's Exhibits 35 and 36, respectively.

The Clerk: Government's Exhibit 35 will be Defendant's Exhibit 38 and Government's Exhibit 36 will be Defendant's Exhibit 39.

The Court: They may be received.

(Continuing reading.)

"Q. Do you know what consideration was paid to the Societe Mecanique in 1928 for the transfer of the mark to the new French Timken Company?

A. I think the document shows it was 12,000 francs, something like that."

[fol. 1351] (Reading on top of Page 232.)

"Q. Did you have anything to do with the organization of the company known as Societe Anonyme Francaise Timken?

A. Yes, I did.

Q. What did you have to do with that?

A. We had to prepare first of all what you call 'statuts', or rather, a memorandum and articles of association, in conjunction with Messrs. Sullivan & Cromwell, and they were prepared by me with Messrs. Sullivan & Cromwell.

Q. And the company was incorporated in 1928?

A. In 1928.

Q. Do you know where the plant that was being occupied by the Societe Mecanique was located prior to 1928?

A. Yes, it was at Gennevilliers, which is a suburb of Paris.

Q. Did the company that you incorporated in 1928,

French Timken, occupy the same plant or move to a different location?

[fol. 1352] A. Quite a different location; they went directly to Asnieres, near Paris.

Q. And has the French Timken Company continued at the Asnieres address since that time?

A. Yes, they are still located at the same place, 5 Quai Aulagnier.

Q. I hand you a document which has been marked for identification Defendant's Exhibit D.36 and ask you if you can identify that?

A. D.36 is a Certificate of Identity, which shows that the Societe Anonyme Francaise Timken has made what you call a renewal of the Mark No. 205,223 for another period, which covered about 10 years, and there is no change in the document which established the transfer of the property from Societe Mecanique de Gennevilliers to Societe Francaise Timken, it is exactly the same wording. It is also registered at the Office for Industrial Property under No. 7,550, January 30, 1929."

Mr. Day: We offer that document in evidence as Defendant's Exhibit 40.

(Document above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 40.)

The Court: It may be received.

Mr. Derr: Your Honor, the Government would like to [fol. 1353] offer from the examination of Mr. Augis from the deposition, Page 233, 234 and the first question on 235.

(Questions read by Mr. Derr and answers by Mr. Dedham.)

"Q. There has been introduced in evidence the Certificat d'Identie, the registration of the Timken Trade Mark in France. Mr. Augis, what rights does the registration of the Trade Mark in France give to a Company registering the Mark?

A. Generally, Trade Marks in France are governed by what you call International Rules. You have a Convention which has been modified from time to time and, according to the contracting States, they are, of course, a bit different, but always the Mark belongs to the person who has really

created the Mark. It does not matter whether it is registered or not. The right belongs to the creator of the Mark, the maker of the Mark.

Q. In other words, the registration is not conclusive evidence of ownership?

A. I will not say it is conclusive, but still the anteriority rights always belong to the person who has created the Mark.

Q. What effect does registration have with respect to the ownership of the Mark in French Protectorates and [fol. 1354] Colonies; that is, this registration in France?

A. Legally it remains the property of the Company that has registered the Mark until the rights are over. That is where we may renew the Mark every ten years.

Q. Does the registration of the Mark in France also give rights to that Mark in French Protectorates and Colonies?

A. It is evidence of the anteriority, because you have no right to deposit the Mark when you are not allowed to do it; but supposing somebody is just patenting the rights of the Mark and you can prove there is anteriority, it is up to the Court to decide. When you deposit the Mark, that is a registration of the Mark. Then you are protected, for the classes of business you have got, against any action, but generally the person who has registered the Mark is considered the owner of the Mark, unless somebody who has the anteriority of the Mark, who has priority, can prove you are not the owner. This is the general rule.

Q. In other words, the registration would not be conclusive evidence of ownership?

A. I will not say it is not conclusive, because the action must be proved before the Court to prove that the person who had registered the Mark has no right to do it.

Q. At the time of the registration?

A. At the time of the registration.

[fol. 1355] Q. Perhaps I have not got this clear with respect to territories. Do the rights which you get from registration and which were obtained by this registration, Defendant's Exhibit D.36, also include rights to own and use the Mark in the French Colonies and Protectorates, or does this just signify ownership in France?

A. For what you call the Colonies—that is, the Republic of France—it certainly is sufficient to register the Mark,

but for some of the things like a Protectorate it is not sufficient.

Q. Can you name some Protectorates where this registration is not sufficient?

A. Morocco and Tunisia. Algiers is not a Protectorate. Morocco and Tunisia are the two Protectorates.

Q. Did you know that Timken was the name of the Founder of the Timken Roller Bearing Company?

A. It was a family name; that is all. It was so well known.

Q. Does the registration of a family name or surname as a Mark give you any different rights or any less rights in France?

A. The Trade Mark is the same as the commercial name. Commercial names—trade names—would be registered in about the same way."

Mr. Day: We have here the redirect examination (Page 237) (Read by Mr. Day.)

[fol. 1356] "Q. Mr. Augis, I have one other question that I neglected to ask you on Direct Examination. I would like to ask you whether or not there are any Government controls on the importation of products into France at the present time.

A. No doubt. It is absolutely controlled. You cannot get a license to import without going to the Ministry of Production and getting a special license, indicating practically all the specification of your import, and you must go at least to two or three Bureaux before getting the license.

Q. The obtaining of that license is to control what?

A. It is in a double way. There is import and finance, because when you are granted the license, you must also get the foreign exchange to pay.

Q. Pay in what currency?

A. Any foreign currency.

Q. Is that controlled strictly by the Government at the present time?

A. Yes, very strictly."

Mr. Day: That is all.

Mr. Ketterer: If the Court please, we also offered, without having any witnesses to identify them as such, in France, some additional exhibits which were marked at the

[fol. 1357] time the depositions were taken. Defendant's Exhibits 37 through 43.

Now, Defendant's Exhibit 37 is a table showing the tariff or the French Customs on bearing importations from the United States into France. The black figures are French and the red letters and numerals on here are the translations and there is a certificate certifying as to their correctness. That will be Defendant's Exhibit 41.

(Table last referred to was thereupon marked by the Clerk; for identification, Defendant's Exhibit 41.)

Then we had a series of sheets, numbering seven sheets, that are clipped together and marked at the time the deposition was taken Defendant's Exhibit D-38, which shows the importations of bearings into France and parts for various types of bearings from 1928 to 1946, and it shows the importations of these from the United States of America, Great Britain, Sweden, Germany, Switzerland, Italy, Belgium, Luxembourg and other countries, shows the weight in Kilograms and value in francs.

(Sheets above referred to were thereupon marked by the Clerk, for identification, Defendant's Exhibit 42.)

[fol. 1358] Then there is a third exhibit which was marked for identification at the time the depositions were taken Defendant's Exhibit D-39, of which there are seven large sheets, in a similar tabular form showing the exportations of anti-friction bearings from France of various classes from 1928 through 1946. They show exportations to the United States of America, Great Britain, Sweden, Germany, Switzerland, Belgium, Luxembourg and other countries, and it shows the total weight in kilograms and the value of the exports in francs.

Now to that is attached what is in French and there is an English translation of it, a document that is called "Report of Ascertainment" which describes in detail how these figures were compiled from the French Government records and there is a certificate attached to it signed by a court officer attached to the Civil Tribunal of the Seine sitting in Paris, certifying that he compared the figures shown in the exhibit with the original record of the French Government showing the French imports and exports of bearings, and at the time the deposition was taken there was attached to

it also, Defendant's Exhibit 39-A, which was a statement showing the official name of the French Government records [fol. 1359] from which this information was gathered.

That will be Defendant's Exhibit 43.

(Papers above referred to were thereupon marked by the Clerk, for identification, Defendant's Exhibit 43.)

Now, I won't stop at this point, if the Court please, to comment upon the contents of these exhibits because we have some witnesses who will later testify in detail on this subject of imports and exports to and from France and into the United States, and there is some other data to be put in in that connection. I think it would best be done all at the same time, but I would like to offer those exhibits, 41 to 43, inclusive, at this time.

The Court: They may be received.

Mr. Ketterer: Then we also offered at the time the depositions were taken photostatic copies of documents in connection with the establishment of the German Timken Company, Defendant's Exhibit D.40, which consisted of 21 pages, was a certified translation or certified copy of certified translation of Material Registration 141 in the year 1948, Berlin, May 5, 1928. That had to do with the organization of the German Timken Company.

[fol. 1360] (Document last referred to above was thereupon marked by the Clerk, for identification, Defendant's Exhibit 44.)

Then there was Defendant's Exhibit D-41, consisting of 18 pages, to which there were two annexures, A and B, which cover the distribution of stock and various matters such as the number of supervisors and the employment of Mr. Prausnitzer, of the German Timken Company in 1928. The date is March 13, 1928.

(Documents above referred to were thereupon marked by the Clerk, for identification, Defendant's Exhibit 45.)

Exhibit D-42 offered at the time the deposition was taken is in the form of a certificate, certifying the name of the holders in Deutsche Timken Gesellschaft, which had a capital stock amounting to 400,000 reichmarks, of which Mr. Prausnitzer had common shares in the amount, I am sure, of 65,000 reichmarks. That bears date of September 29, 1928.

(Document above referred to thereupon marked by the Clerk, for identification, Defendant's Exhibit 46.)

And the last was Defendant's Exhibit D.43, which was a photostatic copy of an agreement that bears date Jan-
[fol. 1361] uary 1, 1928, between British Timken Limited, DeutscheTimken Gesellschaft—German Timken—10 pages in length, and that was introduced in the record already and marked Plaintiff's Exhibit 19.

(Document above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 47.)

Mr. Day: I would like to offer at this time Defendant's Exhibits 44, 45, 46 and 47.

The Court: They may be received.

[fol. 1362] The Court: What is the date when Prausnitzer allegedly registered the trademark "Timken" in his own account in Germany? Was that prior to 1928?

Mr. Ketterer: Oh, yes, that was back in either 1916 or 1917. We will have a copy of the registration later to show when that registration took place, but it was during the first World War. Mr. Dewar testified Mr. Prausnitzer
[fol. 1363] registered the mark in his own name when there was no commercial product.

The Court: In 1928 Dewar and the others became stockholders of the company?

Mr. Ketterer: That is correct.

The Court: Formed by Prausnitzer?

Mr. Ketterer: Formed by Mr. Henry Timken, British Timken, Dewar and Prausnitzer, and he was given 65,000, as shown on the certificate, reichsmarks shares in the new company in exchange for the transfer of the trade mark "Timken" and that was in 1928.

[fol. 1364] Mr. Day: Our next witness is Mr. Umstattd.

[fol. 1365] Thereupon the Defendant, to maintain the issues on its part to be maintained, called as a witness

William E. Umstattd,

who, being first duly sworn, was examined and testified as follows:

Direct examination of William E. Umstattd

By Mr. Day:

Q. Will you state your name?

A. William E. Umstattd.

Q. Your age?

A. 53.

Q. Your residence?

A. Canton, Ohio.

Q. What position do you hold now with the defendant, The Timken Roller Bearing Company?

A. President and Director.

Q. You have been in attendance at the trial of this case, have you not, or practically, since it began two weeks ago today?

A. I have.

Q. How long have you been President of the Company, Mr. Umstattd?

A. Since 1934.

Q. When did you first become connected with the Company?

[fol. 1366] A. In 1919.

Q. Where was your home before you became engaged in business?

A. Bristol, Tennessee.

Q. Did you serve in the first World War?

A. I did.

Q. Beginning when?

A. I don't remembe the exact date, early in 1917.

Q. And for how long were you with the Army in the war?

A. About three years.

Q. In what capacity?

A. As a private, corporal, sergeant and first lieutenant.

Q. Connected with what service or what branch of service in the war?

A. With the ambulance service and the motor transport corps.

Q. Will you tell the Court what first called your attention to the Timken Company in Canton?

A. The success of Timken bearings in automotive equipment, particularly in war materiel.

Q. And after the war, Mr. Umstattd, how soon did you come to Canton and get in touch with the Timken Company?

A. Well, a week or ten days after my discharge from the Service.

Q. And as of what time would you fix the date when you first started to work with the Timken Company?

A. The 7th of November, 1919.

[fol. 1367] Q. And have you been with the company ever since?

A. I have.

Q. And that is a period of 29 years, approximately?

A. Approximately.

Q. At what work did you start in with Timken?

A. As an inspector.

Q. In what line?

A. In inspecting bearings and bearing operations throughout the manufacturing plant.

Q. Who was the active head of the Company in those days?

A. H. H. Timken.

Q. And he died when?

A. In 1940.

Q. After you were inspector will you tell the Court what other positions you held with Timken back in the early days?

A. I moved from one department to another in the various operating departments of the bearing factory, and was made assistant foreman, foreman, assistant chief inspector, assistant superintendent, assistant factory manager, factory manager, executive vice-president and president.

Q. When did you become executive vice-president?

A. Early in 1932.

Q. During the years that you were there, I will ask you [fol. 1368] whether or not you were in close contact with Mr. H. H. Timken?

A. I was.

Q. And who was the chief policy making officer of the company during that time?

A. Mr. Timken.

Q. What was the size of the Timken Company when you first became connected with it 29 years ago?

A. Fewer than four thousand employees, between 3500 and 4000.

Q. How many employees does the Timken Roller Bearing Company have now?

A. Approximately 16,500.

Q. And in connection with your work have you learned something about the early history of the Timken Company?

A. I have.

Q. Can you tell us when it was organized?

A. The Timken Company was organized around 1898 or 1899 as The Timken Roller Bearing Axle Company, I believe was the first designation of the corporate structure.

Q. Was it located in Canton at first?

A. No, it was located in St. Louis, Missouri.

Q. And it made what during those early days?

A. It made axles and tapered roller bearings.

Q. Axles for what?

A. In the beginning axles for fine carriages, for heavy [fol. 1369] horse-drawn vehicles and for a few automobiles.

Q. Who was the founder of the company?

A. H. H. Timken and W. R. Timken.

Q. Was their father also in the axle business?

A. He was.

Q. What was his name?

A. Henry Timken.

Q. Did he come to Canton?

A. Not as a resident. He made many visits to Canton during the establishment of the company in Canton but he never resided in Canton.

Q. And when was it that the two Timken brothers, H. H. and W. R. Timken came to Canton?

A. At various times between 1901 and 1903 a plant site was selected and operations connected with building were commenced in late 1901 or early 1902.

Q. How long was W. R. Timken connected actively with the business in Canton and elsewhere?

A. I believe he left the company in 1915 as an active officer.

Q. At the present time what sons of H. H. Timken are still connected or are now connected with the Timken Roller Bearing Company?

A. Henry H. Timken and William Robert Timken.

[fol. 1370] Q. And Henry H. Timken is sitting right there?

A. He is.

Q. And Robert Timken is back in the front row of the spectators part?

A. He is.

Q. And they are the sons of H. H. Timken?

A. They are.

Q. What position does Henry Timken, Jr., now hold with the company?

A. Executive vice-president and chairman of the Board and a Director.

Q. And W. R. Timken?

A. Vice-president and Director.

Q. What plants does the Timken Roller Bearing Company have at the present time?

A. We have a plant in Canton, Ohio, in Gambrinus, Ohio, a suburb of Canton, in Wooster, Ohio, Mount Vernon, Ohio, Columbus, Ohio, Zanesville, Ohio, Bucyrus, Ohio, Colorado Springs, Colorado, and a plant in Canada in St. Thomas, Ontario.

Q. What does the Timken Roller Bearing Company make?

A. Tapered roller bearings, alloy steel, seamless tubing and removable rock bits.

Q. And the rock bits are made where?

A. In Mt. Vernon, Ohio, Colorado Springs, Colorado, and [fol. 1371] some operations are commencing in Wooster, Ohio.

Q. Where is the principal plant, in size and number of employees, of the Timken Roller Bearing Company now located?

A. Canton, Ohio.

Q. About how many persons are employed there?

A. In the Canton plant and the Gambrinus plant, which is close by, there are approximately 11,000 people employed.

Q. How many are employed, in round numbers, at Columbus?

A. Roughly 4,000.

Q. And they are the two principal plants?

A. They are.

Q. You say that in addition to roller bearings, tapered roller bearings, the company also manufactures steel?

A. It does.

Q. How long has the company been engaged in the manufacture of steel?

A. Since 1915 and 1916. The operation commenced in 1915, and production, I believe, commenced in 1916. The plant was being built in the year 1915 and production actually commenced in 1916.

Q. What kind or quality of steel does the company make?

A. Alloy steel, a very high grade alloy steel, made in open hearth furnaces and electric furnaces.

Q. That steel is used for what purpose?

[fols. 1372-1374] A. It is used in the manufacture of anti-friction bearings, in the manufacture of airplane parts such as crankshafts, cylinders, cam shafts, in high pressure tubing, high temperature tubing in the oil industry, and it is used in the jet planes where elevated temperatures are quite common and strength of steel at those elevated temperatures is highly essential to the performance of the plane.

Q. Generally, to what companies is Timken steel sold?

A. To a variety of companies—to the ball bearing companies, the straight roller bearing companies, the spherical roller bearing companies, to the oil refineries, to the manufacturers of automotive gears, to some extent springs, and to a considerable extent to the airplane industry for use in engines and other aviation parts requiring high strength steel.

[fol. 1375] Direct examination of William E. Umstattd (Cont'd):

By Mr. Day:

Q. Mr. Umstattd, something was said this morning about the Timken Roller Bearing Company making steel, and I think you said something to the general effect that that steel was used in making bearings.

A. That is true.

Q. And is some machine work done on it?

A. Yes, the steel must be machined before it is in shape to be used as a bearing.

Q. And when you sell this steel to other companies, bearing companies, do they do the same general kind of machining work that you do?

A. Yes, it follows our practice in general. Sometimes different makes of machines are used, but the general practice is effective in all bearing factories.

Q. Who are the directors now of the Timken Roller Bearing Company?

[fol. 1376] A. H. H. Timken, Jr., W. Robert Timken, J. E. Fick, A. M. Donze, L. M. Klinedinst, R. C. Brower, William E. Umstattd. I believe that's seven.

Q. State whether or not all those directors are connected

with the Company in a capacity, that is, in the production and operative capacities.

A. Yes, all of them actively work for the Company full time.

Q. Do you have any outside directors?

A. None.

Mr. Day: I have a paper here that I would like to have marked as our next exhibit, just the one side of it.

(The paper referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 48.)

Mr. Day: This is part of a booklet, I understand, your Honor, which was put out by the Company, I think about 1940.

Q. What is that, Mr. Umstattd (handing Defendant's Exhibit 48 to witness)?

A. This was part of an advertising booklet showing the advertisement of designs of the Timken Roller Bearing from the early days up to date, and showing the various places where Timken bearings are presently in use. This [fol. 1377] page goes from airplanes to transmission machinery.

Q. It says up at the top of that, "Timken Experience in Applying Bearings covers every kind of equipment." Then it says, "wherever wheels and shafts turn." Is that substantially true?

A. That is true.

Mr. Day: I would like to offer that in evidence, your Honor.

The Court: It may be received.

Mr. Day: Perhaps your Honor would like to see it (handing Defendant's Exhibit 48 to the Court.)

Q. I think you testified this morning that the Timken Company made tapered roller bearings.

A. That is true.

Q. Does it make any straight roller bearings now?

A. Not at the present moment.

Q. Any ball bearings?

A. No.

Q. Was there a period during the war when it made some ball bearings?

A. There was.

Q. There has been some evidence here that you have heard sitting back in the court room concerning the Fischer Bearing Company. Does the American Timken have any [fol. 1378] connection with that Company?

A. We have a connection through British Timken Ltd. With the Fischer plant in England.

Q. But otherwise do you have any connection with it?

A. None at all.

Q. Will you take a bearing out of the box here, Mr. Umstattd, a Timken roller bearing that is typical?

A. (Witness selects bearing from box.)

[fol. 1379] Mr. Day: Will you mark this piece of paper right there, you can mark the whole box, Defendant's Exhibit 49, this whole big box.

(Box of bearings marked by Clerk, for identification, Defendant's Exhibit No. 49.)

Mr. Day: And will you mark this little box as Defendant's Exhibit 50?

(Smaller box of bearings marked by Clerk, for identifica-
[fol. 1380] tion, Defendant's Exhibit No. 50.)

Mr. Day: Now, will you please mark the place where I took this bearing out as Exhibit 49-A?

The Clerk: Can we just put "A"?

Mr. Day: Yes, that's fine.

(Exhibit marked as requested.)

Q. I have here a bearing which is marked "A" and labeled Timken Tapered Roller Bearing 366-362. What kind of a bearing is that?

A. This is a Timken tapered roller bearing.

Q. Is that one of the kinds that the Company makes now?

A. This is a very popular size.

Q. The Company has been making that for how many years, approximately?

A. Thirty years, at least, and perhaps longer.

Q. Will you tell the Court generally now, just turning to the Court, just how that bearing is made? I know it isn't easy to do, but I wish you would tell the Court just how the different parts of that bearing are made, what they are made out of and generally the process of making them.

A. You mean to start with the steel?

Q. Yes.

A. The heat of steel for this bearing is melted in an [fol. 1381] electric furnace from scrap steel, and the proper chemical constituents, to make what is known in the trade as 4620-SAE steel. That's a nickel molybdenum steel with about 1.75 nickel and about .25 molybdenum. It has low phosphorus content, low sulphur content, and some residual chrome, the chrome to be below about .38. The heat is melted in the electric furnace and poured into a ladle, and from the ladle into what is known as an ingot mold. The ingot is allowed to cool and is taken from the ingot mold and put in what is known as a soaking pit where heat is applied to the ingot to bring it up to the proper heat for rolling. It goes from that point to a 35-inch blooming mill, and from the 35-inch blooming mill to a 28 and a 22-inch merchant mill, where it is made into what is known in the trade as piercing rounds, that is, a solid round piece of steel. That piece of steel is later taken to a tube mill where it is pierced and formed into a piece of seamless tubing. That tubing is finished on a screw machine into a piece that is known as a cup, for the outer part, and a cone for the inner part.

Q. Which is the cone there?

A. The cone is in my left hand.

Q. With the rollers attached to it?

A. Rollers surrounding it. The cup is the outer piece. [fol. 1382] After the piece is formed on the screw machine, it is taken to a machine known as a chamfering machine where a slight chamfer is put on one end of the cup and one end of the cone. It then goes to a stamping operation where the name "Timken" and "Made in U.S.A." and the number 362 in the case of the cup, and 366 in the case of the cone is stamped on the piece. Then it goes to a carburizing operation where it is brought up to about 1700 degrees Fahrenheit, and natural gas is introduced in this operation and which penetrates into the steel. This natural gas precipitates a degree of carbon of about one per cent into the surfaces of the cup and cone. It is then quenched from the carburizing furnace in an oil bath and taken into a hardening department where it is subjected to heat of about 1450 degrees Fahrenheit, that is, under pressure to maintain the roundness of the piece, and again immersed

in oil. After that treatment it is taken to a drawing furnace where it is drawn to about 300 to 350 degrees Fahrenheit to take any hardening strains out of the piece so that it will be able to accommodate considerable jarring and jolting and other rough treatment that it gets in service.

After the drawing operation the piece is cleaned, the scale removed by an operation known as shotblasting, where fine [fol. 1383] particles of steel are driven against the cup and cone to remove the black scale.

The next operation is back face grinding, where the back face and front face of the piece are ground. From there it goes, in the case of the cup, to an external grinding operation where the piece is ground on the outside on a centerless grinder, from there it goes to an internal grinding machine where the inside tapered portion of the cup is ground. The cone, after reaching the back face grinding goes to an internal grinding machine where the bore of the cone is ground. It then goes to an outside diameter grinding operation where the outside race is ground, and from there to a rib grinding machine where the rib or the thrust member of the cone is ground. It then goes to inspection operations, in the case of both the cup and cone, where the tapers are gauged, the sizes are gauged, and any imperfections in grinding, or any inclusions in the metal, or any seams in the metal, any pieces which have serious defects are thrown out into the scrap pile and go back to the furnaces as a piece of scrap.

After getting visual inspection the pieces are sound-tested so that a degree of quietness is maintained. It is then slushed in a heavy oil to prevent any rust from taking place in shipment, wrapped in wax paper, in some cases it's placed [fol. 1384] into a tube, in others in a box, and shipped back—packed in a shipping box for shipment to our customers.

Q. What you have just testified to, is that based upon what you have actually seen through the years that you have been connected with this Company in one capacity or another, starting back some twenty some years ago?

A. Yes. There is part of that operation that hasn't yet been explained, the rollers and the cage.

Q. Will you now tell us about that—before that, you stated after you got out of the Army you went to see the

Timken folks about getting a position. Did you just go on your own, or did they know you were coming?

A. No, they didn't know I was coming.

Q. You just went there on your own?

A. I did.

Q. You have been there ever since?

A. I have.

Q. I didn't want to interrupt you in explaining what other parts of that bearing you had not explained. I am sorry if I did.

A. The rollers surrounding the cone are made from steel in much the same manner as described in the case of cup and cone, except that the roller is not pierced, it comes out [fol. 1385] in a piece of wire or rod stock, and is upset or shaped into a tapered piece on what is known as a cold upsetter. It then goes to carburizing, hardening and grinding, where the operations are much the same as in the case of the cup and cone. The cage steel is not made by Timken ordinarily, that is purchased from the outside, from outside sources. Today, with the inability to purchase flat steel, we sometimes have to make the steel for the cages and have it rolled by outside rolling mills. When it comes to the plant it is flat, either in the form of a flat straight piece or a flat coildd piece of steel, and that is put into punch presses where the piece is formed, the bottom pushed out, and later the pockets or windows that these rollers protrude from are formed in what is known as a multiple perforating operation, where each of the windows or pockets is formed with one stroke of the punch press. There is then a swedging operation on the back part of the cage that gives the radius from the radius of the roller so that the radius of this pocket or window conforms with that of the roller, and the cone is assembled with a certain number of rollers, and one cage, and the cage is then put on a press and closed in so that the rollers will not fall out from the cage.

Q. Does that complete the description pretty well?

[fol. 1386] A. It does.

Q. These are called tapered roller bearings. Why are they called that?

A. The roller is smaller at one end than at the other. The degree of taper varies, depending upon the type of application the bearing is subjected to. In some cases the taper is rather slight, perhaps three to four degrees in-

cluding angle, in other instances it runs up to 45 or 60 degrees including angle where thrust is of paramount importance.

Q. What if anything did the Timken Company have to do with the origin of the idea of tapered roller bearings, or who did conceive that, if you know?

A. The tapered roller bearing was conceived by the joint efforts of two men, Mr. Heinzelman and Mr. Henry Timken.

Q. Henry Timken, do you mean H. H. Timken, Jr.?

A. No, his father.

Q. The father?

A. Yes.

Q. The grandfather of these two Timken gentlemen who are here now?

A. Yes.

Q. And then there were patents on the various phases of the Timken Roller Bearing

A. There were many patents at different times throughout [fol. 1387] the evolution of the present bearing.

Q. Can you tell us how a bearing of this kind is used in connection with a shaft?

A. The bearing, the cone or inner part is placed on a shaft and the outer part or cup is placed in a housing. Two of these bearings are usually mounted on a shaft and two of the cups are housed. The thrust is taken by the bearing shoulder or rib and the radial load is taken by direct downward pressure on the cup.

Q. Now, a bearing like that that I have in my hand, which is this Exhibit 42-A, where does the shaft go with relation to that?

A. The shaft goes through the center hole.

Q. I think we talked the other day, or some questions were asked the other day, about various kinds of thrusts. What are the two principal kinds of thrust?

A. In general, there is only one kind of thrust. It can be to a greater or lesser degree, but thrust is in an axial direction, or through the center of the axle of a shaft in this direction (indicating). The radial load is a downward load from this position (indicating) or an upward load from the inner position.

Q. Then it's correct to say that there is a radial load from the top, generally?

[fol. 1388] A. From the top.

Q. And there is a thrust load from the side, generally?

A. From the side, that's true.

Q. And it is not correct to say, as I perhaps implied a moment ago, that there is a radial and side thrust?

A. There is what we call a resultant load in many cases where the load is both radial and thrust.

Q. Is there another typical tapered roller bearing, Timken tapered roller bearing, in this box here marked Exhibit 49?

A. I believe so.

Q. Would you step around here and let us see one?

A. (Witness selects bearing.)

Mr. Day: I will mark that "B", if I may, your Honor. I suppose the Clerk should do it, but there it is.

The Court: That's all right.

Mr. Day: Thank you.

Q. What is the difference between that one and the "A" that you testified about before?

A. This bearing is a Timken bearing, No. 3920 cup and 3984 cone. This bearing is a little bit larger bearing than the first one, and I believe it has a little steeper tapering than the 366-320.

[fol. 1389] Q. But otherwise it's of the same general nature?

A. That should be 366-362. Yes, it's the same general nature.

Q. Here is a bag that is marked "Component Part of Timken Tapered Roller Bearings." Will you see what is in that, please, and tell us about it (handing bag to witness)?

A. This is a bare cone without any rollers (handing to Court). This is a roller.

Q. I would like to have you—

Mr. Day: May I put them up on the bench, if your Honor would like to look at them?

The Court: Yes.

Q. That's the cone, and this is the roller?

A. And this is the cage.

Q. And that's the cage. There are some more rollers in there, is that right?

A. There are more rollers, yes.

Mr. Day: We'll mark that "C".

(Marking exhibit as indicated.)

Q. Now, in addition to tapered roller bearings, what other kind of roller bearings are there in general use?

A. Straight roller bearings or parallel roller bearings, the terms are interchangeable, and what is known as a spherangular bearing, an hour-glass tapered bearing.

[fol. 1390] Q. Those are all roller bearings?

A. Those are all roller bearings.

Q. While we are on that subject, in addition to the roller bearings which are anti-friction bearings, of course, what other kinds of anti-friction bearings are there?

A. There are ball bearings and floating wedge bearings known as Kingsbury bearings. The ball bearings are of many types for many different purposes.

Q. Have we a sample or a model—I guess there isn't a model, but have we an actual straight tapered bearing here?

A. Well, there is no straight tapered—

Q. I mean straight roller bearing.

A. A straight roller bearing, yes, we have one.

Q. Will you point that out, please?

A. (Witness selects bearing.)

Mr. Day: I will mark that "D".

Q. What kind of a bearing is that?

A. This is a Hyatt roller bearing, straight roller bearing, with parallel rollers.

Q. Will you get out one of those rollers, if you can, so the Court can see it?

A. This cannot be disassembled. This bearing has a cage that doesn't allow of disassembly.

Q. But the difference between the construction of that [fol. 1391] straight roller bearing and the tapered roller bearing is what?

A. There are no tapered components in this bearing. The inner part of the cone has a straight bore and a straight outside surface, the rollers are parallel or straight. The outside member or cup has a straight race, no taper.

Q. And the rollers themselves are not wider at one end than the other, are they?

A. No.

Q. Bottom and top?

A. They are parallel from one end to the other.

Q. Now, you have shown the Court a tapered roller bearing and a straight roller bearing. Are there any other kinds

of straight roller bearings shown on either of these boxes other than the Exhibit D, the Hyatt bearing?

A. I don't believe so. There is a needle bearing with a straight roller.

Mr. Day: We'll mark that "E".

Q. You call that a needle bearing?

A. Yes.

Q. Can you step up here so that the Court can see you, and explain that?

A. The reason for the name needle is that because these rollers that are parallel or straight rollers, are so small [fol. 1392] that in the trade they got the name of needles because they resemble knitting needles.

Q. What company makes those?

A. Several companies. Torrington Company is one of the larger manufacturers of that. The Hyatt Company made them at one time, perhaps they still make them. Orange, and several other bearing companies in the United States.

Q. Are there any other roller bearings in the box?

A. There is another type of straight roller bearing that is made by Hyatt, quite popular at one time, and which still has some applications. This is known as—

Mr. Day: I'll mark that "F".

A. (Continuing) This is known as a spiral straight roller bearing.

Q. Why do they call it that?

A. The roller is formed—

Q. Just a moment.

Mr. Day: Would it be all right for the witness to step up here, your Honor, so that you can see?

The Court: Yes.

(Witness steps to the bench.)

A. The roller on this type of bearing is formed from a flat piece of steel and is wound around a mandrel, and it gets that spiral effect due to the fact that the roller is [fol. 1393] not solid. It has some degree of elasticity and can take care of deflection because of the fact that the roller is hollow and wound in a spiral, used somewhere on line

shafts and places of that sort where a deflection might take place.

Q. Are there any other types of roller bearings there in the box?

A. Yes, there are several other types.

Q. Will you turn to one, please?

A. (Witness selects bearing.)

Mr. Day: I will mark that "G."

Q. What is that you are holding in your hand?

A. This is a Hyatt tapered roller bearing.

Q. Will you step up here so the Court can see you, please?

A. This is a Hyatt tapered roller bearing with two cones and two sets of rollers, one double cup and one spacing ring to allow for adjustment of the parts. This spacing ring touches the outer edges, or the small edges of the cone. This type of bearing is quite popular in pinions in trucks and passenger cars, automobiles.

Q. The Hyatt Company is connected with what other large company?

A. The Hyatt Company is a division of General Motors Corporation.

[fol. 1394] Q. Are there any other roller bearings in that box?

A. Yes, there are.

Q. Will you turn to another one, please?

A. (Witness selects bearing.)

Q. What is that?

A. This is what we call an hour-glass type of roller bearing. The rollers are set at an angle on the cone, and each roller is formed in the general form of an hour-glass. The cup is ground with a taper and a curvature combined so that the cup and the cone fits the hour-glass form of the roller, that in turn allows a certain amount of deflection to take place without hurting the parts. It's quite common in line shafts and pillow blocks, and applications of that sort.

Q. What company makes that type of bearing?

A. The two principal ones are the Schaefer Company in Chicago and the Link Belt Company, I believe, in Indianapolis.

Mr. Day: I will mark that "H".

Q. Are there still any other types of tapered roller bearings in this box marked Exhibit 49?

A. Yes, here is what is known as a spherangular bearing which is made by the Hyatt Company.

Mr. Day: I will mark that "I".

[fol. 1395] A. The Spherangular bearing is a tapered roller bearing with a spherical roller. The roller is set at an angle or a taper, and in itself is in the form of a sphere with a cut-out section in the center of the sphere. The cup has a taper and a curvature combined. That bearing, again, has some self-aligning features which make it useful in certain applications.

Q. What companies make that bearing?

A. This is made by the Hyatt Company, by the SKF Company, by the Kay-Don Company, and perhaps other companies. I believe the Torrington Company at present is making this type of bearing in quite considerable quantities.

Q. Are there any other different types, or a different type of roller bearing in that exhibit 49?

A. The SKF is a variation of the Hyatt bearing. This is a spherical bearing which can turn in any direction. That, you will notice, can take a load from almost any direction and accommodate itself to quite a considerable amount of deflection. The rollers are generated in such a manner that they are spherical and confined into the inside of the cup which is ground in a spherical form.

Mr. Day: I will mark that "J".

Q. Does that pretty well cover the different types of roller bearings in the box?

[fol. 1396] A. That covers the majority. There are variations of all of those types; the straight roller bearings, some are grooved and some are not grooved, the spherical bearings are both double and single, some of the spherical bearings take thrust on the rib and some take it only on the surfaces of the rollers, the cups and cones.

Q. To what extent in this country, first, are those various types of roller bearings competitive?

A. They are highly competitive. Those bearings can be used in almost any type of work where an anti-friction bearing can be used, and we place any friction bearing in actual use.

Q. For about how long have those various types of bearings been on the market in this country?

A. The hour-glass type of bearing has been on the market for at least 25 to 30 years, to my knowledge. The spherical bearing as made by SKF has had a life of at least 25 years. The Hyatt type came on the market about 15 years ago, as I recall. The needle bearing was developed in Germany and came to this country in about 1930, or thereabouts.

Q. And over the years have those various types of roller bearings been in competition each with the other?

A. Yes, and one I forgot to mention there, the Hyatt [fol. 1397] bearing, particularly the spiral type, was in use back in the 1890's, around 1890, and has continued in use up to the present time, although in most instances it has been replaced by the solid roller type which is made by Hyatt and many other American anti-friction bearing manufacturers.

Q. When were the Timken tapered roller bearings first put on the market?

A. I couldn't say definitely. They were used in carriages and buggies in the '90's—I don't know just what date in the '90's, but some time prior to 1899.

Q. And then they became used in automobiles when?

A. Around the turn of the century, 1901, '02, '03.

Q. Since that date, state whether or not they have been in direct competition with these other types, some or all of them, depending upon when they came on the market, of roller bearings that you are testifying about?

A. Yes, they have been in direct competition with those bearings.

Q. And in what kind of applications have they been in competition generally?

A. Automobiles of all sorts, railroad applications, locomotives, passenger cars, freight cars, mine cars, machine tools of all sorts, milling machines, grinders, shapers, [fol. 1398] planers, things of that sort, in mining equipment, in cranes, in pulleys, swivels, oilwell equipment, and in almost every place where there is any mechanical movement.

Q. That is, you are telling now about the competition among and between the various types of roller bearings?

A. Yes, sir. Those bearings compete with each other. Sometimes an application will use a spherical roller, sometimes an hour-glass type of roller, sometimes a tapered roller, sometimes a straight roller.

Q. Now, in addition to the roller bearings, you said something about ball bearings, but before coming to that, can

you tell us approximately how many companies in the United States make roller bearings? Mr. Klinedinst gave us a list of them, I think.

A. I don't know definitely. I would judge, I believe I could name about 15. Perhaps there are more.

Q. Was the list that Mr. Klinedinst gave the other day substantially correct in that regard?

A. It was.

Q. Now, have you some ball bearings in this box?

A. Yes.

Q. Will you take down a typical one, or a well known one for us?

[fol. 1399] A. (Witness selects bearing.)

This one is a typical one, although I notice the name is misspelled on the card. This is a Fafnir bearing made in New Britain, Connecticut, quite well known in the anti-friction bearing trade.

Q. It's spelled there F-a-f-n-e-r, and it should be -n-i-r?

A. Yes, sir.

Mr. Day: That becomes "J", does it, Mr. Clerk?

The Clerk: "K".

Mr. Day: I will mark that "K".

Q. That's a ball bearing, is it, Mr. Umstatdtt?

A. Yes, sir. The inner race has balls interposed between the outer race with a radius substantially the same as that of the ball. The radius is a little bit greater than the radius of the balls.

Q. Are ball bearings older than roller bearings?

A. That would be difficult to say definitely, because straight roller bearings may have been used quite some considerable time ago. The ball bearing is definitely older than the tapered roller bearing.

Q. So that when the Timken tapered roller bearing reached the market the ball bearing had already been there?

A. It had.

[fol. 1400] Q. And approximately can you give us any notion how many years?

A. 25 years, at least.

Q. And did the ball bearing have a wide and general acceptance in the trade before the Timken tapered roller bearing came on the market?

A. It did.

Q. Is there another ball bearing in general use shown in this box, Exhibit 49?

A. (Witness selects bearing.)

Mr. Day: I'll mark that "L."

Q. What is that one?

A. This is—

Mr. Day: Will you step up and explain that to His Honor, please?

A. This is a three-piece ball bearing that is designed to take both thrust and radial load. It is in quite common use in General Motors automobiles, such as the Cadillac, Buick, Pontiac, and Oldsmobile. The inner part, the cone, has a radius set at an angle. The outer cup has a radius set at an angle. The rollers are contained in a soft steel cage and the bearing is put in operation by adjusting a nut on the front axle of an automobile so that the load that is imposed directly downward in straight travel is carried by the radial [fol. 1401] part of the bearing, and the thrust in going around a curve is carried by the thrust portion of the bearing.

Q. Is there another type of ball bearing in that box?

A. (Witness selects bearing.)

Mr. Day: I'll mark that "M".

Q. What is that?

A. This is a bearing manufactured by the Fafnir Company and is known as a thrust ball bearing. It can carry no radial load at all, but can carry a thrust load which can be imposed from this direction if the bearing is mounted in that plane (indicating), or from either of these directions (indicating), if it's mounted in this plane. It consists of three parts, two races and the ball assembly.

Q. Are the tapered roller bearings in competition with the ball bearings?

A. Yes, sir, they are in direct competition.

Q. Have they been in competition with the ball bearings ever since they came on the market, the tapered roller bearings?

A. Yes, sir.

Q. What is the general nature and extent of that competition?

A. It's ordinarily a very bitter and active type of competition.

[fol. 1402] Q. You have already stated about the competition for various applications among and between the various types of roller bearings. Is there also the same kind of competition, or more or less competition, between roller bearings and ball bearings?

A. Yes, there is the same sort of competition, and perhaps even a little keener, between tapered roller bearing manufacturers and ball bearing manufacturers than between the roller bearing manufacturers themselves.

Q. Have you been familiar, since the time you became connected with the Timken Company, and perhaps before that due to your study and knowledge of the industry, with the general nature of that competition between tapered roller bearings among themselves and the various types of them, and with ball bearings and all types of ball bearings with all types of roller bearings over the years?

A. I am familiar with it, and it has been a very keen competition.

Q. Have you an opinion as to whether it is any less keen now than it was some years ago?

A. I believe that, if anything, it gets keener as the years go on.

Q. And has that existed ever since, let us say, the Timken bearing came on the market?

[fol. 1403] A. I couldn't say that with first-hand knowledge. I have talked the matter over many times—

Q. I mean as a result of your own study.

A. As a result of my studies and my talks with Mr. Timken, the competition was quite keen in the '90's and up until 1919 when I came with the Company.

Q. You spoke of your talks with Mr. Timken. You mean H. H. Timken, Jr., who died in 1940?

A. Yes, sir.

Q. And he was the head of the Company, was he not?

A. He was.

Q. I will ask you what the practice was from the time you came to the Company, say, back in 1919—was that it?

A. That's right.

Q. —as to talking over or hearing discussions of Company policy by Mr. Timken and others?

A. I was fortunate in being in on many of the conversa-

tions regarding competition and establishment of manufacturing facilities for the manufacture of tapered roller bearings and the expansion of the steel operations of our company.

Q. You testified a while ago that the directors of the Timken Company were all persons who worked for the Company every day full time.

A. That is right.

[fol. 1404] Q. State whether or not in that situation there were frequently discussions of policy and plans and things of that kind at meetings that weren't necessarily formal meetings of the Board of Directors?

A. That is true. The lack of an organizational chart in our Company has been more or less a joke in the industry. There is no such thing as an organizational chart and never has been in the operation of the Timken Company.

Q. Well, now, what do you mean by "organizational chart"? I am not sure that I understand exactly what that means.

A. In most companies there is what is known as an organization chart, where the Chairman of the Board directs the President, the President directs the Vice Presidents, the Vice Presidents direct the Managers of the various departments, and communications go up or go down through more or less military organizational lines. Our Company——

The Court: That's one of those charts you see so often displayed with the President up at the top and the various Vice Presidents who have various functions to perform, below?

Mr. Day: Oh, yes.

A. (Continuing) That has never been prevalent in our Company. Our President is likely to be down in the shop or up in the office about at equal intervals, I would say.

[fol. 1405] Q. How much time do you spend in the shop now? Do you spend some time there?

A. Yes, quite a bit, when I'm in Canton, and I make frequent visits to the outlying plants and spend considerable time in those.

Q. And over the years have you spent many hours in the shop?

A. Yes.

Mr. Day: We have here a shaft. Will you mark that as our next exhibit, please?

(Shaft above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 51.)

Q. Here is a shaft marked Defendant's Exhibit 51. State whether or not you have had that prepared in connection with your testimony here?

A. Yes, I did.

Q. For the purpose of illustrating certain things?

A. Of showing certain types of bearings that are not anti-friction bearings but are friction bearings which compete with tapered roller bearings.

Q. And this shaft and the various mechanical constructions in connection with it relate to friction bearings?

A. Except in the two on the farthest hand. There is one tapered roller bearing and one ball bearing.

[fol. 1406] Q. What is a friction bearing? We have been talking so far about anti-friction bearings?

A. A friction bearing, in general, is a sleeve of approximately the same inside diameter as the shaft has an outside diameter, and the load, which, in general, is a radial load, is imposed upon the sleeve and transmitted to the shaft or turning member with oil or grease of some sort interposed between the surfaces.

Q. It doesn't have any balls or rollers or things of that kind, does it?

A. It has no rolling elements.

Q. I think we have covered the box marked Exhibit 49 pretty well. Here is another box that is marked as our Exhibit 50. What is there in that that you would like to call to the Court's attention?

A. These are different types of tapered roller bearings. This is one made by the Hoover Company (indicating).

Mr. Day: I'll mark that 50-A.

Q. Without taking that out, is there any distinguishing characteristic of that bearing?

A. They are very much the same design as used by Timken. There may be some slight modification, but it is interchangeable with a Timken bearing.

Q. And where is that made?

[fol. 1407] A. That is made in Ann Arbor, Michigan.

Q. Is that the company right back of the stadium?

A. Yes, sir.

Q. Here is one that I will mark "B". What kind of a bearing is that?

A. That's a Bower roller bearing.

Q. Is there a distinguishing mark or distinguishing characteristic with relation to that?

A. It is interchangeable with our bearing, although some of the internal dimensions of the rollers or cups and cones may be slightly different. But the bearing is interchangeable with a Timken bearing.

Q. Here is one that I will mark "C".

The Court: I didn't get that last. You say the bearing is interchangeable?

The Witness: It is, your Honor.

The Court: Is that a tapered roller bearing?

The Witness: Yes, sir.

Mr. Day: Take it out and show it to the Court.

The Witness: This is a tapered roller bearing. This looks exactly like the Timken roller bearing, and from all ordinary viewpoints it is identical, because this assem- [fol. 1408] bly is interchangeable with this assembly of Timken. There may be some minute differences, but it is interchangeable.

The Court: Who do you say makes that?

The Witness: The Bower Company of Detroit, Michigan. [fol. 1409] Q. Before asking you further about the bearings in the box 50, we said something, and you said something a while ago about a radial load and a thrust load. The Timken bearing is constructed and devised to take which load, to take care of which load, either or both?

A. The orthodox Timken bearing is designed to take both radial and thrust loads in the same bearing, but some 20 or 25 years ago we commenced to make a bearing designed to take only a thrust. That is known as the Timken Thrust Bearing, which still embodies the tapered roller bearing principle.

Q. Are there on the market and have there been for some years ball bearings constructed so as to take a thrust load also?

A. Yes.

Q. And what are those types generally of ball bearings?

A. That is known as ball thrust bearings, such as the one made by Fafnir, that I showed the Court a few minutes ago. The people who make the straight roller bearings also make thrust bearings with parallel rollers.

Q. So that there are various types of bearings, such as you have described, that are constructed so as to take a radial load and also a thrust load?

A. Yes, that is true.

Q. Now, here is bearing in this box 50 I will mark D. It [fol. 1410] says "Orange tapered roller bearing". What is that?

A. That is made by the Orange Roller Bearing Company. It is a tapered roller bearing with the same general dimensions as used in the Timken roller bearings, and is interchangeable with the Timken roller bearing.

Q. Here is one marked "Pratt tapered roller bearing". That is 50-E. Where is that made?

A. That is made in Joliet, Illinois.

Q. By what company?

A. I don't know the corporate name. We call it the "Pratt" bearing. I think it is the Pratt Mfg. Company.

Q. Now, 50-F is the "Marlin-Rockwell Corporation angular contact front wheel bearing". What is that?

A. That is a ball bearing made by the Marlin Manufacturing Company, Jamestown, New York, a ball bearing that carries both radial and thrust loads.

Q. 50-G is a Hoover tapered roller bearing.

A. That is manufactured by the Hoover Company at Ann Arbor, Michigan.

Q. And the Tyson bearing, 50-H?

A. The Tyson bearing is a roller bearing but it is quite different in its dimensions from the Timken roller bearing, internally, although it is interchangeable, I believe, with Timken bearings to some extent. I am not positive about whether or not it always is. The bearing is quite different [fol. 1411] from the Timken bearing as it has no cage separating the rollers. The rollers are put in without the benefit of a cage.

Q. Is that made at Massillon?

A. This is made by the Tyson Company at Massillon, Ohio.

Q. Is that Frank Tyson's Company?

A. Frank Tyson invented the bearing, and was connected with the company for many years; he is now dead.

Q. Here is a New Departure angular contact bearing marked I. What is that?

A. That is the same general type of bearing manufactured by New Departure that was shown earlier today. It is used largely on the front wheels of General Motors automobiles.

Q. Now are all of these types of bearings manufactured by these various companies competitive with the Timken bearing?

A. They are.

Q. And they are competitive with the other ball bearings and roller bearings I have asked you about?

A. They are all competitive with each other.

Q. I have here a bearing that I want to have marked for identification Defendant's Exhibit 52.

(Bearing above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 52.)

What is this?

[fol. 1412] A. This is a type of ball bearing that is used for radial loads largely on such things as crankshafts of an internal combustion engine. The bearing is broken in two so that it can be slid around the crankshaft and then is joined together with four set screws and functions as a radial type ball bearing.

Mr. Day: Your Honor will observe that is split right in two. (Showing to Court.)

Q. What company makes that bearing?

A. I am not sure of the corporate name of the company, it is the—well, I am not certain about that. We sell them steel but I don't remember the name of the company.

Mr. Day: I would like to offer in evidence Defendant's Exhibit 49 and the various lettered exhibits, and Defendant's Exhibit 50 and the various lettered exhibits, Defendant's Exhibits 51 and 52.

The Court: They may be received. 49 was what?

Mr. Day: 49 is the first box. 50 is the second box. 51 is a shaft, and 52 is that split bearing. Will you mark this our next exhibit, please?

(Thereupon the Clerk marked photograph, for identifi-
[fol. 1413] cation, Defendant's Exhibit 53.)

Q. I hand you a photograph marked Defendant's Exhibit 53 of a man standing alongside of a big bearing. What kind of a bearing is that?

A. The man has in his hands a small bearing manufactured by the Timken Roller Bearing Company weighing approximately 4 ounces. The larger bearing in the picture is a bearing that is used on the roll necks of four-high mills for rolling aluminum and steel. The larger bearing weighs in the neighborhood of 10,000 pounds.

Mr. Day: I want to offer that in evidence, and show it to the Court.

The Court: It may be received.

Q. Is that bearing shown in the photograph the largest that the Timken bearings reach, approximately so?

A. It is a little difficult to answer that directly. It is one of the heaviest ones but we have made them up to about 100 inches in diameter. I judge by looking at that one it is in the neighborhood of 60 inches in diameter. We have made them up to about 100 inches in diameter but not quite so heavy as that one.

Q. Are there also large ball bearings?

A. Yes, we had to make some of those during the war.

Q. While you are on that subject will you tell us under what circumstances you made ball bearings during the war? [fol. 1414] A. Some of the applications for ball bearings, particularly in the aircraft field, were of such size that the ball bearing companies in this country did not have the facilities for making them. The War Department called on us to make the ball bearings of the larger sizes and we did that.

Q. During the war?

A. During the war, yes.

Q. We have been speaking now of large bearings. I will have this next exhibit marked Defendant's Exhibit 54.

(The physical exhibit above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 54.)

Q. I will now hand you a little round something we have here, which is going to be put in an envelope and marked Defendant's Exhibit 54. What is that?

A. This is what is known as an instrument bearing, a ball bearing of very small size, commonly designated by the

manufacturers as a miniature bearing. The second disk has one of the smaller balls that is used in this type of bearing.

Q. Have you a magnifying glass with you?

A. Yes, I believe there is one on the table.

Mr. Day: Would your Honor look at this bearing?

[fol. 1415] The Court: I hope my eyes are good enough.

(Thereupon, the Court examines bearing with magnifying glass.).

The Witness: That, your Honor, is the ball. Here are the component parts of the bearing around the outer periphery, the components are around the outer periphery of a piece of plastic, and the assembled bearing is in the center. This went in such things as the Norden bomb sight and range detecting instruments, and things of that sort where a very small bearing was essential for the operation of the mechanism.

Q. That is a sample of a very small bearing?

A. I believe that is one of the smallest ball bearings that has been made.

Q. We have been speaking so far of anti-friction bearings. I want to direct your attention now to friction bearings, if that is the proper term. Is that the proper name for them?

A. Yes, sir.

Q. Well, what is a friction bearing?

A. A friction bearing is, in general, a sleeve that surrounds the shaft or rotating member, and oil or grease is introduced between the moving parts, in some cases water [fol. 1416] is introduced, in the case of rubber bearings for marine work, a stream of water acts as a lubricant.

Q. Is the friction type of bearing older than the anti-friction type of bearing?

A. Yes.

Q. Do we have here some samples of the friction type bearing?

A. Yes.

Q. Will you turn to one of them, please?

A. I will turn to the type——

Q. In taking the shaft which has been marked Defendant's Exhibit 51, we will get it so the Court can see it some way.

(Exhibit 51 placed on Court's desk.)

Now, you are going to talk about Defendant's Exhibit 51.

A. This is the sleeve or friction type bearing made of wood. This particular one is a piece of cypress wood impregnated with oil. It is used on line shafts and slow moving shafts.

Q. The sleeve there, the wooden part, is the bearing part, is that right?

A. That is right.

Q. And it is here constructed so as to fit on a shaft, isn't it?

A. Yes.

[fol. 1417] Q. Now, it says here, "Wood bearing, the Arguto Oilless Bearing Company, Wayne Junction, Philadelphia, Pa. Shaft bearing, cypress impregnated wood."

Now, that piece of wood itself is a bearing, is that right?

A. That is right.

Q. How does that cut down friction or react to friction?

A. The friction is minimized by the introduction of oil. In the case of this particular sleeve it has been impregnated with oil under pressure which gives some degree of smoothness to the operation of the shaft. However, the amount of friction created is much greater than would be found by the use of anti-friction bearings.

Q. Is that bearing in actual use now?

A. Yes, that is taken from our store room. We use them in a few places in our shop.

Q. Going down, the next one says, "Cast iron, Brown & Sharpe, Providence, Rhode Island, hanger bearing." Is that a friction bearing?

A. It is.

Q. That runs from the wooden one down to the brass one?

A. That is bronze.

Q. All right. How does that Brown & Sharpe bearing work?

A. The two pieces of cast iron are separable here, they are held together with a heavy rubber band, and the cut-[fol. 1418] away section is shown so you can see the inside. It is essentially a sleeve divided in two parts and they are joined together and put around the shaft and act as a hanger bearing. The hanger is a thing that is used in combination with grinding machines and belt driven machines.

Q. Is that kind of bearing in use now?

A. It is.

Q. On what kind of applications?

A. On belt-driven machinery, built in this instance by the Brown & Sharpe Company. I believe they are in Providence, Rhode Island.

Q. Is that a good sized company?

A. Yes, it is.

Q. How is that lubricated?

A. This is lubricated ordinarily through these holes. This is filled with, in some cases, grease, in other cases oil. If it is oil a drip pan must be put below to allow the oil to collect, it drips through as the shaft revolves.

Q. The bronze bearing, "Allis-Chalmers Manufacturing Company, Milwaukee, Wisconsin, electric motor bearing." How does that work?

A. This is essentially a sleeve form of bronze with oil holes for the introduction of oil or grease to the shaft of [fol. 1419] the motor. The rotor shaft revolves in this bronze sleeve. The load is almost 100 per cent radial and almost no thrust.

Q. Are those bearings made now by Allis-Chalmers?

A. Yes, they are, currenely.

Q. And in what kind of applications are they used?

A. That particular one is used on one of their motors.

Q. Now, the next is the Rabbit bearing?

A. Well, that is misspelled. That should be "b-a-b-b-i-t".

Q. It ought to be a babbit bearing. "General Electric, Schenectady, New York." Now, what do they use that babbit bearing for?

A. That bearing is also used in electric motors and in other applications where a shaft revolves. It is a steel backed bearing lined with babbit. Babbit is a soft, white metal made of lead and antimony and in some cases a slight amount of tin or a slight amount of copper is introduced. There are many trade secrets used in the making of babbit; everybody seems to have his own way of making it.

Q. And that is made by the General Electric?

A. Yes.

Q. Now, down here are "Ball bearing, New Departure Manufacturing, Division of General Motors Corporation, Bristol," and next to it, down at the end, "Tapered Roller [fol. 1420] Bearing, Timken Roller Bearing Company, Canton, Ohio." What are these two bearings?

A. The first is an anti-friction ball bearing, the second

is an anti-friction tapered roller bearing. There are many other types of bearings that could be used. For instance, this stand was made of a piece of plastic that is also used in the manufacture of friction type bearings. Rubber is used, all sorts of material, lignum vitae is one of the principal bearing woods. All forms of bronze, steel, in some cases silver is used as a bearing. The Cleveland Graphite Bronze Company in Cleveland uses immense amounts of silver for friction type bearings.

Q. Are the friction type bearings competitive with anti-friction bearings?

A. In general they are much cheaper than anti-friction bearings.

Q. And are they in competition with anti-friction bearings?

A. They are.

Q. Upon what kind or character of applications, generally?

A. Line shafts, wheelbarrows, automobiles, internal combustion engines, compressors, pumps, drilling equipment, and almost every instance where a piece of mechanism moves the friction bearing is in competition with the anti-friction bearing.

Q. Can you give us any idea of the number of companies [fol. 1421] in the United States now that are engaged in manufacturing friction bearings?

A. I couldn't say with any degree of accuracy. I know that there are well over a thousand and perhaps it runs up into many, many thousands.

Q. And do you have any information or knowledge as to whether there are more friction bearings sold than anti-friction bearings?

A. There are many more friction bearings sold than anti-friction bearings, either sold or produced. For instance, in the case of General Electric, Allis-Chalmers, Brown & Sharpe, all of those people are manufacturers of equipment and make their own friction type bearings.

Q. Well, do they put their own bearings in their own equipment that they sell?

A. In some instances they do, in other instances they buy from companies who specialize in making friction bearings.

Q. And are there manufacturers of friction bearings that

sell them out generally on the market and don't put them only in other equipment they make themselves?

A. There are some companies that specialize in the manufacture of friction type bearings only.

Q. Now, what kind of a bearing is that (handing same to witness)?

[fol. 1422] A. That is a friction type bearing, a replica of a mine car wheel.

(Bearing above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 55.)

Q. Well, where is the bearing on that? Just explain that to the Court, will you, please?

A. The shaft or knurled portion is in my right hand, and this cut-away section shows the bearing surrounding the shaft, being inside the hub of the wheel.

Q. Now, there are no balls or rollers in there, are there?

A. There are no rolling members in there other than the bearing itself which revolves around the shaft; no rolling elements interposed between the shaft and the bearing.

Mr. Day: I want to offer Defendant's Exhibit 55.

The Court: The Defendant's Exhibit 55 may be received.

Q. Here is one marked Defendant's Exhibit 56. What kind of a bearing is that?

A. This is a cut-away section of a mine car wheel, or miniature of the car wheel, with two Timken tapered roller bearings and a dust collar and lock-washer shown in the [fol. 1423] application.

(The bearing last above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 56.)

Q. Is it correct to say that 55 is a friction type bearing used on mine cars?

A. It is a small model of the same application that you would find in the full sized car.

Q. Of a friction type bearing?

A. Of a friction type bearing in a full sized mine car wheel.

Q. And 56 is a model also?

A. Is a model of an anti-friction bearing, of a Timken application.

By Mr. Day: I want to offer our Exhibit 56.

The Court: It may be received.

Mr. Day: I offer 54, if I haven't offered it.

The Court: 54, 55 and 56?

Mr. Day: Yes, your Honor.

Q. Now, I have here a piece of steel that we will mark our next Exhibit 57.

(Piece of steel above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 57.)

[fol. 1424] Q. While this is being done, it has been suggested to me I ask you, and I do ask you which one of these mine car-wheel types of bearings was in use first, the friction or anti-friction type?

A. The friction type was in use first.

Q. On mine cars?

A. Yes.

Q. State whether or not it was, therefore, necessary in order to obtain the adoption of the Timken type of mine car bearing to displace this with the trade or try to?

A. Yes.

Q. And for how many years, approximately, if you have any idea upon that subject, was this mine car friction bearing in use before the Exhibit 56, the anti-friction mine car bearing?

A. I couldn't say with any degree of certainty. Certainly used a hundred years.

Q. That is long enough.

Now, what is this Exhibit 57?

A. This is what we call an etched section of a Timken cone.

Q. And it shows what?

A. It shows the depth of penetration of the carburized case and the core adjacent at the top penetration of carbon that is shown in the case.

[fol. 1425] Q. Will you step up to the bench and see if you can show his Honor that?

(Witness complies.)

The steel which is used in the manufacture of Timken roller bearings is what is known as low carbon steel, the carbon being about .20. And after the piece has been machined it is subjected to a carburizing operation and carbon is driven into the outer surfaces, here and here and here (indicating), which gives it about one per cent, as con-

trasted with one-fifth of one per cent in the center. That gives a very hard surface and a very tough core so the bearing will stand considerable impact without cracking The wearing qualities of the outside are protected by this carbon case which allows a very high degree of hardness and the inside remains relatively soft and very tough. You can see the difference in the outer section and inner section. That piece has been polished so it is possible to see penetration of carbon.

Mr. Day: We offer Defendant's Exhibit 57 in evidence.

The Court: It may be received.

Q. I notice several pieces of steel here. Will you step down here and tell us whether they are illustrative of something you haven't told us about?

[fols. 1426-1427] A. These are generally the same type with the exception that there is one cup here which has been broken and not polished, but this is a fresh break which was just made last evening, at least, or early this morning, so you can faintly see around the outer surfaces the carbon penetration even though the piece has not been polished. These pieces are broken from time to time during the heat treating operation to be certain we get the right penetration of carbon and the right condition of carburizing.

Q. There was some talk here the other day about fractures. Are those examples of fractures?

A. They are.

Q. And they are made for the purpose of what?

A. Inspecting to be certain that the pieces are receiving the proper heat treatment.

Mr. Day: I would like to tie these together and offer them as our next exhibit.

(Pieces of steel above referred to were thereupon marked by the Clerk, for identification, Defendant's Exhibit 58.)

The Court: They may be received.

[fol. 1428] Further direct examination of William Umstattd.

By Mr. Day:

Q. We were asking yesterday about competition as between tapered roller bearings and other kinds of roller bearings and ball bearings, they being anti-friction bearings,

and friction bearings. In railroad cars what kind of bearings are used?

A. Lately in the more modern passenger cars, pullmans, streamlined cars, diners, and things of that sort, anti-friction bearings are used, roller bearings of some type, some cylindrical rollers, parallel rollers, some barrel type rollers and some tapered rollers. In the freight cars of which there are about a million eight hundred thousand in current use in the United States, all of those freight cars with the exception of about ten thousand which are equipped with anti-friction bearings are operating on what is known as a wedge type bearing, a friction bearing that is composed of bronze and various analyses, and covers about one-half of the axle, the top half of the axle. The bottom part of the box or retainer for the bearing is filled with a [fol. 1429] type of waste, cotton waste impregnated with oil. So that means that essentially all of the freight cars of the United States are running on friction type bearings.

Q. You stated yesterday, as I understood you, that you thought perhaps there were a thousand or more companies making friction bearings. Did you mean to say by that that they were making bearings either for themselves or as component parts of other things they made?

A. That is true. Many manufacturers who make motors make their own bearings. Many who make lawn mowers and things of that sort make their own bearings. A friction bearing can be made by anyone who has a lathe, and I have no doubt that there are many thousands of companies throughout the United States making their own friction type bearings.

Q. Are there some applications where ball bearings can be used more readily than roller bearings?

A. Yes, there are some places where ball bearings can be used almost to the exclusion of roller bearings. For instance, the miniature types of bearings that are used on bomb sights and range finding equipment on airplanes and for antiaircraft guns are equipped almost entirely with ball bearings. The roller bearing possibly could be made to those minute dimensions but it certainly would not be practicable.

Q. Is there a field of bearing applications where either roller bearings or ball bearings might be used, is there a [fol. 1430] large field in that respect?

A. That is by far the greatest field for anti-friction bearings, where either a ball or a roller bearing could be used. It just depends upon the salesmanship or the economy of the bearing. There are probably at least 90 per cent of the places where anti-friction bearings are used that could accommodate a ball bearing or a roller bearing.

The Court: You are now referring to railroad cars particularly?

The Witness: Not to railroad cars. I am talking about the entire field. In the case of railroad cars the severity of the service almost necessitates the use of a roller bearing. Ball bearings can be used, they have been used in Germany to some extent on railroad cars but the balls become so large and the bearings become so large that it is an impractical thing, it just doesn't pan out from the standpoint of economy.

The Court: I am sorry, Mr. Day, to interrupt.

Mr. Day: That is all right. I am very glad your Honor did ask the question.

Q. Now, in this large field that you describe, is that a field that includes also friction bearings of certain types?

A. That is true.

[fol. 1431] Q. In some of the large applications such as you have just told his Honor about, can you use friction bearings in those applications?

A. Yes. One application in particular that I have in mind is the roll-necks on steel mill rolls. We developed, back in the early 20's, a tapered roller bearing for use on four-high continuous mills, and it worked out very satisfactorily. As a matter of fact it helped produce sheet in wide widths and close tolerances for many years; but the friction bearing people developed a bearing that suited that purpose better and have almost taken all that business away from us. We are gradually losing out in that field because a friction bearing serves the purpose better.

Q. I think Mr. Klinedinst testified the other day, perhaps you did yesterday, as to the number of tapered roller bearings manufacturers in this country. Did you testify to that?

A. I don't believe so.

Q. Can you tell us generally about how many there are and what the principal ones are?

A. Yes, I think I can tell you the principal ones. The principal ones are the Timken Roller Bearing Company, the Bower Bearing Company, the Orange Bearing Company, the Pratt Bearing Company, the Bantam Bearing Company, the Torrington Company, the Kay-Don Company, [fol. 1432] the International Harvester Company, the Messenger Company, the Loewly Bearing Company, I believe is the correct spelling, the Tyson Roller Bearing Company, the Hoover Roller Bearing Company. No, I believe the name of the Hoover is the Hoover Ball Bearing Company but they do make tapered roller bearings. There may be others but those are the principal ones.

Q. And how many companies are there in the United States that make straight roller bearings as distinguished from tapered roller bearings?

A. I don't know the exact number. I know some of the principal manufacturers.

Q. Would you name just some of them, please?

A. The Hyatt Bearing Division of the General Motors Corporation, the Rollway Company, the American Roller Bearing Company, the Roller Bearing Company of America, the Bower Roller Bearing Company, the International Harvester Company, the Gwilliam Company, the Bantam Company, the Torrington Company, the Kay-Don Company, Marlin-Rockwell Corporation. There may be others but those are the principal ones.

Q. They all make straight roller bearings?

A. Yes, sir.

Q. And is there a difference between the hour-glass bear- [fol. 1433] ing and the spherangular bearing and the barrel shaped bearings?

A. Yes, there is.

Q. Well, are they considered generally straight roller bearings or are they in a class by themselves?

A. No, they are considered a modification of a tapered roller bearing. They are essentially tapered roller bearings with curved surfaces.

Q. Now, the SKF Company. Where is the home plant of that company?

A. Gothenburg, Sweden.

Q. What is the size of that company as a maker of bearings

A. That company is the largest manufacturer of anti-friction bearings in the world.

Q. And outside of or in addition to the plant they have in Gothenburg, Sweden, can you give us an idea where else they have plants?

A. They have plants in Germany, in France, in England and perhaps other places around the world, but I know of those plants.

Q. Do they have a plant in this country?

A. In Philadelphia.

Q. And what kind of bearings do they make in that plant they have in Philadelphia?

[fol. 1434] A. They make a barrel shaped roller bearing, ball bearings, straight roller bearings, needle bearings, and, on occasion, tapered roller bearings. I am not certain that they are making them today; I know they have made them.

Q. Are they in competition with the Timken Roller Bearing Company and these other bearing companies I have been asking you about?

A. Yes, they are.

Q. Something has been said in the evidence here offered in behalf of the Government concerning certain trade arrangements made between British Timken and SKF and other companies relating to Great Britain and France, back around 1930, '31, whatever the date may be. At that time what was your position with the Timken Roller Bearing Company?

A. In 1930 and '31 I was factory manager.

Q. And were you closely connected with H. H. Timken and some of the other officers in connection with the affairs of the company as of that time?

A. I was.

Q. And you became president, I think you said, in 1934?

A. Yes, in 1934.

Q. What knowledge did you have as to the existence of those trade arrangements in England and France?

A. I am not certain about the date. I know that our British partner, Mr. Dewar, informed us that he had made [fol. 1435] arrangements with SKF in both England and France, but it strikes me the date was a little later than 1930.

Q. Well, whatever the dates were, and the record shows

what they were, you say you knew about some arrangements having been made by Mr. Dewar?

A. Yes.

Q. Did you also hear something from Mr. Hess in that regard, or from communications that Mr. Hess sent to the Timken Roller Bearing Company?

A. Yes, and reports of it that Mr. Hess made regarding his occasional visits to England and France.

Q. Outside of that knowledge did you have anything to do or did you have anything to do at all with the making of those agreements?

A. I had nothing to do with making the agreements.

Q. And was American Timken party to any of those agreements?

A. No.

Q. It is in evidence here that the British agreements, whenever they were made—what was the year when they were made——

Mr. Ketterer: 1934.

Mr. Day: I want to correct that.

Mr. Umstattd was right. 1934.

Q. It is in evidence here that those agreements or arrangements, whatever they were, ran out or expired in 1939 with [fol. 1436] the coming of the war and they never were renewed?

A. They were not.

Q. And it is in evidence here, I think also, whatever arrangements were made in France between British Timken and SFK or any other companies——

Mr. Ketterer: French Timken.

Q. (Continued) and SKF and any other companies, ran out in 1940 when the Germans invaded France, and they have never been renewed?

A. They have not.

The Court: You are now referring to trade arrangements made with SKF?

Mr. Day: That is right, concerning which the Government offered some testimony.

Q. As president of the Timken Company, are you able to state what the policy of that company is now as to any trade arrangements of that kind?

A. The policy of the Timken Roller Bearing Company is that we do not believe in any sort of trade arrangement that would restrict sales.

Q. And state whether or not that has always been your policy.

A. Personally, yes, and I believe that it has been the policy of the Timken Roller Bearing Company as far as I know.

Q. And state whether or not on occasions you have [fol. 1437] declared that policy as being your policy and the policy of the company as far as you are concerned.

A. I have many times.

Q. I have asked you about the different kinds of bearings and about the competition between and among the various kinds of bearings. I will ask you whether the competition such as you have described existed to your knowledge, let's say in 1927?

A. It did.

Q. And state whether or not it has existed ever since that time?

A. It has.

Q. And does it exist today?

A. It does.

Q. You became connected with the company in 1919?

A. I did.

Q. Did you acquire knowledge before 1927 as to these competitive conditions you have described?

A. I did.

Q. And when would you say you first acquired that knowledge?

A. I commenced to acquire it immediately after being employed by the company, and as time went on I learned more of the competitive situation.

Q. And in those days did you have to do with the finances [fol. 1438] of the company or the production of the company?

A. I think the two are inter-leaved. I had more to do with the production but of course that in turn did have to do with the finances of the company.

Q. And if I asked you yesterday I beg the Court's pardon for asking you again, has the character of the competition, the keenness of the competition between these various types

of bearing manufacturers abated or lessened during these years?

A. I think it has become keener as the years have gone on.

Q. Can you give us an opinion as to the percentage of tapered roller bearings that are produced now in this country by the Timken Roller Bearing Company?

A. The percentage of tapered roller bearings?

Q. Yes, sir.

A. The first knowledge I have had of any accurate figures concerning our percentage occurred a few days ago when the Government introduced some testimony that they had obtained from the Anti-friction Bearing Manufacturers Association. That information has never been available to us up until that time.

Q. And that showed about what percentage for the Timken Roller Bearing Company?

A. As I recall it, it showed in the neighborhood of a [fol. 1439] range of about 78 to 80 or 81 per cent. I believe currently less than 80 per cent.

Q. And do those figures involve the production of all of the tapered roller bearing manufacturers in this country?

A. I think not.

Q. Well, did it involve the production of all of those who belong to the Association?

A. That statement was made by Government counsel.

Q. Are there some tapered roller bearing manufacturers who do not belong to the Association?

A. I believe there are.

Q. But do most of the larger manufacturers belong to the Association?

A. With the exception of International Harvester I believe most of the larger producers do belong to the Anti-friction Bearing Manufacturers Association.

The Court: Most or all?

The Witness: Most.

Q. And that Anti-friction Bearing Association is a trade association having to do with the anti-friction bearing industry, similar to trade associations generally in other lines of business?

A. I am not familiar with the activities of trade associations in other lines of activity. The Anti-friction Bearing [fol. 1440] Manufacturers Association was formed to

enable the industry to conform with the laws regarding the National Recovery Act back about 1933 or early '34.

Q. Are you able to give any opinion or judgment as to the percentage of tapered roller bearings manufactured by the Timken Roller Bearing Company in this country in 1927, let's say?

A. I have no knowledge of what the figure would be. In 1927 no figures were available at that time, so far as I know.

Q. You would rather not hazard a guess about it?

A. I would prefer not to.

Q. Can you give us any notion as to the percentage of roller bearings that are now produced by the Timken Roller Bearing Company in this country?

The Court: Now, you are wanting it for all roller bearings?

Mr. Day: All roller bearings, not merely tapered roller bearings.

A. Figures submitted to us by the Anti-friction Bearing Manufacturers Association indicate that we are making approximately 50 per cent of the roller bearings made in the United States. And that, again, is based upon the figures submitted by members of the Association. I am not certain that includes the entire industry. As a matter of [fol. 1441] fact I know definitely that it does not in the case of International Harvester, who make tapered roller bearings, straight roller bearings and ball bearings.

Q. Does the International Harvester Company make those bearings in substantial quantities?

A. Yes, they do.

Q. Are you able to give an opinion as to the percentage of anti-friction bearings produced at the present time by the Timken Roller Bearing Company in the United States?

A. It varies from month to month but it hovers around the 25 per cent mark.

Q. Do you know whether that percentage of production of anti-friction bearings at the present time is larger or smaller than it was, say in 1927? Have you any judgment on that?

A. I really have no basis for judgment in that matter. I should like to qualify the statement I just made before this question, and that was that we produced roughly 25 per cent of the anti-friction bearings. Again, that is predicated on the figure submitted by the Anti-friction Bearing

Manufacturers Association. And in turn they got their figures from the members of that organization.

The Court: Let me get that straight. Did those figures include all anti-friction bearings?

[fol. 1442] The Witness: No, sir, they do not. Some people manufacture anti-friction bearings and are not members of the Anti-friction Bearing Manufacturers Association.

The Court: I understood that. But the 25 per cent figure is a figure which covers all anti-friction bearings with the exception of those that you are excluding because of their non-membership in the Association.

The Witness: That's right.

The Court: Are there any anti-friction bearings which are not roller bearings?

The Witness: Yes, there are. There is a bearing known as the Kingsbury bearing that is an anti-friction bearing. Although it does not have rollers or balls, it has what is known as wedges. Those wedges float around in the periphery of the bearing in a bath of oil and do produce a bearing with a very slight friction. That bearing is used largely in marine installations, shafts, propeller shafts on ships, and things of that sort.

The Court: The reason for my inquiry is because of your statement that Timken makes approximately 50 per cent of the roller bearings in the United States as reported to [fol. 1443] you by the Association. Now then, when you were asked the percentage of anti-friction bearings you said it's 25 per cent.

Mr. Day: Anti-friction includes the ball bearings, you see.

The Witness: Your Honor, the Anti-friction Bearing Manufacturers Association reports the manufacture of ball bearings, straight roller bearings, tapered roller bearings, and all variations of tapered roller bearings. That's the 100 per cent.

The Court: I see.

The Witness: But the roller bearings are 50 per cent of the 100 per cent. In other words, tapered roller bearings, straight roller bearings, spherangular bearings and barrel shaped bearings constitute approximately 50 per cent of the anti-friction bearing total in this country. Timken makes 50 per cent of that 50 per cent, which brings us to 25 per cent of the total.

Q. Well, ball bearings are anti-friction bearings, aren't they?

A. They are.

Q. And in the figures that have to do with anti-friction bearings ball bearing figures are included, aren't they?

[fol. 1444] A. They are.

Q. I want to ask you something about the manner in which Timken Roller Bearing Company carries on its sales of bearings. Do you have a main office, first, to begin with?

A. The sales department is located in Canton, Ohio, and a vice-president of our company is in charge of that activity. Under him is a director of sales, and under the director of sales are our various sales offices throughout the United States, where we have a corps of sales engineers. Those sales engineers are graduate engineers in the different branches of engineering who are trained in our factory for a period of a year to 18 months and then transferred to the drafting department where they spend an apprenticeship on the drawing board laying bearings into various applications, and then the ones who show the greatest aptitude for sales are transferred to the sales offices throughout the United States, and they constitute our field or sales force.

Q. There have been various names brought out in the evidence here and the Court perhaps knows the officers, but I think it perhaps all right to ask you a question along that line in connection with this particular testimony. The vice-president in charge of sales now is who?

[fol. 1445] A. L. M. Klinedinst.

Q. Who is the—you made it very clear yesterday there wasn't any president giving orders to this man and this man and the other man, on down the line, but who is the next person to Mr. Klinedinst in sales end of it?

A. W. B. Moore.

Q. What is his position?

A. Director of sales.

Q. Who are some others holding responsible or high positions in the sales branch of the business?

A. E. W. Austin is head of our automotive sales division; S. C. Partridge is head of the industrial sales division; W. C. Sanders is head of our railroad sales division; H. C. McCollum is head of our steel sales division; G. W. Curtiss

is head of the farm equipment sales division. Those are the principal divisions.

Q. Do you have branch offices or branch sales offices in [fol. 1446] connection with the sales of bearings, your product?

A. Yes, we do. We have many offices scattered throughout the United States.

Q. Can you tell us about how many of those there are?

A. I believe at the moment there are about 20.

Q. Can you tell us some of the principal cities where they are located, without naming them all, unless you want to tell them all?

A. Yes. New York, San Francisco, Los Angeles, Seattle, Denver, Dallas, Houston, Atlanta, Boston, Philadelphia, Cleveland, Buffalo, Kansas City, St. Louis, and other places that I can't recall right at the moment.

Q. With relation to taking orders for bearings and supplying bearings to the trade, how do these sales offices operate generally?

A. They keep a complete file of present customers and call on those customers at regular intervals to see if any new designs are being considered, and if a customer comes out with a new machine or a piece of farm equipment, tractor, or automobile, our sales engineers confer with the design engineers in the customer's offices and attempt to put Timken bearings in places where any movement occurs, such as shafts or gear trains, things of that sort. In addition to calling on our present customers, our men read the [fol. 1447] trade journals and through contacts with other salesmen learn of prospective customers and call on them for design applications and attempt to engineer Timken bearings into pieces of equipment made by those people who are not presently customers of ours. Occasionally some very weird applications turn up, as evidenced by the use of Timken bearings in knee joints of artificial legs.

Q. Does the company furnish bearings for that purpose now?

A. Yes.

Q. In connection with obtaining orders for bearings in the manner you have described, does your company have competition with other companies and makers of ball bearings, for instance, and things of that kind?

A. We have competition with the manufacturers of ball

bearings and straight roller bearings and friction bearings of all types.

Q. And does the sale of bearings, therefore, involve the acceptance by the purchaser of your particular kind of bearing in the particular application which they have in mind?

A. It does.

Q. And these blue prints which are submitted by the purchaser to your engineers, and which you look over to see where you can put the bearings in the place where the blue print seeks to have them put, are those blue prints also [fol. 1448] shown to the manufacturers of other bearings, ball bearings, and matters of that kind?

A. Yes, in almost all instances several companies compete for the same position in a piece of machinery or equipment that is being built.

Q. And back in the earlier days when the tapered roller bearing was more or less in a pioneering stage, as has been described by all the witnesses, state whether or not the marketing of tapered roller bearings involved the acceptance by the engineers of the purchasing public of tapered roller bearings as contrasted with, say, ball bearings?

A. Yes, that is true. The tapered roller bearing was an American invention and was not widely publicized in engineering text books. The engineering text books specialized on friction bearings of various types and ball bearings, and in some instances straight roller bearings. But the ball bearing was really the bearing featured most and was most readily understood by graduate engineers in the 1900-1910 decade, and even in the decade through 1920. The tapered roller bearing commenced to get on solid ground really in the 1920's.

Q. I think you testified yesterday that the ball bearing preceded the roller bearing, tapered roller bearing in this [fol. 1449] country. Way back years ago, where did most of the ball bearings come from?

A. Most of them came from Germany.

Q. And they were made by what companies, do you know, then?

A. In the early days, I'm not certain. I know in the 1920's Fichtel & Sachs and Fischer were the two largest manufacturers of ball bearings in Germany.

Q. Then there was a time when most of the ball bearings sold in this country came from Germany, is that right?

A. The bulk of them came from Germany, although some came from Italy, some came from Sweden, and some, I believe, in rare instances came from Switzerland, particularly some of the smaller sizes.

Q. Something has been said in the evidence here about bearings for original installation. What does that mean?

A. That is the bearing that is first placed in a machine when it is built, whether it's a punch press or lathe or screw machine or automobile, or tractor.

Q. That is, if a company builds an automobile, let's say Ford builds a new automobile, or a great number of them, and he wants to sell them to the public, he puts bearings in as part of the original equipment, doesn't he?

A. He does.

Q. And those bearings are then supplied for original equipment or original installation, is that right?

[fol. 1450] A. They are.

Q. Something has been said here also about bearings for replacement purposes or service bearings. What does that mean?

A. That means that if a bearing gets out in an original installation, such as an automobile or a punch press, and through neglect or through mechanical defect a failure occurs the bearing must be replaced with a good one, and that is considered a replacement bearing.

Q. And what steps does the Timken Roller Bearing Company take, and has it taken over the years, to provide a source of replacement, service bearings?

A. We have warehouses throughout the United States and Canada where bearings can be obtained on short notice. Those warehouses serve jobbers and dealers throughout the United States so that bearings are readily available at almost any point in the country.

Q. So that if a jobber or dealer had a replacement job to perform he would get it from the warehouse instead of coming to one of the home plants of Timken to get it, is that right?

A. That's true.

Q. And what is the comparative proportion of replacement business as against original equipment installation business?

[fol. 1451] A. That varies. At the moment I would say it's in the neighborhood of 5 per cent.

Q. 5 per cent replacement or service business and 95 per cent original installation?

A. Yes, sir.

Q. Or original equipment?

A. Original equipment.

Q. Mr. Umstattd, you have been president of the company since 1934 and connected with the company since 1919. I will ask you whether or not you have given attention to the transaction of the bearing business by the Timken Roller Bearing Company abroad in foreign countries during those years?

A. I have.

Q. Have you given some study and attention to it?

A. I have.

Q. In its various phases?

A. Yes.

Q. And have you done that in connection with the performance of your duties as an officer of the Timken Roller Bearing Company?

A. Yes.

Q. And have you in that connection considered the situation, let us say, in the United Kingdom and in France and on the Continent?

[fol. 1452] A. I have.

Q. What is meant when it is said that a country or a nation has a domestic economy?

A. I think that is understood to mean that as many things are made internally, inside the country's boundaries, as is practicable.

Q. That is, in plain words, when you say a country has a domestic economy you mean the country is having products manufactured within its borders, is that right?

A. I think that's the commonly accepted understanding, that a country tries, as far as possible, to be self-contained, at least some countries do.

Q. Are there some countries that do not have a domestic economy?

A. I don't think you could say there is any country that does not have a domestic economy. I think you would have to differentiate as to whether it's an agricultural economy or a manufacturing economy or a trading economy.

Q. Well, are there some countries that do not have developed a manufacturing domestic economy?

A. Yes, there are many countries that depend upon imports for taking care of their needs for manufactured articles.

Q. That is, the country with a domestic economy seeks to make the products that its people use, and so on, within [fols. 1453-1461] its own boundaries, is that right?

A. Again I think there must be some——

Q. I mean a manufacturing economy.

A. —some difference made. Obviously Iraq and Iran have an economy but they manufacture very little.

Q. I am talking——

A. England has an economy and manufactures a great many things.

Q. I'm talking about a manufacturing economy.

A. A manufacturing economy, of necessity, tries to manufacture as many things as possible within its own boundaries.

Q. When you have a country in that shape that makes its own products, to some extent, what is the nature of the opportunity afforded to somebody outside to sell in that country?

Mr. Nitschke: Your Honor, I think the Government ought to object to this sort of general discussion of economics.

[fols. 1462-1463] The Court: Rather than my permitting the testimony to go in, as I said at the outset of the objection, when it was made by Mr. Nitschke, I will receive it over the objection of the Government, and, as I said, the matter in its final analysis may be one legal question and upon the resolving of that legal question the matter of the objection can very well be answered.

[fol. 1464] The Court: Pardon me, so that I understand the nature of the objection of the Government. The objection is not made on the basis of his inability to give expert testimony, as one who is schooled in the field of economics?

Mr. Nitschke: Well, I do think that I would make my objection also on that ground, because this testimony is on the general subject of economics, and I don't think there is any showing that this witness has studied economics. He is the president of the company engaged in selling Timken roller bearings.

The Court: Do you wish to have him qualified, so that the record is clear on that subject?

Mr. Day: I'll be glad to do that, your Honor.

[fol. 1465] Q. Mr. Umstattd, what if any study have you made of conditions, economic conditions in foreign countries, say the United Kingdom and France and the Continent, with relation to the manner in which trade is carried on there?

A. I have made quite considerable studies by conferring with companies that do business in countries in Europe, in particular, with lawyers regarding the trade laws in the countries in Europe, particularly France and England, and by reading literature pertaining to trade policies indulged in by countries such as France and England. The standard papers, business papers, of those countries come to my desk regularly and I keep in touch with the attorneys for both French and British Timken for laws pertaining to trade in these two countries.

Q. To what extent have you made it an object of yours, if you have, to read books and periodicals dealing with this question?

A. I subscribe to British magazines, business magazines, daily newspapers delivered by plane, and our attorney in France sends me copies of the Herald Tribune marked by him in conjunction with any new laws pertaining to business transactions in France or its dependencies.

[fol. 1466] Q. And in connection with your business have you visited the United Kingdom?

A. I have.

Q. How many times over the last few years, would you say?

A. In 1945, in 1946, in 1947.

Q. And did you pay attention to the conditions you saw there?

A. I did.

Q. And what other countries have you visited in connection with your work as president of Timken Roller Bearing Company?

A. France, Belgium, Russia.

Q. And in the carrying out of your work, and in the discharge of your responsibilities as president of the Timken Company, have you felt it a part of your job to become

acquainted with the economic conditions over there and the economic restrictions, things of that kind?

A. I have.

Q. So that from your study and your experience and your travels in the performance of your duties, do you feel you are qualified to give an opinion upon the subjects such as this?

A. I believe I am.

[fol. 1467] Q. You made a study of the situation concerning bearings, didn't you?

A. I did.

Mr. Nitschke: I'm not raising any question with respect to his business expefience. I'm sure it's very vast. I was concerned, your Honor, with this general discussion of economic terminology, things like that. I have no objection to his testifying and giving his opinion on matters he is qualified in, and I think he is certainly qualified to tesify regarding business conditions in the bearing industry. My objection wasn't directed to that particular feature of it.

The Court: He may answer subject to the limitations that I have outlined in receiving all this testimony over the objection of the Government.

Q. What if anything have you learned and discovered as to the attitude, let us say of the United Kingdom, as to having bearings manufactured in the United Kingdom?

A. The pressure exerted by his Majesty's Government has made it almost impossible for bearings to be imported into England, as the Government is very active in promoting the manufacture of bearings in Great Britain for use internally, as well as for export purposes.

[fol. 1468] use internally, as well as for export purposes.

Q. And how long has that attitude been in evidence?

A. It has been in evidence to some extent since the end of World War I, in 1918, but it has become more pronounced since September, 1939.

Q. And did that attitude exist in 1927 and 1928?

A. It did.

Q. Now, what effect does that attitude have as to bearings, for instance, if we are to talk about bearings directly, used in Great Britain or in the United Kingdom, made in Great Britain or the United Kingdom?

A. The attitude of the present Government and preceding governments since 1939, has greatly favored the

manufacture of bearings in the United Kingdom for use in England and throughout the United Kingdom.

Q. And what relation if any, if you have discovered it, does the manufacture of bearings, and things of that kind, within the borders of the United Kingdom have to do with the national economy that the United Kingdom is seeking to build up?

A. From discussions with people in England representing banks, accounting firms, manufacturing concerns, it is quite apparent that England is determined to manufacture more goods today than she ever manufactured at any time [fol. 1469] in the past, and generally for export trade. The targets for exports have been set very high in order to attract what is known as hard money to the coffers of the United Kingdom.

Q. And if a company, say an American company sought to sell bearings now in Great Britain, what if any program would it have to go through?

A. An import license would have to be obtained from proper governmental agencies in the United Kingdom before bearings could be exported from any outside country and imported into the United Kingdom.

Q. And have you made any study or inquiry as to the conditions surrounding an application for that kind of a license?

A. I have.

Q. And what have you discovered in that regard?

A. I have found that it is almost impossible to get bearings into England unless a bearing company in England says that they are unable to produce bearings for the British trade.

Q. I will ask you whether or not, having regard for what you have just testified to, it would be a practical, feasible thing now for an American company to sell bearings in the United Kingdom coming from itself?

A. I think it would be practically impossible.

Q. And in order for American capital to sell American [fol. 1470] bearings in the United Kingdom under the conditions you have described, what if anything, in your opinion, would it be necessary for that American capital to arrange, what kind of a setup would they have?

A. I think it would be almost impossible to sell bearings

in the United Kingdom unless a bearing plant were established there for the manufacture of those bearings.

Q. Have you heard of the slogan, if that's the right word, "Buy British"?

A. I have, for the past 25 years or more.

Q. And what does that indicate or mean to you?

A. It indicates that the British Government and the British Board of Trade, which is a governmental agency in England, commenced a campaign back in the early '20's to impress upon people in England and the United Kingdom that they should buy British made products. The packing cases with British goods in are stencilled in large letters "Buy British." Billboards throughout London and the midlands, towns such as Birmingham, and places of that sort, have enormous billboards with the slogan "Buy British." They have had those billboards for many years.

Q. What if anything would you say about the advisability, if perhaps not sheer necessity, of having British workmen and British supervisors in the producing plant of the [fol. 1471] United Kingdom?

A. I think it is highly essential for smooth operation to have British personnel both at the benches and in supervisory positions.

Q. And is that based on your own consideration of that subject?

A. That's based on my own analysis after consulting with many people in England who have had plants established there by American or Swedish or other interests.

Q. What if anything would you say about the proper nationality as to being British or otherwise of those who sell bearings in the United Kingdom?

A. I think it's highly essential that British born personnel be employed in the sales departments of bearing plants or bearing concerns in the United Kingdom.

Q. And why do you think that?

A. The British business man is ordinarily very hard to approach. Engagements have to be set up days, or in some instances weeks in advance. For an American to try to make appointments and to make a sale is a most difficult matter. The British people seem to resent outside influences.

Q. Something has been said about metric sizes of bearings. What does that mean?

[fol. 1472] Mr. Day: If the Court please, I think at the adjournment we were talking about metric sizes.

Q. What does that mean?

A. The metric system of measurement depends upon meters, millimeters, as contrasted with our inches, feet, yards in the English and American system of measurement.

Q. And in what countries abroad do the metric sizes of bearings prevail?

A. I believe that the metric sizes prevail in almost all countries throughout the world with the exception of within the United Kingdom and the United States of America and Canada.

Q. Do the metric sizes apply in France?

A. They do.

Q. What if any bearing or effect, if any, in your opinion, does the fact that in certain countries bearings are meas-[fol. 1473] ured in metric sizes have to do upon the question of the difficulty of an American company doing business abroad?

A. It presents quite an obstacle to an American company. The metric countries in general use bearings that conform to what is known as the I.S.A., I believe the full name of that is the International Standards Association, and metric sizes are used almost exclusively in those countries wherever possible. Of course some inch sizes are used on occasion.

Q. Well, what effect does that have on the manner of transacting business by an American company as to whether it has a plant abroad or an agency abroad or something of that kind?

A. From a standpoint of practicability it is much better to have a plant in a metric country where sales are to be made in such countries.

Q. That is a plant producing inch bearings?

A. A plant producing inch bearings is not entirely out of the competition but it is easier to place metric sizes in a metric country than it is inch sizes in a metric country. Some bearings can be made to internal inch dimensions and external metric dimensions. In such cases the

inch bearing can be sold with slight alteration in the [fol. 1474] outside and inside diameters.

Q. What do you understand by the expression "the Sterling Bloc": what does that mean?

A. The Sterling Bloc is a system of currency exchange that is under the control of the British Government. The pound sterling is the unit of currency in usage throughout the United Kingdom with the exception possibly of Canada. The pound sterling is maintained presently at a price of about $4.03 to 1 British pound. That is a fictitious value, as pounds in the world market can be readily bought for about $2.50, in American money for one British pound.

Q. Well, what effect does the Sterling Bloc have upon the question of transacting business and the manner of transacting business in the United Kingdom?

A. I think perhaps it accelerates the exchange of goods between England and other members of the Sterling Bloc but it stultifies the importation of goods from outside the Sterling Bloc, particularly from hard money countries like the United States.

Q. Will you tell the Court how it has that effect?

A. The British Government must pay for goods obtained from the United States in dollars and dollars cannot be readily purchased by pounds. Few people wish to exchange dollars for pounds. Therefore, it is almost incum- [fol. 1475] bent upon England to trade within its own economy, within the Sterling Bloc.

Q. You testified a while ago that in your opinion it would not be commercially practical for an American company to sell bearings in the United Kingdom, and at that time you had given one reason for it, for the attitude of the British Government. I will ask you whether or not your opinion is reenforced by these other considerations you have been testifying to?

A. Those are great deterrents to free trade between the United States and England.

Q. What would the situation in that regard be as to the British Colonies outside of the United Kingdom?

A. The Colonies are within the Sterling Bloc and it is very difficult to sell American goods in the Colonies because the dollars are not available for payment.

Q. You have testified so far about the general situation as you understand it in the United Kingdom, Great Britain,

and its Colonies. What is the situation that you have discovered in France?

A. The condition in France is somewhat similar to that in England. France has tried to maintain the franc at artificially high levels. Just recently, I believe in January or February of this year, the franc was officially devalued, but, even so, black market francs are still plentiful, and [fol. 1476] you can obtain more francs for a dollar than the standard rate of exchange would justify.

Q. What is your opinion as to the advisability, if not the necessity, of an American company or of any company selling bearings in France having its plant located in France?

A. It has been advantageous to manufacture bearings in France for many years and that is particularly true today. The French Government wants bearings manufactured in France and makes it very difficult for bearings to be imported into France.

Q. Can you state some of the respects in which the French Government makes it difficult to import bearings into France?

A. They have a tariff and it becomes necessary to get governmental permission before bearings can be taken into France, and that permission is extremely difficult to obtain.

Q. So, what would you say as to whether or not it would be commercially practical for American Timken, without having a plant or an arrangement for a plant in France to sell bearings over there now?

A. I think it would be practically impossible.

Q. How long would you say that condition has existed? [fol. 1477] A. I would say that condition has existed clearly for the past 20 years or more.

Q. And would you say in your opinion that that condition existed, say in 1927 and 1928?

A. I believe it did.

Q. As to French dependencies, what would the situation be?

A. The situation is pretty much the same in the Dependencies; they prefer to deal with the mother country.

Q. British Timken had a plant in Great Britain, did it not?

A. It did.

Q. And Great Britain is how far from France, across the Channel?

A. I believe there is one point that is roughly 30 miles.

Q. And state whether or not British Timken found from a business standpoint it essential to have a plant in France, that is French Timken?

A. Yes, they felt that it was essential.

Q. Does the Timken Roller Bearing Company have a plant in Canada?

A. It does.

Q. Will you state the circumstances under which that was established there?

A. The Canadian Government had difficulty in securing an adequate supply of anti-friction bearings during the [fol. 1478] course of World War II, and on many occasions the Office of Defense, headed up by Mr. Howe told representatives of the Timken Company and of other anti-friction bearing companies in the United States that Canada was going to insist upon having anti-friction bearings built in Canada. Mr. Howe told H. H. Timken, Jr., and me that if we did not choose to establish a plant in Canada that they would prevail upon someone else to manufacture tapered roller bearings in Canada, and as a last resort the Government might be forced to manufacture the bearings as a governmental project.

Q. And state whether or not in your opinion that was due to the position and attitude of Canada with relation to its domestic economy?

A. The Canadian Government, according to Mr. Howe decided that capital goods must be made in Canada for consumption in Canada, and since anti-friction bearings, particularly tapered roller bearings, were incorporated in many of the capital goods being manufactured in Canada or contemplated for manufacture in Canada, it would be highly essential to establish a plant for the manufacture of tapered roller bearings in Canada.

Q. What if anything have you discovered as to the bearing situation in Germany?

[fol. 1479] A. Presently?

Q. No, over the years.

A. The manufacture of anti-friction bearings in Germany was confined largely to ball bearings and straight

roller bearings, very few tapered roller bearings were made in Germany, very few were used in German equipment. We were literally astounded during the course of World War II to see the scarcity of tapered roller bearings in use in German war materiel which was captured and brought back to this country for inspection and examination. The use of ball bearings and straight roller bearings was very high; the use of tapered roller bearings was extremely low.

Q. Well, was Germany a nation that had a domestic economy?

A. Germany was a nation that had a highly developed capital goods industry before World War I and after World War I and during the first part of World War II. Of course that manufacturing economy was upset considerably by bombing attacks and artillery fire.

Q. So that from your experience and your study, having in mind the territory which is described in, let's say the 1934 contract as the territory of British Timken, and the territory that is described in that contract as the territory of French Timken, what would you say as to whether or [fol. 1480] not in your opinion it would be a practical or sensible thing from a commercial standpoint for American Timken to sell its bearings in those territories?

A. I do not believe it would be practical or sensible.

Q. I want to ask you now something about the carrying on of the service and replacement bearing business in the foreign countries, that is, let's say the British United Kingdom. How does American Timken carry on its servicing and replacement business in Great Britain, for example?

A. You mean on American made capital goods such as automobiles?

Q. Yes.

A. The servicing is done by dealers and jobbers who are licensed or who are sold bearings by British Timken Limited. Those bearings are made to the identical dimensions of American bearings and are replaceable without any machining or other alterations of the original piece of capital equipment.

Q. Well, what kind of manufactured goods have original American bearings that reach into or go into the territory, say, of Great Britain—automobiles?

A. Passenger cars, trucks, in some instances railway equipment, in some instances heavy machine tools such as punch presses, screw machines, lathes, grinders, milling machines.

Q. If a bearing in one of those mechanical constructions [fol. 1481] wears out over in Great Britain, what is the ordinary method and process of having it replaced?

A. The user of the piece of equipment ordinarily tears down the wheel, if it is a wheel bearing that has failed, and examines the bearing and finds that it has a certain number, and the name "Timken." He orders from a dealer or a jobber a bearing of the same number and replaces it in the piece of equipment. That bearing can be obtained in numerous places throughout England or the United Kingdom, through dealers appointed by British Timken Limited.

Q. And is that replacement service business that we are talking about a large proportion or otherwise of the total bearing business, say, of British Timken in Great Britain?

A. I don't know what percentage it is in Great Britain. I don't have those figures available, but Mr. Austin or Mr. Sauer, of our company, have those figures available.

Q. And state whether or not you believe that is an advantageous method of carrying on the replacement and service business for automobiles and other constructions?

A. I think it is advantageous. I think it is very displeasing to a person who buys a piece of equipment, whether it is a passenger car or truck or punch press, and has a bearing failure and has to wait any considerable length of time [fol. 1482] for replacement.

Q. That is, if a man has an automobile over in, let's say England, that has as a part of its equipment American bearings you think it would be rather difficult for him to write home instead of getting the bearings at some supply point or dealer in Great Britain?

A. Even with cable communication and airplane delivery the car or piece of equipment would be out of commission for a matter of a week or more, with the best possible communication, I would think.

Q. I think something has been said in the complaint in this case, perhaps in the evidence already adduced, as to what was done by American Timken and British Timken and French Timken during the war by way of bearings.

Can you give the Court some idea of what was done by American Timken in that regard?

A. When the war commenced in September, 1939, Great Britain commenced to manufacture war materiel in great quantities, and almost everything that is used in modern warfare is dependent upon anti-friction bearings, either ball bearings, straight roller bearings, tapered roller bearings, or variations of those bearings. It was impossible for England and France to get sufficient bearings from the British and French plants, therefore cables and telephone [fol. 1483] communications were received from both Great Britain and France asking for large quantities of bearings from our company and for component parts of bearings, and our plant turned those parts and completed bearings out in great quantities during the entire course of the war and shipped them to England and France. Of course, in France the shipments were cut off around May 1940 and not resumed until our troops had landed in France in 1944. In England the deliveries were made throughout the entire course of the war. Of course some shipments were lost by submarine action and bombing but, in general, the deliveries reached their destination.

Q. Now, you have been asked some questions concerning the selling of bearings in British and French territories by the American Timken. Have you an opinion, based on your study and your experience and your research, as to whether or not it would be commercially practical and feasible and sensible for British Timken to sell bearings in the United States of America? Have you an opinion on that subject?

A. Yes, I have.

Q. What is your opinion in that regard?

A. My opinion is that it would be impossible for British Timken to sell bearings in the United States today, anti-friction bearings.

[fol. 1484] Q. Will you tell the Court the basis of that opinion?

A. The cost of manufacture in England is greater than it is in the United States. In addition to the cost barrier there is a tariff barrier of 35 per cent ad valorem, and 8 cents per pound specific, which weighs against imported anti-friction bearings into this country. In addition to that,

I think that the British sales approach would not be readily acceptable in this country, and the delivery from a point some 3000 or 3500 miles away would be another obstacle in sales of anti-friction bearings from England to the United States.

Q. And is your opinion the same with relation to the sale of bearings from France into the United States?

A. I think it would be more pronounced in the case of France to the United States than it would in the case of England.

Q. I want to ask you something I would have forgotten, perhaps, or omitted if Mr. Ketterer hadn't suggested it to me, about the situation in Russia. Now, Russia, as I understand it, under the contracts, was a part of the territory of British Timken; is that right?

A. Russia was a country where either British Timken or American Timken could make sales.

Q. In the original contract, I think, am I not correct, Russia was a part of Europe?

[fol. 1485] A. The original contract, that is true. I thought you were speaking of the latest contract.

Q. No, you misunderstood me. Originally.

A. The original contract had Russia as part of Europe.

Q. I believe there was a change made in the 1934 contract, is that right?

A. There was.

Q. Will you state to the Court the circumstances which preceded or surrounded the making of that change?

A. The Russian Purchasing Commission in this country and in England and in other countries throughout the world got at different times goods from different countries depending upon the exchange situation prevailing at the time, and the state of Russian balances in certain countries. Many times goods would be bought from Germany for a period of six months or more, then the puchases would switch to Sweden or to England or to the United States or to Italy, and with that in mind it was felt that Russia might be better served by having sales avenues open from Great Britain and the United States.

Q. Was that the purpose of the change in the 1934 contract?

A. It was.

Q. And that same provision was carried on in the 1938 contract?

A. It is in effect today.

[fol. 1486] Q. You say you visited Russia. Now, when was that?

A. In June and July of 1945.

Q. What was the occasion of that visit?

A. The Russians had made a trade arrangement with Italy back about 1929 or '30, and one of the provisions of that arrangement was that Italy would engineer and establish a plant for manufacturing a considerable number of types of anti-friction bearings in Russia. That plant was built in 1931-32 in Moscow by the RIV, a subsidiary of Fiat of Italy. The bearings produced in the Moscow plant were never of very good quality and the quantities were not impressive, and when the war had progressed to the point of where Russia became an ally of the United States immense numbers of anti-friction bearings were purchased by the Treasury Department of the United States for shipment to Russia under the Lend Lease arrangement. It got to the point of where the American bearing companies were having such a burden imposed upon them by delivering bearings not only to our own armed forces but in quantities of millions to the Russians that considerable complaint was made to the Treasury Department and to the Armed Forces about the situation. The Russians were asked to manufacture more of their own bearings, and they plead inability to produce more.

[fol. 1487] Q. This was all during the war, of course?

A. This was during the war. And they suggested that if the American bearing companies would engineer and help build a plant in Russia for the Russian Government the situation might be eased, and that Russia could produce more of her own requirements. They investigated, the Russian authorities investigated several American plants and finally decided that Timken would be best fitted for engineering such a project, and they asked us if we would agree to draw up plans for the bearing plant and lay in the equipment and train the Russian workmen in the manufacture of anti-friction bearings. We agreed to this, with the acquiescence of the Department of State and of the Armed Forces, and in 1945 I visited Moscow with Mr. Bergstrom,

vice-president in charge of engineering of our company, and Dr. Horger, who were in charge of the railway engineering division of our company. The discussions with the Russians convinced us that they were interested in getting immense amounts of American machine tools under the pretense of establishing a bearing manufacturing establishment, and we turned down the proposal. In the meantime the war with Japan had ended and the participation of Russia was no longer sought by our Department of State or our Armed Forces.

[fol. 1488] Q. Do you know what the attitude of Russia is now as to having bearing plants within its own borders?

A. Yes, they have gone ahead and established new bearing manufacturing facilities, partly by purchase of equipment from Sweden and partly by possession of bearing plant equipment in Germany. I saw immense quantities of German machine tools in Moscow that had been brought up from different points in Germany, where bearing plants had been moved, or at least the machinery had been moved to Russia by the Russian army.

Q. How long were you in Russia?

A. About two weeks.

Q. And was that the only visit you made there?

A. Yes.

Q. There has been something said in this case about the subject of know-how. What do you understand that to mean?

A. I understand it to mean the knowledge of how to interpret blue prints and specifications and apply that knowledge to the manufacture of product, the catylist between the theory and the practice.

Q. Back in 1919 when you became connected with the Timken Roller Bearing Company did you become advised of the fact that there was a British Timken or that there was a relation between the Timken Roller Bearing Com-

[fol. 1489] pany and the Electric & Ordnance Accessories Company?

A. Yes, we shipped bearings and component parts on occasion to our British manufacturing affiliate. They weren't at that time partners of ours, they were working under a royalty arrangement.

Q. And at that time, from 1919—of course this case goes back to 1909, 10 years before you came to Canton—but from

1919 to 1927 what did you have to do with the manufacture and production operations of the Timken Company?

A. I was in the production end of the business in all of those years.

Q. And did you learn also that the Wolseley Motors Company came into the picture in England?

A. Yes, sir.

Q. And afterwards that British Timken did?

A. Yes.

Q. And being interested in or engaged in the production end of the business in Canton, did you acquire some knowledge as to the nature of the work and the progress that was being accomplished, say, from 1919 up until 1927?

A. I did.

Q. What did you learn in that regard?

A. I learned that the British methods were distinctly inferior to American methods as far as manufacturing was concerned.

[fol. 1490] Q. Can you give any details in that regard?

A. Yes. The British manufacturer made bearings largely from bar stock or from forgings, whereas in the United States we made bearings from seamless tubing. The British costs were higher and in general their quality at that time was quite inferior to the quality of bearings being made in the United States by the Timken Company.

Q. And when was it that you began to sit in on talks or meetings with H. H. Timken and others down in the Timken plant in Canton having to do with policy and general business of the company?

A. In about 1922.

Q. And what would you say as to what you learned about the progress being made in Great Britain by E&OA Company and Wolseley and British Timken as to whether it was satisfactory or otherwise?

A. The concensus of opinion expressed in the meetings was that British Timken was not advancing nearly as fast as American Timken was in new fields of endeavor. They were distnctly slower in getting new applications for bearings than the American Company was.

Q. Do you remember what the practice was, say prior to 1927, as to American Timken imparting information to, let's say British Timken, as to manufacturing methods and [fol. 1491] applications and things of that kind?

A. We imparted some information and prints to them but we had a feeling that full advantage was not taken of the knowledge we were sending to them.

Q. And did you acquire a general knowledge of the reports that were made to the Canton Timken Company in that regard prior to 1927 as to the progress of the British Company?

A. Yes.

[fol. 1492] Tuesday, April 6, 1948, 2 o'clock P. M.

Direct examination of William E. Umstattd (Continued).

By Mr. Day:

Q. Mr. Umstattd, this morning you said something about a French tariff having some effect on the sale of bearings by an American company in France.

A. Yes.

Q. During the noon hour have you had some conversation in relation to that?

A. I have learned that the tariff was suspended by the Vichy Government in 1943 and has not been reinstated.

Q. And you wish to add that to your testimony?

A. I do.

Q. You testified this morning that the SKF principal factory was in Gothenburg, Sweden.

A. It is.

Q. And do you know generally about the costs of labor in Sweden, whether they are high or low?

A. The wages paid per hour in Sweden are considerably lower than those paid in the United States.

[fol. 1493] Q. Well, do you know, what is the fact as to whether or not the SKF Company, the Gothenburg, Sweden, big SKF Company, has made it a practice of exporting bearings into France and Great Britain from Sweden, or whether they have constructed plants of their own in those countries?

A. They have constructed plants in countries such as Germany, France, England, the United States.

Q. Have you learned anything concerning the buying of bearings by the governments themselves in Continental countries of Europe?

A. I have.

Q. What have you learned in that regard?

A. Many industries are owned by governments in Europe and the United Kingdom, and the purchase of bearings is made through governmental departments.

The Court: You are now referring to the present time?

The Witness: The present time, as well as the past, your Honor. In Germany the railroad systems were owned by government for many years. The same condition prevailed [fol. 1494] in France, and many other industries were owned by the government in those countries.

Q. And along the line of the question suggested by the Court, your testimony this morning concerning the impracticality of American companies selling bearings in the foreign countries, does that cover the present time and also as far back as 1927?

A. It does.

Q. And throughout the years from that time?

A. It does.

Q. And before 1927 to some extent?

A. Yes.

Q. Something has been said in this case, as we have found out, about original installation of bearings and installation for service or replacement purposes. Now, take a country that has what we know as a domestic economy, that has plants of its own, is there an opportunity there, in your opinion, for someone from the outside to send bearings into that country for original installation?

A. Very little.

The Court: Mr. Day, what do you mean by "domestic economy"?

Mr. Day: I mean a country, so far as bearings are concerned, that produces bearings in plants located in the [fol. 1495] country. I think if I stated it that way it probably would be more expressive of what I have in mind, because I realized this morning when we talked about the phrase "domestic economy" it might mean manufacturing, it might mean agricultural, and a lot of things.

The Court: That's the reason I asked.

Mr. Day: What was the last answer?

(Last answer read by reporter.)

Q. Why is that?

A. The manufacturing concerns in countries where anti-friction bearings are produced are more likely to buy from local sources than from foreign sources.

Q. And is that true also of countries which make products that require the use of anti-friction bearings?

A. That is true.

Q. Take a country that has no factories of its own within its borders, are they interested in importing bearings?

A. In some instances for replacements on such things as automobiles or pumps or windmills, things of that sort, that are used even in agricultural countries.

Q. That is, for replacement purposes?

A. For replacement purposes.

Q. Now, in your experience to what extent have you found [fol. 1496] that the sale of replacement bearings, let's say in an automobile, follows the automobile itself?

A. In the case of American automobiles exported to foreign countries certain spare parts are exported to dealers who handle the original sale of the automobile in those countries. Those are many parts that are likely to wear out or become damaged in use, and replacements are necessary for the functioning of the vehicle.

Q. And ordinarily where do those replacements come from?

The Court: I don't quite understand that. Will you read the last question and answer, please?

(Last question and answer read by reporter.)

The Court: By exporting, you mean exporting from the United States with the original vehicle?

The Witness: Either with it or shortly after the original vehicle has been exported.

Q. From whence, or from where, are those replacement parts obtained?

A. Generally they are obtained from the manufacturer of the vehicle who, in turn, obtains them from his various sources of supply.

Q. And if you have in England, for instance, an automobile that has bearings, an English automobile with bearings in it, or in any other country an automobile with bearings [fol. 1497] in it made in that country, from whence comes the replacement parts for that vehicle ordinarily?

A. Ordinarily they come from the point of origin of the

vehicle. If it's a British car the spare parts come from England, if it's made in England.

Q. And is the result of that fact or series of facts to restrict considerably the replacement market in foreign countries for American bearings?

A. It does in countries where cars built outside the United States predominate.

Q. I think you testified this morning that replacement parts for cars, let's say made in America and shipped over to Great Britain, are obtained in many instances from British Timken.

A. Yes, they are. In some instances they are obtained from a dealer, in other instances from British Timken.

Q. That is, they might get them from British Timken, and they might also get them from some dealer in that particular country who is carrying a supply of the bearings, is that right?

A. That is true.

Q. What has been the practice of American Timken in selling bearings in British Timken's territory where British [fol. 1498] Timken is unable to make deliveries?

A. If American Timken can make deliveries the business has always been obtained by American Timken of bearings shipped to those countries.

Q. And is it true the other way around, that if British Timken can make deliveries it supplies the bearing?

A. It does.

Q. And why is that?

A. There are a number of reasons. Sometimes it's a matter of credit, as to where the money lies, whether it is in pounds or in dollars. In other instances it depends upon the production facilities of either the American Company or the British Company.

Q. Is it dependent to some extent upon the desire of both companies to get a Timken bearing installed or in use rather than some other bearing?

A. The motive behind the sales forces in American Timken, British Timken and French Timken are identical, that is, always to sell a Timken bearing.

Q. Whenever that can be done?

A. Whenever it can be done.

Q. Rather than some other bearing?

A. Yes.

Q. Or rather than have some other bearing used?

[fol. 1499] A. Yes.

Q. Going back now to 1927 for a few minutes, at that time your position with Timken Roller Bearing Company was what?

A. As I recall it, it was as assistant factory manager in 1927.

Q. Do you remember when Mr. Dewar came over to the United States in 1926?

A. I do.

Q. Did you meet him at that time?

A. I did.

Q. What was the extent of your meeting him, and what did he do that you observed there?

A. I conducted him through our plant and explained the various operations we used in manufacturing tapered roller bearings, and through our steel mills and showed him our facilities for manufacturing steel of solid bars, seamless tubing, wire, and the various types and analyses of steel that we made, and the testing laboratories, and things of general interest to him as a manufacturer.

Q. How long was he here upon that occasion?

A. I don't recall the exact number of days. I believe he was at our plant for about four days, as I recall.

Q. Do you remember that at that time he was in Canton as a member of some British Commission?

A. He told us he was sent over by some governmental [fol. 1500] agency to observe the technology used in manufacturing in the United States, not just bearings but many other types of manufacturing.

Q. Do you recall that Mr. Ely went to London in 1927?

A. Yes.

Q. And were you informed, in a general way, or perhaps in a more specific way, as to what was going on over there by the reports he made and the letters he sent and the cables he sent back home to the plant in Canton?

A. I was.

Q. Were you present at any meetings or conferences attended by H. H. Timken and others in the plant at Canton concerning Mr. Ely's visit to London?

A. I was.

Q. And were you aware of the fact that negotiations be-

gan in 1927 having in view the purchase of British Timken by American Timken and Mr. Dewar?

A. I was.

Q. Did you hear some discussion at that time as to territory divisions as between American Timken and British Timken?

A. I did.

Q. What did you hear in that regard, so far as you can remember it after all these years?

A. The matter of selling was discussed and considered at [fol. 1501] several meetings with Mr. Timken, Mr. Strough, who was secretary-treasurer of the company at that time, Mr. Lothrop, Mr. Overmeyer, and with Mr. Ely, who was not at that time employed by the Timken Company regularly. He was employed for this particular mission. The matter of sales was discussed, as to whether or not sales could be better carried on by an American sales force or British or French sales forces.

Q. And what was the—you say they were discussed. What was said in those discussions, what was the point of the discussion?

A. The pros and cons of selling were brought out at those meetings, and the consensus of opinion was that bearings could be sold more readily by British forces in British territory and by French forces in France or possessions of France.

Q. Now, at that time did you know that there was—did you have general knowledge of the fact that there was a contract between American Timken and British Timken?

A. In 1927?

Q. Yes.

A. I don't believe there was a contract between American Timken and British Timken at that time. I don't recall the exact name of British Timken at that time. It may [fol. 1502] have been British Timken Limited. Bearings were being manufactured in England at that time, but I'm not certain that the name was British Timken Limited at that time.

Q. You haven't any definite recollection about that?

A. I don't recall definitely the corporate name of the British Company.

Q. Would it refresh your recollection to say that first there was an arrangement between American Timken and the Electric & Ordnance Accessories Company?

A. I know that definitely.

Q. And then there was the Wolseley Company came into the picture a very short time?

A. The Wolseley Company was the parent company of Ordnance.

Q. And do you recall now that about 1920 the British Timken came into the picture?

A. I don't remember that that was the name. I know that bearings were manufactured there, and they were called British Timken bearings, but I'm not certain that the name was British Timken at that time.

[fol. 1503] Q. Starting in 1927, did you have—or back in 1927 and 1928, do you remember that a contract was drawn up between American Timken and British Timken?

A. Yes, I recall that. That was when Mr. Dewar became our partner in the British venture.

Q. And that was dated as of January 1, 1928?

A. I don't remember the exact date of it. I know it was approximately that time.

Q. And when was it that, if at all, American Timken started to send its men, its skilled men over to London to British Timken?

A. That was after Mr. Dewar had visited us in 1926, and after the new contract had been signed. As I recall, it was sometime around 1928.

Q. Do you remember there were some men went over even before that time?

A. I am not certain of the date. I know that at various times we sent men over there, but I am not sure of the date. I believe we did send them before 1928, but I am not certain of those dates.

Q. In 1927, when Mr. Ely went over there to London, state whether or not you learned that for some time prior to that time British Timken had been carrying on a bearing business?

[fol. 1504] A. Yes, bearings had been—Timken bearings had been made, as I told you earlier, but I am not sure that the name of the Company at that time was British Timken. I know it was after the arrangement was made with Mr. Dewar.

Q. Did you learn anything at that time, or before that time, as to whether or not British Timken had sales agencies on the continent in various countries?

A. They did.

Q. And at various points of the United Kingdom?

A. They did.

Q. Did you hear, without going into the details, later of the situation as to French Timken?

A. The bearings, as I recall, in France at that time were built by a concern that didn't carry the name of Timken.

Q. By SMG?

A. I believe it was the Societe Mecanique.

Q. In 1926 and 1927, where was American Timken selling bearings?

A. In what years?

Q. Say in 1926 and 1927.

A. American Timken was selling bearings in the United States, in Canada, in Mexico, and in some South American countries, and in rare instances in Europe.

Q. Any other countries?

[fol. 1505] A. Perhaps other countries. I don't recall. I think we perhaps sold small quantities in China, Japan. I know we had agents in both China and Japan and sold some bearings there, and I don't recall any great sales other than to Russia. We had sold some bearings to Russia at that time.

Q. Now, I asked you a while ago about sending Timken men over to London after the arrangement with Mr. Dewar was made. What if anything did you have to do with that?

A. I selected those men.

Q. As a part of the duties that you were performing for Timken Roller Bearing Company?

A. Yes.

Q. Can you give the Court some idea when you started first to send men over there and who you sent? Have you any recollection of that?

A. Yes, we sent men after 1928 at fairly steady intervals. I would say we had someone in England almost every year after 1928 at some time during the year, usually linemen or skilled machine operators who were capable of setting up jobs on machines and instructing workers as to the proper operation of the machines.

Q. And what was the purpose of sending those men over to London, or England?

A. To enable the British Company to cut costs and manu-

[fol. 1506] facture bearings more cheaply and to a better standard of quality.

Q. Do you know whether or not, after French Timken was organized, any men visited French Timken that came from American Timken?

A. Yes, they did.

Q. And to what extent did that take place?

A. Some of the same men who went to England also went to France. I don't know that each of them went to both countries, but in general they covered both England and France on their visits.

Q. I think that subject will be covered by other witnesses, Mr. Umstattd, and I don't want to ask you in detail about it, but is it a fact or not that starting back in 1927 American Timken did send men from time from the American Timken plant over to British Timken?

A. We sent men over back around 1927 and 1928, and right on up to the present date.

Q. When did any of the Timken men go over last, do you know?

A. Mr. Eastberg was over there about 18 months ago, as I recall. Mr. Murray was in both France and England within the past two years, and one of our railway men—his name escapes me at the moment—spent some time in France about a year ago going over railway bearing installations.

Q. And how continuous has been this flow of know-how, if [fol. 1507] I can so express it, from American Timken to British and French Timken since 1927?

A. By way of personal appearances on the scene?

Q. Yes, we will have that first.

A. I think there have been representatives in the two countries, England and France, every year with the exception of the war years. I believe between 1939 and 1945 no representatives were sent.

Q. In addition to personal visits of individuals, what if any means of transmitting know-how have been carried out by American Timken with relation to British Timken and French Timken?

A. Engineering data has been supplied in the form of blueprints, written specifications, moving picture films, still portraits and photographs of operations, and by cablegram, and in some instances Trans-Atlantic telephone.

Q. How continuous has that been since 1927 and 1928?

A. That has been almost daily or, at least weekly, since that time. That information has been flowing from this country to England, and to a considerable extent to France, either through England or directly to France.

Q. Has any know-how come from British Timken or French Timken to American Timken to any great extent?

A. Very slightly. We have had one or two bearings sent [fol. 1508] to us that were invented and perfected in England within the war years but, as far as I know, nothing from France.

Q. Then the designs of bearings have originated where?

A. Largely in our Engineering Department in Canton, Ohio.

Q. Is that true also of the methods of manufacture?

A. It is.

Q. And the manner or methods of application?

A. It is.

Q. Do you have a Research Department in connection with the Timken Roller Bearing Company?

A. We do.

Q. Will you tell the Court generally the size and extent of it?

A. The Research Department is actively involved in testing out new methods of manufacture of bearings, new designs of bearings, new steels for use in the production of bearings, new types of heat treatment for the production of bearings, and the Company spends in the neighborhood of $250,000 to $300,000 per year on this venture.

Q. To what extent is the knowledge obtained by that method, as to bearings, transmitted by American Timken to British Timken?

A. It is transmitted to British Timken as soon as it becomes feasible for use in the manufacturing of bearings. [fol. 1509] Q. And either directly or through British Timken to French Timken in many instances?

A. Yes.

Q. Do you remember Mr. Pascoe and Mr. Dewar coming over from England to this country in 1934 in connection with a project including, among other things, the sale of stock to the British public?

A. I do.

Q. And you recall that thereafter a contract was drawn up dated, I think, the last of December 1934?

A. I don't recall the exact date. I know that it was in approximately 1934.

Q. Did you attend conferences at which Mr. Dewar and Mr. Pascoe were present at that time?

A. I did.

Q. Do you recall some discussion about the Russian territory in connection with those conferences?

A. I do.

Q. I think you told us about that this morning.

A. I did.

Q. Do you recall how much stock, additional stock, was sold at that time?

A. I do not.

Q. Do you recall some discussion concerning the attitude [fol. 1510] of brokers in Great Britain who were connected with the sale of that stock?

A. I do.

Q. What was said on that subject?

A. Both Mr. Pascoe and Mr. Dewar said that the brokers felt that the British Timken Company was a thriving company and that there would be no difficulty in selling stock provided some protection were given to the venture, and they suggested that the contract be extended for some considerable period of years.

Q. And it was exte-ded until 1965, as I remember?

A. As I recall, it was extended for a period of approximately 30 years.

Q. We have a document here that is marked—well, it's a memorandum from Mr. Umstattd to various persons dated at Canton, Ohio, February 20, 1941.

[fol. 1511] Mr. Day: Yes, Government's Exhibit 118.

Q. There are perhaps some other exhibits that relate to the same subject matter, but I want to call your attention to this part of this exhibit, or memorandum, marked Exhibit 118, and before asking about it do you remember a Mr. Gutteridge and a Mr. Chamberlain?

A. I remember them.

Q. Do you remember them coming to America?

A. I remember them coming to Canton, yes.

Q. Have you examined that memorandum?

A. Not recently.

Q. Will you read it, please? (Handing Government's Exhibit 118 to witness.)

A. Aloud?

Q. No, read it to yourself, please.

A. (Witness reads exhibit.)

Q. Do you recall it now?

A. I do.

[fol. 1512] Q. Calling your attention to the third paragraph:

"I explained to Gutteridge and Chamberlain that Australia was controlled by British Timken and that under no circumstances would we consider building a plant in Australia. I pointed out to them that it would be almost impossible to get delivery on any machine tools suitable for the manufacture of anti-friction bearings, and that no bearing manufacturer in this country had excess machinery that could be shipped to Australia. Mr. Gutteridge wanted to know if we would be interested in establishing a plant in Australia if he could secure priorities for the necessary equipment. I told him that I did not think he could secure such priorities, but if he did we would not be interested as I had previously pointed out that British Timken controlled the sale of Timken bearings in Australia."

What did you mean by that?

[fol. 1513] A. I meant that that was British Timken territory.

Q. Under the arrangements that American Timken had with British Timken?

A. Yes.

Q. And when you say, "I pointed out to them it would be almost impossible to get delivery of any machine tools suitable for the manufacture of anti-friction bearings and that no bearing manufacturer in this country had excess machinery which could be shipped to Australia," was that the fact?

A. That was the fact. We were having extreme difficulty in getting machines enough to take care of our production.

Mr. Day: I think that's all now.

Cross examination of William E. Umstattd

By Mr. Nitschke:

Q. Mr. Umstattd, I want to add another bearing to this collection we have got here. Do you recognize what this is (handing bearing to witness)?

A. This is a Bower tapered roller bearing marked 3920 Cup, and 3984 Cone.

Q. And that's the same size as the—bears the same numbers as Timken bearing marked Plaintiff's Exhibit 3 (handing Government's Exhibit 3 to witness)?

A. Yes.

[fol. 1514] Q. Is that right?

A. Yes.

Mr. Nitschke: I would like to have this bearing marked for identification at this time as Government's Exhibit 161.

(Carton containing bearing was thereupon marked by the Clerk, for identification, Government's Exhibit No. 161.)

Mr. Nitschke: This box contains a Bower roller bearing, Cup No. 3920, Cone No. 3984.

Q. During your direct examination, Mr. Umstattd, you said something about the interchangeability of bearings, and I would like to ask you if the Timken bearing No. 3984-3920 is interchangeable with this Bower bearing bearing the same numbers?

A. It is generally interchangeable. I wouldn't say that the dimensions are identical, but from the standpoint of practical application the bearings can be interchanged.

Q. In other words, if—well, let me ask you first, what is a bearing of this size used for?

A. I don't know what this particular bearing is used for. It could be used for a rear wheel on a truck or a bus, or it could be used for a differential, it could be used for gear boxes in the manufacture of machine tools, could be used for [fol. 1515] a line shaft bearing, could be used for a hanger bearing in installations made by Meadeart or Dodge Company.

Q. You say it could be used for a truck. Would that be, for example, a Ford truck, a one-ton or one and a half ton?

A. I would say it could be used for the rear wheel application for that truck.

Q. Do you know whether or not both the Bower bearing of this number and the Timken bearing of that number are used in Ford trucks?

A. I am not positive about Ford at the moment, but I do know that in Ford trucks certain Timken bearings are used and certain identical numbered Bower bearings are used.

Q. In the same position?

A. In the same position.

Q. As the Timken bearing?

A. Yes.

Q. Well, can you explain to the Court a little more accurately what you mean by interchangeability? This Bower bearing, Government's Exhibit 161, and this Timken bearing, Government's Exhibit 3, either one could be put in the wheel or the axle of a Ford truck without any change in the axle?

A. That is true, it could be put in the axle, but the internal dimensions of the bearings might vary to some slight degree.

Q. As a matter of fact, Ford does use these bearings in- [fol. 1516] terchangeably on his trucks, does he not?

A. I am not certain whether he does or not. We try to get Ford or anybody else who uses our bearings to use our cup and cone assembly rather than to use a cup of one manufacture and a cone of another manufacture.

Q. Yes, but with respect to both the cone and cup—

A. The complete assembly will go into the outside and inside dimensions of a Ford truck or any other truck, either Bower or Timken, where Bower and Timken bearings are used, but we prefer to have them use our cups with our cones rather than mixing Bower cups with Timken cones, or vice versa.

Q. Yes, I understand that. In other words, then, if a Ford truck which has a Timken bearing in it were to break down, and a new bearing was needed in the hole or space where the broken bearing was, you could replace it with this Bower bearing which has the same part number?

A. If you would buy both elements of the Bower bearing, the cup and the cone. Sometimes the failure involves only one element, and in that case it is always wise to replace the broken element with the same type manufactured by the same Company. In other words, if a cup breaks, buy a

new Bower cup to replace a Bower cup, or buy a new Timken cup to replace a broken or worn-out Timken cup.

Q. That's the commercial policy of your company and [fol. 1517] the Bower Company?

A. It is not commercial necessarily—it is commercial, but it is based upon the dimensions of the bearings. We have taper gauging machines that are, I believe, more accurate than any taper gauging machines built in the world, and we believe that our tapers are held to closer tolerances than any other tapers manufactured by other tapered roller bearing manufacturers.

Q. And Bower thinks probably his are held to closer tolerances than yours?

A. I don't believe he could prove it, because I don't believe he has the type of taper gauging machines that we have. We have gauging machines built by Warner & Swasey at a cost of around $25,000 for a machine that's not much bigger than this chair, and it's built by the same precision builders who build the astronomical instruments that Warner & Swasey build.

Q. Well, Bower probably doesn't admit his bearings are any less accurate than yours.

A. I don't know whether they would admit it, but I think we could prove it.

Q. Is it possible to—although you said you don't like to have it done, is it possible for us to take this Bower cone which bears the same number as yours, 3984, and place it [fol. 1518] with the Timken cup, 3920?

A. Yes, that is possible.

Q. And would you say that you will get a satisfactory performance if that interchange is made?

A. I don't believe you would get as satisfactory a result as you would if the units were combined with the proper cup. In other words, I think you get better performance if a Bower cone and Bower cup go together and a Timken cone and a Timken cup, than you would by mixing the two elements.

Mr. Nitschke: Your Honor, I would just like to show you these two. I have reversed the cups and cones (handing bearings to the Court.)

Q. Speaking about the assembled bearings again—

The Court: May I ask a question before you proceed with another question?

Mr. Nitschke: Certainly, your Honor.

The Court: What is the reason these numbers are alike? The Bower numbers are identical with the Timken numbers. Is that just by accident, or how does it happen?

The Witness: No, that's just by copying the Timken bearing. They just copy our bearing dimensionally and the numbering system too.

Q. As a matter of fact, in connection with part numbers, [fol. 1519] almost all tapered bearing manufacturers use the same part numbers, do they not?

A. We put the part numbers on the bearing and other manufacturers adopt our part numbers.

Q. And customers like that, don't they, so that they can buy—

A. I believe they do, and I believe the Government likes it, that is, the purchasing agents of the Government.

Q. And the bearing with the number 3984 made by your Company, or by Bower, or by Tyson, has the same external dimensions, they are all the same size?

A. They fit the same opening in an application, whether it's a hub of a wheel or a shaft of a wheel.

Q. Yes, and in that connection you have, do you not, Mr. Umstattd, several common customers with Bower for the same type of bearing, that is, for the same application on a wheel or an axle, you both sell the same bearing to the customer?

A. I know of a great number of customers that use both Bower and Timken bearings.

Q. On the same application?—

A. On the same application.

Q. The same sized bearing on the same application?

A. The same sized bearing on the same application, but my experience has been that those people like to put Bower [fol. 1520] cones and Bower cups and Timken cones and Timken cups on.

Q. I was speaking about the completed assembly.

A. The completed assembly is interchangeable.

Q. Who are some of those companies?

A. The Ford Motor Company, the Chrysler Motor Company, the Hudson Motor Company, the Packard Motor

Company, the Nash Motor Company, and perhaps many others.

Q. There are some that are not in the automotive field, such as tractor people such as J. I. Case?

A. I believe there are some tractor accounts, yes, like J. I. Case, John Deere, Oliver. There is also the Spicer Axle Company that use both Timken and Bower bearings in their axles.

Q. Do they buy both the cup and cone or just the cone?

A. They buy the complete assembly.

Q. They buy the complete assembly?

A. Yes.

Q. Are there any common customers of Bower and Timken who buy just the cup or the cone?

A. The wheel companies buy only cups, people like Motor Wheel Company and other people who make wheels buy the cups.

Q. That's the outer ring?

A. The outer element, yes.

Q. And you were going to say they do what?

[fol. 1521] A. They place this in the hub of the wheel at the wheel plants and ship the completed wheel to the automobile manufacturer.

Q. So when they sell a wheel it contains the outer race of the bearing in the wheel?

A. That is true.

Q. And when that gets to the automotive manufacturer he puts the cone on the axle, is that right?

A. That is true.

Q. And assembles the wheel together?

A. That is true.

Q. Is it possible sometimes that in doing that you might get a cup made by Bower on a Timken cone, or vice versa?

A. That does happen on occasion.

Q. It does happen on occasion?

A. Yes.

Q. Mr. Umstattd, do you recognize this volume I have in my hand (handing volume to witness)?

A. Yes, I do.

Q. What is that?

A. Timken Engineering Journal.

Mr. Nitschke: I would like to have that marked for identification as Government's Exhibit 162.

(Timken Engineering Journal above referred to was thereupon marked by the Clerk, for identification, Govern-[fol. 1522] ment's Exhibit 162.)

Q. I would like to call your attention to page 211 of that Engineering Journal—is this the same as a catalog?

A. In general, I would say that it would correspond with a catalog put out by some other types of business. There is a series of black and white drawings of Timken bearings giving the roller characteristics and the dimensions, and so on.

Q. I call your attention to page 211. Is that a drawing of the bearing which we have just shown the Court with the numbers 3984 and 3920?

A. Yes, this is a drawing of the outside dimensions of the bearing recently submitted by you as a Government's exhibit.

Q. I would like to show you this other volume, Mr. Umstattd. Do you recognize what this is (handing volume to witness).

A. This is a Bower Roller Bearing Company booklet entitled, "1947 Engineering Data."

Mr. Nitschke: I would like to have this Bower catalog marked as Government's Exhibit 163.

(Bower catalog above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit No. 163.)

Q. Mr. Umstattd, I would like to call your attention to page 75 of the Bower catalog. Is that a drawing of the same [fol. 1523] size bearing, numbered 3984-3920?

A. Yes.

Q. And both in the Timken catalog and the Bower catalog the same part numbers are given, is that right?

A. That is true.

Q. And, although I have called your attention to this particular bearing which is on his Honor's desk, is that true with respect to the other sizes of bearings, that they bear the same part numbers in both catalogs?

A. So far as I know.

Q. That's the general practice, is it, with respect to both the Bower Company and the Timken Company using the same part numbers?

A. The Timken uses a part number and Bower copies it.

Mr. Nitschke: I would like to have your Honor see these two books or catalogs (handing Government's Exhibits 162 and 163 to the Court.)

Q. Incidentally, Mr. Umstattd, you mentioned on your direct examination that during the war the British could not get enough tapered roller bearings and that you shipped them considerable quantities of bearings. Is that right?

A. Yes, we did.

Q. Isn't it true that the Bower Company also sent bearings to England during the war?

[fol. 1524] A. I don't know.

Q. You don't know that?

A. No.

Q. As a matter of fact, you do know that you were not the only bearing company that assisted in the war effort by sending bearings over to England and France?

A. I have heard from friends of mine in the bearing industry that many millions of bearings were sent by companies other than Timken to England.

Q. On your direct examination, Mr. Umstattd, you also described for the Court a process of manufacturing a bearing. It occurred to me as I listened to you that you left out one of the processes that is involved in finishing the bearing. I believe you mentioned the fact that the bearings are ground, and then you said the next step is inspection. Isn't there a finishing process in there that you omitted?

A. That applies to some bearings used for particular purposes. That's a thing known as super finishing. That is essentially a honing operation. That is used on bearings that revolve at extremely high speeds or bearings that are made to extremely close tolerances.

Q. What is that process?

A. That's a process of reciprocating a stone made of carborundum or alundum against the surface of a cup or [fol. 1525] cone or roller as it is revolving around its own axis. The accomplishment is ironing out of the hills and valleys—or, rather, leveling off the hills to the level of the

valleys so that you obtain essentially a plane surface, in other words, you get down to a smooth, flat surface.

Q. How is that flatness measured?

A. It's measured by several methods. A profilometer, which is pulling a sapphire or diamond point across the roller surface, registers the height of the hills and depth of the valleys of the piece which has been finished.

Q. And it measures them in micro inches, does it?

A. It measures them in micro inches.

Q. That's a millionth of an inch?

A. That's right.

Q. I suppose when you talk about tolerances of the surface you mean the distance between the bottom of the valleys and the top of the hills, if you are looking at it through a microscope?

A. That is right.

Q. What is the difference in the tolerance in micro inches between a ground surface and a honed surface?

A. There can be different types of grinding. Some ground surfaces are rather rough, others are given a finish grinding operation and are rather fine. I would say that in the case [fol. 1526] of a good ground surface you might get 15 to 20 micro inches, and in the case of an extremely well finished, super-finished piece, you might get down to a level of four to six micro inches.

Q. Is that the normal range between your ground bearings and your honed bearings, that is, are the ground bearings around 20 micro inches and honed bearings three micro inches?

A. I would say somewhere around five or six in the case of super-finished bearings.

Q. Do you super-finish or hone automotive bearings?

A. Some automotive bearings are and some are not.

Q. Is this Timken bearing 3920, which is marked as Government's Exhibit 3, honed (handing Government's Exhibit 3 to witness)?

A. The cup is. I can't tell you about the cone. The rollers are not.

Q. How about this Bower bearing? Is that also honed (handing bearing to witness)?

A. It has the appearance of being honed.

Q. Can you tell the difference between a honed bearing and a ground bearing just by looking at it?

A. I believe so.

Q. Incidentally, looking at this, you were looking at the inner surface of the cup, is that right?

A. The inner surface is the honed surface. The outer [fol. 1527] surface of the cup is never honed.

Q. I show you this British Timken bearing. Can you tell us if that is honed (handing bearing to witness)?

A. That has not been honed. That is a ground surface.

Q. That is a ground surface?

A. Yes, sir.

Q. How do you tell the difference between these two, Mr. Umstattd?

A. The ground surface has a marking going around the periphery of the piece, as you see there, following around the periphery, whereas the honing is interrupted with a diagonal mark, as the hone goes up and down in the piece and the piece revolves it makes a diagonal or diamond-shaped mark.

Q. These little scratches?

A. We don't like to call them scratches. Those are those little pieces that reflect light in that part of the surface.

Q. Generally a honed bearing looks shinier, does it not?

A. It does.

Q. You might as well look at this French bearing also. Is that French Timken bearing, of the same number, ground or honed?

A. That is ground. It has not been honed.

Q. It has not been honed?

A. No.

[fol. 1528] Mr. Nitschke: Your Honor, perhaps you would like to look at these.

(Court looks at bearings.)

[fol. 1529] Further cross examination of William E. Umstattd.

By Mr. Nitschke:

Q. Mr. Umstattd, I would also like to call your attention, in the catalog, on Page 2, to the sentence that says: "Precision of manufacture came hand in hand with the improvement of the working surfaces of the bearings. In order to measure surface finish the Profilograph was developed.

This instrument, the finest developed up to that time, measured surface irregularities to the millionth of an inch. By studying the readings made on this machine it was possible to improve the finish until the Timken bearing of today embodies the finest commercial finish known to modern science."

I take it you are talking about the honing process there?

A. It is known by various names,—super-finishing, honing, micro-finishing, and ma-y other terms used by the trade, but it is essentially a honing operation.

Q. And cross-hatching is another word?

[fol. 1530] A. Cross-hatching is another term.

Q. Do some of your customers insist upon having honed bearings?

A. Yes.

Q. Some of the automotive customers?

A. Yes.

Q. Which ones, for example, of automobiles?

A. That is not a question that can be answered by saying which customers. Some customers require honed bearings in certain positions, such as the pinion and do not require them for wheels, so it is a little difficult to answer that as you put the question.

Q. Are there some customers that buy, some automotive customers that buy honed bearings for all applications?

A. I believe that the Chrysler Company specifies the honed bearings for all applications at the moment. I am not positive of that, but I believe that is true.

Q. That has been the case sometimes?

A. Sometimes it is.

Q. Yesterday Mr. Day asked you about the origin of the tapered roller bearing. I believe you stated Mr. Heintzelman and Mr. Henry Timken, Sr., had conceived the tapered roller bearing?

A. Yes, that is my understanding. I believe the patent [fol. 1531] was taken out in the name of Mr. Heintzelman. I am not positive about that; I believe that is true, and later he sold his patents rights to Mr. Timken.

Q. I would like to read something to you from the testimony of W. R. Timken, which perhaps might refresh your memory on this subject. I am reading from the transcript of testimony taken in the case of the Timken Roller Bear-

ing Company vs. Leterstone Sales Company. You probably recall that lawsuit?

A. I do.

Q. I believe you testified?

A. I did.

Q. Reading from the examination of W. R. Timken—I believe you stated he was one of the brothers who owned the Timken Company?

A. He was.

Q. The question was: "You have mentioned the existence of other tapered roller bearings which were on the market at the same time.

Can you name any of those?

A. Well, the original one was Grant. That was the earliest.

Q. Who?

A. Grant. Grant Roller Bearing.

Q. Can you state whether or not the Grant roller bearing was before the existence of the bearing that you developed?"

[fol. 1532] A. It was."

And then also, to refresh your recollection I would like to read a portion of the testimony of Mr. Klinedinst at that trial.

This is a statement by Mr. Klinedinst:

"When I came with the Timken Roller Bearing Company we had one competitor in the tapered roller bearing field. That was Grant. Grant later sold out their business to Standard Roller Bearing Company in about 1910. Standard Roller Bearing Company in 1917 sold it to the Marlin-Rockwell Company; and Timken Roller Bearing Company acquired the tapered roller bearing end of the Marlin-Rockwell business in 1924."

Does that refresh your recollection on this question of who was the first manufacturer of tapered roller bearings?

A. It does not change my thoughts in the matter.

Q. You testified on the basis of what someone else had told you?

A. What someone had told me and the histories concern-

[fol. 1533] ing bearings that I have read.

Q. Also during Mr. Day's examination you testified to the fact that the statistics compiled by the Anti-friction Bearing Manufacturers Association did not include all the tapered roller bearings manufactured, and I believe you stated that

International Harvester was a large producer that was not included in that list.

A. I said I thought they were not included. If I recall, I wasn't positive on that point.

Q. Is it your understanding they were not included?

A. That is my understanding.

Q. You looked over that table the other day?

A. I beg pardon?

Q. You looked over the table the other day and you testified you didn't think they were included.

A. I do not believe they are included.

Q. Well, I think the table shows they are not. Does International Harvester make any tapered roller bearings to sell commercially?

A. Yes. That is, I don't just know what you mean "sell commercially". They make tapered roller bearings that are sold for use. I don't know that they sell them for original installation uses but they sell them for replacement in International trucks and tractors and farm equipment of all sorts.

[fol 1534] Q. They manufacture them for original application only for their own equipment?

A. As far as I know. I am not positive on that point. I know they manufacture many tapered roller bearings. I have been through their plant and we sell them steel but I don't know whether they sell to builders or not.

Q. As a matter of fact, Mr. Umstattd, aren't they under license from you to manufacture only for use in their own equipment?

A. I am not positive about that. We have a contract with them that we will supply them information regarding the manufacture of bearings, and blue prints, and give them technical information, but as to whether or not the contract covers the point you raise I am not certain at the moment.

Q. I will call your attention to Government's Exhibit 13, which is in evidence as being an agreement between the Timken Roller Bearing Company and the International Harvester, referred to in your agreement with British Timken and French Timken dated December 31, 1927, and which states in the first paragraph:

"The Timken Roller Bearing hereby licenses and empowers said International Harvester Company to make taper roller bearings and parts thereof under the Miller [fol. 1535] Patent No. 1,392,019, dated September 27, 1921,

for taper roller bearings now owned by the Timken Roller Bearing Company for use only in machines made and sold by the International Harvester Company and for sale as complete bearings only for replacement of bearings on machines sold by said International Harvester Company, it being understood and agreed that said International Harvester Company shall have no right to sell such bearings or parts thereof separately except for replacement of bearings in machines sold by it."

Does that refresh your recollection?

A. It does. I think that is probably right, although I think an agreement was made with International Harvester Company after that agreement there was signed, and I believe we could produce that if you would like to have it.

Q. I wonder if it is not the one already in evidence, an agreement dated May 14, 1936, a letter agreement which states modifies the agreement of December, 1927 (handing exhibit to witness)?

A. Yes, this is the one I referred to.

Q. Mr. Umstattd, do you know what the total tapered roller bearing sales were of Timken in 1947, approximately?

A. In dollars.

Q. Yes.

[fol. 1536] A. Yes, I know approximately.

Q. What were they?

A. In the neighborhood of $70,000,000.

Q. And your Company also makes steel and rock bits, does it not?

A. It does.

Q. What were the total sales of the Company in 1947, approximately?

A. In excess of a hundred million dollars. I am not certain of the exact figure.

Q. When Mr. Day was questioning you you testified in some respects regarding your agreements made in France and England. I would like to fix a little more precisely the particular agreements you were testifying about and the dates. Do you know, do you recall, Mr. Umstattd, what your position was with the Timken Roller Bearing Company in December of 1933?

A. I was Executive Vice President and Director of the Company in December, 1933.

Q. And were you still that in January of '34?

A. Yes.

Q. Do you recall what month you became President of the Company?

A. I believe it was some time around July or August of 1934.

Q. You held this executive position just prior to that, though?

[fol. 1537] A. I did.

Q. December '33 and the early part of '34?

A. I did.

Q. I believe you testified that you had heard of these agreements that you said Mr. Dewar had entered into regarding the French market?

A. I had.

Q. I would like to call your attention specifically to Government's Exhibit D-15, which is a letter from Mr. Dewar to Mr. Hess, enclosing a copy of an agreement which is in evidence as Exhibit D-15-A.

I am sorry, I mentioned the deposition numbers. It is Government's Exhibits 65 and 65-A.

Is the agreement attached thereto the one you are talking about that you knew of?

A. (After witness examines same.) Yes, this is the one I knew about.

Q. I call your attention to the fact in handwriting at the top of the top right hand corner of the letter it says: "Seen by W. E. U.—Chas. Br., J.N.S., A.C.E. & H.H.T., Jr." Do you know whose initials those are?

A. I believe I can identify those. "W.E.U." is William E. Umstattd, the next one is Charles Brower, the next is Judd Spray, the next one A. C. Ernst, the next one Henry H. [fol. 1538] Timken, Jr.

Q. And the handwriting also says further: "No suggestions except by A.C.E. to do nothing for the present. D.P.H." Do you know whose initials those are?

A. Yes, those are the initials of Donald P. Hess.

Q. Now, in your function as the Executive Vice President of the Timken Company did you disapprove of this agreement?

A. Do you mean did I try to upset it?

Q. Yes, did you attempt to keep it from being entered into?

A. No, I did not.

Q. And it is true, is it not, that the Timken Roller Bearing Company told Mr. Dewar that he could go ahead with the agreement?

A. I think through Mr. Hess Mr. Dewar was given permission to do what he thought was necessary under the circumstances.

Q. And that was done at a meeting that the executives of the Company attended?

A. Yes. Most of the men mentioned in that memorandum there were executives of the Company. I believe all of them except Mr. Ernst.

Q. Going into another subject, I believe you testified on direct, it was, has been, and is practically impossible to sell tapered roller bearings in the United Kingdom or Germany or France. Is that correct?

[fol. 1539] A. In my opinion, yes.

Mr. Day: You mean for an American company or some outsider to do it?

Mr. Nitschke: Yes.

The Witness: I presumed that is what you meant.

Q. That it is impossible, as a practical matter, for Timken Roller Bearing to sell?

A. In my opinion, it would be practically impossible.

Q. How about the rest of the territory that is dedicated to British Timken and French Timken under the various agreements, currently under the 1938 agreement, do you think it is impossible for Timken to sell now in all those countries?

A. I believe it would be impossible to sell at a profit. Perhaps bearings could be sold if the sales were subsidized by some means.

Q. You mean you would have to sell them at a loss?

A. I believe so.

Q. In order to sell in those countries?

A. I believe so.

Q. You are talking now about tapered roller bearings?

A. I am talking about tapered roller bearings with an independent sales organization, engineer organization and service organization, and all the things that would be neces-

[fol. 1540] sary to conduct a sales effort in those countries.

Q. Well, would it be possible to sell bearings there with-

out having a sales agency there, and these other things you mentioned?

A. I think it would be impossible from a practical standpoint. Bearings are rarely sold by correspondence or by mail order methods.

Q. You say without a sales agency. Do you mean without having a Timken owned company, or are you referring to having any distributor in that country?

A. Either a Timken owned company or a distributor who would demand such high charges for his services that it would make the venture impractical.

Q. And that is true in all these countries assigned to British Timken under the contract?

A. In my opinion that is right.

Q. That would be true of Burma?

A. I believe so.

Q. Switzerland?

A. I believe so.

Q. Spain?

A. I believe so.

Q. All the countries—I won't bother to read them.

A. I believe that is true.

[fol. 1541] Q. And is it your statement it would be practically impossible, that it was practically impossible to sell there in 1928 as well as today?

A. At a profit I think it would have been impossible.

Q. And in 1934 or 1935?

A. I believe the same answer would prevail in 1934 and 1935, that it would have been impractical and a costly venture.

Q. And is it your view that it will be impossible to sell during all the future years from now until 1965 in those territories?

A. I would hate to speculate on what will happen in the coming years. The world is in such a state of flux and chaos that whatever prediction I would make would seem to be poorly founded.

Q. But your contract with British Timken prohibits you from selling in those territories until 1965, does it not?

A. Except under certain circumstances.

Q. Yes, those are enumerated in the contract.

A. Yes.

Q. I believe you said you are also certain that British Timken and French Timken could not possibly sell in the United States today tapered roller bearings?

A. I think that is true.

Q. And was that true also in 1928?

[fol. 1542] A. I believe it was.

Q. And in 1934 and 1935?

A. I believe it was.

Q. Right on through up until the present?

A. I believe so.

Q. And is it also your opinion that during any year from now until 1965 that they will be unable to sell in this country?

A. Again I would hate to venture a prediction as to what might happen in the intervening years.

Q. And, again, the agreements prohibit them from selling in this country, do they not, until 1965?

A. Except under certain circumstances.

Q. As a matter of fact, Timken hasn't attempted to get any business in this territory allocated to British Timken since 1928, has it?

A. I don't believe any direct attempt has been made. I think perhaps there might have been some advertising literature sent to those countries on occasion, but we sent no salesmen to sell from Timken direct to those countries. We just sent salesmen to aid French Timken and British Timken on the sales of bearings in their respective territory.

Q. You haven't attempted to sell your bearings there the way you have been, say, in South America?

A. We have not.

[fol. 1543] Q. And under the contract you are obligated not to try to do so, isn't that correct?

A. That is true.

Q. But the contract did permit you in certain circumstances in connection with replacement sales to make sales in the territory allocated to British Timken and French Timken, did it not?

A. It did.

Q. I believe that in that current agreement it states that that is permissible as long as the prices are agreeable to the British Company or the French Company, isn't that correct?

A. I believe that is what the agreement calls for; I am not positive on that point.

Q. Now, as a matter of fact, it is true, is it not, Mr.

Umstattd, that even despite the fact you haven't tried to sell bearings in those countries, you have from 1928 to date sold considerable quantities of bearings in those territories, on unsolicited orders for bearings, isn't that correct?

A. We have sold considerable quantities of bearings where British or French Timken couldn't make deliveries.

Q. And we have here in evidence as Plaintiff's Exhibit 160 some statistics which were prepared by your Company of sales by Timken Roller Bearing Company in British [fol. 1544] Timken Ltd. territory on which commissions were paid, and it shows a total of $2,980,679 for the years 1928 to 1947. That is correct, is it not?

A. I can't vouch for the authenticity of the figures. I presume if one of our people compiled them for you it is correct.

Q. Are you sure that in every one of those instances that was business which British Timken or French Timken could not supply?

A. No, I am not sure.

Q. In any event, it was business which you did not seek?

A. I wouldn't answer that yes because we seek business all over the world. If it cannot be obtained by British Timken or French Timken, naturally we try to get it for American Timken.

Q. And if it cannot be obtained by British or French Timken in the case of these replacement sales, you will handle it at prices agreeable to British and French Timken?

A. Yes.

Q. Now, bearing in mind your testimony that it is practically impossible from 1928 to date to sell bearings made by Timken here in Canada and in England, do you have any recollection of the fact that there was a time in 1928 when you could sell bearings in England and in Ireland?

[fol. 1545] A. In any considerable quantities, do you mean?

Q. Yes, in large quantities.

A. I don't know other than an occasion when the Ford Motor Company was building tractors, I believe, in Cork, and later in Daggenham in England, they bought some bearings from American Timken for Ford tractors built in those two plants.

Q. So that was a situation where it was possible to sell bearings in England?

A. It was because the engineering design used in this country was transferred to Cork and later to Daggenham where the tractors were produced.

Q. It is true, is it not, at that time in 1928 Ford would have bought anywhere in the world where he could have bought the bearings the cheapest?

A. I am not certain of that. I think Ford has always had a high regard for quality products. They do not always buy the cheapest article.

Q. Assuming that Ford had said they would buy anywhere they could get the lowest price?

A. I don't know that definitely. I would have to speculate as to what Ford would do.

Q. I would like to read you a cablegram.

Mr. Day: Is that something new?

[fol. 1546] Mr. Nitschke: I have had marked as Plaintiff's Exhibit 164 a cablegram from Hess to Britimken dated October 20, 1928.

(Cablegram above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit No. 164.)

Mr. Nitschke: I would like to read you a portion of this cablegram:

"Production being planned Cork Ireland five hundred to eight hundred daily stop Can you quote better prices for tractor wheel bearings on above production than our prices we sent you recently stop All bearings go into Ireland no duty and they will purchase anywhere in world at best prices stop"

Q. Does that refresh your recollection as to the situation?

A. I don't recall that particular cablegram and I don't know who sent the cablegram.

Q. Mr. Hess.

A. Hess sent it?

Q. Yes, he did.

A. I don't know where he got the information concerning Ford's purchasing policy. I don't believe I could answer for Mr. Hess in this instance.

Q. Well, would you agree or disagree with that statement. [fol. 1547] of Mr. Hess?

A. That Ford would purchase anywhere in the world that they could get the cheapest price?

Q. At the best price.

A. I am afraid that I would have to disagree with it be-

cause in my experience in dealing with Ford there have been many instances where he has paid a higher price for a product, even our own product, than he could have bought it for from another source.

Q. You aren't speaking of this particular transaction?

A. Not of this particular transaction. I am speaking of my association with the Ford Company over 29 years.

Q. During this period from 1928 to date, Mr. Umstattd, it has even been possible, hasn't it, for distributors of bearings in this country to sell them abroad in competition with other bearings?

A. What sort of bearings?

Q. Tapered roller bearings.

A. You mean Timken distributors?

Q. Yes.

A. I presume it would be difficult for a Timken distributor to sell abroad in competition with other bearings. I doubt if distributors have sales outlets in foreign countries for the sale of tapered roller bearings.

[fol. 1548] Q. I want to call your attention to the fact that you sell bearings for replacement purposes to the Timken-Detroit Axle Company, isn't that right?

A. We sell them for installation in their original equipment and I presume they use some of those bearings for replacement. I am not familiar with the details of that.

Q. Do you know whether or not Timken-Detroit Axle has been able to ship those bearings abroad into the territory of British Timken and sell them in competition with bearings made by British Timken over there?

A. I don't know that definitely. I presume they send bearings as spare parts, just like they would send gears or housings or other parts of an axle.

Q. Well, I would like to call your attention to a letter which is in evidence as Government's Exhibit 42, written by W. E. Hobley—you know who he is?

A. Yes.

Q. Sales Manager of British Timken?

A. He was. I believe he has retired.

Q. He was Sales Manager for British Timken, however, in 1928 and for several years thereafter?

A. Yes.

Q. He wrote, on March 22, 1928:

"In your letter of the 17th February you mentioned that [fol. 1549] arrangements had been concluded with the Timken-Detroit Axle Co. apropos the sale of their service bearings throughout Europe."

Mr. Hobley is writing to Mr. Hess.

"We have not had an opportunity up till now of seeing the Automotive Products Co. in London, who are the British representatives for the T. D. A. Co., but hope to do so very shortly."

"Our reason for writing now is to ask if this arrangement which you have made with Detroit will embrace Australia also. Col. Murray—White, who is touring Australia and investigating our distributing arrangements very closely, reports that the firm of Messrs. Motor Traders are the agents for the T.D.A. Co. in Australia, but whether their agreement is with the T.D.A. Co. direct or through their London house, we cannot say."

This is what I would like to call your attention to, bearing in mind your previous testimony:

"The fact is that they are importing bearings from Detroit and distributing them throughout the trade at lower prices than our own authorized distributors can. As you know, we have established list prices identical with your own, and it is unfair for the Timken-Detroit Axle Co. to service their bearings throughout our territory at lower [fol. 1550] prices just because they are in a position to do so."

Now, bearing in mind what I have just read you, is it still your opinion that bearings could not be sold by Timken-Detroit Axle distributors in competition with British Timken in British Timken territory?

A. I am not certain about that. Judging from what you have read in that letter, they did sell at a lower price. I don't know what they can do currently.

Q. I believe, Mr. Umstattd, in your direct examination you stated, I am just giving you the nature of your testimony, I think you stated it was your opinion it was not possible to sell bearings in Europe and the British Empire unless you established a plant there for manfacturing. Is that the nature of your testimony?

A. I believe I confined that to the principal manufacturing countries in Europe that must have capital goods. I wouldn't say that would be all-inclusive. There are some

countries in Europe that have a very meager manufacturing economy.

Q. In those countries where they do manufacture capital goods, is it your testimony that in order to do business in those countries you have to put up a plant there and manufacture there?

A. I believe that from a standpoint of good business relations that would be necessary.

[fol. 1551] Q. Well, the question I have asked you is this, your agreements prohibit you from establishing manufacturing plants in countries allocated to British Timken and French Timken, do they not?

A. You mean countries such as French Morrocco and Australia, South Africa?

Q. I mean in countries in British Timken territory which I believe is all of Europe,—British Timken, French Timken territory, all of Europe, all of the British Isles, all of the possessions of the countries of Europe.

A. I believe there would only be one or two countries in Europe where it would be profitable to establish a bearing plant. One would be England, one would be France, one would be Germany, and one, conceivably, might be Italy.

Q. But you have agreed not to establish a plant in Italy, haven't you?

A. We have agreed to not establish a wholly owned American plant in Italy. We could participate in the establishment of a plant in Italy, I believe, under the agreement. I am not positive, but I believe we could.

Q. Well, I call your attention to Paragraph 6 of the current agreement, the tripartite agreement:

"Each of the Companies parties hereto as a convenantor Company hereby covenants with each of the other Com-

[fol. 1552] panies parties hereto as a covenantee Company that during the life of this Agreement the covenantor Company will not directly or indirectly make or sell or authorise others to make or sell bearings in the territory of the covenantee Company or in the territory of the covenantor Company knowing them to be for shipment into the territory of the covenantee Company save and except as follows to wit:"

A. I think, with that paragraph being read to me, I would say it would be impossible for us to establish a plant in Italy as long as the present agreement is in force.

[fol. 1553] Further cross examination of William E. Umstattd.

By Mr. Nitschke:

Q. Mr. Umstattd, yesterday you mentioned that you had received some know-how from British Timken. Your engineers and other people, when they have gone to England to visit British Timken have had complete access to their plants and facilities, have they not?

A. So far as I know they have had.

Q. And they were permitted to see any methods and processes that were in operation there?

A. That was my understanding from the people who visited the plants as well as from Mr. Dewar and Mr. Pascoe.

Q. British Timken has a research department also, has it not?

A. It has.

Q. Smaller than yours, I believe Mr. Dewar testified to that?

A. Yes, considerably smaller.

Q. Are the results of their research made available to [fol. 1554] American Timken?

A. Yes.

Q. In other words, there has never been any question, has there, about there being a free exchange of know-how between American Timken, British Timken and French Timken?

A. No, there has never been any question about that.

Q. Also yesterday you mentioned the SKF Company and that it was the largest manufacturer of anti-friction bearings in the world. It is not the largest manufacturer of tapered roller bearings, is it?

A. I do not believe so. I believe Timken is the largest manufacturer of tapered roller bearings.

Q. How do you know SKF is the largest manufacturer of anti-friction bearings in the world?

A. From the statements that they publish from time to time and from reports we get from our salesmen in our office, and the reports we get from British Timken salesmen in Europe.

Q. Showing the sales of SKF?

A. Showing the probable sales and the reported sales are

printed and are accessible to the public at various times.

Q. And when you speak of SKF, were you speaking of the Svenska Kullager Fabriken of Gothenburg, Sweden?

A. That is the parent company.

[fol. 1555] Q. When you say it is the largest manufacturer—

A. I was speaking of the parent company and its subsidiaries throughout the world.

Q. You were speaking of production of both parent and subsidiaries?

A. Yes.

Q. Do you know whether as a matter of fact these other companies are subsidiaries?

A. No, I do not know as a matter of fact. All I know is the published statements of SKF that indicate that they are subsidiaries.

Q. They do make bearings marked "SKF", these various plants you mentioned?

A. I think some of them mark them SKF and probably the ones in Germany are presently marked VKF.

Q. Now, I would like to ask you a question about an answer which you made yesterday.

Q. (Continued) Mr. Day had asked you about the change in the 1934 contract with respect to Russia. The question was:

"Q. Will you state to the Court the circumstances which preceded or surrounded the making of that change?" And [fol. 1556] your answer was:

"A. The Russian Purchasing Commission in this country and in England and in other countries throughout the world got at different times goods from different countries depending upon the exchange situation prevailing at the time, and the state of Russian balances in certain countries. Many times goods would be bought from Germany for a period of six months or more, then the purchases would switch to Sweden or to England or to the United States or to Italy, and with that in mind it was felt that Russia might be better served by having sales avenues open from Great Britain and the United States."

Now, during the past 20 years hasn't the exchange situation fluctuated in other countries besides Russia, viz., Great Britain and the United States?

A. The exchange situation has fluctuated greatly in the past 20 years.

Q. But was it only in Russia that you felt the country could be better served by having the sales avenues open to both British Timken and American Timken?

A. So far as I know Russia was the only totalitarian state at that time in control of all the industry within its boundaries, purchasing through one central agency. I know of no other country that was a totalitarian state 20 [fol. 1557] years ago.

Q. I am not quite sure that answers my question.

Will the reporter read the question?

(Previous question read by reporter.)

A. Yes. I will answer yes.

Q. And did you feel that Russia would be better served by both you and British Timken if you sold at agreed upon prices?

A. We gave our prices to British Timken. British Timken in turn gave their prices to us.

Q. And your contract required that you not undercut them, isn't that right?

A. I am not familiar with every detail of the contract, in general, I think that is true.

Q. I believe you mentioned yesterday with reference to the United Kingdom that it was practically impossible for American Timken to sell there, and then I think later on in your testimony you broadened that statement to include all the territories that were allocated to British and French Timken; is that right?

A. It was our opinion that it would have been unprofitable to have sold through agencies established by the American Company and controlled directly from the United States.

Q. That is, unprofitable except to British Timken?

A. That they could have done it more economically.

[fol. 1558] Q. Do you think that would be true of Spain, for example, in the Continent of Europe?

A. I believe British Timken could serve Spain more economically than Spain could be served from the United States.

Q. Now, there is no different tariff in Spain?

A. I am not familiar with the tariff laws in Spain.

Q. Spain isn't in the Sterling Bloc, is it?

A. I don't believe it is in the Sterling Bloc 100 per cent

but their exchange of commodities with England ties them very closely to England.

Q. How about import restrictions: are there any different import restrictions regarding shipments from England rather than America?

A. I am not familiar with the import situation in Spain today.

Q. There is not any "Buy British", "Buy French" policy in Spain, is there?

A. Not that I know of as a policy other than the fact that Spain does sell considerable iron ore and other commodities to England.

Q. There aren't any local manufacturers of bearings in Spain, are there?

A. Not to my knowledge.

Q. And, Mr. Umstattd, isn't it true you today could lay down a bearing in Spain at a lower cost than British Timken?

[fol. 1559] A. I don't know. I don't know what the restrictions are. As I mentioned earlier I don't know whether there is a preferential tariff or preferential import license existing in Spain. I am not familiar with that situation.

Q. But it is still your opinion you couldn't sell there as economically as British Timken?

A. I believe British Timken could sell there more economically than we could.

The Court: Well, what do you base that on?

The Witness: I base that on conversations I have had with people who have done business in Spain, both from France and from England. There seems to be a considerable amount of common interest between Spain and France and Spain and England as regards the exchange of commodities. I could give you the names of some of those people.

The Court: I just wanted to find out the basis of your conclusion.

Q. I believe you also stated yesterday it would be practically impossible for British Timken or French Timken to sell in the United States?

A. I believe it would be practically impossible for them to sell at a profit in the United States.

Q. And I think you said it would be even more impossible [fol. 1560] for French Timken than British Timken?

A. Under existing circumstances I believe that is true.

Q. Do you also think it would be practically impossible for French Timken to sell any product in the United States?

A. I believe French Timken could sell some products any place in the world but I am not certain they could sell them at a profit.

Q. Do you think it would be impossible for them to sell any product in the United States at a profit?

A. French Timken?

Q. Yes.

A. I believe that would be impossible for them to sell any product in the United States of French Timken at a profit.

Q. Products they make now?

A. Products they make now.

Q. How about any product that might be made by French Timken?

A. You mean if they could make perfume, for instance?

Q. Yes.

A. I think perhaps they could sell a high grade perfume in the United States more cheaply than we could make it and sell it. We haven't learned how to make high grade perfumes in this country.

Q. As a matter of fact your agreement prohibits them from selling any product in the United States?

[fol. 1561] A. I am not familiar with each detail, but as I recall they are prohibited from selling here unless the parties agree in the matter.

Q. Unless you give them your consent they cannot sell any other product?

A. I think that is true, according to the terms of the agreement.

Q. I would also like to ask you some questions about some other testimony you gave yesterday. You mentioned the fact that conferences were held in the United States in 1927 about the time that these arrangements with British Timken were entered into, and that you attended those conferences.

Q. You mentioned the matter of selling was discussed and considered at several meetings with Mr. Timken, Mr. Strough, who was secretary-treasurer of the company at that time, Mr. Lothrop, Mr. Overmeyer, and Mr. Ely. You recall that testimony?

A. I do.

Q. And you were asked:

"What was said in those discussions, what was the point of the discussions?"

[fol. 1562] And your answer was:

"The pros and cons of selling were brought out at those meetings, and the consensus of opinion was that bearings could be sold more readily by British forces in British territory and by French forces in France or possessions of France."

And is it your recollection that it was discussed at that meeting whether or not American Timken could sell bearings for replacement purposes in British Timken's territory?

A. I don't recall any conversation being directed particularly at that point, although that well may have come up at that time, because the whole situation of selling was discussed. There were three other people at most of those meetings I failed to mention yesterday, Mr. Strough, Mr. Klinedinst, and Mr. Porter, all of those men were connected with the sales department of the Timken Roller Bearing Company.

Q. Well, did you discuss the fact at that meeting that American companies could sell replacement bearings more readily in British Timken's territory than British Timken could?

A. That is a little involved for a direct answer. If you would like to have me explain some of the things that were [fol. 1563] said, I could perhaps answer it. I cannot answer the question directly, I think.

Q. I will make it a little more specific. Is it your recollection at that time as a matter of fact that American Timken could sell for replacement purposes in British Timken's territory at a profit?

A. Not directly. We could sell through manufacturers who exported goods to British territory and carried bearings as spare parts, and that was quite common then and is today.

Q. And did you solicit that sort of business after these arrangements were entered into?

A. I don't know that we ever directly solicited it. The people who build automobiles and machine tools purchased

bearings in excess of their building requirements and they shipped those around the world to their dealers for replacement parts when a bearing wears out in the particular type of equipment that is shipped abroad.

Q. And you could handle that business better than British Timken could handle it in its territory in 1927?

A. I think that it could be better handled by the dealers who imported the machinery into the British Timken territory. Those dealers were supplied by the manufacturers in this country who exported the machinery. They were sup- [fol. 1564] plied with bearings as extra parts or replacement parts.

Q. And whether the sales were made by American Timken or some other bearing company at that time, the American companies could sell in British territory at a profit in connection with those sales?

A. No, sir, we did not sell those in British Timken's territory. We sold them in the United States and they were exported to British Timken territory. The sale was consummated in the United States.

Q. You did not sell or solicit the business of the dealers in British Timken's territory?

A. We did not.

Q. And is it your statement you could not have gotten that business?

A. I don't think I made a statement we couldn't have gotten it. I said I thought it was not practical.

Q. Not practical to get it?

A. Yes.

Q. Well, bearing that testimony in mind, I would like to call your attention to a letter which I would like to have marked for identification Government's Exhibit 165, which appears to be a letter from R. C. Brower to Mr. Strough, dated April 1, 1927.

[fol. 1565] (Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 165.)

I would like to read to you from Government's Exhibit 165, which appears to be a letter from R. C. Brower to Mr. Strough, it has the heading "Subject: British Timken Territory—Service" dated April 1st, 1927, and is on the letter-

head of The Timken Roller Bearing Company. Is that the Mr. Strough you have just mentioned who was at these meetings?

A. He is the only Strough employed by our company as far as I know.

Q. Is R. C. Brower the Charles Brower you mentioned yesterday?

A. Yes, he is secretary-treasurer of the Timken Company at the present time.

Q. Do you know what his position was in 1927?

A. I believe he was the head of the sales and service division of the company. I am not certain. I know he was at one time, and I believe he was in 1927.

Q. I would like to read to you from this letter of Mr. Brower.

[fol. 1566] "In view of pending negotiations with British Timken, Limited, I believe arrangements should be made whereby the Service & Sales Company should be permitted to solicit without restrictions, Timken bearing replacement business in all territories controlled by British Timken, Limited, with the possible exception of the British Isles.

We are now permitted to ship unsolicited orders into British Timken territory with the exception of France and French Colonial Possessions and Protectorates on which we give British Timken, a 10% of the net amount of the invoice commission. This arrangement results in some business, but in that we do not solicit from representatives handling American made motor vehicles, our competitors who do solicit this business secure a sizable volume.

We would not wish to appoint Authorized Distributors in British Timken territory. Neither would we wish to make a general solicitation of the entire trade. Our suggested solicitation would be confined to representatives handling American made motor vehicles who naturally look [fol. 1567] to the American market for replacement parts and supplies. In the particular case of Hudson and Dodge, we handle all of their service. Bearings are not carried by the respective factories. On numerous occasions, Hudson and Dodge foreign agencies have complained because of the poor service they secure thru British Timken agencies. Most importers of American made motor vehicles are sizable houses and contend they are as much an importer as

the concerns representing British Timken, Limited. Our experience has been that due to this fact and other jealousies, they wish to purchase direct. If we were permitted to solicit the business and handle the orders, it would keep for Timken, the bulk of the business now going to competitors.

With such an arrangement, we would be in equal competition with British Timken, Limited, for all business in their territory. Between the two Companies, we could satisfy all potential buyers of bearings for service replacement purposes. Many of these buyers in the world market would favor purchasing thru the British market, while some prefer purchasing thru the American market.

One of the principal things to bear in mind is that in [fol.1568] countries such as Australia, South Africa, India, New Zealand and many others, the car registration is largely American. It is only natural that the agencies selling these American made cars should look to the American market for their source of supply on replacement parts. With our encouragement to purchase from us, the business would not go to competitive makes of bearings.

In case of open and free solicitation of the world market, we would not of course wish to continue extending a 10% commission to British Timken, Limited, but if for any reason, it should be deemed advisable to continue the commission arrangement, it would be satisfactory to us."

What I would like to ask you is with reference to Mr. Brower's statement where he said "Our experience has been due to this fact and other jealousies they wish to purchase direct," speaking about the foreign agencies of these automotive companies. "If we were permitted to solicit the business and handle the orders it would keep for Timken the bulk of the business now going to competitors." Do you agree with that statement of Mr. Brower's?

A. No, I do not.

[fol. 1569] Q. Do you agree with it as stating conditions in 1927?

A. I think perhaps that's his opinion of conditions in 1927. So far as I know, Mr. Brower never visited any foreign market.

Q. That was his opinion made in 1927?

A. I presume so, if he wrote it at that time. I presume that was his opinion.

Q. Do you agree with his opinion as stating the conditions in 1927?

A. No, I do not.

Q. I also have another letter of Mr. Brower's that I would like to ask you a question about.

Mr. Nitschke: I will have that marked as Government's Exhibit 166. This is from Brower to British Timken and it is dated July 2, 1927, and has written on the top in handwriting "J. F. Strough."

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 166.)

[fol. 1570] Q. I would like to read you a portion of Mr. Brower's letter to British Timken Limited. Would you like to look at that first, and then I'll read the portion I'm interested in and ask you a question about it (handing Government's Exhibit 166 to witness)?

A. All right.

Q. Mr. Brower writes:

"Gentlemen: With reference to your cable dated June 10th and your confirming letter of the same date regarding discounts extended to the service trade in your territory, we would first ask that you discuss this thing with Mr. Hess of our company who is now in England because he familiarized himself with all conditions just prior to his departure from the States.

In explanation of our change in discount, we found it necessary to increase the discount from 35 to 50 per cent in order to meet competition. We, of course, have not made direct quotations in your territory although it has developed in some few cases local export houses who have purchased material for shipment into countries controlled by [fol. 1571] us have also secured bearings for shipment into your territory at the same discount."

Now, this is the part I am particularly interested in calling your attention to:

"Another thing to consider is that while Gilliam and Bock were in the picture discounts of 50% and 50 and 10% were regularly extended. To show how far reaching the

effects of this were, we can tell you that for the 12 months in 1926 Bock shipments into your territory were as follows:

Australia, $11,000.

Continental Europe $34,000.

Colonial Possessions $5,000, or a total of $50,000 in the territory controlled by us."

Now, do you agree or disagree with Mr. Brower's statement regarding the sales made by Bock in British Timken territory?

A. I have no knowledge of those other than what you have read.

Q. And Bock was a small tapered roller bearing manufacturer in the United States?

A. Yes, I believe they also had a plant in England. I'm not certain that they had one at exactly that date, but they had at one time, as I recall, in Scotland, or somewhere [fol. 1572] in the British Isles.

Q. And you bought them out in 1926?

A. The American Timken, as I recall it, it was somewhere around 1926, yes.

Q. And that's how these figures got to Timken as to such sales?

A. Perhaps so. I'm not familiar with that.

Q. Now, I want to ask you some other questions, about some other questions and answers in your direct testimony.

Q. Do you remember being asked this question:

"Q. As president of the Timken Company, are you able to state what the policy of that company is now as to any trade arrangements of that kind?"

A. Yes, I remember answering that.

Q. And your answer was:

"A. The policy of the Timken Roller Bearing Company is that we do not believe in any sort of trade arrangement that would restrict sales."

Do you remember that answer?

A. I remember that.

Q. And then the further question was asked:

"Q. And state whether or not that has always been [fol. 1573] your policy."

And your answer was:

"A. Personally, yes, and I believe that it has been the policy of the Timken Roller Bearing Company as far as I know.

Q. And state whether or not on occasions you have declared that policy as being your policy and the policy of the company as far as you are concerned.

A. I have many times."

In your answer about company policy, Mr. Umstattd, were you talking about, when you talked about trade arrangements, were you talking about oral arrangements or written arrangements?

A. I was talking about any sort of arrangements that would obstruct the sale of bearings or curtail the sale of bearings.

Q. Whether they were oral or written?

A. Whether they were oral or written.

Q. Were the sales that you were talking about your own sales or anybody else's sales, or what sales were you talking about?

A. I'm talking about the sales of Timken Roller Bearing.

Q. Of the Timken Roller Bearing Company's products?

[fol. 1574] A. Yes.

Q. You are not including in those arrangements to restrict the sales of somebody else, some other bearing manufacturer?

A. To restrict the sales of somebody else?

Q. Yes.

A. I think if we increase our sales it would probably be to the detriment of some other anti-friction bearing manufacturer or friction bearing manufacturer.

Q. I'm talking about your statement that you do not believe in any sort of trade arrangement that would restrict sales.

A. That would restrict the sales of Timken roller bearings, steel or rock bits.

Q. But you do believe in trade arrangements with other bearing manufacturers that would restrict the sales of a competitor?

A. No, I do not.

Q. So you mean you do not believe in any sort of trade

arrangement that would restrict either your sales or any other bearing manufacturer's sales?

A. I don't believe in any sort of an arrangement that will stultify the sale of Timken bearings. I will admit that if we take business away from Hyatt or New Departure or Fafnir, it probably stultifies their sales, but it helps our sales.

[fol. 1575] Q. I'm not talking about individual action to take business away from someone, and that's not what you stated your policy was. You said your policy was you did not believe in any sort of trade arrangement. I'm assuming by that you mean arrangements with some other manufacturers?

A. I do not believe in making any arrangements with any manufacturers outside of the Timken group regarding restriction of sales or division of sales territories, if that answers your question.

Q. You mean by "Timken group" American Timken, British Timken and French Timken?

A. And French Timken, yes.

Q. You said "arrangements to restrict or curtail sales." Do you include in that arrangements to fix prices?

A. I do not believe in fixing prices.

Q. By agreement with your competitors?

A. By agreement with competitors.

Q. And when you say you don't believe in it and that's the policy of your company not to believe in it, do you mean it has always been your intent, and you have so acted, not to enter into arrangements to curtail sales or to fix prices with other bearing manufacturers?

A. So far as I know, there is no arrangement for fixing prices with any other bearing manufacturer, and I certainly [fol. 1576] do not believe in it.

Q. And that's your statement, when you say you don't believe in it, that it's your intent and purpose not to enter into arrangements to fix prices?

A. It is my intent not to enter into such an arrangement.

Q. I would like to call your attention to another set of questions and answers which you made on direct examination.

Q. You were asked the following question:

"Q. Are the tapered roller bearings in competition with the ball bearings?"

And your answer was:

"Yes, sir, they are in direct competition.

Q. Have they been in competition with the ball bearings ever since they came on the market, the tapered roller bearings?

A. Yes, sir.

Q. What is the general nature and extent of that competition?

A. It's ordinarily a very bitter and active type of com- [fol. 1577] petition."

Do you remember making that answer?

A. I do.

Q. I would like to ask you if you have ever seen this document before (handing document to witness)?

(Witness reads document.)

A. Yes, that was signed by me on April 5, 1933.

Mr. Nitschke: I would like to have that marked for identification as Government's Exhibit 167. It is a letter addressed to H. H. Timken dated April 5, 1933, from Mr. Umstattd.

(Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 167.)

Q. Now, you note you say in the first paragraph of this letter which you wrote to Mr. H. H. Timken on April 5, 1933:

> "Louie Klinedinst and I were in New York last week and had a long talk with Fred Hughes and Lester Sigourney of New Departure and arrived at a mutually satisfactory selling price for flanged type bearings [fol. 1578] both ball and tapered roller. We held the price on these bearings at a point where a nice profit will be made for both companies, and I feel that we did a pretty good job as New Departure might have been out of line if we had not told them our prices, and in that event we should have had to cut our prices."

Is that the kind of bitter and active competition with ball bearing manufacturers that you were talking about?

A. That was a particular type of bearing that had been brought out by Timken with a flanged cup for machine tool manufacturers, and New Departure brought out a flanged type bearing and attempted to sell it in the mine car field, and they sold it at a price that admittedly was below cost in order to get into the mine car field. They didn't know our prices, or at least they said they didn't know our prices. We told them the prices we were selling the bearing at in the mine car field.

Q. Bearing in mind your previous testimony about your intent not to enter into arrangements to fix prices or to restrain trade, I would like to ask you if you have ever seen that document before (handing document to witness)?

A. It has my name typed in. I presume I wrote that, apparently the 26th of January, 1934. I am not familiar [fol. 1579] with the entire text of the letter at the moment. Would you like to have me read it, or do you want to read it to me?

Q. I will ask you a question about it.

(Document referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 168.)

Q. I would like to read you a paragraph from this letter. You referred in here to a meeting, which you mentioned in the preceding paragraph, between Ingersoll-Rand, Crucible Steel and Timken Roller Bearing Company. You state as follows:

> "All three of the principals involved agreed that the patent was not valid and that if any license was taken out it would be merely a move for legalizing the fixing of prices so that we would not be threatened by either [fols. 1580-1581] the Clayton or Sherman laws."

Do you still maintain it has been your intent not to enter into arrangements to fix prices and curtail sales?

A. I do.

Q. As a matter of fact, Mr. Umstattd, the Timken Roller Bearing Company has been convicted recently for fixing prices in violation of antitrust laws, has it not?

A. I believe——

Mr. Dey: Well, I object to that.

[fol. 1582] The Court: The objection will be overruled. You may answer the question.

Q. Did the Timken Roller Bearing Company, while you were president, plead nolo contendere to an indictment for violation of the Sherman Act by fixing prices?

A. I believe that such a plea was entered in a stainless steel suit brought by the Government. I am not certain of the date, some two years or so ago.

Q. In 1944?

[fol. 1583] A. That was while the war was going on.

Q. And Timken was sentenced to pay a fine of $5,000 on both counts?

A. I think that is correct.

Mr. Nitschke: Your Honor, I think perhaps since I read the phrase in my question from the certified copy of the docket I ought to have it marked for identification.

(Document referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 169.)

[fol. 1584] Mr. Nitschke: I will offer Government's Exhibits 161 to 169, inclusive.

The Court: They may be received.

Mr. Nitschke: That's all.

Redirect examination of William E. Umstattd

By Mr. Day:

Q. Calling your attention now to some of these exhibits marked by the Government as their exhibits 165, 166, 167 and 168, and referring first to Exhibit 165, it's a memorandum, obviously, from Mr. Brower to Mr. Strough. Mr. Brower at that time held what position with any of the Timken companies?

A. I am not positive. I believe he was the head of the Sales & Service Department, and I believe that he carried the title of vice-president of that organization which at that time was a subsidiary of Timken Roller Bearing Company.

Q. What has become of that company?

A. That company was consolidated with the Timken Roller Bearing Company a number of years ago. It is now a division of the company.

Q. Of the Timken Roller Bearing Company?

A. Yes.

Q. The date is April 1, 1927. Do you recall that there was a contract, the first contract between British Timken [fol. 1585] and American Timken dated as of January 1, 1928?

A. I'm not positive of the date. I know it was about that time.

Q. And have you had your attention called in connection with this case and the affairs of American Timken and British Timken to a document marked "Heads of Agreement"?

A. I have.

Q. Are you aware that the date of that is May 16th, I think, of 1927?

A. I'm not positive about the date. I know it was before the final agreement was signed.

Q. Then looking at the date April 1, 1927, on this document, that was before the contract, obviously, of January 1, 1928, and also before the Heads of Agreement of May 16, 1927, wasn't it?

A. It is if those dates you mentioned are correct. I'm not familiar with the exact dates.

Q. Did you have any knowledge at all at the time that this memorandum was prepared and submitted to Mr. Strough by Mr. Brower of its contents? Do you recall anything of that?

A. I never saw it before and never heard that particular letter discussed, before today.

Q. I understood you to say on cross-examination that [fol. 1586] there are some statements in the letter by Mr. Brower that you do not agree with. Is that right?

A. That is true.

Q. I want to call your attention to one statement in the middle of the third paragraph:

> "On numerous occasions, Hudson and Dodge foreign agencies have complained because of the poor service they secure through British Timken agencies."

Do you understand that's what Mr. Brower said they were complaining about?

A. I presume so. That's what his letter states.

Q. As of April 1, 1927?

A. I presume that's what he meant.

Q. Now, calling your attention——

The Court: That letter antedates the charges that are contained in this indictment.

Mr. Day: Yes, it does, your Honor.

Q. I call your attention to Government's Exhibit 166, a memorandum of July 2, 1927, to British Timken Limited, Attention Mr. William Dallow from R. C. Brower. First, did you ever have any knowledge of that memorandum at the time it was sent, so far as you can remember now?

A. This is the first time I have seen that letter.

Q. Something was said here about the Bock Company. [fol. 1587] What was the Bock Company, B-o-c-k?

A. The Bock Company in the United States operated a plant in Toledo, Ohio, and made tapered roller bearings of a rather unusual design with a head on the large end of the tapered roller.

Q. Was that company acquired by the Timken Roller Bearing Company?

A. It was.

Q. About when?

A. As I recall, sometime around 1926. I'm not positive of the date, but in that general time.

Q. And the Gilliam Company, what company was that?

A. The Gilliam Company was a company manufacturing tapered roller bearings and other products, malleable castings and tire covers, in Canton, about in the early 1920's. I don't know just when they were formed.

Q. Was that the company in Canton that for many, many years, either by itself or its predecessor, made harness and things of that kind?

A. They did, and harness hardware. They made malleable castings for use in harness.

Q. You say the Timken Company acquired that company also?

A. Yes.

Q. And there was a Bock Company figuring in the evi- [fol. 1588] dence also that had a plant in Scotland.

A. I believe it was in Scotland.

Q. Do you recall the testimony, I think it was of Mr.

Dewar, that the company machinery was purchased by British Timken?

A. I think that was read in Mr. Dewar's deposition, as I recall.

Q. That's the same company?

A. Presumably.

Q. Here is Government's Exhibit 168 headed "Thurston Patents." Have you anything to add to what you have already stated in answer to the question by Mr. Nitschke in reference to that?

A. The patent agreement was never entered into regarding this patent proposition. The Timken Roller Bearing Company refused to form a partnership with the other parties and purchase the patent.

Q. Is there anything in any of these exhibits that Mr. Nitschke has called your attention to that changes or affects the statement you made on direct examination and repeated on cross-examination as to the policy of the Timken Roller Bearing Company as to making any agreement with a competitor as to prices or competition or markets or allocation of customers, anything of that kind?

[fol. 1589] A. The Timken Roller Bearing Company will not make an agreement with a competitor regarding prices or allocation of territory. We do on occasion supply technical knowledge to many of our competitors, we show them operations in our plant, we send service men to their plants to show them how to machine, heat treat and finish bearings. But we do not enter into price arrangements with those people. On occasion we have told our prices, and our prices are published in some industries, so there is no secret about any of our prices.

Q. When you were asked something by Mr. Nitschke as to the agreement that exists between American Timken and British Timken and French Timken that's in evidence here, do you regard that as an agreement as to prices or allocation of territory with competitors?

A. British Timken and French Timken are not competitors of American Timken. They are partners in a bearing manufacturing and sales venture.

Q. And do you so regard them?

A. Yes.

Q. Now, you were asked yesterday something about the

process of honing, and one of these bearings was shown [fol. 1590] you.

Q. I hand you this round piece of steel, this circle of steel. What is that?

A. This is a Timken cup made in the United States of America, No. 3920.

Q. By looking at that can you tell whether or not it has been subjected to the process of honing?

A. It has been subjected to a certain type of honing that is commonly called in our plant cross-hatching or superfinishing.

Q. Are there numerous finishes to which bearings of that kind, or parts of bearings of that kind, are subjected?

A. Yes.

Q. What are some of the different finishes?

A. The most common finish is grinding. After that the piece can be honed or cross-hatched, or subjected to a treatment called in our plant mirror finishing, which gives a very high polish to the piece, a much higher polish than is present in this piece.

Q. And is there a lapped finish?

[fol. 1591] A. Yes, there is a lapped finish.

Q. What is that?

A. A lapped finish is ordinarily accomplished by impregnating a piece of copper or lead with diamond dust or carborundum or alundum dust and rotating the piece with the lap held tightly against the rotating cup or cone.

Q. I have a list of these finishes here, and there is one—— is that hypro finish?

A. There is a hypro finish.

Q. What is that?

A. That is done on a machine developed by the Norton Company of Worcester, Massachusetts. That gives a very fine type of finish and is used in many cases where seals are necessary to seal the escape of gas, from a refrigerator, compressor, things of that sort. The micro inches in some of those instances are held down to under one micro inch. The surface is remarkably flat and without any evidence of hills or valleys, that is, I mean any that could be detected by ordinary instruments.

Q. How does the Timken Roller Bearing Company determine when and to what type of finish a cone or cup will be subjected?

A. We are dependent upon the engineers, the information we get from our sales engineers, and in some instances from visits of engineers from purchaser plants.

[fol. 1592] Q. Do the customers' engineers sometimes request a certain type of finish?

A. They do.

Q. What is the fact as to subjecting bearings or parts of bearings to different kinds of finishes in the operations by British Timken?

A. British Timken use a type of finish that is known as cross-hatching or superfinishing. They also manufacture bearings with mirror finish, and I believe in some instances they finish with a hypro lap or a ladder counterlap, where seals for gases are necessary.

Q. Does British Timken have the modern finishing machines?

A. They have the most modern type that has been perfected by us. They have the very latest type of machine that we use in our own operations in this country.

Q. What is the situation in that regard in French Timken?

A. In French Timken they have the intermediate design of machine which is still in operation in this country, and in England, and produces the same type of finish but does not do it as economically or as fast. In other words, the newest type produces more pieces per man per hour.

Q. You were asked yesterday by Mr. Nitschke something about sales by American Timken in British Timken and [fol. 1593] French Timken territory of quantities of bearings, and it was suggested that those sales were not induced by any sales efforts upon the part of American Timken. Do you recall that?

A. Of American Timken directly.

Q. Yes. Well now, those sales were made as a result of whose efforts, sales efforts, as you understand it?

A. The direct efforts of British Timken or French Timken augmented by our sales assistance in sending men to England and France and sending advertising literature to those countries, and advertising in American technical magazines which are read by French and British engineers and government executives.

Q. And those efforts that were made by British Timken and by American Timken in that regard were the result of

what, the existing arrangement between British Timken and American Timken and French Timken?

A. Yes, they were the result of the agreements and arrangements between the companies.

Q. You were asked this morning about selling in Spain, selling bearings in Spain, and I think you said it would be more practical and more profitable for that kind of sales in that territory to be carried on by British Timken than [fol. 1594] American Timken?

A. That is my opinion.

Q. What is that based on?

A. It's based on conversations I have had with people who are familiar with trade relations in France, Spain, and England. The flow of certain commodities from Spain to England and France is quite high and quite logical. France and England import immense amounts of citrus fruits from Spain, olives, olive oil, both of which are in very short supply in both France and England, all fats, and those can be procured from Spain and, in turn, manufactured products are exported to Spain in payment for the agricultural and mineral products imported into England and France.

Q. You were asked yesterday by Mr. Nitschke something about the establishment of plants in English territory and French territory. Do you recall that something is said in the Heads of Agreement to the effect that all practical steps will be taken for the manufacture and sale of bearing by the formation of Continental companies?

A. I remember that in the Heads of Agreement, and as far as I know that has been done.

Q. We talked yesterday about metric sizes and inch sizes. Ball bearings are produced in what sizes, generally?

A. Metric sizes.

[fol. 1595] Q. I asked you questions, and Mr. Nieschke questioned you also, as to whether certain things would be possible or practically possible, especially with regard to sales of bearings by American Timken in the territory of the foreign companies, and by them in American territory. Now, when you say "impossible" do you mean from a practical standpoint?

A. I mean from the standpoint of doing it at a reasonable profit.

Q. And from a business, commercial standpoint?

A. And from a business or commercial standpoint.

Q. You did not mean to imply—this might be a leading question—that it would be physically impossible to do it?

A. I believe a bearing could probably be sold any place in the world.

[fol. 1596] Recross examination of
William E. Umstattd

By Mr. Nitschke:

Q. You stated, Mr. Umstattd, that these sales of some $3,000,000 that you made abroad during the period of these agreements were the results of the agreements and arrangements you had with British Timken?

A. I believe so.

Q. And do you mean that it's the result of this particular clause in the agreement, reading from Paragraph 6 of the current agreement:

> "Each of the Companies parties hereto as a covenantor Company hereby covenants with each of the other Companies parties hereto as a covenantee Company that during the life of this Agreement the covenantor Company will not directly or indirectly make or sell or authorize others to make or sell bearings in the territory of the covenantee Company or in the territory of the covenantor Company knowing them to be for shipment into the territory of the covenantee Company."

A. I don't know that it grew out of that particular paragraph of the agreement. I said it grew out of the agreement.

Q. I believe you stated, Mr. Umstattd, that you did not enter into this license agreement, that you wouldn't go into it. But, as a matter of fact, you did make an offer of h[illegible] [fol. 1597] a cent royalty to this gentleman in that arrangement, didn't you?

A. As I recall, the half cent offer was made by Mr. Hufnagel of the Crucible Company.

Q. Let me read you the last paragraph:

> "After some half hour of discussion it was agreed that Mr. Hufnagel would inform Mr. Kilborn that we would be willing to pay a flat one-half cent per bit royalty and that it would be useless to discuss anything

beyond this price. Mr. Hufnagel will get in touch with Mr. Kilborn sometime Monday and the writer will call Mr. Kilborn later in the week and substantiate the above statement."

So that you did know the facts, didn't you?

A. The offer was made by Mr. Hufnagel with the acquiescence, I believe, of the other parties.

Q. Including Timken?

A. Including Timken.

Mr. Nitschke: That's all.

The Court: Mr. Umstattd, did I understand you correctly that all ball bearings are made on the metric standard?

The Witness: No, your Honor. I think probably 99 per cent of them are. I dare say there would be 1 per cent [fol. 1598] that might be made on the inch standard, but the practice in the ball bearing industry has been to make almost 100 per cent to the metric sizes. There are very, very few exceptions.

The Court: That's true of ball bearings made here, as well as on the Continent?

The Witness: Yes, sir, here and on the Continent.

[fol. 1599] Thereupon the Defendant, to maintain the issues on its part, called as a witness Joseph Gravely, who, being first duly sworn, testified as follows:

Direct examination of Joseph Gravely

By Mr. Ketterer:

Q. What is your name?

A. Joseph J. Gravely.

Q. Where do you live?

A. St. Louis, Missouri.

Q. What is your profession?

A. I am a patent lawyer, patent and trade marks.

Q. How long have you practiced patent and trade mark law?

A. Since 1916, officially, but, actually, since January, 1919.

Q. And are you connected with any firm engaged in that practice?

A. Yes, the firm name is Carr, Carr & Gravely.

Q. Where is your office?

A. 705 Olive Street, St. Louis.

Q. And have you any connection with the Timken Roller Bearing Company?

A. My firm has been patent and trade mark counsel for the Timken Roller Bearing Company throughout all the time I have been practicing, and the files of my office show that the predecessor firm of Carr & Carr represented the [fol. 1600] Timken Company in such matters from its inception.

Q. Your personal knowledge of the patent and trade mark matters involving the Timken Roller Bearing Company goes back to what date?

A. For the most part 1919. At the time I was admitted to practice I was still in law school and I went back to law school for a year after passing the bar examinations, and during that time I was working part time in the office of Carr & Carr. Then of course the war came along and my active practice begins with January, 1919 when I came back from the service.

Q. And does your active connection with patent matters of Timken Roller Bearing Company go back to that date?

A. One of the first things I did after returning to the office was to make a trip over to Canton, not so much to attend to any legal matters as to become familiar with the plant and the operations of the company and the products made by the company so as to be better able to handle its patent matters. At that time it was contemplated that the war being over there would be changes in bearing designs and possibly new products, and that there would be more activity in patent matters than there was during the war period.

Q. And how soon after January 1st, 1919, did you visit [fol. 1601] the Timken plant?

A. My recollection is that it was that very month, perhaps, or in February and that I stayed a couple of weeks.

Q. Now, do you know how soon your firm had something to do or anything to do with the trade mark matters of the Timken Roller Bearing Company?

A. Well, we almost from the beginning began to get more interested in the trade mark matters and we were handling trade mark matters along with the patent matters. Of

course I always understood from Mr. Carr, who is now dead, that from the beginning the trade mark had been considered, and he had represented the Timken Company in trade mark matters as well as patent matters.

Q. Do you know when the trade mark "Timken" was first registered in the United States by the Timken Roller Bearing Company?

A. The trade mark "Timken" was first registered in 1920 after the pasing of the Trade Mark Law of March 19, 1920.

Q. And what change did the 1919 Act do in respect of the prior Act or the 1905 Trade Mark Act?

A. That 1920 law——

[fol. 1602] A. The Trade Mark Law of 1920 made possible the registration of surnames which had previously not been registerable under the 1905 Trade Mark Law.

Mr. Ketterer: If the Court please, I have here a letter that has been marked for identification as Defendant's Exhibit 60, which is a letter from the Timken Roller Bearing Company dated 5/6/11, to Lynch & Day, in Canton, Ohio, which I should like to offer in evidence at this time, and then direct the Court's attention to some part of it.

[fol. 1603] Mr. Nitschke: (After examining letter) Your Honor, I think I will object on the ground it is a self-serving letter, quoting from a document received, and asking for legal advice. I don't see its relevancy.

[fols. 1604-1605] The Court: It may be received.

[fols. 1606-1608] Mr. Ketterer: We offer Defendant's Exhibit 60.

The Court: It may be received.

Mr. Ketterer: I might say, if the Court please, Lynch & Day is the firm with which I am presently connected, who were counsel at that time of the Timken Roller Bearing Company.

I have here a letter which has been marked for identification as Defendant's Exhibit 61, which is dated May 8, 1911, addressed to The Timken Roller Bearing Company, with the initials under the margin on the last page "AL/HLR" which is from Mr. Austin Lynch of our firm. I would like to offer this in evidence, it being the reply to the letter I have just read of Mr. Timken.

[fol. 1609] The Court: All right, if you will offer the first two paragraphs of this letter it will be admitted. I see no objection to that.

Mr. Ketterer: That is satisfactory to us.

The Court: I take it in this instance as well as in the others a copy will be made of the first two paragraphs and those substituted for the entire document?

Mr. Ketterer: That is correct. We will take care of that.

Q. Now, Mr. Gravely, I have here a photostatic sheet that has been marked for identification as Defendant's Exhibit 62, and ask you if you recognize that?

A. Yes, that is a copy of a letter of which I am sure I saw the original when it was received in our office.

Q. Who is Mr. James Carr, to whose attention this letter [fol. 1610] was directed?

A. Mr. James Carr was the head of our firm for many years until his death in 1943, and he personally took complete charge of all of these trade mark matters until about 1924 or '25, or so. He consulted with me,—of course I was the only other man in the office working with him on these particular matters,—but he kept close personal supervision over it and was in full charge until, as I say, 1924 or 1925, or somewhere in there.

Mr. Ketterer: I should like to offer Defendant's Exhibit 62 in evidence at this time and direct the Court's attention to the third full paragraph from the top of the page.

(Reading)

> "I would also like your detailed advice regarding the use of the name 'Timken' as stamped on bearings, by the English and French Companies, just what is involved by this, and whether we can require that bearings should be so stamped. The writer does not clearly remember all the points you made, and therefore wishes in front of him a record of just the rulings on this whole proposition."

Mr. Nitschke: I don't know what the probative value [fols. 1611-1614] is to this letter. I think I will object to it. [fols. 1615-1630] The Court. I will receive it for the sole purpose of showing the desire, I repeat again, of the de-

fendant, Timken Roller Bearing Company, to protect its interest in the trade mark.

[fols. 1631-1632] Mr. Ketterer: Thank you.

We would like to offer the portion of Defendant's Exhibit 63 that I referred to, being the part that begins with the first full paragraph on page 3 and extending to the end of that letter.

The Court: It may be received for the purpose indicated.

[fol. 1633] I would like to have marked as Defendant's Exhibit 64 a letter to Mr. Ely, from Lynch, Day, Fimple & Lynch, dated June 10, 1920.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 64.)

Mr. Ketterer: If the Court please, I have a letter which has been marked here for identification as Defendant's Exhibit 64, dated June 10, 1920, from Lynch, Day, Fimple & Lynch, addressed to Mr. Ely of The Timken Roller Bearing Company, and the portion of that which I should like to offer is the last two paragraphs.

The Court: It may be received.

[fol. 1634] I would like to have marked as Defendant's Exhibit 65 a letter dated September 4, 1920, from Carr & Carr addressed to The Timken Roller Bearing Company.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 65.)

Q. Mr. Gravely, I have a letter of three photostatic sheets, a reproduction of a letter, marked for identification as Defendant's Exhibit 65. I will ask you to examine that and tell me whether you can identify it?

[fol. 1635] A. This is a letter addressed to Mr. Ely of the Timken Roller Bearing Company, again signed "Carr & Carr" in the handwriting of James A. Carr.

[fols. 1636-1638] The Court: It may be received.

[fol. 1639] I would like to have marked by Defendant's Exhibit 66 a letter dated October 7, 1920, from Carr & Carr to The Timken Roller Bearing Company.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 66.)

Q. I have here, Mr. Gravely, four photostatic sheets that [fol. 1640] have been collectively marked for identification

Defendant's Exhibit 66. I will ask you whether you can identify those?

A. That's a letter dated October 7, 1920, on the letterhead of Carr & Carr to The Timken Roller Bearing Company for the attention of Mr. Ely, and the signature "Carr & Carr" is in the handwriting of James A. Carr, as is indicated by his initials, "J.A.C." in the lower left hand corner of the last page.

Mr. Ketterer: Now, if the Court please, the portion of this letter which I would like to offer begins with the first full paragraph on page 2 of the letter, at the bottom of the page, and runs from there to the conclusion of the letter.
[fol. 1641] Mr. Ketterer: Very well, I will offer the paragraph that begins at the bottom of page 3, beginning with the words, "It would seem advisable," to the end of the letter.
[fol. 1642] The Court: That portion may be admitted.

I would like to have marked as Defendant's Exhibit 67 a letter addressed to The Timken Roller Bearing Company by Lynch, Day, Fimple & Lynch, dated October 16, 1920.

(The letter above referred to was thereupon marked by [fols. 1643-1644] the Clerk, for identification, Defendant's Exhibit 67.)

Mr. Ketterer: I have here a copy of a letter dated October 16, 1920, addressed to The Timken Roller Bearing Company on the stationery of Lynch, Day, Fimple & Lynch, marked for identification Defendant's Exhibit 67. I should like to offer that letter in its entirety.

The Court: It may be received.
[fol. 1645] I would like to have marked for identification, a letter to Carr & Carr from The Timken Roller Bearing Company, dated October 26, 1920, as Defendant's Exhibit No. 68.

(The letter above referred to was thereupon marked by [fol. 1646] the Clerk, for identification, Defendant's Exhibit No. 68.)

Mr. Ketterer: If the Court please, this letter which has been marked for identification as Defendant's Exhibit 68 is a letter addressed by The Timken Roll. Bearing Com-

pany to Carr & Carr, dated October 26, 1920, and I should like to offer the last two paragraphs of that letter.

The Court: The last two paragraphs may be received.

I would like to have marked as Defendant's Exhibit 69, for identification, a letter from Carr & Carr to Timken Roller Bearing Company, dated November 20, 1920. In fact, there are two letters here bearing the same date.

[fol. 1647] (The letters above referred to were thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 69.)

Q. Mr. Gravely, I have some photostatic sheets here that have been marked for identification as Defendant's Exhibit 69. Will you examine those and tell me whether you can identify them?

A. Those are photostats of carbon copies of two letters, each dated November 20, 1920, and addressed to The Timken Roller Bearing Company for the attention of Mr. Ely. The initials "JAC" appear on the last page of each photostat, indicating that the letters were both dictated by Mr. James A. Carr.

Mr. Ketterer: I should like to offer these letters marked Defendant's Exhibit 69.

Mr. Nitschke: Well, I object to portions of those letters, your Honor. There are two letters here of November 20, 1920. The one I have here on that date is to the attention of Mr. Ely—I guess they are both the same way. One is a five-page letter. The first paragraph is lawyer's talk about what the law of trade-marks means, and then beginning in the second paragraph it construes the principal agreement which is in evidence in this case, and that appears to be what the letter is all through. The third page, [fol. 1648] at the bottom of the third page, he says: "The fair inference from these provisions is," so he construes by inference, and that seems to be what the letter does right down to the bottom of the fourth page. I don't have any objection to the first paragraph or the last paragraph. I think they certainly show what was occurring to the Timken Roller Bearing Company in this connection, and the rest of it in the middle seems to me is all a construction of agreements which I object to. The first paragraph and

the last paragraph I think are certainly sufficient to show what the Defendant is claiming he is offering this letter for.

The Court: Well, let's take it paragraph by paragraph. The second paragraph is clearly a construction of the law of trade-marks. I think the objection to the second paragraph will be sustained. The succeeding two paragraphs are again clearly construction by counsel of the terms of an agreement, which is objectionable, and the objection to those two paragraphs will be sustained. The next paragraph is of the same nature, and the objection will be sustained. The concluding paragraph I think may be offered for the purposes indicated by counsel.

Mr. Ketterer: All right.

[fols. 1649-1651] The Court: The second letter of the same date addressed to Timken Roller Bearing Company, attention Mr. Ely—

Mr. Nitschke: I have no objection, your Honor, to the last paragraph of that letter—the last two paragraphs of that letter being offered for the purpose for which they say they are offering it, but the other paragraphs, the first paragraph again construes the contract. The second paragraph construes an Act of Great Britain, the trade-mark act of 1905, and the next paragraph, which is on the third page, again construes the contract.

The Court: The objection to the first paragraph is well taken and will be sustained. The objection to the second paragraph of that letter is well taken and will be sustained, including the quotation of Section 9. The objection to the succeeding paragraph is well taken and that will be sustained. The objection to the paragraph beginning with the words "The next question is whether such application" is well taken and will be sustained. The objection to the last two paragraphs will be overruled.

[fol. 1652] As Defendant's Exhibit 70 I would like to have marked a letter dated November 29, 1920, addressed to Carr & Carr, from Timken Roller Bearing Company.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 70.)

Mr. Ketterer: If the Court please, this is a letter dated November 29, 1920, marked for identification Defendant's Exhibit 70, from the Timken Roller Bearing Company to

[fol. 1653] Carr & Carr, and I should like to offer that letter.

The Court: The letter may be received.

Mr. Ketterer: I would like to have marked for identification as Defendant's Exhibit 71 a letter to The Timken Roller Bearing Company from Carr & Carr dated December 8, 1920.

(The letter above referred to was thereupon marked by [fol. 1654] the Clerk, for identification, Defendant's Exhibit No. 71.)

Q. Mr. Gravely, I hand you two photostatic sheets which have been marked for identification as Defendant's Exhibit 71, and ask you whether you can identify them?

A. Those are photostatic copies of the pages of a letter dated December 8, 1920, addressed to The Timken Roller Bearing Company, for the attention of Mr. Ely. The initials "JAC" appear in the lower left hand corner of the second page, indicating that the letter was dictated and signed by Mr. James A. Carr.

Mr. Ketterer: I would like to offer this letter of December 8th marked Defendant's Exhibit 71.

[fols. 1655-1656] The Court: I see no objection, except the formality of it. They may be received. You may as well offer the other one at the same time, and then we won't get into the same discussion again.

(Thereupon, letter of December 15, 1920, from Timken Roller Bearing Company to British Timken was marked by the Clerk, for identification, Defendant's Exhibit No. 72.)

[fol. 1657] And the letter which has been marked Defendant's Exhibit 72, of December 15th, addressed to British Timken, reads as follows:

[fol. 1658] "When we were registering the word 'Timken,' in various countries—"

The Court: Is that identical with the previous letter?

Mr. Ketterer: I think it is, yes. I won't bother to read it, but I would like to offer it to show that the suggestion of counsel was carried out.

The Court: It may be received.

[fol. 1659] Mr. Ketterer: If the Court please, I have here a letter that has been marked for identification as Defendant's Exhibit 73. It is a letter dated January 19th, 1921, to

The Timken Roller Bearing Company from British Timken Limited, which I should like to offer.

Mr. Nitschke: Your Honor, I object to the second last paragraph of that letter. It is written by the Chief Engineer, and the second last paragraph says, "We are of opinion that the new law will" etc.

The Court: The objection to that paragraph will be sustained and the rest of the letter will be admitted.

[fols. 1660-1661] (Letter dated December 28, 1920, from Carr & Carr to Messrs. Abel & Imray, marked by the Clerk as Defendant's Exhibit 74.)

Q. Mr. Gravely, I show you two photostatic sheets here marked for identification Defendant's Exhibit 74, and I will ask you if you can tell me what they are?

A. That is a letter dated December 28, 1920, to Abel & Imray of London written by Carr & Carr and that letter was signed by me, as appears from my initials "JJG".

Q. Who were Messrs. Abel & Imray?

A. Messrs. Abel & Imray were a firm of patent agents in London whom our firm Carr & Carr used in British patent and trade mark matters.

Mr. Ketterer: I should like to offer the first paragraph and the last two paragraphs of this letter.

The Court: They may be received.

[fol. 1662] Mr. Ketterer: That will be satisfactory to us, if you will stipulate that a letter was sent, as stated in Defendant's Exhibit 74 by Carr & Carr to Messrs. Abel and Imray, giving data to be used by Messrs. Abel & Imray in preparation of the application for the trade mark Timken in Great Britain.

[fol. 1663] (Thereupon the Clerk marked as Defendant's Exhibit 76 a letter from Abel & Imray to Carr & Carr dated January 18, 1921, for identification.)

Q. Mr. Gravely, I hand you two sheets that have been marked for identification as Defendant's Exhibit 76. I will ask you what they are?

A. That is a letter dated January 18, 1921, to the firm of Carr & Carr, written by Abel & Imray with reference to the trade mark "Timken" in Great Britain.

Mr. Ketterer: I should like to offer Defendant's Exhibit 76.

Mr. Nitschke: Your Honor, I object to that letter.

[fols. 1664-1665] The Court: It appears to the Court that that portion of the letter around which a line has been drawn is objectionable for the reason stated by Government counsel. With the exception of that one sentence the letter will be admitted.

[fols. 1666-1667] Q. Mr. Gravely, I hand you a sheet of paper that has been marked for identification as Defendant's Exhibit 77, and ask you to tell us what that is, please?

A. That is a letter dated January 20, 1921, to Carr & Carr from Abel & Imray.

Mr. Ketterer: We offer Defendant's Exhibit 77.

The Court: It may be received.

[fol. 1668] (Letter dated May 18, 1921, from Timken Roller Bearing Company, J. F. Strough, Secretary, to Carr & Carr, marked by the Clerk, for identification, Defendant's Exhibit No. 78.)

I have here a letter that ha been marked for identification Defendant's Exhibit No. 78, and I would like to offer the first three paragraphs of the letter.

The Court: It may be received.

[fol. 1669] (Letter dated June 28, 1921, from Carr & Carr to Timken Roller Bearing Company, marked by the Clerk, for identification, Defendant's Exhibit No. 79.)

Q. Mr. Gravely, I have here two sheets that have been marked for identification Defendant's Exhibit 79, and I ask you to examine them and tell me what they are.

A. They constitute a letter dated June 28, 1921, to the Timken Roller Bearing Company, addressed for the at-
[fol. 1670] tention of Mr Ely, and referring to the British Trade-Mark. The letter was signed by Mr. James A. Carr.

Mr. Ketterer: We offer Defendant's Exhibit 79 in evidence.

The Court: It may be received.

[fols. 1671-1672] Q. Mr. Gravely, I hand you a sheet of paper that has been marked for identification Defendant's Exhibit 80, and ask you if you can identify that?

A. That is a letter dated August 22, 1921, and signed by J. F. Strough, Secretary of The Timken Roller Bearing Company, to Messrs. Carr & Carr.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 80.)

Mr. Ketterer: We offer this Defendant's Exhibit 80.

The Court: It may be received.

[fol. 1673] Mr. Ketterer: I have here a letter marked Defendant's Exhibit 81, dated December 9, 1921, addressed to The Timken Roller Bearing Company, from Langner, Parry, Card & Langner, in connection with the mark in France.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 81.)

Mr. Ketterer: I should like to offer Exhibit No. 81.

Mr. Nitschke: I object to all of that except the first sentence, as having any purpose.

Mr. Ketterer: Well, that is actually all I want to offer.

The Court: All right, it maybe received.

[fol. 1674] (Letter dated December 12, 1921, thereupon marked by the Clerk, for identification, Defendant's Exhibit 82.)

Q. Mr. Gravely, here is a letter marked for identification Defendant's Exhibit 82. Will you examine it and tell me what it is?

A. It is a letter dated December 12, 1921, addressed to Carr & Carr, and shown as having been written by Mr. Strough, as appears from the initials "JFS."

Mr. Ketterer: We offer Defendant's Exhibit No. 82.

The Court: It may be received.

[fols. 1675-1680] Mr. Ketterer: If the Court please, I have had marked for identification a letter consisting of three pages, Defendant's Exhibit 83, dated March 25, 1924, and it is addressed to Mr. A. J. M. Duncan, by The Timken Roller Bearing Company, and I will offer this in evidence.

The Court: It may be received.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 83.)

[fol. 1681] (Thereupon, a letter dated November 6, 1924, from British Timken Ltd. to Timken Roller Bearing Com-
[fols. 1682-1685] pany, was marked by the Clerk, for identification, Defendant's Exhibit No. 84;

Letter dated November 17, 1924, from Timken Roller Bearing Company to British Timken Limited, was marked by the Clerk, for identification, Defendant's Exhibit No. 85;

Letter dated November 27, 1924, from British Timken Ltd. to Timken Roller Bearing Company, was marked by the Clerk, for identification, Defendant's Exhibit No. 86.)

Mr. Ketterer: I have three letters that have been marked for identification Defendant's Exhibits 84, 85 and 86. I had them marked together since they all deal with the same matter. I should like to offer them in evidence.

The Court: They may be received.

[fol. 1686] (At 9:45 A.M., Thursday, April 8, 1948, the trial was resumed.)

Mr. Ketterer: If the Court please, there were offered in the case by the Government marked Government's Exhibit 149 a list of trade mark registrations of the name "Timken" held by the Timken Roller Bearing Company, and registrations of British Timken Limited and the registrations of French Timken of the mark. I should like to have that Government's Exhibit 149 marked first and then offered as an exhibit on behalf of the defendant.

The Court: Is it the same exhibit?

Mr. Ketterer: Exactly the same, using the same exhibit and having the mark put on it.

(Document last above referred to was thereupon marked by the Clerk, for identification, as Defendant's Exhibit 87.)

Mr. Ketterer: There was also offered as part of the Government's case, Government's Exhibit 10, which was a contract dated January 1, 1925, between the Timken Roller Bearing Company and British Timken Limited. I should like to have that marked first as a defendant's exhibit and offered also.

[fol. 1687] (Contract above referred to was thereupon marked by the Clerk, for identification, as Defendant's Exhibit 88.)

The Court: They will both be received.

JOSEPH J. GRAVELY thereupon resumed the stand for further direct examination by Mr. Ketterer.

Further direct examination of Joseph J. Gravely.

By Mr. Ketterer:

Q. Mr. Gravely, while you were on the witness stand yesterday I read Defendant's Exhibit 83 which was offered in evidence, which was the letter addressed by The Timken Roller Bearing Company, through Mr. Ely to Mr. A. J. M. Duncan. Do you recall that?

A. Yes, I do.

Q. Following the writing of that letter to Mr. Duncan did you have any knowledge as to whether there were any negotiations between The Timken Roller Bearing Company and British Timken Limited looking toward the execution of a new contract or a modification of the existing agreement?

A. Yes, I do. That matter came up on trips that I made to Canton, and I think also some that Mr. Carr made, and there was correspondence around and then a representative [fol. 1688] of the Timken Company made a trip to England, as I recall it, which resulted in the making of the agreement.

Q. Now I want to hand you some photostatic papers that have been marked collectively both as Government's Exhibit 10 and Defendant's Exhibit 88. I will ask you whether or not that was the contract that resulted from the instructions that were given by Mr. Ely to Mr. Duncan in the letter that has been marked for identification as Defendant's Exhibit 86?

A. That is the contract.

Q. Now I believe you testified yesterday that you and your firm have been active in respect of the obtaining of trade mark registrations of the mark "Timken" for the Timken Roller Bearing Company since sometime around 1920?

A. That is right.

Q. Now, can you tell us briefly and generally what the program of the company has been in respect of the registration of the mark since 1920 down to the present time?

A. Right about the time of the first war the Timken bearing became known very widely throughout the world, partly by reason of the success of motorized equipment containing Timken bearings. That naturally stimulated in-

terest in world wide registration of the trade mark. Around [fol. 1689] about 1920 it was decided, and we were instructed, that is to say my firm were instructed, to proceed to register the trade mark "Timken" in the important industrial countries.

A. (Continued) The program was then widened to include registration of the trade mark in important countries generally, and finally it was extended to include registration of the mark in any country, large or small, where it could be registered.

Q. Now, there has been offered in evidence in the case a compilation of registrations both by American Timken, British Timken and French Timken of its mark, for identification Government's Exhibit 149, also Defendant's Exhibit [fol. 1690] 87. I want to direct your attention to the portion of the exhibit that has to do with the registrations of the American Company of the trade mark "Timken". I will ask you whether or not that was prepared under your direction?

A. That was prepared under my direction.

Q. Now, have you also examined the portion of this exhibit that has to do with the registration of the mark as held by the British Company and those held by the French Timken?

A. Yes, I have looked at those portions of the exhibit.

Q. Now, will you tell the Court what countries in the world to your knowledge there are in which there is no registration of the mark "Timken" at the present time?

A. Well, I checked that from not only those exhibits last night but from other memoranda as to registrations which have been taken out since that time, and I made a note at the time,—if I might look at it—as of today the only countries in which the mark "Timken" is not registered by one or the other of the three companies are Eritrea, Lebanon, Virgin Islands, Syria, Bahamas, Ceylon, Cyprus, Fiji Islands, Nigeria and Palestine.

Q. Those are the only countries in the world as far as you know in which the mark is not registered at the present [fols. 1691-1693] time?

A. To the best of my present knowledge.

Q. Are there any applications pending in any of those countries at the present time to your knowledge?

A. There is at this time an application pending in the Virgin Islands and I believe, well, I should say that in the

Virgin Islands American Timken has an application pending, and I think that in some of those other countries British Timken has applications.

(Letter dated July 30, 1925, from Carr & Carr to Timken Roller Bearing Company marked by the Clerk, for identification, Defendant's Exhibit 89.)

Q. I will hand you, Mr. Gravely, three photostatic sheets that have been marked for identification Defendant's Exhibit 89, and ask you if you can tell me what they are?

A Those sheets are a letter dated July 30, 1925, written by the firm of Carr & Carr, and I should say written by me.

Mr. Ketterer: I would like to offer, if the Court please, the portion of this letter beginning with the first full paragraph at the bottom of the first page and running from there to the conclusion of the letter.

The Court: It may be received.

[fol. 1694] (Letter dated August 15, 1925, from Carr & Carr to Skerrett & Skerrett, marked by the Clerk, for identification, as Defendant's Exhibit 90.)

Q. I have here three photosatic sheets that have been marked for identification as Defendant's Exhibit 90. Will you identify those, Mr. Gravely?

A. They are a letter dated August 15, 1925, to Messrs. Skerrett & Skerrett written by me on behalf of the firm of Carr & Carr.

Mr. Ketterer: I would like to offer Defendant's Exhibit 90.

Mr. Nitschke: I object to certain paragraphs of that letter on the ground that they are interpretations of the law and also contain statements as to the ownership of the mark. The paragraphs I object to are the three middle paragraphs of the letter, the second, third and fourth paragraphs of the letter. I am not objecting to the first or the last paragraphs.

The Court: The objection to the paragraph on Page 2 beginning "All of these registrations are of course" is well [fols. 1695-1696] taken and will be sustained. The balance may be received.

[fol. 1697] (Letter of September 14, 1925, Stibbard, Gibson & Co. to Timken Roller Bearing Company marked by the

Clerk, for identification, as Defendant's Exhibit 91; and copy of statement of grounds dated blank day of September 1925 marked by the Clerk, for identification, as Defendant's Exhibit 92.)

Mr. Ketterer: If the Court please, I have had marked for identification as Defendant's Exhibit 91 a letter addressed to The Timken Roller Bearing Company by Stibbard, Gibson & Co. of London, dated September 14, 1925, and as Defendant's Exhibit 92 a copy of a Statement of Grounds, dated the blank day of September, 1925, request-
[fols. 1698-1700] ing registration of the trade-mark "Timken" in England by The Timken Roller Bearing Company and British Timken Limited.

I should like to offer them in evidence at this time.

The Court: They may be received.

[fol. 1701] Q. Now, Mr. Gravely, can you tell me whether or not there was an application filed as outlined there?

A. The application was filed in the joint names of the two companies.

[fols. 1702-1703] Q. What is the fact as to whether or not that application was withdrawn at any time after its filing?

A. It was withdrawn.

Q. And on what basis?

A. On the basis that a joint application, as that was, could not be granted registration under the circumstances, that is to say, under the actual business conditions.

Mr. Ketterer: I would like to have marked for identification as Defendant's Exhibit 93 a letter dated September 25, 1925, from Messrs. Skerrett to Carr & Carr.

(Letter above referred to was thereupon marked by the Clerk, for identification, as Defendant's Exhibit 93.)

Q. I have here a sheet that has been marked for identification as Defendant's Exhibit 93, Mr. Gravely. Can you tell us what that is (handing Defendant's Exhibit 93 to witness)?

A. That is a letter dated September 25, 1925, from Messrs. Skerrett to the firm of Carr & Carr.

Mr. Ketterer: We offer Defendant's Exhibit 93.

The Court: It may be received.

[fol. 1704] I would like to have marked for identification

as Defendant's Exhibit 94 a letter dated October 9, 1925, from Carr & Carr to Skerrett & Skerret.

(Letter above referred to was thereupon marked by the Clerk, for identification, as Defendant's Exhibit 94.)

Q. Mr. Gravely, I hand you two sheets that have been marked for identification as Defendant's Exhibit 94. Will you tell us what they are (handing Defendant's Exhibit 94 to witness)?

A. That is a letter written by me for the firm of Carr & Carr to Messrs. Skerrett in Birmingham.

Mr. Ketterer: We offer Defendant's Exhibit 94.

Mr. Nitschke: Your Honor, I object to the last two paragraphs of that letter which I do not think have any reference to the purpose for which these letters are being offered, and particularly the fact that it's sort of a triple hearsay statement in the second paragraph, a statement of Praus-nitzer related to somebody else, as related to Skerrett, and then apparently passed on to Carr & Carr. With respect to the last paragraph it's an opinion as to the ownership [fol. 1705] of the mark.

[fol. 1706] The Court: The objection to the last paragraph on the first page of the letter is well taken and will be sustained. The objection to the concluding paragraph will be overruled. The letter will be received with the exception of the paragraph I mentioned.

Mr. Ketterer: Paragraphs 1, 2, and 4 are admitted?

The Court: Yes.

[fol. 1707] I would like to have marked for identification as Defendant's Exhibit 95 a letter dated October 7, 1925, from Messrs. Skerrett to Carr & Carr.

(Letter above referred to was thereupon marked by the Clerk, for identification, as Defendant's Exhibit 95.)

Q. Mr. Gravely, I have a sheet that has been marked for identification as Defendant's Exhibit 95. I will ask you if you can identify that (handing Defendant's Exhibit 95 to witness)?

A. That is a letter dated October 7, 1925, from Messrs. Skerrett to the firm of Carr & Carr.

Mr. Ketterer: We offer Defendant's Exhibit 95.

The Court: It may be received.

[fol. 1708] I would like to have marked for identification as Defendant's Exhibit 96 a letter dated January 9, 1926, from Carr & Carr to Messrs. Skerrett.

(Letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 96.)

[fol. 1709] Q. Mr. Gravely, I have here two sheets that have been marked for identification as Defendant's Exhibit 96. Will you identify them for us, please (handing Defendant's Exhibit 96 to witness)?

A. That is a letter dated January 9, 1926, written by me for Carr & Carr to Messrs. Skerrett.

Mr. Ketterer: We offer all but the first paragraph of the letter.

The Court: It may be received.

[fol. 1710] I would like to have marked for identification as Defendant's Exhibit 97 a letter dated January 9, 1926, from Carr & Carr to The Timken Roller Bearing Company.

(Letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 97.)

Q. Mr. Gravely, I have two sheets that have been marked for identification as Defendant's Exhibit 97. I will ask you to identify that, please (handing Defendant's Exhibit 97 to witness)?

A. These sheets constitute a letter dated January 9, 1926, written by me for the firm of Carr & Carr to The Timken Roller Bearing Company.

Mr. Ketterer: I would like to offer Defendant's Exhibit 97.

Mr. Nitschke: Your Honor, I would like to make an objection to the first sentence of the third paragraph, in which [fols. 1711-1712] the attorney expresses an opinion as to the fact that he thinks the action is proper. I don't think that is admissible. I also object to the last paragraph on the ground that it involves the construction of agreements.

The Court: I think both of those objections are well taken and will be sustained. The balance of the letter will be admitted. That means that the first sentence in the third paragraph, and the last paragraph are excluded.

[fol. 1713] I would like to have marked for identification as Defendant's Exhibit 98 a letter dated February 2, 1926,

from Stibbard, Gibson & Co. to The Timken Roller Bearing Company, and as Defendant's Exhibit 99 a joint opinion [fols. 1714-1715] dated January 22, 1926, attached thereto.

(Thereupon the letter above referred to and the joint opinion above referred to were marked by the Clerk, for identification, Defendant's Exhibits 98 and 99, respectively.)

Mr. Ketterer: If the Court please, I have just had marked for identification as Defendant's Exhibits 98 and 99, two documents. 98 is a letter from Stibbard, Gibson & Company to The Timken Roller Bearing Company dated February 2, 1926. It has to do with the registration, or the pending application for registration, to which reference has already been made in the testimony. To that is attached this Defendant's Exhibit 99, which is an opinion of trade-mark counsel in regard to that registration, and I should like to offer Defendant's Exhibits 98 and 99.

Mr. Nitschke: The Government will object to both of these exhibits, your Honor, on the ground that they are expressions of legal opinion as to the law of England.

[fols. 1716-1720] The Court: The objection will be overruled, and they will be admitted, to show that such opinion was given, and the defense is that they acted in pursuance of the receipt of such opinion.

Mr. Ketterer: That is correct.

Reading from Defendant's Exhibit 98:

[fol. 1721] The Court: Do you believe that last portion of that opinion is admissible on any ground?

[fol. 1722] Mr. Ketterer: Well, as I say, the only reason I offered the whole paragraph was because of the fact that in the last three lines, as the Court will observe, there is the suggestion that "the company take prompt steps to make known that you and you only are selling Timken bearings."

The Court: That portion will remain. I think the balance of it will be excluded.

[fol. 1723] Mr. Nitschke: Your Honor, I'm not sure I understand which portion was omitted from that expression. Was it the second last paragraph?

The Court: Candidly, it's undoubtedly my fault that it isn't clear what portion of it remains. I think it's the last paragraph—

Mr. Nitschke: Beginning with "Under the agreements as they at present stand, when the British Company's license comes to an end, you and you only"—

[fols. 1724-1729] The Court: That's right.

Mr. Nitschke: That paragraph?

The Court: That paragraph will go out.

[fol. 1730] I would like to have marked for identification as Defendant's Exhibit 100 a letter dated January 12, 1927, from Carr & Carr & Gravely to The Timken Roller Bearing Company.

(Letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 100.)

Q. Mr. Gravely, I have three sheets that have been marked for identification as Defendant's Exhibit 100. I will ask you whether or not you can tell us what they are (handing Defendant's Exhibit 100 to witness)?

A. They are a letter dated January 12, 1927, from the firm of Carr & Carr & Gravely, by me, to The Timken Roller [fols. 1731-1732] Bearing Company.

Mr. Ketterer: If the Court please, I should like to offer the first, second, third, and fourth paragraphs of this letter only.

The Court: It may be received.

[fol. 1733] I would like to have marked for identification as Defendant's Exhibit 101 a letter dated February 2, 1927, from Timken Roller Bearing Company to Carr & Carr.

(Letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 101.)

Q. Mr. Gravely, I have here a single sheet that has been marked for identification as Defendant's Exhibit 101, and I will ask you whether you can identify that (handing Defendant's Exhibit 101 to witness)?

[fol. 1734] A. That is a letter dated February 2, 1927, from The Timken Roller Bearing Company signed by J. F. Strough to the firm of Carr & Carr & Gravely, for my attention.

Mr. Ketterer: We offer Defendant's Exhibit 101.

The Court: It may be received.

[fol. 1735] I would like to have marked for identification as Defendant's Exhibit 102 a telegram dated April 1, 1927, from Strough to Messrs. Carr & Carr & Gravely.

(Telegram above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 102.)

Q. Mr. Gravely, I have here a sheet that has been marked for identification as Defendant's Exhibit 102. I will ask you to examine that and tell us what it is (handing Defendant's Exhibit 102 to witness)?

A. This is a telegram dated April 1, 1927, from J. F. Strough to Carr & Carr & Gravely.

Q. And Mr. Strough held what position with Timken Roller Bearing Company at that time?

A. He was secretary and treasurer.

Mr. Ketterer: We offer, if the Court please, Defendant's Exhibit 102.

The Court: It may be received.

[fol. 1736] I would like to have marked for identification as Defendant's Exhibit 103 a telegram dated April 2, 1927, from Carr & Carr & Gravely to Timken Roller Bearing Company.

(Telegram above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 103.)

Q. I have, Mr. Gravely, a paper that has been marked for identification as Defendant's Exhibit 103. Will you tell us what that is, please (handing Defendant's Exhibit 103 to witness)?

A. That is a telegram dated April 2, 1927, to Mr. J. F. Strough from Carr & Carr & Gravely.

Mr. Ketterer: We offer Defendant's Exhibit 103, your Honor,

[fol. 1737] The Court: It may be received. We'll take a recess at this time.

(Recess taken.)

Mr. Ketterer: If the Court please, the Clerk tells me Defendant's Exhibit 103, which was the telegram I read just before the recess from Carr & Carr to Timken was not offered. If it was not I should like to offer it at this time.

The Court: It will be received.

(Letter dated April 2, 1927, from Carr & Carr to Timken Roller Bearing Company marked by the Clerk, for identification, Defendant's Exhibit 104.)

Q. Mr. Gravely, I have three sheets clipped together and marked for identification Defendant's Exhibit 104. I will

ask you if you can identify that (handing Defendant's Ex-
[fols. 1738-1740] hibit 104 to witness)?

A. That is the letter dated April 2, 1927, to The Timken Roller Bearing Company for attention of Mr. Strough, from Carr & Carr & Gravely, signed by me.

Mr. Ketterer: I should like to offer Defendant's Exhibit 104.

The Court: It may be received.

[fol. 1741] Q. Mr. Gravely, I should like to ask you one question about this. In that letter which I have just read, that has been marked Defendant's Exhibit 104, you say that: "A joint application was at one time filed in Great Britain; but was abandoned (as we understand) because of subse-
[fol. 1742] quent adverse opinion of British counsel." What is the fact as to whether or not that was the opinion of D. W. Kerley and F. E. Bray that I read a few moments ago?

A. That is correct. That is the opinion on which the decision to abandon that application was reached.

(Letter dated April, 1927, from Timken Roller Bearing Company to Heman Ely, was thereupon marked by the Clerk, for identification, Defendant's Exhibit 105.)

Mr. Ketterer: I have, if the Court please, what purports to be a copy of a letter that has been marked for identification Defendant's Exhibit 105, dated April 1927, addressed to Mr. Heman Ely. It has no signature on it but the word "Secretary-Treasurer" appears on the second page, and in the left-hand corner "JFS", which I think appears to be Mr. Strough, who was then secretary-treasurer of the company.

[fols. 1743-1745] The Court: Is the letter along the same lines as those which have been read and offered here.

Mr. Ketterer: Yes, it is, your Honor. The part we want to direct the Court's attention to especially is the third numbered paragraph on Page 2. It is in connection with the line of testimony we are offering here now, that is, these were the general instructions given to Mr. Ely before he left for Europe.

The Court: All right.

[fol. 1746] (Cable dated April 5, 1927, from Timken to Stibbard, London, was thereupon marked by the Clerk, for identification, Defendant's Exhibit 106.)

Mr. Ketterer: I have had marked for identification Defendant's Exhibit 106, which is a cable from Timken dated April 5, 1927, to Stibbard-Gibson, in London, which I should like to offer in evidence.

The Court: It may be received.

(Letter dated April 6, 1927, from Stibbard-Gibson & Co. [fols. 1747-1752] to Timken Roller Bearing Company was thereupon marked by the Clerk, for identification, Defendant's Exhibit 107.)

Mr. Ketterer: I have here a letter marked as Defendant's Exhibit 107, which purports to be a copy of a letter from Stibbard-Gibson to the Timken Roller Bearing Company dated April 6, 1927, and I should like to offer it in evidence.

The Court: It may be received.

[fol. 1753] Mr. Ketterer: As for the exhibits that are remaining here, when Mr. Dewar's deposition was taken in [fol. 1754] London he said that he couldn't recall what disposition was made of the trade mark "Timken" in Germany after the company withdrew from Germany in 1934. He said that was done. Now, this correspondence shows, in point of fact, what was done with the trade mark "Timken". It didn't happen to be available in England at the time we were over there, and it shows the mark was transferred to British Timken, and if counsel for the Government is willing to stipulate it was transferred to British Timken, ultimately, I have no desire to encumber the record with this correspondence.

Mr. Nitschke: That is the trade mark rights in Germany?

Mr. Ketterer: That is correct. After we withdrew from Germany in 1934, subsequently, between 1937 and '38 the mark in Germany was transferred on the registrar in Germany to British Timken Limited.

Mr. Nitschke: Well, if that is the fact I certainly won't object to it going in. I certainly have no knowledge of it.

Mr. Ketterer: Well, that is the fact, there is not any question about it.

[fol. 1755] Mr. Nitschke: I do not want to object to counsel making the statement for the record.

Mr. Ketterer: So, with that, it won't be necessary to offer the balance of the correspondence.

Mr. Nitschke: I would like to say this, that the defendant's answer to the interrogatory with respect to trade

marks doesn't show the transfer of the German trade mark to the British Company.

Mr. Ketterer: I didn't understand that.

Mr. Nitschke: I say that the answer to the interrogatory requiring information as to the trade mark rights doesn't show that British Timken was assigned the right to the mark in Germany.

Mr. Ketterer: It doesn't show that?

Mr. Nitschke: No, it does not.

Mr. Ketterer: Well, your Honor, it was overlooked because it certainly was in their name in Germany, there is no question about that.

Mr. Nitschke: I won't raise any point about it at this time, because I don't want to commit myself to the fact, except that if it should turn out otherwise I would like to make an objection.

There is no doubt about it being a fact that it is not included.

[fol. 1756] Mr. Ketterer: That is an oversight. That was prepared in England, and that is where the registration is. There is no question about it.

Mr. Nitschke: All right.

Cross examination of Joseph J. Gravely.

By Mr. Nitschke:

Q. Mr. Gravely, I believe you said there are only a few countries today in which the mark isn't registered by either American Timken, British Timken or French Timken?

A. That is true, I don't think my answer was quite complete on that.

Q. You listed Eritrea, Virgin Islands, Syria, Ceylon and so on and so forth. There were about ten or eleven countries?

A. That is right. And I should have said that Timken Roller Bearing Company filed applications in all of those countries. I only mentioned Virgin Islands, but as a matter of fact we filed in all of them. In some of them we have found that British Timken had already obtained registration or at least have an application on file. I think that is the situation in Nigeria, for instance, possibly in Cyprus, two of them.

Q. It just has an application on file?

[fol. 1757] A. I think it may have a registration. I don't have the complete facts at the moment but I do know we filed in those various countries that I mentioned in my direct examination and that most of them are still in process. In some few cases we have found that British Timken already has filed. I have some of those, I know that in some cases the British Timken applications have matured into registrations.

Q. Do you know if a registration has been made in Saudi Arabia?

A. No, I do not but there are certain other countries where a registration must be based on a British registration or else there must be actual use in the particular country. And what I meant to say in my answer was that we had checked over the list of all countries where we felt that the Timken Roller Bearing Comany could file, and that list that I read was the last list of such countries in which we didn't have registrations. Then we did proceed to file the applications.

Q. So there may be other countries where you have not registered besides those you mentioned?

A. There are undoubtedly countries where we, that is to say the Timken Roller Bearing Company, have not registered due to the fact, as I say, that the registration either requires actual use of the mark, and we haven't been using [fol. 1758] it there, or that the registration, as in the case of a number of British Colonies, must depend from a British registration. Now, what I cannot say is whether or not British Timken has either applications or registrations in all of such countries. As I mentioned a moment ago we have found where they have in some few countries, as Ceylon and Cyprus, as I recall it, and Nigeria, that British Timken is ahead of us with a registration. So they may or may not have applications in all the remaining countries.

Q. So there may be countries of that type where the mark is not registered at this time?

A. Yes, that is right.

Q. Besides those you mentioned?

A. That is right.

Q. I wonder if you could tell us what countries in the world the mark was not registered by American Timken as of January 1st, 1928? Would it help ~~you any if I~~ showed you Government's Exhibit 149?

Mr. Nitschke: May I suggest, your Honor, perhaps you could follow this by looking at Government's Exhibit 28, which is a list of the various countries allocated to British Timken, French Timken and American Timken.

[fol. 1759] A. In other words, you want me to go through this list and pick out those registrations which were in existence as of—what date was that?

Q. I would like you to tell the Court what countries there was no registration of American Timken as of January 1st, 1928.

A. Well, that would depend on my knowledge of geography whether I could list all the countries you ask me to from my recollection. In other words here is a list of the registrations as they existed as of that date, and it seems to me that the rest is simply a matter of looking at the map of the world, and what is not on here is where it was not registered.

Q. Well, based on what you have there, can you give us what countries you can say the mark was not registered in by American Timken in 1928?

A. As of 1928?

Q. As of January 1, 1928.

A. Well, of course, we always start out with the group of England, France and Germany. There was no registration in New Zealand in the name of American Timken. The Dominican Republic registration was later. The Belgian Congo registration was later. The Bolivia registration was later.

[fols. 1760-1762] Q. In other words, you mean there was no registration as of January 1st, 1928?

A. As of January 1st. This exhibit, you remember, gives the date of each of these registrations. There was none in Colombia, Costa Rica, Cuba, Curacao, Dominican Republic, Dutch East Indies, Dutch Guinea, Equador, Ethiopia, Guam—of course there couldn't have been any registration in Guam at that time, Guatemala, Haiti, Honduras, Hong Kong, Ireland, Iran-Iraq, Jamaica, Leeward Islands, Manchuko, Liberia, French Morocco, Newfoundland, Nicaragua, Panama, Paraguay, Russia. Of course, with Russia, we hadn't recognized Russia at that time so there, again, there could not have been a registration in 1928. Salvadore, Siam, Tangier, Trindad and Tobago, Tanna Tuva and Uruguay.

Now, as to those South American countries which I have

read, I will call your attention to the fact that there was an inter-American registration in 1922, so that as of 1928 there were in effect registrations in some of those South American countries, whichever ones had ratified the Inter-American Convention as of that time.

[fol. 1763] Cross examination of Joseph J. Gravely (Continued).

By Mr. Nitschke:

Q. Mr. Gravely, before lunch I believe you had by reference to Government's Exhibit 149, named some countries in which American Timken did not have registered the mark "Timken" on January 1, 1928.

A. That is true, and I'm not quite sure I had finished the answer, because just at the adjournment I was pointing out that I read off some South American countries in which, as of January 1, 1928, there were no individual registrations but I pointed out that in 1922 the Timken Roller Bearing Company had taken out a registration under the Pan American Convention, or the Inter-American Convention, as it was afterwards known, which would in effect be a registration in those of the countries which had ratified it as of that time. So that I really read into the record as not having registrations more countries than I should have. What I meant was there was no individual registration in those countries.

[fol. 1764] Q. As of January 1, 1928, in what countries had British Timken or French Timken registered the mark?

A. You are asking now the affirmative question in which countries they had registrations as of 1928?

Q. Yes.

A. The other one was in reverse, you remember.

Q. Yes.

A. Well, this list shows no registrations by British Timken as of January 1, 1928, nor does it show any registrations by French Timken. It has appeared here, though, that the German representative, Max Prausnitzer had a German registration which, I am quite sure, was much earlier than 1928, and the predecessor, in other words, the Societe de Mecanique de Gennevilliers, which was the French agent or subsidiary, or which was the French company of British

Timken, had a registration in 1921. There was a letter which was read here yesterday which called attention to that.

Q. But British Timken and French Timken had no registrations of January 1, 1928, anywhere?

A. I don't think there was a French Timken at that time. I wouldn't be sure as to that.

Q. Well, British Timken had none?

A. That's right.

[fol. 1765] Q. Anywhere?

A. That's right, so far as this list shows.

Q. And that list is accurate, as far as you know?

A. That's right, these were prepared with my cooperation and under my general supervision. I must say, though, that our knowledge could be depended upon as being absolutely complete only as to our own registrations. We were dependent, naturally, on British Timken and their records for some of those other matters.

Mr. Nitschke: That's all.

Mr. Ketterer: That's all, Mr. Gravely.

[fol. 1766] Thereupon, the Defendant, further to maintain the issues on its part to be maintained, called as a witness Stephe B. Ladas, who, being first duly sworn, was examined and testified as follows:

Direct examination of Stephen B. Ladas.

By Mr. Ketterer:

Q. State your name, please.

A. Stephen B. Ladas.

Q. Where do you live?

A. In New York.

Q. What is your profession?

A. We are handling foreign patents, trade-mark and copyright work for clients, who are attorneys.

Q. Are you admitted to the bar?

A. No.

Q. Where were you educated?

A. In the law school of Athens, in Greece, then in the School of Political Science, at Paris, and Harvard Law School.

Q. Did you graduate from the Law School at Athens?

A. Yes.

Q. Did you practice law in Greece before you came to this country?

A. Yes.

Q. What degree did you obtain from the University of Athens Law School?

[fol. 1767] A. Degree of Laws, as you call it.

Q. What degree did you obtain from the School of Political Science in Paris?

A. Diploma, which is equivalent to A.M. in this country.

Q. Equivalent of what?

A. A.M., Master of Arts.

Q. How long did you attend Harvard Law School?

A. Four years.

Q. And you graduated there?

A. I graduated in 1926 with LL.B. and took my Doctor's degree in 1927.

Q. You have a Doctor's degree from Harvard?

A. Yes.

Q. And in what subject?

A. International Law, generally, and jurisprudence.

Q. Did you have any connection with Harvard Law School after you graduated in 1926 and got your Doctor's degree in 1927?

A. Yes, I stayed there in charge of the Bureau of International Research for Harvard for three years after 1927, and during that time I took charge of courses in international law, substituting for Professor Hudson.

The Court: For Professor who?

The Witness: Professor Hudson.

Q. How long did you teach there at Harvard, substituting [fol. 1768] for Professor Hudson?

A. 12 weeks.

Q. What is your present occupation?

A. Handling foreign patents, trade-marks and copyright cases.

Q. Have you written any books on the subject of trade-marks or trade-mark law, either domestic or foreign?

A. Yes, I have written, when I was in Harvard, the book on International Protection of Industrial Property, which includes patents, trade-marks, trade names, unfair competition, and so on. That was in 1930.

Q. Have you written any other works on that same general subject?

A. The year before I had published a smaller book named International Protection of Trade-Marks by the American Republics, and in 1938 I published a two-volume book on International Protection of Literary and Artistic Property.

Q. Are you connected at the present time with any organizations that have to do with trade-mark law, either domestic or international?

A. Yes, I happened to have served as Chairman of the International Commission on Industrial Property of the International Chamber of Commerce, and also I am Chairman of the International Committee of the U. S. Trade-Mark [fol. 1769] Association, and I am a member of the Executive Committee of the International Association for the Protection of Industrial Property, and also of the International Law Association, Industrial Property Committee.

Q. Are you presently connected with any periodicals that have to do with the reporting of trade-mark law?

A. I was for a number of years Editor-in-Chief of Trade-Mark Reports.

Q. Is that an American publication?

A. That's an American publication.

Q. Are you connected with any publication that has to do with the reporting of trade-mark law on an international basis?

A. I'm suposed to write each year, which I don't usually do, an article reviewing decisions and legislation on industrial property for the magazine which is published by the International Bureau for Industrial Property, at Berne, which is called LaPropieta Industrielle.

Q. What is that group that you just referred to, the International Association for the Protection of Industrial Property?

A. Since 1883 there has been an international convention for the protection of industrial property covering patents, trade-marks, trade names, designs, etc. That convention has been revised periodically, and the last time at London [fol. 1770] in 1934, and it now includes about 40 countries. We are members, we are part of that convention.

Q. By "we" you mean who?

A. I mean the United States. Excuse me.

Q. Yes.

A. And that convention is supposed to have created a union for the protection of industrial property, and the union has a central organ, a central bureau at Berne, Switzerland, which publishes this magazine and generally supervises the protection of industrial property throughout the world.

Q. Now, in addition to the books that you have described, have you written any other articles on the subject of trade-marks?

A. Yes, sir, from time to time.

Q. Over how many years?

A. Oh, ever since I came to New York, in 1930.

Q. Have you continuously since 1930 been engaged in the practice that you have described?

A. Yes, sir.

Q. Or worked in respect of patent and trade-mark matters on the basis of international law?

A. That's right.

Q. I will ask you, Dr. Ladas, whether or not you have [fol. 1771] kept in touch with and kept yourself informed about the laws of the various nations on the subject of trade-marks?

A. Necessarily, because that is my job. As I said before, I'm supposed to be, and my firm, advisors on foreign patent law and trade-mark law and copyright law for our clients, who are all attorneys, particularly patent attorneys and trade-mark attorneys. So, when they have any problem on foreign trade-marks and patents they usually come to us because we are supposed to have knowledge and experience on the foreign laws, as well as on the working of foreign laws. In our business, on my desk every day I may handle 40 or 50 cases involving trade-marks in every conceivable part of the world, from Great Britain to South Africa, to China, to Argentina.

Q. Did I ask you with what firm you are presently connected?

A. Langner, Parry, Card & Langner.

Q. In New York City?

A. New York City.

Q. Are you a partner of that firm?

A. Yes.

Q. Now, I want to ask you, Dr. Ladas, whether or not you

have kept yourself informed as to the trade-mark law in Great Britain and the United Kingdom generally?

A. Yes, sir.

[fol. 1772] Q. And are you familiar with the principles of trade-mark law as they existed in 1925, 1926, and 1927, in Great Britain?

A. Yes, sir.

Q. I would like to ask you first of all, doctor, this question. Is there any difference in England between a common law trade-mark right and statutory trade-mark rights?

A. Yes, sir.

Q. Will you explain what that difference is under the English law, or was in 1925, 1926, 1927?

A. Well, there is a very important difference, in this respect.

[fol. 1773] Q. Proceed.

A. In Britain we have two, shall I say, compartments of law with respect to trade-marks, the passing-off act, and the statutory trade-mark law.

The Court: What is the first one?

The Witness: Passing-off act.

A. (Continuing:) Trade-marks which are registered are protected under the statutes. Trade-marks which are not registered are protected by the passing-off act.

Q. And what did the passing-off act involve in respect of the protection of a common law trade-mark ownership in England?

[fol. 1774] A. A passing-off action protected unregistered trade-marks in England against—

[fol. 1775] The Witness: It protects unregistered trade-marks in England, provided a case is made that the defendant who misuses the trade-mark of the plaintiff is passing off his product for the product of the plaintiff. In other words, provided there is a misrepresentation with respect to the origin of the goods.

Q. Now, you said there was a statutory proceeding for protecting a trade-mark that had been registered in England.

A. Yes, sir.

Q. And, in what respect, if any, did that differ from a passing-off proceeding that was designed to protect the ownership of an unregistered mark in England?

A. In the case of a registered trade-mark the plaintiff was not bound to make a case of misrepresentation; if he could

show that his mark had been used by the defendant there was trade-mark infringement, or there is trade-mark infringement.

Q. Am I correct, then, doctor, in saying that the difference was in one case, that is, the passing-off action, it was necessary for a plaintiff to show that there was misrepresentation [fol. 1776] as to the origin of the goods, whereas in an action in respect of a statutory trade-mark or registered trade-mark, no such proof was necessary?

A. Yes, sir.

Q. I want to ask you this, doctor: How was, or how could a common law trade-mark be established in England in 1925, 1926, and 1927, what conduct or procedure was necessary in respect of a manufacturer to establish the existence of a common law trade-mark in England?

A. Use. If he could show that he has used the trade-mark in connection with his goods so that the public has identified and distinguished his goods by that trade-mark, he had established common law ownership of that trade-mark.

Q. Over what period of time was it necessary under the law at that time for him to establish that use?

The Court: What kind of law, statutory law?

Mr. Ketterer: We are talking about the common law.

The Court: I know you were talking about common law, but in this question you said "under the law." Read the question, please.

(Last question read by the reporter.)

Q. Under the common law.

Mr. Ketterer: Thank you, your Honor.

[fol. 1777] A. No stated or definite period had to be shown. Any use which was made for the purpose of identifying and distinguishing the goods of the user was sufficient to establish common law ownership of the trade-mark.

Q. Was there any difference in respect of establishing a registered or statutory trade-mark as to user?

A. In England you can obtain a trade-mark registration without necessarily having used your trade-mark before registration. In other words, intention to use is sufficient in order to register a trade-mark, or to obtain a registration.

The Court: What period are you referring to, 1928, or when?

Mr. Ketterer: 1925, 1926 and 1927.

Q. The answer you gave, Dr. Ladas, as to the establish-
[fol. 1778] ment of a statutory trade-mark right, or its registration in England, was directed to the years 1925, 1926, and 1927, is that correct?

A. Yes, sir.

Q. Now, doctor, assuming that a manufacturer could show use of a mark for a period commencing in 1910 and running continuously to 1925, the use being the stamping of the trade-mark word upon the manufacturer's product, and assume, doctor, that sales were made by the manufacturer of his product in England with such mark on the product for the period I have indicated, namely, 1910 until 1925. I would like to ask you, first of all, whether or not you have an opinion as to whether a manufacturer making such use of a mark for that period would have any common law ownership in a mark based on such use?

A. Definitely.

Q. What is your opinion?

A. Not only would he have acquired ownership under common law, but his showing in a case of passing off against somene else who has used that trade-mark would be extremely strong, because through the use for a period of 15 years he would establish that the public definitely identified certain products with that trade-mark and, therefore, the use of the same mark by any other person would amount to [fol. 1779] misrepresentation, without necessarily his having to show that there was an actual confusion in the trade.

Q. Now, doctor, would the opinion you have just given be in any wise affected, if at the same time that the user that I described in the preceding question for the British manufacture was going on for the period I indicated, an American manufacturer imported goods bearing the same mark, but which were used by persons who had imported equipment from America and were using the goods for replacement purposes in their product? First of all, do you have an opinion in respect of that?

[fol. 1780] Q. Dr. Ladas, in answer to the preceding question you gave your opinion as to whether or not a British manufacturer who had marked his goods with a mark for a period of from 1910 until 1925 with a trade-mark, as to whether or not such a manufacturer would have a common

law right in the mark established as a result of such user. Now I want to ask you whether or not your opinion in that regard would be changed in any respect if you add to the facts that I assumed in the preceding question this further fact, that during at least part of the time that the British manufacturer was making and selling goods in England bearing the mark for the period I have indicated, there was an American manufacturer who was also importing goods into England which bore the same mark, but which goods so imported were being used and were imported as replacements on capital goods that had been manufactured outside of England and had been brought into England?

A. The ownership at common law of the trade-mark of the British manufacturer under the conditions described in the preceding question would not be affected by this incidental use, which I believe it to be, of the American manu-
[fol. 1781] facturer, on the assumption that such incidental use was limited—

A. On the assumption that such incidental use was limited to a special class of customers or purchasers, rather than to the general public.

Q. And the basis of that answer and that opinion is what, doctor?

A. Well, again I have to explain at length rather than briefly. The British manufacturer had identified his products for the general public—

[fol. 1782] The Witness: I was trying to lay down, your Honor, the basis for saying what I was going to say. In other words, I was trying to say, provided the general public in England knew the trade-mark of the British manufacturer and knew that that mark identified a certain kind of product, that condition of facts on which the law is based would not be affected by an incidental use which is not to the general public but may be only a limited use, to a limited class of persons.

Q. Was there any rule of law in England in 1925, 1926,
[fol. 1783] and 1927, that had to do with the matter of the assignment of trade-marks in gross, or otherwise?

A. The statutory law of England at that time was the same as the common law of England, that is, a mark could be validly assigned only with the entire good will of the business in connection with which it was used.

Q. And I take it from what you say, doctor, that there could not be in England, as of 1925, 1926, and 1927, an assignment of a trade-mark in gross?

A. No.

Q. Disassociated from the business with which it had been built up?

A. Definitely not.

Q. The opinions you have given, doctor, in respect of the trade-mark law in England for the period 1925, 1926, and 1927, I will ask you for what period of time that remained the trade-mark law of England?

A. Are you asking in regard to assignments specifically?

Q. Yes, first.

A. The law changed in 1938.

Q. In 1938?

A. Yes.

Q. And can you tell us when the trade-mark law of England changed in 1938, what the change was?

[fol. 1784] A. It now provides that the trade-mark may be assigned with the good will of the business or without.

Q. In other words, as of the present date, or since 1938, an assignment of a trade-mark in gross that had been registered—is that a qualification?

A. Correct, if it has been registered.

Q. —may be assigned in gross?

A. Yes, that's right.

Q. In respect of the common law trade-marks in England as of the present time, has there been any change in the law since 1928?

A. No.

Q. On the subject of assignment?

A. No. In other words, today a common law unregistered trade-mark can only be assigned with the good will of the business.

Q. And is it correct, doctor, to say that an agreement to assign a common law trade-mark as of the present time in England that did not carry with it the obligation to assign the good will of the business with which the mark was associated, could or could not be enforced?

A. Without obligation to assign good will?

Q. That's correct.

A. It could not be enforced in the sense of being able to transfer the validity in the trade-mark.

[fol. 1785] Q. I want to ask you, doctor, whether or not in 1928 and in 1927 there was any distinction observed in the English law between the equitable ownership of a trade-mark and the legal ownership of it, whether it was a common law trade-mark or whether it was a statutory trade-mark?

A. There was no provision in the statute prior to 1938 about equitable ownership as distinguished from legal ownership. The Act of 1938 for the first time provides for that possibility. But I think that the Act of 1938 is declaratory of the common law prior to 1938, so that with regard to unregistered trade-marks prior to 1938, you could have a situation where the legal ownership belong to one party and the equitable ownership to another.

Q. I believe, doctor, that you have examined the contract that was made between the Timken Roller Bearing Company and the British Timken Limited dated as of January 1, 1928, and especially the trade-mark provisions of that contract?

A. Yes, sir.

Q. Can you tell us whether or not, under British law in 1928, the provisions of that contract in respect of the trade-mark would have the effect of establishing in the American Company the equitable ownership of the mark?

A. Definitely, I think.

Q. Now, as part of your business of advising and dealing [fol. 1786] with international trade-mark law, have you kept abreast of and kept yourself informed concerning the trade-mark law of France

A. Yes, sir.

Q. And what was the general principle of trade-mark law in France in respect of the effect of the registration of a mark in France as of 1921?

A. The first party to register a trade-mark in France acquired ownership, provided there was no prior use by another. In other words, a prior user could annul a subsequent registration by another party.

Q. Now, doctor, if you assume the registration of a trade mark by a manufacturer in France in 1921, was that ownership absolute, or could it have been set aside on any basis?

A. It could have been set aside on a showing of prior use by another.

Q. And that showing would have to be made where?

A. Before the courts in France.

Q. Now, have you kept yourself informed as to trade-mark law in Germany from 1918 down to the present date?

A. Down to 1939, yes, sir.

Q. Down to 1939?

A. Yes.

Q. During that period, can you tell us the effect of the [fol. 1787] registration of a mark in Germany, as to whether that was absolute ownership of the mark or whether it could be set aside on any basis?

A. Contrary to France, in Germany a registration grants ownership, and the registration cannot be set aside on proof of prior use.

Q. Prior user, then, under the German law, was immaterial?

A. Yes, sir.

Q. And did that continue to be the law of Germany from 1918 down to 1939, to your knowledge?

A. That is right.

Q. Now, in Europe generally, were there any other jurisdictions in which the registration of the mark could be upset on any basis or for any period of time?

A. Well, we have really three groups of countries in Europe, one group, a smaller one, in which the law is similar to that of Germany, in the sense that the prior registrant had ownership of the trade-mark; then, a second group consists of countries where a prior user could upset the registration in the name of another at any time; and then a third group where the right of the prior user to cancel a subsequent registration was generally limited in time, he could only take action within a certain term, usually three years, with the exception of cases where a registrant was [fol. 1788] not in good faith in obtaining the registration, or when he knew of the prior user's better right, then the registration could be cancelled even after the term set by law.

Q. Now, as to the first class of countries that you mentioned, namely, those in which prior user was immaterial and in which you say that a registration was proof absolute of ownership of the mark that could not be set aside on any ground, can you tell us what countries fell into that classification?

A. I would like to consult a few notes that I kept because of the details involved.

(Witness consults notes.)

Finland is such a country. That's all, only Finland.

Q. That is, of the countries in Europe, if a registration had been obtained in Germany and in Finland, the registration was absolute proof of ownership and could not be set aside?

A. That is right.

Q. Then you said there was a second group of countries in which, as in France, a prior user could come in and set aside the registration of the mark. Can you tell us what countries those are?

A. At any time. That's Belgium, Greece, Italy, Luxembourg, Netherlands, Portugal, Roumania, Sweden, Switzerland, and Turkey.

[fol. 1789] Q. And there was no limitation as to time in which the registration could be set aside in any of those countries?

A. That's right.

Q. Assuming that it would be possible for some person claiming prior user to demonstrate to a court in such country that there had been user that antedated the registration?

A. Yes. I would like to make one clarification, that in two countries the law has changed since then. Italy, for instance, in 1942, Luxembourg in 1945, and Portugal in 1938, those three countries would allow registration at any time, after many years, even, and they changed the law and now they allow it for a certain time.

Q. In other words, they have a limited period now?

A. That's right.

Q. As to the third class of countries, you said there were certain countries for which varying periods of prior user could set aside the registration of a mark.

A. That's right

Q. What countries are they, Dr. Ladas?

A. Austria—

Q. And within what period?

A. Three years.

Q. Give us that at the same time.

A. Yes. Austria, three years; Bulgaria, one year; Czecho-

[fol. 1790] slovakia, three years; Denmark, five years; Yugo-

slavia, two years; Norway, three years; Poland, one year; and Spain, three years.

Q. Now, you also said, I believe, that in those countries, in the latter group you have just described, that even though there were time limitations, if the person who registered the mark knew of the prior user, the time limitation did not apply. Am I correct in that?

A. Correct.

Q. And was that the law in 1928 in respect of those countries?

A. Yes, sir.

Q. Subject to the change as to the three countries that you outlined a moment ago?

A. Correct.

Q. What is the fact, doctor, as to whether the right of a prior user of the mark in any of the jurisdictions of the three classes which you have outlined could waive that right by contract in respect of this right to set aside a registration?

A. Yes, sir, he could waive the right.

Q. In all of those countries?

A. Yes, sir.

Q. Again going back to the contract that was made and dated as of January 1, 1928, between The Timken Roller [fol. 1791] Bearing Company and British Timken Limited, and referring specifically to the paragraphs of the contract that have to do with trade-mark rights, and assuming that there was a possible prior user on the part of British Timken Limited in any of the countries in which prior user might be used as a ground for setting aside a registration, what is the fact, in your opinion, doctor, as to whether the contract had the effect of waiving such right on the part of British Timken Limited in favor of American Timken?

A. If I recall correctly the articles in question—I would have to see them again.

Q. All right.

Mr. Nitschke: What article is it, now?

The Witness: Articles 3 and 4.

Mr. Nitschke: What are you referring to?

Mr. Ketterer: Plaintiff's Exhibit 12, which is also Defendant's Exhibit 23, a copy of the January 1, 1928 contract, between Timken Roller Bearing Company and British Timken Limited.

Mr. Nitschke: Thank you.

Q. I want to direct your attention, doctor, to this Article 3-(a), (b), and (c) of the contract which has been offered in evidence here as Plaintiff's Exhibit 12 and also Defendant's Exhibit 23 (handing contract to the witness.)

[fol. 1792] A. In so far as Clause (a) of Article 3 provides that nothing will be done to prejudice the rights of the parties hereto, it would seem to me to amount to a waiver on the part of the British company of any action to cancel any registration of the American company.

Q. Dr. Ladas, you have testified about the trade-mark law of Great Britain. I want to ask you to what extent the trade-mark law of the dominions and colonies of Great Britain, with the exception of Canada, was based upon or related to in any way, the trade-mark law of Great Britain itself?

A. Substantially, the law of the British colonies was the same as the British law for that period.

Q. And was there in 1928, or has there been since that time, any colony or dominion of the United Kingdom in which registration of the mark was in any way dependent upon registration in Great Britain?

A. Yes, there are six or seven small colonies, colonial possessions, where a trade-mark cannot be registered except upon the production of a certified copy of the British registration.

Q. And will you tell us what they are, doctor?

A. Yes. Aden, British Borneo, British Somaliland, Falkland Islands, Guernsey, Jersey, and Northern Rhodesia.

Q. And in those jurisdictions registration was dependent upon registration in Great Britain?

[fol. 1793] A. That's right.

Q. Now, as to Australia, upon what was the trade-mark law of Australia based in 1928, and since that time?

A. Very much like the British trade-mark Act of 1905 and 1919.

Q. And New Zealand?

A. New Zealand also.

Q. And British South Africa?

A. Union of South Africa?

Q. Union of South Africa.

A. Yes.

Q. What is your answer?

A. The law is the same, substantially. The procedure is changed somewhat, but in substance the law is the same.

Q. I want to ask you this, doctor. To obtain registration of a trade-mark under the 1938 Trade-Mark Act in Great Britain, what if any showing was it necessary for an applicant to make to obtain such a registration?

A. You said under the Act of 1938?

Q. That's correct.

A. Any trade-mark?

Q. Yes, any trade-mark.

A. The British law makes a distinction between four or five kinds of subject matter which can be registered as a trade-mark. Ordinarily, registration is granted without any [fol. 1794] difficulty to an invented word, or a signature, or a word which has no reference to the character or nature of the product. Some other things cannot be registered unless distinctiveness is shown, and that applies particularly to surnames.

Q. Will you explain a little further what proof of distinctiveness has to be shown in respect of the registration of a surname under the 1938 law in England?

A. The amount of distinctiveness to be shown is governed by the regulations and the practice rather than by the law itself. The practice in England is that you have to show—may I make just one interruption? The British registry is divided into part A and part B of the registry. In part B the showing is much less. For a registration in part A the showing must be extremely convincing and persuasive.

Q. What is the difference between part A and part B of the registry?

A. There are many differences, the essential one being that a part A registration may become conclusive and incontestable at the end of seven years, whereas a part B registration does not become conclusive. So that people ordinarily prefer to get a part A registration.

The Court: In all of these things are you now talking [fol. 1795] about statutory law of Great Britain, or are you talking about law as developed by the judicial decisions in the British courts?

The Witness: The particular question I have been asked, your Honor?

The Court: No, all of these questions.

The Witness: This is all statutory law—

The Court: You were referring to the practice, and I'm especially interested whether in referring to practice you were referring to statutory law of Great Britain or whether you were referring to the judicial decisions which have brought about the practice.

The Witness: I am referring, your Honor, to the practice of the Controller of the Patent Office, as his practice has been reviewed by court decisions and now prevails in England.

The Court: Well, does—

The Witness: The rulings of the Controller of the Registry.

The Court: Does the Controller set rules and regulations?

The Witness: Yes.

The Court: On his own account?

The Witness: He is authorized by the Act to do so.

[fol. 1796] The Court: He is authorized by the Act to do so, and then that is subject to judicial review?

The Witness: That's right.

The Court: And when you are referring to the practice now you are referring to the regulations as promulgated by the Controller, as either affirmed or reversed by the judicial decisions?

The Witness: That's right.

Mr. Ketterer: If the Court please, I thought that Dr. Ladas had made that statement earlier, that when he was talking about practice he was talking about something that wasn't in the statute.

The Court: Well, particularly with reference to this situation, I was quite concerned about what he meant by practice. I wanted to clarify it.

Q. I would like to ask you this, doctor: You say that it is possible to get a registration under either part A or part B of the Trade-Mark Act of 1938 in Great Britain. If you do obtain a registration under either one, part A or part B, does that make any difference as to the assignability of the mark so registered in gross?

A. No.

Q. Either type of registration is assignable in gross?

[fol. 1797] A. Correct.

Q. Now, I want to assume this set of facts, doctor. Assume that a British manufacturer was the registered owner of a trade-mark that consisted of a surname and was using the mark in England, and that an American manufacturer having a trade-mark in its corporate name sought to import its

goods into England, either marked with another mark or unmarked, would it be possible for the British manufacturer under English law to stop such importation under such circumstances?

A. Provided the name of the British manufacturer was well known and had acquired reputation and public acceptance, then the importation of products bearing the name which consisted mainly of the principal name of the British company, or of the trade-mark, could be stopped on a passing-off action.

Q. And under those circumstances an American manufacturer could be prevented from importing his products into England, whether the goods were marked with any mark or whether they were marked with a different trade-mark than the English trade-mark?

A. Yes, on the assumption that the name of the American Company was so similar. In other words, the importation would be stopped or would be suppressed because there was an infringement of the British name or trade-mark by the [fol.1798] use of another name.

Q. And would that rule of law obtain in respect of imports under similar circumstances by an American manufacturer into France?

A. Yes, sir.

Q. And how about the continent of Europe generally?

A. I should say the same thing, a little stronger even because of the fact that in those countries there were no well-developed unfair competition laws, so that trade-marks are much more strictly protected than in some others.

Q. I want to ask you one further question, doctor. Under the 1938 Trade-Mark Act of England, is it possible to license the trade-mark?

A. Yes, sir.

Q. And under the French Trade-Mark law in 1928, and from that time down to the present time, is the license of a trade-mark valid?

A. License is always permitted in France.

Q. How about Germany and other continental countries?

A. In all of them, practically, a license does not impair the protection of the validity of the trade-mark.

[fol. 1799] Cross examination of Dr. Ladas.

By Mr. Stedman:

Q. Dr. Ladas, you testified, as I recall, that it was not necessary under the law of England, that you could obtain a registration in England on the basis of user alone, is that right, under the Common Law?

A. You could obtain, was the question?

Q. What is that?

A. That you could obtain on the basis of user.

Q. Would that apply to any sort of a name, whether it was a fanciful name or whether it was the name of a person, or any name whatsoever?

A. If an invented word, the act says you could obtain a registration without any showing of use. Where a surname, you would have to make a very persuasive showing of distinctiveness.

Q. And what do you mean by distinctiveness?

A. Just what we call in this country, a secondary meaning; the surname has acquired a secondary meaning.

Q. Would you explain what that means as far as the law of England is concerned?

A. Taking the word Timken, it means the name of a person, that is the primary meaning of the word. The secondary meaning Timken means the name of a certain product of a certain manufacturer, designated or defined by that name.

[fol. 1800] Q. In other words, the word Timken ordinarily could be used by anybody, is that right, or just by a person by the name of Timken? I mean, essentially, in the absence of a secondary meaning.

A. I thought your first question was as to the use of a surname. Now you are talking about user.

Q. I am talking about the common law.

A. I said if the British owner of the trade-mark Timken had used the name sufficiently as to give it a secondary meaning, then no one else could use that same name.

Q. So that if you had a situation in which this name meant only, let's say, the British Timken Company, that then that company and only that company would have the right to use the name and could prevent anybody else from using it?

A. Correct.

Q. Could they prevent them using it absolutely, or would there be any qualifications to that prevention?

A. They could prevent—there are two rules about that. First that a person could use his family name, in other words, if a person named Timken in England he could use Timken but he couldn't use the word Timken associated with the word Company, for instance, or Limited, because [fol. 1801] then an action would lie because it would mean he was passing off his goods for the goods of British Timken.

Q. Suppose under the British Common Law that two individuals, products of two individuals were known in the country, both of them under the name "Timken", each of them being produced, let's say, by a company which is properly using the name "Timken" in its name, would it be possible for both of those companies or individuals to sell in England under the Common Law?

A. The law recognizes the concurrent right in a trademark. If those two persons bonafidely and honestly used that name they could use it, but the court, if advised of the matter, would define the conditions under which they could use the name, distinguish the localities, the class of customers, and so on.

Q. For instance if one particular man was selling a product for a certain purpose, the other man could sell it for use to a different class of purchasers, would that be one qualification that might be made which would enable both of them to use the mark?

A. The test would be whether there was deception of the public involved.

Q. In other words, whether there is any confusion between [fol. 1802] the two products?

A. Yes.

Q. Is it correct to say that to the extent the two companies could sell their product without confusing the one product with the other, each would be free, they would both be free to use the same mark?

A. I think you will have to distinguish between confusion and deception of the public. I think the court would rather look for absence of deception of the public. And deception in that sense means that someone who bought the goods marked Timken of one manufacturer would buy them thinking they were the manufacture and goods of another. That is the sort of deception which the court would prevent.

Q. Suppose it could be shown that without deceiving members of the public as to the nature of the product or without deceiving them in the sense of passing off the product of one manufacturer as that of another, as the product of another, the two individuals could sell concurrently under the same name in England, would there be anything to prevent that under the Common Law of England?

A. No, so long as you assume that the court would find that there is no deception.

Q. And that was the law in England in 1928?

A. That is right.

[fol. 1803] Q. And it is the law in England today?

A. Yes.

Q. Now, with respect to registration, you indicated that under the law in 1925 to 1927, I believe it was, there could be a registration of the name under the Registration Act, under the statute, as distinguished from the Common Law, without prior user; is that correct?

A. That is right. That is, with evidence to use, bona fide evidence to use.

Q. With an intention to use you could register the name.

A. Yes.

Q. Were surnames registerable in England?

A. Not without evidence of distinctiveness, and the registrar usually insisted on a very large amount of evidence with regard to surnames.

Q. That was the law in 1925 to 1927?

A. Yes.

Q. Now, is that the law today in England?

A. It is the law except always making a distinction between a Part A and Part B registration.

Q. I am trying to find out for myself what the English law is. Suppose the person attempted to register the name "Timken" under the statute, English statute, what actual [fol. 1804] procedure would be followed in that attempt to register?

A. You will have to file the application accompanied by trade statements. It is altogether technical, setting out the history of the adoption and use of the trade-mark, extent of use and so on. Then this application has to be supported by trade evidence, so-called, consisting of declarations obtained from every one of the seven districts in which England is divided for the purposes of registration,—North

England, South England, West England, East England, as well as Scotland and Northern Ireland. You will have to have at least one declaration from each of those districts and also additional ones from wholesalers, distributing companies, and so forth. A total of twelve declarations, and to prove at least five years of use and a substantial amount of sales, and in addition to that to show distinctiveness. All of this would be to the effect the person was declaring to the state they have known the trade-mark for very many years, and to them it means the product of the applying company, and so on.

[fol. 1805] Q. Suppose in that situation some individual were to appear, a person who enjoyed rights in the name in some other country were to appear before the—was it the Patent Office?

A. Yes.

Q. Is that where the proceedings are held?

A. Yes.

Q. —and introduced evidence to show that this same name meant somebody else's product right here in England. For instance you would have a man from Wales, and that man from Wales said, "This name means to me the product of British Timken Limited," and you have somebody else who introduces an affidavit, perhaps from Wales, saying, "This name means to me the product of Timken Roller Bearing Company of the United States," what would happen, then, in the Patent Office?

A. That would have thrown a monkey wrench into the application, and in a case of that kind, usually the applicant makes a clean face, and states in his statement that in addition to his main use of the trade-mark there has been some incidental use by one other company, and so on. Unless you would make such statement in the statement of the case, then if that comes out, the chance of getting the application through would be very poor.

[fol. 1806] Q. Well, let me go on to another phase of the matter. Is that substantially the law in most of the European countries?

A. About the surname?

Q. Yes.

A. No.

Q. You indicated certain countries do permit the registration of surnames?

A. Most of the European countries permit the registration of surnames the same as any other mark.

Q. In that case it has exactly the same effect as a fanciful name would have?

A. Correct.

Q. What about the British colonies, do they follow the English rule?

A. The important British colonies follow the rule, the dominions, for instance, and the most important other colonies follow very much the same procedure in that respect.

Q. What is the law with respect to the colonies of France, we will say?

A. The French registration extends to the colonies, with the exception of Morocco and Tunisia.

Q. What is the distinction as far as Morocco and Tunisia are concerned?

[fol. 1806-A] A. They are protectorates; they have their own registration office.

Q. What about the other colonies?

A. That differs, again they have in every one of the French colonies a separate registration bureau.

Q. What is the law in Morocco and Tunisia with respect to registration?

A. Very much similar to the French law. In other words, the prior user has better rights.

Q. What about the registration of surnames?

A. The same like in France.

Q. As I recall, in France surnames can be registered?

A. Yes.

Q. And the registration has the same effect as the registration of a fanciful name?

A. Yes.

Q. What about the use of a surname in France? Does that mean that a person who has the same name can't even manufacture and sell in France or import into France?

A. No, the law is the same like in our law or in the British law. A bona fide individual who has that name can trade personally under his name provided, however, he doesn't add anything to the name which may cause confusion, and so on.

[fol. 1807] Q. In other words, if in those areas where the name in substance has the same position that a fanciful name has, the person who has the right to use the name because

it is a family name, his own name, would have the right to sell in that area, to use the name in that area provided he did so without, in effect, passing off or confusing the public?

A. You refer to an individual, not a company.

Q. You indicated in connection with the common law of England that the common law mark is assignable only with good will?

A. Yes.

Q. That was the law from 1925 to 1927?

A. And is still the law now.

Q. Will you explain to the Court just what you mean by "good will" in that situation?

A. I don't think it is any different than what we mean in our trade-mark law here.

Q. What does it mean in England?

A. Well, in England the assignments are stricter than in our country in the sense,—for instance, I can show the difference this way, if a company has two departments, a manufacturing department and a vending department, and uses the trade-mark in connection with the two, manufacturing and the vending of the goods, then he could not sell the vending business alone with the trade-mark, he must [fol. 1808] also sell the manufacturing business, which means in effect he must sell the entire business.

Q. He must sell the entire business, is really what is meant under the good will?

A. That is right.

Q. You cannot, for instance, assign it with one part, one branch of the business?

A. No.

Q. And you certainly couldn't assign it with, oh, let's say, a list of customers or anything of that sort?

A. No.

Q. It has to be assigned with the entire business?

A. Yes.

Q. And that is still the law now, common law in England?

A. Yes.

Q. You indicated under the 1938 Act, passed in 1938, it is now possible to assign the mark with or without the good will of the business to which it is attached?

A. Yes.

Q. Are there any limitations whatever on assignment under the British law?

A. Except when deception of the public may be involved.

Q. If the effect of assigning would be to deceive the public?

A. To deceive.

[fol. 1809] Q. Is that the same sort of deception that the common law refers to?

A. No.

Q. Explain what is the difference.

A. Deception could be avoided completely if the assignee of the trade-mark without good will would advertise the fact that he is not the owner of the trade-mark or puts his name, in addition to the trade-mark, on, so the public will know there has been an assignment.

Q. What about the assignment of marks in other European countries? Is the rule substantially the same?

A. No, there is a great variety. In Holland, Sweden and Germany and Austria not only must you assign the business in that partic ular country with the trade-mark but you must assign your entire business. In other words, an American company having a registration in those countries must assign to the British company not only the business it had in those countries but also its American factories, its American business everywhere.

Q. In other words, what is required is what amounts to your business all over the world, is that right?

A. That is right.

On the other hand, you have France, for instance, and Portugal and Spain and Luxembourg, where you can assign [fol. 1810] control without any limitation whatsoever.

Q. But the number of countries where that is permissible is fairly small?

A. About evenly divided.

Q. It is about evenly divided between those countries in which you can assign, so to speak, in gross?

A. That is right.

Q. And those in which you cannot assign except with the good will of the business, and not just the good will of the business but an assignment of the business?

A. That is right.

Mr. Stedman, if you will permit, I will make the point now, under the new International Convention, as revised in

London in 1934, it is now possible to assign the registration with the good will of the business in the particular country without affecting the other country. So the law I described in Holland and Sweden is no longer in effect.

Q. That law has been limited but is still the law within the territory, within the boundaries of the country itself; is that right?

A. Yes.

Q. You also testified, Dr. Ladas, with respect to equitable and legal ownership of a mark. I am not entirely clear on exactly what you meant by those distinctions.

[fol. 1811] A. Well, all I meant is that the owner of the trade-mark may make a contract with another party by which he recognizes that the trade-mark belongs to the party with whom he is contracting, and that he retains the trade-mark only for a certain time, subject to assignment or abandonment at a later time, in order to permit the party with whom he contracts to acquire ownership of the trade-mark.

Q. Is that a contract which can be enforced irrespective of whether it accurately states what would be the rights of the individuals under the law of that country? I am not sure that question is clear. Do you understand it?

A. Yes, I do, I think I do. The courts would enforce that contract provided the obligation is so clear that it is possible to work out a valid assignment. For instance, if the contract is a good contract, a valid contract, the courts will enjoin the party who gave the equitable ownership of the trade-mark to the other party to desist from further use of the trade-mark, to abandon the trade-mark. So that by such abandonment, then the other party may come in and begin using the trade-mark himself and acquire the right himself. In other words, if it is not possible to execute a valid assignment of the trade-mark proper, you could have an indirect assignment by one party abandoning the trade-mark and permitting the other party to acquire new owner-[fol. 1812] ship of the trade-mark.

Q. Suppose the other party weren't quite quick enough and a third party came in after the abandonment by the person who agreed to abandon it, a third party came in and started to use the mark, if he were quick enough it would be possible for him to do that; is that right?

A. Yes.

Q. In other words, this relationship is purely an equitable

relationship between the two individuals, which the court would enforce simply because the parties have agreed to do this, and would say, "You have agreed to do it, therefore you have to do it."

A. Correct, unless the contract can be so construed as to compel the first party to transfer the good will of the business, together with the trade-mark to the other party.

Q. In which case it would be in substance comparable to an executory contract to transfer the business?

A. Correct.

Q. In that case here, you would do that?

A. Yes.

Q. Would there be one further qualification, that this type of agreement would be enforcible only if it were consistent with public policy of the country in which they were seeking to enforce it?

[fol. 1813] A. If you mean by public policy, the deception of the public would be involved, yes.

Q. It probably would not be enforced if it would result in deception of the public?

A. Correct.

Q. Or if it resulted in—I don't think offhand how this would happen—but if it had some other result which was inconsistent with other laws of the country, perhaps restraint of trade, if it had the effect of restraining trade contrary to the policy of that country?

A. Of course there is no such policy in England. There is no restraint of trade law.

Q. I am not referring to a specific law. I am asking generally, most countries would limit their enforcement of that sort of an agreement by the considerations of public policy and the effect of it.

A. You are going a little too far. I don't know that I can go that far because there is no policy similar to ours in any country, in fact, outside of the United States.

Q. One more question I wanted to raise here, and that was in connection with this question of incontestibility. You indicated that there is a very small number of countries in Europe—this I believe was as of 1928—a couple of countries in Europe in which registration does give absolute owner-
[fol. 1814] ship irrespective of prior use?

A. That is right.

Q. That in a fairly substantial number of countries that

registration is merely, you might call it, declaratory of the rights that the parties have?

A. Correct.

Q. That simply says that you have these rights, therefore you still have them, and therefore you still have them, and in that case I assume the mark is only prima facie valid?

A. Correct.

Q. And would be subject to attack by attempt to use it?

A. Correct.

Q. And anybody who attempted to use it, if he could show a prior use, he would be entitled to do so?

A. Correct.

Q. And then there is another group of countries, which numerically seems to be a large group, in which the mark is prima facie valid for a certain period of time, and after that period of time it becomes incontestible, is that right?

A. Yes.

Q. You made one qualification with respect to incontestibility, and that is it would not become incontestible even after this time elapsed if the mark was obtained by fraud?

[fol. 1815] A. Or if the registrant knew of the prior use of the first user.

Q. Or if the registrant knew of the prior use of the first user.

Can you tell us a little more about how that phase of the law operates, what constitutes fraud, and what constitutes prior knowledge of a user? Perhaps I could give you a hypothetical example. Suppose that in a given country where the law was that a mark became incontestible if I obtained the registration and had it, let us say, for three years, and I applied for the registration in Austria of the given mark, and during the time of application I knew about a prior user in Austria and I said nothing about it, and I went ahead and got the registration and for a period of three years, let's say, everybody kept quiet, now, is that registration incontestible after that period?

A. No, it can be contested after the three years.

Q. It could be contested after the three years, it could be contested by you if you were the active prior user?

A. Only by me, not by the third party.

Q. A third party couldn't raise that issue, is that right?

A. Yes.

Q. That, I take it, is generally the law in those countries where this incontestability provision applies?

[fol. 1816] A. That is right.

Q. Now, there was one other thing I wanted to ask you about in connection with this 1938 Act. You testified that there were two parts of that Act, part A, and part B, and you indicated that one of the differences between them was that registration under part A was incontestable, and under part B was not, is that correct?

A. Yes.

Q. So that what you have under that Act is that those marks which would be registered under part A would come into the category of those countries where during a certain period of time the mark is merely prima facie valid and after that period of time it becomes incontestible, and in other words conclusively valid.

A. Well, I will say something more. The incontestibility under British law goes further than incontestibility under the continental laws. In other words, there is the distinctive conclusion, except for three reasons: Either the mark has not been used in the meantime; if the mark was obtained by fraud; or if the mark may be used for deception of the public.

Q. Now, is that the only difference between part A and part B?

A. There are other differences also. The scope of protection of the registration under part A is much wider than [fol. 1817] under part B registration.

Q. Just what do you mean, in what sense is the scope of protection wider?

A. A part B registration is very much the same nature as what we have under the supplemental registration.

Q. Again I would appreciate your confining your statement to the English law.

A. I mean to say, when you use a registration in part A, the use of your trade-mark registered under part A, prima facie is an infringement, technical infringement, regardless of whether there is likelihood of confusion or not. In the case of a part B registration you have to show likelihood of confusion in addition to showing you have a registration under part B. That is an important difference.

Q. In other words, so far as the registration under part B is concerned, that part, for all time, as far as that goes, is

subject to attack on the basis of prior use or possibility of confusion, but to any of those grounds, is it prima facie? Is the registrant prima facie the owner? Is there a prima facie case?

A. No, there is prima facie evidence of the fact of registration.

Q. Prima facie evidence of the fact of registration but not even prima facie evidence of ownership?

A. With this difference, that the part B may become part [fol. 1818] A registration after five years.

Q. If a person can establish it on the basis of distinctiveness?

A. Yes.

Q. In connection with this registration under part A or part B where would a surname be registered?

A. The choice is with the applicant. There is a very heavy onus of proving distinctiveness for a part A registration. Then he can go provisionally into part B, after waiting a number of years until he is an established user he can go into part A.

Q. So that really what it comes down to, and I will ask you if this is correct, a registrant in order to establish his rights and get a registration under part A, would have to establish the distinctiveness or uniqueness, and so forth, which would give him exclusive right to the use of the mark?

A. That is right.

Q. Do you happen to know, Dr. Ladas, this is not I believe any question in connection with anything specifically you have testified on, I would like to ask you briefly about registrations in some other countries, if I might, not the details of them so much, but just simply whether they have trade-mark laws or whether, let's say, they are a part perhaps of some other trade-mark system, such as the colonies of Great Brit- [fol. 1819] ain. Do you know about Albania, does Albania have a trade-mark system?

A. Yes, they have the old Turkish law which was supposed to be applicable to Turkey and people could register trade-marks there.

Q. Do you know about Anglo-Egyptian Sudan?

A. Yes, it has a registration act.

Q. Angola?

A. Angola is a part of Portugal. In other words, if you

have a registration in Portugal you can in Portugal extend the registration to Angola.

Q. Basutoland?

A. Basutoland has trade-mark registration also.

Q. Borneo?

A. Borneo, you must present a certified copy of a British registration.

Q. British Somaliland?

A. The same as Borneo.

Q. Burma?

A. No registration act.

Q. East Indies?

A. I don't know what that means.

Q. Netherlands East Indies?

A. Netherlands East Indies, yes, it has a registration act.

[fol. 1820] Q. Estonia?

A. Yes, prior to 1919.

Q. But it does not at the present time?

A. No.

Q. It has rather disappeared somewhere along the line?

A. Yes.

Q. Germany, of course has.

Italian East Africa?

A. Italian East Africa, you could extend an Italian registration in Italy.

Q. An Italian registration would apply in that territory?

A. Yes.

Q. Kenya?

A. Yes.

Q. Latvia?

A. Same as Estonia.

Q. Libya?

A. Libya, there is no such state.

Q. That doesn't exist any more. I hope you will excuse my ignorance on the geography part, I have been working too much on law.

Liechtenstein?

A. Liechtenstein, you can use a Swiss registration there.

Q. Monaco?

[fol. 1821] A. No.

Q. Mozambique?

A. Mozambique is a Portugal colony, the same thing like Angola.

Q. Nigeria?
A. Yes.
Q. Palestine?
A. Yes.
Q. Rio de Oro?
A. That is a French colony. You don't need any registration there.
Q. San Marino?
A. No registration there.
Q. San Marino is even smaller than Monaco?
A. Yes.
Q. Sardinia?
A. No separate registration; part of Italy.
Q. Spanish Morocco?
A. Part of Spain.
Q. Swaziland?
A. Separate registration.
Q. Syria?
A. Yes.
Q. Tanna Tuva?
[fol. 1822] A. — — —
Q. Tasmania?
A. Tasmania is part of Australia.
Q. Transjordania?
A. Transjordania, separate registration.
Q. Trinidad?
A. Yes, separate registration.
Q. Union of South Africa?
A. Yes.
Q. Yugoslavia?
A. Yes. I should probably mention many of those small British colonies like Transjordania and others, have been passed after 1930.
Q. Some of those have been passed since 1930?
A. Basutoland, for instance, passed its first registration act in 1939.
Q. But they all do have trade-mark registration at the present time even though they may not have had prior to 1930?
A. Yes.
Q. How about British Honduras?
A. British Honduras had a separate trade-mark registration, but at the present time you must present a certified

copy of British registration, but at the same time you can assign it through the American Consul.

[fol. 1823] Q. French Guiana?

A. That is part of France.

Q. Liberia?

A. No registration.

Q. Outer Mongolia?

A. No registration.

Q. Nova Scotia?

A. Part of Canada.

Q. Prince Edward Island?

A. Part of Canada.

Mr. Stedman: I think that is all.

Redirect examination of Stephen B. Ladas.

By Mr. Ketterer:

Q. I have two questions I would like to ask Dr. Ladas. First of all, over in England, France, Germany, and on the continent of Europe, generally, is it lawful in those jurisdictions to give an exclusive license of a trade-mark?

A. Yes.

Q. One other question. You were asked during the course of your cross examination as to whether in France, for example, a person who was living in France who had the name "Timken" could make use of that name in respect of anything that he personally did. If you recall that.

[fol. 1824] A. That is right.

Q. I want to ask you whether or not that would apply to a company either in France or a company that came in from outside of France with the name of "Timken" in its corporate name and would undertake to make use of it, if that mark had been registered in somebody else's name in France?

A. No, it could not. The exception is special to a man, to a person, a physical person who has his own name and wants to do business under his own name.

Mr. Ketterer: That is all.

The Court: Are particular British laws relating to trade-marks so well settled and precise that the law applicable to them, to trade-marks particularly, may be stated with definiteness, and not merely as a matter of opinion?

The Witness: Your Honor, I have attempted in answering, in response, to precede my explanation by some statement in order to qualify the answer or to explain the answer. However, I did not have a chance to do it. There is no doubt, as you say, the law is uncertain in many respects, except in so far as covered by the Registration Act.

The Court: What I want to know is whether or not England had reached a point so far ahead of us that the common [fol. 1825] law is so clear and well defined that no difference of opinion may exist as to it.

The Witness: Your Honor, the common law of trade-marks has very limited application in England because the statutory law has created substantive rights in trade-marks.

The Court: These matters in which common law does take part, are matters of opinion as most recently announced by the Courts.

The Witness: That is right.

The Court: Now, what about the matter of distinctiveness? Is that determined by the registrar or is that defined by statute?

The Witness: The statute merely says a surname, for instance, is registrable upon evidence of distinctiveness to the satisfaction of the registrar.

The Court: But the determination of distinctiveness is a matter of discretion with the registrar, and is that subject to review by a court?

The Witness: His discretion is subject to review by a court.

The Court: And it is the court, then, that determines whether or not a trade-mark is or is not distinctive?

[fols. 1826-1831] The Witness: In that case, yes.

[fol. 1832] Thereupon the Defendant recalled as a witness, Donald P. Hess, who, having been previously sworn, further testified as follows:

Further Direct Examination of Donald P. Hess, *By Mr. Ketterer*:

Mr. Ketterer: If the Court please, we had Mr. Hess testify a week ago last Thursday, at which time he completed testimony concerning the reports that were made by him in 1927 as to his observations and recommendations in respect of the British, French and German situations. We want to resume with him at this time.

[fols. 1833-1835] (Letter of February 6, 1928, from Mr. Dallow to Mr. Hess was thereupon marked by the Clerk, for identification, Defendant's Exhibit 109.)

Q. Mr. Hess, I hand you some photostatic sheets that have been marked for identification Defendant's Exhibit 109. Will you look at those and tell me whether you can identify them, please?

A. Yes, that is a letter written to me by Mr. Dallow of British Timken in the form of a report, together with the letter.

Q. Mr. Dallow was who at that time?

A. He was a director of British Timken.

Mr. Ketterer: We offer Defendant's Exhibit 109. It is dated February 6, 1928.

The Court: And what is the document?

Mr. Ketterer: It is a letter from Mr. Dallow to Mr. Hess.

The Court: It may be received.

[fol. 1836] (Letter dated February 20, 1928, from The Timken Roller Bearing Company to British Timken Limited, was thereupon marked, by the Clerk, for identification, as Defendant's Exhibit 110.)

Q. Mr. Hess, will you examine the paper marked for identification Defendant's Exhibit 110 and tell us what that is please?

A. That is a letter I wrote under date of February 20, 1928, to British Timken, Attention Mr. Dallow with reference to a report he had sent in.

Mr. Ketterer: We offer Defendant's Exhibit 110.

The Court: It will be received.

[fol. 1837] (Letter dated September 3, 1929, from The Timken Roller Bearing Company to Dallow, thereupon marked by the Clerk, for identification, Defendant's Exhibit 111.)

Q. Will you look at this paper, Mr. Hess, that has been marked for identification Defendant's Exhibit 111 and tell me what that is?

A. That is a letter dated September 3, 1929, that I wrote to Mr. Dallow.

Mr. Ketterer: We offer Defendant's Exhibit 111.

The Court: It may be received.

[fol. 1838] (Letter dated March 29, 1928, from Hobley to Hess, thereupon marked by the Clerk, for identification, Defendant's Exhibit 112.)

Q. I have here, Mr Hess, a letter that has been marked for identification as Defendant's Exhibit 112, to which is attached some sheets. Will you look at that and tell me what it is, please?

A. That is a letter dated March 29, 1928, addressed to me by Mr. Hobley, and has various data on business handled in January of British Timken.

[fol. 1839-1845] I would like to offer at this time Defendant's Exhibit 112, which is the letter of March 29, 1928, with certain attachments.

The Court: It may be received.

[fol. 1846] Mr. Ketterer: I would like to have marked for identification as Defendant's Exhibit 113 a letter dated October 8, 1929, from British Timken to Hess.

(Letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 113.)

Q. Mr. Hess, before looking at a further exhibit, the last report which was marked Defendant's Exhibit 112 and had attached to it some data in respect of sales made by British Timken and different classifications, what is the fact as to whether or not you received regularly from British Timken, from time to time, similar reports as to their sales and classifications of sales?

A. According to my recollection, we received those very regularly.

[fols. 1847-1855] Mr. Ketterer: I don't want to encumber the record unnecessarily with a whole group of those, your Honor.

Q. I have here a letter which has been marked for identification as Defendant's Exhibit 113. Will you examine that and tell us, if you can, what that is (handing Defendant's Exhibit 113 to witness)?

A. That is a letter dated October 8, 1929, sent to me by Mr. Dewar.

Mr. Ketterer: We offer Defendant's Exhibit 113 in evidence.

[fol. 1856] I would like to have marked for identification as Defendant's Exhibit 114 a letter dated May 27, 1930, from Timken Roller Bearing Company to British Timken Limited.

(Letter above referred to was thereupon marked by the Clerk, for identification, as Defendant's Exhibit 114.)

Q. Mr. Hess, I hand you some sheets that have been clipped together and marked for identification Defendant's Exhibit 114. Will you examine those and tell us what they are, please (handing Defendant's Exhibit 114 to witness)?

A. It is a letter dated May 27, 1930, to British Timken Limited, attention Mr. Dallow, and signed by me.

Mr. Ketterer: We offer Defendant's Exhibit 114.

[fol. 1857] The Court: Yes, that may be received.

[fol. 1858] Q. Mr. Hess, will you examine that sheet and explain it, the first one, the first attached sheet to that exhibit, explain to the Court what that shows in respect of the operations in the Columbus plant, the Canton plant of American Timken, and the Birmingham plant of British Timken (handing Defendant's Exhibit 114 to witness)?

A. Well, this report was made to compare the costs of manufacturing between the Canton plant and the Columbus plant and the Birmingham plant, Birmingham meaning [fol. 1859] British Timken. It is summarized in the total here in percentages of what is called a standard value. It shows the Canton plant and the Columbus plant reasonably close in total. I might read you those totals, as those percentages are shown. The Canton plant shows 127%—this is all relative to 100%, you understand—the Columbus plant 132% and the British Timken 290%. That indicates that the British costs were in that proportion compared to the American costs in the Canton and Columbus plants.

The Court: That's comparative costs?

The Witness: Yes.

The Court: Between those plants?

The Witness: Between those three plants, as compared with what we call a par value of 100%.

Q. There are two other sheets that are attached to this Exhibit 114. Will you explain to the Court what they show?

A. Well, these sheets identify various classifications. For instance, in the Canton and Columbus plants direct labor and indirect labor, and in the British Timken terms they call it "Productive wages and viewers Stock Taking-Overtime-Sundry Allowances." That's a rather detailed explanation of what goes into these various items of expenses [fol. 1860] and costs.

Q. As shown on the preceding sheet?

A. As shown on the preceding sheet, yes.

Q. And that last column under British Timken, I take it from what you say, was intended to explain to British Timken how you had allocated various items under the headings shown on the first sheet for these comparison purposes?

A. That is correct.

The Court: That's a breakdown, I assume.

Mr. Ketterer: Yes, a detailed breakdown.

The Witness: Of terms and classifications.

The Court: Now, what was the total standard value for? Was that for comparison purposes?

The Witness: Yes, that's for comparison purposes. These reports were prepared monthly, and we judged the reports monthly by comparison of one month to another.

Q. You mean by that they were prepared at American Timken monthly?

A. Yes.

Q. For the purpose of comparing the Columbus and Canton plants?

A. That's right.

[fol. 1861] Q. And after British Timken came into the picture then you did the same thing in respect to British Timken?

A. Well, I don't recall whether we did it monthly for British Timken or not, but I know we did it periodically.

Mr. Ketterer: I would like to have marked for identification as Defendant's Exhibit 115 a letter dated September 11, 1931, from Timken Roller Bearing Company to Mr. Dallow.

(Letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 115.)

Q. Mr. Hess, I hand you a sheet that has been marked for identification Defendant's Exhibit 115. Will you tell

us what that is, please (handing Defendant's Exhibit 115 to witness)?

A. This is a letter dated September 11, 1931, to Mr. Dallow and signed by me.

Mr. Ketterer. We offer Defendant's Exhibit 115.

The Court: It may be received.

[fol. 1862] Q. Now, I would like to ask this question, Mr. Hess, in respect of the material in this letter that has been marked Defendant's Exhibit 115. You say that some of their high cost was due to the great many changes which they had owing to their smaller volume. Will you explain to the Court what you meant by that statement?

A. Well, it's due to the fact that they made such small quantities of the various part numbers, and that meant [fol. 1863] they had to change their machinery setup very much oftener than normally we would in Canton or Columbus.

Q. And that had what effect on their costs?

A. Well, that would have a tendency to increase their costs.

Q. There was a reference made here in one of these letters that was read a while ago, and which I handed to you, about a Mr. Porter. Will you tell the Court who Mr. Porter was?

A. Mr. Porter was our vice-president in charge of sales work, and he went to Europe in that period. I don't recall the year he went.

Q. But he had been in Europe in connection with the affairs of British Timken and of American Timken?

A. Yes, sir.

Q. Is he retired now or still with the company, to your knowledge?

A. I think he is retired.

Mr. Ketterer: I would like to have marked for identification as Defendant's Exhibit 116 a letter dated October 20, 1931, from Mr. Dewar to Mr. Hess.

(Letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 116.)

Q. Will you look at these sheets that have been marked [fols. 1864-1865] for identification as Defendant's Exhibit

116 and tell us, please, if you can, what they are, Mr. Hess (handing Defendant's Exhibit 116 to witness)?

A. That is a letter from British Timken dated October 20, 1931, addressed to me and signed by Mr. Dewar.

Mr. Ketterer: We offer Defendant's Exhibit 116 in evidence.

The Court: It may be received.

[fol. 1866] Now, Mr. Hess, what was meant in this letter marked Defendant's Exhibit 116 by the reference to No. 2 specification and No. 1 and No. 4 specifications?

[fol. 1867] A. Well those were covering various tolerances of bearings as produced at that time by the various plants.

Q. And did that have to do with the finish that was placed on the bearings?

A. Partially, and also the tolerances and, the eccentricities, the bore, and things like that.

Q. And there was a variation as to tolerances, and so on, depending upon the use to which the bearing was put, is that correct?

A. That is correct.

Mr. Ketterer: I would like to have marked for identification as Defendant's Exhibit 117 a letter dated November 6, 1931, from Timken Roller Bearing Company to Mr. Dewar.

(Letter above referred to was thereupon marked by the Clerk, for identification, as Defendant's Exhibit 117).

Q. Mr. Hess, here are two sheets that have been marked for identification Defendant's Exhibit 117. Will you examine them and tell us what they are, please (handing Defendant's Exhibit 117 to witness)?

A. That is a letter dated November 6, 1931, addressed to Mr. Dewar and signed by me, sent by me.

Mr. Ketterer. We offer Defendant's Exhibit 117 in [fols. 1868-1871] evidence.

The Court: It may be received.

[fol. 1872] Q. Mr. Hess, who was the Mr. Fegan referred to in this letter marked Defendant's Exhibit 117?

A. He was one of British Timken's technical men that they sent over here to be educated and taught how to make bearings.

Q. That is to say, he had come to the United States?

A. That's right.

Q. Is it correct to say he had come prior to the time that this letter was written?

A. I assume so from that letter. I don't recall directly.

Q. Did you spend any time with him in connection with [fol. 1873] the operations of American Timken?

A. Yes, sir.

Q. Now, you refer also to the fact that in 1931 the Columbus plant was closed down. What is the fact as to whether or not that was a temporary shutdown?

A. Well, it was temporary, all right. I don't recall that we knew at the time it was temporary.

Q. The plant was reopened?

A. Oh, yes.

Q. And in operation after that date?

A. Yes, sir.

Mr. Ketterer: I would like to have marked for identification as Defendant's Exhibit 118 a letter dated November 25, 1931, from Timken Roller Bearing Company to Mr. Dewar.

(Letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 118.)

Q. I hand you here a single sheet marked for identification Defendant's Exhibit 118, Mr. Hess, and ask you to tell us what that is (handing Defendant's Exhibit 118 to witness)?

A. This is a letter dated November 25, 1931, to Mr. Dewar and signed by me.

[fol. 1874] Mr. Ketterer: We offer Defendant's Exhibit 118.

The Court: It may be received.

I would like to have marked for identification as Defendant's Exhibit 119 a letter dated November 27, 1931, [fols. 1875-1877] from Mr. Dewar to Mr. Hess.

(Letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 119.)

Q. Mr. Hess, here are two sheets that have been marked for identification as Defendant's Exhibit 119. Will you tell us what that is, please (handing Defendant's Exhibit 119 to witness)?

A. That is a letter dated November 27, 1931, and sent to me by Mr. Dewar.

Mr. Ketterer: We offer Defendant's Exhibit 119.

The Court: It may be received.

[fol. 1878] I would like to have marked for identification as Defendant's Exhibit 120 a letter dated April 14, 1930, from British Timken to Hess, attached to which are six sheets of trading reports.

(Documents above referred to were thereupon marked by the Clerk, for identification, Defendant's Exhibit 120.)

Q. Mr. Hess, I hand you a group of sheets that have been clipped together and marked for identification Defendant's Exhibit 120, and ask you if you can identify that (handing Defendant's Exhibit 120 to witness)?

A. Yes, this is a letter of April 14, 1930, sent to me by Mr. Squire, secretary of British Timken, including what they call their trading results for the first two months of the year 1930.

Mr. Ketterer: We offer Defendant's Exhibit 120.

The Court: It may be received.

[fol. 1879] Q. These sheets that are attached to the letter of April 14th, 1930, which are a part of Defendant's Exhibit 120, will you look at those, Mr. Hess, and tell us what they are intended to show in respect of British Timken operations?

A. They were intended to show their total sales, their cost of sales, and their gross profit as covered by the various divisions of their business. There is also various other data and expenses, salaries and commissions, traveling expenses, and the condition of their inventories, their overhead, factory charges, and their various sales of bearings, as I said before, by various divisions over that same period.

[fol. 1880] Q. Now, you recall that there was a letter read a little while ago this morning that was addressed to you by Mr. Dallow in which he outlined the type of report that you had requested from British Timken covering a variety of subjects, such as their costs that you have outlined in this report, trading results, overhead, and so on. What is the fact as to whether the trading results report attached to this letter of April 14, 1930, was a sample of

the type of report that was sent by British Timken as outlined in that letter from Mr. Dallow?

A. Well, those reports are a part of the reports that we asked for in that letter.

Q. They are a part of it?

A. That's right.

Q. And they were sent as agreed between you and Mr. Dallow, as outlined in that letter?

A. That's right.

Q. Now, during the time you were with the American Timken Company, I believe you said that was up until 1936 when you were on the stand a week or so ago, did you continue to receive these reports during that entire period?

A. Yes, sir.

Q. And this is illustrative of the type of data that you constantly received from British Timken?

A. That is correct.

[fol. 1881] Mr. Ketterer: I would like to have marked for identification as Defendant's Exhibit 121 a weekly report of British Timken of orders on hand for the week ending March 17, 1928.

(Document above referred to was thereupon marked by the Clerk, for identification, as Defendant's Exhibit 121.)

Q. I hand you, Mr. Hess, a single sheet that has been marked for identification Defendant's Exhibit 121, and ask you if you can identify that?

A. Yes, sir. That's a weekly statement that we received from British Timken with reference to orders on hand, orders received, orders invoiced and orders cancelled.

Q. And was that also in accordance with the outline of material that you were to receive from British Timken, as outlined in the Dallow letter which I referred to a while ago?

A. Yes, sir.

Mr. Ketterer: We offer Defendant's Exhibit 121 and, inasmuch as the witness has testified it is illustrative, I don't care to read the figures shown on it.

The Court: It may be received.

Mr. Ketterer: I would like to have marked for identifica-
[fol. 1882] tion as Defendant's Exhibit 122 a letter dated December 2, 1938, from British Timken to W. Robert Timken.

Mr. Ketterer: If the Court please, the next letter that we have here is one that is dated December 2, 1938, from British Timken to W. Robert Timken. That has been marked for identification as Defendant's Exhibit 122. Of course, that was after Mr. Hess had left the employ of Timken Roller Bearing Company, but I would like to offer this at this time since it has to do with the same general subject we are interested in now, and I will later ask Mr. [fol. 1883] W. Robert Timken, who is going to testify, some questions in regard to the contents of it.

The Court: All right, it may be received.

(Letter of August 6, 1930, from Hess to Dallow thereupon marked by the Clerk, for identification, Defendant's Exhibit 123.)

Q. Mr. Hess, I have a single sheet that has been marked for identification as Defendant's Exhibit 123 and I ask you if you can identify that, please?

A. That is a letter dated August 6, 1930, to British Timken, Attention Mr. Dallow, and signed by me.

Mr. Ketterer: We offer Defendant's Exhibit 123.

The Court: It may be received.

[fol. 1884] (Letter dated August 15, 1930, from Dallow to Hess thereupon marked by the Clerk, for identification, Defendant's Exhibit 124.)

Q. I have, Mr. Hess, a single sheet that has been marked for identification Defendant's Exhibit 124. Will you please tell us what that is?

A. That is a letter dated August 15, 1930, from Mr. Dallow of British Timken addressed to me.

Mr. Ketterer: We offer Defendant's Exhibit 124.

The Court: It may be received.

(Letter dated October 1, 1930, from British Timken to Hess thereupon marked by the Clerk, for identification, Defendant's Exhibit 125.)

Q. I have here three sheets, Mr. Hess, that have been marked for identification as Defendant's Exhibit 125. I will ask you what they are, please?

A. That is a letter of October 1st, 1930, signed by Mr. Dallow of British Timken to me and contains data on their [fols. 1885-1905] machinery.

Mr. Ketterer: We offer Defendant's Exhibit 125.

The Court: It may be received.

[fol. 1906] Q. Mr. Hess, I want to ask you whether or not in 1930 you had followed, or up to 1930 you had followed the relationship between American Timken and British and French Timken and German Timken?

A. Yes, sir.

Q. And was it part of your duty as assistant to the president of the Timken Roller Bearing Company to keep abreast of developments existing or the connection between American Timken, British and French Timken?

A. Yes, sir.

[fol. 1907] Mr. Ketterer: I would like to have these reports marked Defendant's Exhibits No. 127, 128, 129, and 130, for identification.

(Reports referred to were thereupon marked by the Clerk, for identification, Defendant's Exhibits 127, 128, 129, and 130.)

Q. Now, Mr. Hess, I hand you here a single sheet that has been marked for identification as Defendant's Exhibit 127. I will ask you if you can tell us what that is, please?

A. This is a report made by me under date of August 19, 1932, covering a summary of results for the first half of 1932 of British Timken operations.

Q. Was that made following a trip you had made to England?

A. I have an idea that it was, but I can't remember exactly.

[fol. 1908] Q. Well, will you refer to it and see if you can tell from looking at it whether it was based on a trip that was made over there?

A. I will have to read it.

Q. Will you glance at it, then?

(Witness reads report.)

A. Yes, I would say it was.

Q. Now, I hand you another document of several pages, which has been marked for identification as Defendant's Exhibit No. 128. Will you tell us what that is, please?

A. This is a report made by me on a visit in February and March 1932, to Europe. It covers British Timken, French Timken, and Deutche Timken.

Q. I hand you some other papers marked for identification Plaintiff's Exhibit No. 129, and ask you if you can tell us what that is?

A. That is a report covering a visit to French Timken.

Q. At what time?

A. That's March 29, 1932. That's the date of the report.

Q. And handing you the papers marked Defendant's Exhibit 130 for identification, will you tell the Court what that is, please?

A. That is a report of a visit to German Timken dated March 29, 1932.

[fols. 1909-1913] Q. I will ask you to state whether or not those reports were prepared and submitted to executives of the Company in the performance of your duties?

A. That is correct.

Mr. Ketterer: We offer Defendant's Exhibits 127, 128, 129, and 130.

Mr. Nitschke: Your Honor, I object to the admissibility of these reports on the general ground on which I have objected to all this type of testimony, but, in addition, on the ground that the contents here are irrelevant in a great many respects, and I can't give it all to you at once. But, for example, the report contains estimates, predictions, opinions as to what other companies may do, includes trade gossip of the most hearsay type.

[fol. 1914] Mr. Ketterer: May I suggest, then, if the Court please, that we read the report and as we come to any items that counsel for the Government regard as objectionable, that we consider their content at that time?

The Court: I think that's the best way of proceeding, unless you wish to go into something else, and during recess I will show a longer recess and have you and counsel for the Government go over it.

Mr. Ketterer: There is so little of the so-called gossip items, your Honor, that I really don't think we would save much time in that way.

The Court: All right go ahead in the way you suggested.

Mr. Ketterer: I am going to read from a typed copy, your Honor, Now, this is Defendant's Exhibit No. 127, under date of August 19, 1932:

"Messrs. H. H. Timken Sr., H. H. Timken, Jr., Ernst, Spray, Umstattd and Brower.

"Following is a brief summary of results for the first half of 1932 covering British Timken operations:

"Sales for this period were $660,000.00 as compared with $1,180,000.00 for the similar period of last year. This [fol. 1915] large decline was due primarily to the loss of Russian business which for the first six months of 1931 amounted to $330,000.00 against $6,300 for this year. If we eliminate this Russian business from our sales figures for both years to date, we find that 1932 sales are 20% below last years. Another point we must remember is that Mr. Dewar advised us that his selling prices on the average had declined 14% from last year.

"We are making real headway in developing Industrial Sales at British Timken. While the figures show an 8% decline from the first half of last year, our second quarter business was 10% ahead of last year. The first rolling mill equipped with British Timken bearings recently went into operation and is meeting every guarantee of its makers. Our engineering department at British Timken is swamped with industrial layout work, and Mr. Dewar wants to keep our engineer Moreland for another year. England generally has realized they must modernize their industrial equipment, and we are going to share very largely in this development.

"Another encouraging factor is the development of our railroad business. We received an order recently for 15 [fol. 1916] cars from the London Midland & Scottish Railway similar to the type which have operated so successfully on the Metropolitan Railway during the past year. The former is the largest railway in England and is considered one of the best managed and financed not only in England but on the Continent as well. Recognition of our product by this road will be of immense help to us throughout Europe. We are also equipping a trial car for the Belgian State Railways.

"Profits for the first half were $36,000.00 as against $270,000.00 for the same period in 1931. This rather indicates that with sales of $1,200,000.00 annually we will just about break even.

"Progress is being made in the development of our straight roller and ball bearing business. We expect to

be marketing the former type bearing by October of this year and the latter by the Spring of 1933."

Then there is a note at the bottom: "Note A: All figures are based on the pound sterling at par. Note B: French Timken and German Timken figures for the first half of 1932 are not yet available."

Turning to the sheets that have been marked for identification as Defendant's Exhibit 128, which is the report [fol. 1917] on British Timken Limited:

(Reading:)

"Sales. During 1931 British Timken total sales were $1,860,000 which is a decrease of 1.3% under 1930. As has been our experience in England for the past few years, commercial vehicles and service represent the largest part of our sales or 31% and 25% respectively or a total of approximately $1,040,000. It is rather interesting to know, however, that, while these figures represent the monetary value of these sales, the total number of bearings shipped for commercial and passenger car vehicles is approximately the same, although the latter represent only 10% of our gross sales in monetary value. This figure, of course, includes the Ford business, as we are receiving all of this business available from the British Ford plant."

Mr. Nitschke: I think at this point I would like to object to this paragraph. I don't see what the relevancy is of this data respecting British Timken's sales and its proportion of the bearing business, and of some of these companies. I don't see how it is relevant to any defense in this case.

The Court: The defense is that this was a joint venture [fol. 1918] and was not a conspiracy in restraint of trade, it was a joint venture between The Timken Roller Bearing Company, British Timken, and French Timken, and I assume this testimony is introduced for the purpose of showing the method of checking the business of the British Company to show what has been termed by one or two witnesses here as the partnership. Of course, the mere assertion that it's a partnership, or the mere assertion by one or the other, or several, of the fact that it is a partnership or joint venture doesn't make it so. But assuredly evidence

to show the fact that it was a joint venture is permissible and should be allowed to be introduced by the defense, and I am receiving it for that purpose, and I understand that is the purpose of this testimony.

Mr. Ketterer: That is correct, your Honor.

The Court: The objection will be overruled.

Mr. Ketterer: Continuing:

"During the past year approximately 68,000 commercial vehicles were produced in England and with the exception of Chevrolet, Austin, Morris, and Hillman, we are represented in at least one position on every truck produced. To put it another way, Timken bearings are used on 97% of the commercial vehicles in England, excluding Chevrolet (see Exhibit 'A'). Prices range from our No. 14 to No. 16, [fols. 1919-1921] but we are now faced with severe SKF competition, who are now equipped in England to make truck size bearings. During the past year this latter company has quoted several of our customers and during the writer's visit Leland Motors, one of our best accounts, called up and stated SKF had just quoted them the equivalent of our No. 9 price, which of course is lower than our costs at British Timken."

Mr. Nitschke: Your Honor, this next sentence I will object to on the ground that it's not a fact but an opinion.

[fol. 1922] Mr. Ketterer: Very well.

[fol. 1923] Q. Mr. Hess, in preparing this report I will ask you whether or not you stated facts in here as you developed them at the time of your trip to England, France, and Germany, in 1932?

A. Yes, sir.

Q. Do you recall at the present time whether or not in 1932 SKF was in the production of tapered roller bearings for use in commercial vehicles in England?

A. Well, I recall it after reading that report.

Q. Well, can you tell by refreshing your recollection and referring to this report that has been marked for identification as Defendant's Exhibit No. 128 what the situation was in that regard?

A. Yes, sir.

Q. Do you need that report to refresh your recollection on that point?

A. Yes, sir.

Q. Will you refer, then, to Defendant's Exhibit No. 128 and refresh your recollection so that I can ask you a question on that point?

A. Is this about SKF competition?

Q. Yes, in the commercial vehicle field.

A. (Witness reads report:)

Yes, sir.

Q. Now, having refreshed your recollection by exam-
[fols. 1924-1930] ination of this report, which is marked for identification Defendant's Exhibit 128, will you tell the Court whether or not in 1932 SKF was in the business of producing tapered roller bearings in England for use in commercial vehicles?

A. Yes, sir. At that time [illegible] had offered a quotation to Leland Motors which indi[illegible] they were either in the manufacture of tapered roller bearings or expected to be so that they could supply Leland Motors. That's where British Timken received this information about the price.

Q. And had they prior to that time, to your knowledge, been in the business of producing tapered roller bearings for use in commercial vehicles?

A. That I can't recall. I don't know how long they had been in that business in England.

[fol. 1931] Q. Mr. Hess, you heard what was read from
[fols. 1932-1974] the paragraph of this exhibit in respect of the production of motor cars in England by Austin and Morris. Can you tell us now where the data was obtained as to the number of vehicles produced in England, and the number produced by those two manufacturers?

A. No, I can't. I can't recall 17 or 18 years later just where I got that information.

[fols. 1975-2037] Donald P. Hess resumed the stand for further direct examination.

[fols. 2038-2041] Mr. Ketterer: If the Court please, in line with the Court's suggestion, there are only two sections of the reports, one relating to British Timken and one relating to French Timken, as to which I would like to ask Mr. Hess two questions. As to the balance I would like to go along with the Court's suggestion, wherever it appears to the Court it is based on personal observation it will be received, and where it is not it will not be.

[fol. 2042] Mr. Nitschke: Well, your Honor, I think perhaps if I might try to restate my understanding, that I may be clear, this evidence is admitted, with the exception of the two portions Mr. Ketterer is now going to offer, for the sole purpose of showing that discussions were had, or that Mr. Hess talked to the people he did talk to, with the exception of where it is very clear from the report that he is making a personal observation or his own observation not what he got from someone else, or what he read in the newspapers, or whatever it is, then it will be taken under the business entry rule.

The Court: Your understanding is correct.

Mr. Day: He says "if it is very clear".

Mr. Nitschke: Well, if it is clear to the Court.

[fol. 2043] Mr. Day: He says "if it is very clear."

The Court: Is there a degree of clarity?

Mr. Nitschke: I'm willing to withdraw the "very".

Mr. Day: All right.

Q. In the report with respect to your visit to the British Timken plant in 1932, commencing on Page 10, under the heading of "Manufacture" extending over pages 11 and 12 to the first four paragraphs on Page 13, there is a description of methods, and recommendations with respect to manufacturing methods used in the plant of the British Timken Company. I want to ask you whether or not the observations made in those paragraphs and those pages of the report were based on your personal observations of the manufacturing methods employed in the British Timken plant in 1932?

A. That is correct.

Q. And I would like to direct your attention to the report of French Timken commencing on Page 3 of that report, under the same heading "Manufacture" extending over to Page 4 of the report, whether your observations about the manufacturing methods and practices employed in the French Timken plant were based upon your observation of those methods at the time of your visit in 1932?

[fol. 2044] A. Yes, sir.

Q. Now, Mr. Hess, do you recall in 1934 there was a discussion with the representatives of British Timken in respect of a proposed sale of stock, or some stock of the

British Timken Company to the investing public in England?

A. Yes, sir.

Q. And without giving the details of the discussions that you had on that subject, can you tell us whether or not those discussions were in person or how they were conducted with the representatives of the British Timken Company?

A. I don't recall all of the discussions, how they were conducted but I do recall there were telegrams and telephone conversations.

Q. Do you recall whether or not Mr. Dewar and Mr. Pascoe came to America in 1934 to discuss the matter with representatives of American Timken?

A. Yes, I believe they did.

Q. Now, during the course of those negotiations, what if anything happened with respect to the extension of the term of the then existing contract, the 1928 contract, between American Timken and British Timken?

A. We were asked to extend for a given number of years [fol. 2045] over what the contract then called for. I think there was some complaint of the brokers in London that the agreements were of too short a nature.

Q. And the basis of the complaint that the agreements were of too short a nature was what, if you recall?

A. I don't recall the details of it, Mr. Ketterer.

Q. To refresh your recollection on that, did that have anything to do with the use of the name "Timken" as a trade mark, and of the name "Timken" in the corporate name of the British Company?

A. I think it did.

Q. Do you recall whether that particular subject was discussed by you by telephone or otherwise with Mr. Dewar?

A. Yes, I think either I called Dewar or he called me, I don't recall which way it went, but I think I talked about it over the phone.

Q. And raised the point as to the extension of the agreement?

A. Yes, sir.

Q. do you recall whether or not you sent any cable to British Timken or to Mr. Dewar in respect of the request for extension of the term of the agreement?

A. Yes, I think there were several cables sent.

(Report dated May 31, 1935, by Mr. Hess thereupon marked by the Clerk, for identification, Defendant's Ex-
[fol. 2046] hibit 131.)

Mr. Ketterer: Now, if the Court please, I have had marked as Defendant's Exhibit 131 a report dated May 31, 1935, of Mr. Hess' with respect to his telephone conversation. I am not offering it in connection with the telephone conversation because he has sufficiently testified about that in oral examination, but the report does have a copy of the cable I would like to have Mr. Hess identify, and offer this only as with respect to this containing a copy of the cable sent to Mr. Duncan in connection with that transaction.

Q. Now, I have here two sheets marked Defendant's Exhibit 131, Mr. Hess. First of all can you identify the document in its entirety, in general?

A. Yes, sir.

Q. And what is it?

A. It covers a memorandum I wrote of Mr. Dewar's conversation with me and the memorandum is dated May 31, 1935.

Q. Now, I want to direct your attention to what appears in the last line on the bottom of the first page of Exhibit 131 to be a quotation, and the top of the second page, and I will ask you if you can identify that?

[fol. 2047] A. Yes, that is a copy of a cable I sent to Mr. Duncan, our attorney in London.

Mr. Ketterer: I would like to offer the portion of Exhibit 131 which shows the cable only.

The Court: It may be received.

Q. Now, I believe, Mr. Hess, you said that Mr. Duncan, or the Mr. Duncan to whom that cable was addressed, was attorney for American Timken in England?

A. That is correct.

(Cable dated May 31, 1935, from Duncan to Hess thereupon marked by the Clerk, for identification, Defendant's Exhibit 132.)

Q. Now I hand you what has been marked for identification Defendant's Exhibit 132 and ask you if you can identify that?

A. Yes, that was a cable sent to us by Mr. Duncan from London.

[fol. 2048] Q. Bearing what date?

A. May 31, 1935.

Q. Was that in reply to the earlier cable we just had identified and which was read into the record?

A. Yes.

Mr. Ketterer: I offer Defendant's Exhibit 132.

The Court: It may be received.

(Cable dated May 31, 1935, of Hess to Duncan thereupon marked by the Clerk, for identification, Defendant's Exhibit 133.)

Q. I have, Mr. Hess, a sheet or photostat which has been marked for identification as Defendant's Exhibit 133. Will you tell us what that is?

A. That is a cable dated May 31, 1935, from me to Mr. Duncan.

Mr. Ketterer: We offer Defendant's Exhibit 133.

[fol. 2049] The Court: It may be received.

(Cable dated May 31, 1935, from Duncan to Hess thereupon marked by the Clerk, for identification, Defendant's Exhibit 134.)

Q. So that there is no confusion about names, what was the name of the firm with which Mr. Duncan was associated, do you recall?

A. No, I don't recall the full name. I would know it if I heard it.

Q. Was the name Stibbard, Gibson & Company?

A. That is right.

Mr. Ketterer: Some of the cables are signed "Stibbard", some signed "Duncan". I thought we ought to get it cleared up.

Q. I have another sheet marked Defendant's Exhibit 134, and ask you if you can identify that?

A. Yes, that is a cable to me from Duncan dated May 31, 1935.

Mr. Ketterer: We offer Defendant's Exhibit 134.

The Court: It may be received.

[fol. 2050] (Cable dated May 31, 1935, from Hess to [fol. 2051] Dewar thereupon marked by the Clerk, for identification, Defendant's Exhibit 135.)

Q. I have here a sheet that has been marked for identification as Defendant's Exhibit 135, can you identify that?

A. Yes, that is a cable dated May 31, 1935, to Mr. Dewar and signed by me.

Mr. Ketterer: I offer Defendant's Exhibit 135.

The Court: It may be received.

Q. Now, do you recall, Mr. Hess, whether the subject of the extension of the agreement was discussed, without giving the details of the discussion, with any other officers and executives of American Timken?

A. I recall discussing it with Mr. Timken and I think all our executives. I recall discussing it with Mr. Ernst, I believe, of Ernst & Ernst.

Q. Will you state whether or not that discussion took place before the last cable which was read where you advised Mr. Dewar of American Timken's willingness to extend the contract for a thirty year period?

[fol. 2052] A. That is correct.

Q. Now, going to another subject, you will recall yesterday we offered some evidence as to your request for reports from British Timken and your testimony with respect to that subject.

(Letter dated February 18, 1930, from Seward to Hess thereupon marked by the Clerk, for identification, Defendant's Exhibit 136.)

Q. (Continued) Going to the French Timken situation as to the requests for information from them, I have here Defendant's Exhibit 136. Can you identify that?

A. Yes, that is a letter dated February 18, 1930 to me and signed by Mr. Seward of French Timken.

Q. What was Mr. Seward's connection with French Timken?

A. He was manager of French Timken.

Q. And was he French or English?

A. English.

Mr. Ketterer: We offer Defendant's Exhibit 136.

The Court: It may be received.

[fol. 2053] Q. Will you tell us what the initials "D.O.H. steel" mean?

A. Direct oil hardening.

Q. What significance did that have in respect of the French Timken operations?

A. They were using a different type of steel than was used in British Timken and American Timken in all of their operations. We used some of that type of steel at British Timken.

Q. What is direct oil hardening steel?

A. That is high carbon, high chrome steel.

[fol. 2054] Q. And the hardening process involves the use of what material?

A. Well, you don't use carburizing at all.

Q. You mean you omit the carburizing process you described when you were on the witness stand ten days or so ago?

A. That is correct.

[fol. 2055] Direct examination of Donald P. Hess

By Mr. Ketterer:

Mr. Ketterer: I would like to have the cable of March 4, 1930, from Hess to Seward marked for identification as Defendant's Exhibit 137.

(Cable above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 137.)

Q. Mr. Hess, I have a sheet that has been marked for identification as Defendant's Exhibit 137. Will you examine it and tell us what it is, please?

A. That is a cable dated March 4, 1930, to Mr. Seward of French Timken, and signed by me.

Mr. Ketterer: We offer Defendant's Exhibit No. 137.

The Court: It may be received.

[fol. 2056] I will have marked for identification as Defendant's Exhibit 138 a cable dated March 5, 1930, from Seward to Hess.

(Cable above referred to was thereupon marked by the Clerk, for identification, as Defendant's Exhibit No. 138.)

Q. Mr. Hess, will you examine this sheet that has been marked for identification as Defendant's Exhibit No. 138, and tell us what it is, please?

A. That is a cable dated March 5, 1930, from Mr. Seward to me at Canton.

Mr. Ketterer: We offer Defendant's Exhibit 138.

The Court: It may be received.

I will have marked for identification as Defendant's Exhibit No. 139, a letter dated December 16, 1929, from Seward to Timken Roller Bearing Company.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 139.)

[fol. 2057] Q. Mr. Hess, I have here some papers marked for identification Defendant's Exhibit 139. Will you tell us what the first page is and what the attachments to it are?

A. This is a letter and data dated December 16, 1929, to us at Canton from Mr. Seward, and gives the data on their orders, their production for the week ending December 14, 1929.

Mr. Ketterer: We offer Defendant's Exhibit No. 139.

The Court: It may be received.

[fol. 2058] Mr. Ketterer: I would like to have marked for identification as Defendant's Exhibit 140 a letter dated May 30, 1930, from French Timken to Timken Roller Bearing Company.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 140.)

Q. I have, Mr. Hess, a group of documents clipped together which have been marked for identification Defend-
[fol. 2059] ant's Exhibit 140. I will ask you if you can identify the first page and the documents that are attached to it?

A. This is a letter and data, dated May 30, 1930, and sent to us at Canton by Mr. Seward and covers their trading results for the four months' period ending April 30, 1930.

Mr. Ketterer: We offer Defendant's Exhibit 140.

The Court: It may be received.

[fol. 2060] Mr. Ketterer: I would like to have marked for identification as Defendant's Exhibit 141 a document headed "Data Now Received From British Timken."

(The document above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit 141.)

Q. Mr. Hess, I have three sheets here that are clipped together and marked for identification as Defendant's Exhibit 141. Will you examine those and tell me what they are?

A. It doesn't have a date, either, does it? This is data we received from British Timken, and my writing on here shows that we also received it from Deutsche Timken and Francaise Timken covering monthly trading results, payrolls, orders on hand, orders received, pieces produced by part number, supervision expense, indirect labor expense, [fols. 2061-2962] material costs, labor costs, departmental payrolls, and various lists of machinery, quarterly, and data semi-annually.

Q. I will ask you, Mr. Hess, whether that is an outline of the materials, samples of which have been introduced in evidence here, that you were receiving from the Timken Companies abroad, British Timken, French Timken, and German Timken, as long as the latter company, of course, was in operation?

A. Well, this is the data we received from British Timken and French Timken. I can't remember whether we received any from German Timken, and I don't believe you have introduced any from German Timken.

Q. But as far as British Timken and French Timken are concerned, this is actually the data received?

A. That's correct.

Mr. Ketterer: We offer this Defendant's Exhibit 141. [fol. 2063] Mr. Ketterer: That's what he testified to yesterday. Has the Court received this Exhibit 141?

The Court: Yes, it will be received.

Mr. Ketterer: I would like to have marked for identification as Defendant's Exhibit 142 a letter dated December 2, 1930, from Timken Roller Bearing Company to British Timken Limited.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 142.)

Mr. Ketterer: And as Defendant's Exhibit 143 a letter dated January 9, 1931, from British Timken Limited to Mr. Hess.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 143.)

Q. I have two sheets here, Mr. Hess, marked for identification as Defendant's Exhibits 142 and 143. I will ask you if you can identify those, please?

A. This first exhibit is a letter dated December 2, 1930, to British Timken and signed by me. The second one is a letter dated January 9, 1931, to me from Mr. Dallow of British Timken.

[fol. 2064] Mr. Ketterer: We offer Defendant's Exhibits 142 and 143.

The Court: Both may be received.

[fol. 2065] I would like to have marked for identification as Defendant's Exhibit 144 a letter dated June 26, 1931, from Timken Roller Bearing Company, to French Timken.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 144.)

Q. Mr. Hess, I have here a sheet that has been marked for identification Defendant's Exhibit 144. Will you examine that and tell us what it is, please?

A. This is a letter dated June 26, 1931, to French Timken, attention Mr. Seward, and signed by me.

Mr. Ketterer: We offer Defendant's Exhibit No. 144.

The Court: It may be received.

[fol. 2066] I would like to have marked for identification as Defendant's Exhibit No. 145 a letter of August 24, 1931, from Timken Roller Bearing Company to Mr. Dallow, with a sheet attached.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 145.)

Q. Now, Mr. Hess, I have two sheets that have been marked for identification Defendant's Exhibit No. 145. Will you examine those, please, and tell us what they are?

A. This is a letter dated August 24, 1931, to Mr. Dallow [fol. 2067] of British Timken, signed by me, and enclosing data covering manufacturing costs of Canton, Columbus, and Paris, for the month of April, 1931.

Mr. Ketterer: We offer Defendant's Exhibit 145.

The Court: It may be received.

Q. I would like to ask you, Mr. Hess, whether or not this comparison of costs that is attached to this letter of August 24, 1931, was prepared on the same basis and [fol. 2068] shows the same type of data as you explained to the Court yesterday in respect of the comparison of costs between Canton, Columbus, and Birmingham?

A. May I have another look at it?

Q. (Handing exhibit to witness.)

A. Yes, that's the same data.

Q. And the percentage figures that appear in the right hand columns under "Canton," Columbus," and "Paris," are in reference to and calculated in the same fashion as they were in respect of Canton, Columbus, and Birmingham?

A. That's right.

Mr. Ketterer: I would like to have marked as Defendant's Exhibit No. 146 for identification a letter dated January 5, 1931, from Seward to Timken Roller Bearing Company, and attached to which is a production report for the month of November, 1930.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 146.)

Q. Mr. Hess, I have several sheets marked for identification as Defendant's Exhibit 146. Will you examine those and identify them, please?

A. This is a letter dated January 5, 1931, from French Timken to us, and it includes various data, such as pro- [fol. 2069] duction by part number, gross hours required to produce at French Timken.

Q. And that covers what period?

A. The month of November 1930.

Mr. Ketterer: We offer Defendant's Exhibit 146.

The Court: It may be received.

Mr. Ketterer: I would like to have marked as Defendant's Exhibit 147 for identification a letter dated July 7, 1931, from Seward to Timken Roller Bearing Company.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 147.)

Q. I have here a single sheet, Mr. Hess, marked for identification Defendant's Exhibit 147, and I will ask you [fol. 2070] if you can tell us what that is, please?

A. That is a letter dated July 7, 1931, to us at Canton, from Mr. Seward of French Timken.

Mr. Ketterer: We offer Defendant's Exhibit No. 147.

The Court: It may be received.

[fol. 2071] Q. Now, do you recall whether or not Mr. Seward did come to America at any time prior to the time that you left the Timken Roller Bearing Company in 1936?

A. Yes, sir.

Q. He was at the Timken plant in Canton?

A. That is right.

Mr. Ketterer: I would like to have marked as Defendant's Exhibit 148, for identification, a letter dated July 18, 1933, from French Timken to Timken Roller Bearing Company, attached to which is a detail of productive wages and general charges.

(The letter above referred to was thereupon marked by [fol. 2072] the Clerk, for identification, Defendant's Exhibit No. 148.)

Q. Mr. Hess, will you examine the two sheets that have been marked for identification as Defendant's Exhibit 148, and tell us what they are, please?

A. This is a letter dated July 18, 1933, from Mr. Beauvivier to us and contains production data on wages and general charges for the month ending May 31, 1937, and covering operations of French Timken.

Mr. Ketterer: We offer Defendant's Exhibit No. 148.

The Court: It may be received.

[fol. 2073] Q. Mr. Hess, apparently this sheet which I have now had marked also as Defendant's Exhibit 148 was detached from the other exhibit bearing the same number. Will you look at that and identify it for us, please?

A. Yes, that is a list of material used in May 1933, at the French Timken plant covering tubing, bar, strip, wire, and certain stamped cones and cups, rolls and cages.

Mr. Ketterer: We offer this as part of Defendant's Exhibit 148.

The Court: It may be received.

Mr. Ketterer: I would like to have marked as Defendant's Exhibit 149, for identification, a letter of July 1, 1933, from French Timken to Timken Roller Bearing Company.

[fol. 2074] (The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 149.)

Q. I hand you here, Mr. Hess, a single sheet marked for identification Defendant's Exhibit 149, and ask you to identify that.

A. That is a letter dated July 1, 1933, sent to us at Canton by Mr. Beauvivier, and covers production reports, wage statement, efficiency operations, for the month of May, the first and second fortnights.

Mr. Ketterer: We offer Defendant's Exhibit No. 149.

The Court: It may be received.

[fol. 2075] I would like to have these three sheets headed, "Particulars of Employees (Excluding Staff)" marked for identification Defendant's Exhibit 150.

(The summary above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 150.)

Q. I have three sheets, Mr. Hess, marked for identification Defendant's Exhibit 150. Will you examine those and tell us what they are, please?

A. That is a report dated December, 1933, covering particulars of employees in the various departments of French Timken, and covers the period of December, 1933.

Q. And the third sheet, what does that cover?

A. That covers the hours worked and the amount of money paid for piecework, day work, and overtime.

Mr. Ketterer: We offer Defendant's Exhibit 150.

The Court: It may be received.

[fol. 2076] I would like to have marked for identification as Defendant's Exhibit 151, a letter dated October 6, 1927, from Timken Roller Bearing Company to British Timken.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 151.)

Q. I hand you, Mr. Hess, a sheet that has been marked for identification Defendant's Exhibit 151, and ask you to identify it, please.

A. That is a letter dated October 6, 1927, to the British Timken Company attention Mr. Dewar, signed by me. [fol. 2077] Mr. Ketterer: The letter is dated October 6, 1927, from Timken Roller Bearing Company to British Timken Limited. We offer Defendant's Exhibit 151.

The Court: It may be received.

I would like to have marked for identification as Defendant's Exhibit 152, a letter dated January 4, 1933, from Timken Roller Bearing Company to Mr. Dewar, and as Defendant's Exhibit 153, a letter dated November 28, 1932, from Mr. Dewar to Mr. Hess.

(Said letters above referred to were thereupon marked by the Clerk, for identification, Defendant's Exhibits 152 and 153.)

Q. I have here two sheets, one of which is marked for identification Defendant's Exhibit 152, and the other as [fol. 2078] Defendant's Exhibit 153. Will you examine those and tell us what they are, please?

A. This first one is a letter dated January 4, 1933, and written to Mr. Dewar and signed by me. The other one is a letter dated November 28, 1932, sent to me by Mr. Dewar.

Mr. Ketterer: We offer Defendant's Exhibits 152 and 153.

The Court: They may be received.

[fols. 2079-2080] I would like to have marked for identification as Defendant's Exhibit 154, a letter dated March 21, 1933, from Dewar to Hess.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 154.)

Q. Mr. Hess, will you examine this sheet which has been marked for identification as Defendant's Exhibit 154 and tell us what it is, please?

A. That is a letter dated March 21, 1933, and written to me by Mr. Dewar.

Mr. Ketterer: We offer Defendant's Exhibit No. 154.

The Court: It may be received.

[fol. 2081] Q. Will you identify for the Court, please, the Mr. Moreland who is referred to in this letter?

A. He was a man we sent from American Timken to aid British Timken at that time.

Q. What was his position with American Timken?

A. As I recall, he was in our Engineering Department.

Q. Did he specialize in any particular type of bearing applications, to your knowledge?

A. I think it was rolling mill applications.

Q. Do you know whether he was in Europe more than once in connection with the affairs of British Timken?

A. I don't recall that.

Mr. Ketterer: I would like to have marked for identification as Defendant's Exhibit No. 155, a letter dated April 6, 1933, from Timken Roller Bearing Company to Dewar.

(The letter above referred to was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 155.)

Q. Mr. Hess, will you examine this paper which has been marked for identification as Defendant's Exhibit No. 155 [fol. 2082] and tell the Court what it is, please?

A. This is a letter dated April 6, 1933, addressed to Mr. Dewar and signed by me.

Mr. Ketterer: We offer Defendant's Exhibit No. 155.

The Court: It may be received.

[fol. 2083] I would like to have marked for identification as Defendant's Exhibit No. 156 a letter dated April 20, 1933, from Dewar to Hess.

(The letter above referred to was marked by the Clerk, for identification, Defendant's Exhibit No. 156.)

Q. Mr. Hess, I hand you a paper which has been marked for identification Defendant's Exhibit 156, and ask you to tell the Court what that is, please.

A. That is a letter dated April 20, 1933, addressed to me and signed by Mr. Dewar.

Mr. Ketterer: We offer Defendant's Exhibit No. 156.

[fol. 2084] The Court: It may be received.

Q. Mr. Hess, there has been some testimony offered in this case in respect of an agreement reached between French Timken an SKF in France, which the record indi-

cates was negotiated by Mr. Dewar. Do you recall that matter?

A. Yes, sir.

Q. I want to ask you, first of all, did you personally at any time participate in any negotiations that led up to the execution of that agreement?

A. No, sir.

Q. Did you ever meet with any representatives of SKF or any other bearing company in France in respect of any such arrangement?

A. No, sir.

Q. What is the fact as to whether or not that was handled exclusively by Mr. Dewar or Mr. Pascoe, or both of them?

[fol. 2085] A. That is my recollection.

Q. Now, I will ask you whether or not you were acquainted with the fact that that arrangement was worked out between French Timken and SKF in France?

A. Yes, sir.

Q. And did you object to the making of the arrangement at any time?

A. I don't recall that we objected to it, except we asked several questions about it.

Q. And on what basis did you withhold any objections to the making of the arrangement?

A. Well, it had been our policy that we allowed Mr. Dewar full charge of all French and British and German operations. He was the so-called managing partner in those divisions, and we normally, in fact, I don't know of any case offhand that we didn't follow his advice.

Q. There has been some testimony offered here in respect of a matter that involved the Timken-Detroit Axle Company and its sale of bearings for replacement purposes in, I believe, Budapest, Hungary. What if any relationship is there between the Timken-Detroit Axle Company and the Timken Roller Bearing Company, or was there at any time during the time you were connected with the Timken Roller Bearing Company?

[fol. 2086] A. They were our customers.

Q. Well, I will ask you to tell the Court whether or not there was any—

The Court: The relationship between Detroit Axle and—

Mr. Ketterer: The Timken Roller Bearing Company.

The Court: It was that of customer and supplier?

The Witness: Well, we supplied bearings to them. There was no corporate relationship between the two companies, as I recall it, from the standpoint of stock ownership or anything like that.

Q. To your knowledge, was there any control that was exercised by Timken Roller Bearing Company over Timken-Detroit Axle Company, or vice versa?

A. No, sir.

Q. Have you any personal recollection of every having discussed with anybody at the Timken-Detroit Axle Company any matter involving the sale of replacement bearings in Budapest, Hungary, as of the present time?

A. No, sir.

Q. And to your knowledge, was there anything in the connection between the Timken Roller Bearing Company and the Timken-Detroit Axle Company as a result of which [fols. 2087-2088] could have required the Timken-Detroit Axle Company to do one thing or another in respect of the sale of bearings?

Mr. Nitschke: I think I will object to that question. [fol. 2089] The Court: Well, I can't see what effect it would have, but I will let him answer.

A. No, sir.

Q. There has been some testimony, Mr. Hess, as to the fact that the market for tapered roller bearings or anti-friction bearings generally falls into two classifications, bearings for original installation and bearings for replacement purposes. Do you recognize, on the basis of your experience with Timken Roller Bearing Company over the years those two classifications in the market for tapered roller bearings or anti-friction bearings?

A. Yes, sir.

Q. For what period of time while you were with Timken Roller Bearing Company, did you follow the operations of the foreign companies, British Timken, French Timken, and German Timken that were associated with the Timken Roller Bearing Company?

A. From the summer of 1927 until I left in the Spring of 1936.

Q. Now, based upon the experience that you had, what is [fol. 2090] your opinion as to whether or not sales for original installations could be made in a country where there was a substantial manufacturing economy unless a plant was in operation in that country?

A. It would be extremely difficult.

Q. And will you state why, in your opinion, it would be difficult?

A. That's a pretty broad question but, generally speaking, in countries like England, France, and Germany, and to some extent Austria, the original equipment builders insisted on bearings made in their own country for many reasons, one of which was extremely important at some time in that interval. I believe it didn't start in 1927, but a little later on, a nationalistic feeling. For instance, in England there was a very strong attitude to buy British, and in France, I have a general recollection that Mr. Citroen's men told me they couldn't possibly use bearings except those made in France as a permanent installation in their cars. The other difficulty was largely involved in tariffs and trade restrictions, where you almost had to make products in countries that had large products of that type.

Q. Now, what if anything does knowledge of engineering practices in the different countries have to do with the necessity of making bearings in those countries?

[fol. 2091] A. Well, that's important, but of even greater importance is the application of close manufacturing tolerances and know-how, and contacts with customers in those countries. By that I mean you couldn't very successfully sell and replace bearings with a Britisher in France in original equipment jobs.

Q. How about Germany?

A. The same way in Germany, and vice versa, the same way in England.

Q. Mr. Hess, in connection with the sale of bearings in countries in Europe where there is a substantial manufacturing economy for original installation, what if anything does the fact that the governments of those countries represented part of the markets have to do with the necessity of having a plant in the country?

A. Well, of course, they always wanted to buy products

made in their own countries, but you read this morning, and which I recall at the time in Germany, they told us that but they were buying special made bearings for their railroads from Switzerland.

Q. Now, as to replacement bearings and the business for [fol. 2092] replacement bearings, what was your experience as to where that business went to in respect of it following or not following the original installation in the equipment that was manufactured?

A. Well, normally it followed the original installation. For example, if we shipped trucks either from America into England or France they would want to replace the bearings with the same kind of bearings that were in there.

Q. Now, if capital goods or equipment was manufactured in England and the bearings that were installed in the equipment were English-made bearings, what was your experience as to whether the bearings for replacement purposes in respect of that equipment would, generally speaking, go to English manufacturers?

A. They would.

Q. Are you able to tell the Court as to whether or not Germany was a large manufacturing country and producer of capital goods between 1927 and 1936?

A. My recollection is that it was.

Q. And by comparison with other European countries was it the largest or what was its general position?

A. Well, I would generally think and say it was somewhat larger than England.

Q. And as to France?

[fol. 2093] A. Not as large in capital goods as either Germany or England.

Q. That is, France was third in your opinion?

A. Yes, sir.

Q. As to machine tools, trucks, rolling mills, things of that sort or type of capital goods, were they produced in substantial amount in Germany in the period between 1927 and 1936?

A. Yes, I would say so.

Q. And to the extent that they employed anti-friction bearings in respect of replacement business, where would that replacement business normally go or where did it go as you observed it?

A. Well, I will have to break that down. For truck pur-

poses and passenger car purposes they tried to replace with the original bearings that were in there.

Q. Well, if a truck or passenger car was produced in Germany and it included German bearings, for replacement purposes where would the business go?

A. To Germany, which was the manufacturer.

Q. How about other types of equipment made in Germany in which various kinds of anti-friction bearings were used, in respect of replacement business? For example, rolling mills.

A. If any bearings were made in Germany for rolling mills they would go to the German manufacturer of the [fol. 2094] bearing.

Q. Was that your experience generally in respect of the replacement business?

A. That is right.

Q. Now, one other question. Over the period from 1927 to 1936, to your knowledge was there an exchange of personnel between American Timken and British Timken? By that I mean people going over from the British Timken plant to America or going over from America to British Timken?

A. Yes, sir.

Q. Can you give us some of the names of the people, first from British Timken, who came over to America during that period to your knowledge?

A. Well, of course, there was Dewar and Pascoe, and a fellow by the name of Fegan, and Spear.

Q. Will you tell the Court who Messrs. Fegan and Spear were?

A. Well, Fegan was a factory man, as I recall it, and Spear was an engineer. I don't recall any others. I believe there were more.

Q. From French Timken, do you recall any of the names of French people who came to America?

A. Seward came, he was the manager, and another engineer, Mr. Beauvivier's son came and spent some time in our Engineering Department.

[fol. 2095] Q. Do you know how long Mr. Beauvivier was here?

A. I don't recall.

Q. Was it a short period or long?

A. No, it was several months.

Q. As to people going over from American Timken to British Timken, were there any of those during the period 1927 to 1936?

A. Yes, sir.

Q. Can you give us the names of any of them?

A. Yes, I see some of them right here: Mr. Shuler, Mr. Sloan, Mr. Moreland—I don't recall any more at the moment.

Q. To what extent did you make arrangements for those people who went from American Timken to British Timken?

A. Well, I always contacted Mr. Dewar on it.

Q. And did you make the arrangement at the American Timken plant for the people from American Timken who went over there?

A. Generally speaking, yes. We had various departments that took care of the traffic and tickets and things like that.

Q. Will you tell the Court generally what the purpose was of sending people from American Timken to French and British Timken?

A. Mostly to give them education and advice in their various problems.

[fol. 2096] Q. Were they problems relating to the production of bearings and the use of machinery and equipment?

A. Yes, as well as engineering work and sales work.

Q. Will you tell the Court the general purpose of having the British Timken personnel, some of whose names you have given, come to America?

A. So that they could see our methods and our ways of doing business.

Q. To what extent after 1927 was the equipment that was in the British Timken and French Timken plants the same general type of equipment that was employed in the American Timken plants in America for the production of bearings?

A. Well, they used as much equipment as we had in America that they could use to advantage.

Q. Was that on your recommendation as to the type of equipment they could use?

A. In most cases.

Q. You say they used it to the extent it was possible. What factors were there that prevented them from using all the same type of equipment as used by American Timken?

A. Well, there were several factors: Their small quantity of production sometimes would not permit them to use what we call high production machinery. There was another example in the type of gas they had in their plant [fol. 2097] at Birmingham, they couldn't use our type of equipment because of the type of gas they had.

Q. Was that for the carburizing process?

A. Yes, and some heat treatments besides carburizing.

Q. Is it correct to say, aside from the size and the other limitations mentioned, their equipment generally followed the same type of equipment as used in the American Timken plants?

A. Yes, after 1927.

Q. Prior to 1927 the equipment that was in use, was that described in your report of 1927?

A. Yes, sir.

Mr. Ketterer: I think that is all.

Q. Mr. Day suggested I ask you one other question, and that is where were you born and educated?

A. In Cleveland, Ohio.

Mr. Ketterer: That is all.

Cross examination.

By Mr. Nitschke:

Q. Mr. Hess, in connection with Defendant's Exhibits 128, 129, and 130, which were your reports of your visits to British Timken, French Timken, and German Timken, there were attached certain exhibits. One of them I would like to call your attention to, which is labeled Exhibit J, [fols. 2098-2099] and it has two pages and has your initials at the end, dated February 29, 1932, Turin, Italy.

Q. I would like to call your attention to the first paragraph of this memorandum headed "Exhibit J," entitled, "R.I.V., Turin, Italy."

[fol. 2100] Now, Mr. Hess, did you have any arrangement to give know-how to RIV?

A. No, sir.

Q. Had you made recommendations to RIV on how to make tapered roller bearings?

A. No, sir.

Q. Did you send men over there to show them how to do it?

A. No, sir.

Q. A week ago last Thursday, when you testified before, I believe the nature of this testimony was to the effect that as a result of Timken's investment in British Timken, you took a trip over there in 1927?

A. That is correct.

Q. And that you examined their methods of operation and made recommendations on how to improve their methods of operation?

A. That is correct.

[fol. 2101] Q. I believe you found in some instances they weren't using as good material as they could have used?

A. Yes.

Q. Some of their applications weren't as efficient as they might have been, some of the applications which they were recommending?

A. You mean bearing applications?

Q. Yes.

A. Yes, sir.

Q. Tapered roller bearings?

A. That is right.

Q. And that some of their processes and methods were not entirely efficient?

A. That is right, as compared to American standards.

Q. And that some of the bearings they were making were of an old-fashioned type?

A. Well, what do you mean by old-fashioned? They were making what was known as a V-type bearing which we had made here in America for years and years, but we had swung over to a new design called the F-type bearing by that time.

Q. At that time they were still making some of the V-type?

A. Yes, the bulk of their production was the old V-type.

Q. Now, at that time that you went over there, Mr. Hess, were you familiar with the fact that an agreement was

[fol. 2102] entered into or was in the process of being entered into between American Timken and British Timken regarding allocation of territories?

A. Yes, sir.

Q. You are familiar with the fact that such an agreement dated January 1, 1928 was entered into?

A. Yes, sir.

Q. And that it did have provisions for dividing territory?

A. Yes, sir.

Q. Are you also familiar with the fact that prior to January 1, 1928, there were in effect other agreements between British Timken and American Timken which also contained provisions dividing territories?

A. Yes, sir.

Q. So that both before you made this trip over there and afterwards there were in effect between American Timken and British Timken agreements dividing territories?

A. Yes, sir.

Q. In other words, before you went there, when they had these rather inefficient methods as compared to ours and the bearings weren't the same type, they still had the allocation of territories then?

A. Yes.

Q. And they also had it after you made these recom-

[fols. 2103-2105] mendations and were charges made in the techniqne?

A. That is correct.

Q. I would also like to call your attention to Defendant's Exhibit 131, which is the memorandum that you testified to, dated May 31, 1935, reporting a phone call with Mr. Dewar about getting the agreement lengthened from 16 years to 30 years in comection with something he had said to the brokers?

A. Yes, sir.

Q. You said in this memorandum: "I explained that in this country a 30-year period was practically unheard of and that all similar types of agreements were usually made for 15 years and some extreme cases for 20 years."

Now, was that your view at that time, that a 30-year period was practically unheard of?

A. Yes, sir.

[fol. 2106] Mr. Nitschke: I have no further questions.

Mr. Ketterer: I would like to offer this document identified as Defendant's Exhibit 131 in its entirety in view of the fact that counsel for the Government used it on cross examination.

The Court: It may be received.

Mr. Ketterer: That is all.

[fol. 2107] Thereupon, the Defendant, to maintain the issues on its part, called as a witness

CLIFFORD L. EASTBURG,

who being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Ketterer:

Q. Will you state your name?

A. Clifford L. Eastburg.

Q. Where do you live?

A. Canton, Ohio.

Q. And you are employed where?

A. Timken Roller Bearing Company.

Q. How long have you been employed by The Timken Roller Bearing Company?

A. Since September 12, 1927.

Q. In what capacity have you been employed at various times since 1927 down to the present time by the Timken Roller Bearing Company?

A. From 1927 to about 1936 I was employed as an engineer for the design of roller bearing applications, Timken roller bearing applications to railway equipment. From 1936 to 1945 I was supervisor engineer in the Railway Engineering Department, and from 1945 to the present time [fol. 2108] I have been Assistant Chief Engineer of the Railway Engineering Division.

Q. And that covers the entire period of your employment with the Timken Roller Bearing Company?

A. It does.

Q. Now, as engineer in the Railway Bearing Division of the Timken Roller Bearing Company, I will ask you to state whether or not you have had any contact from time to time with the British Timken Company?

A. During the period of 1927 to 1936 I was occasionally called upon to check applications sent in by British Timken covering various types of railway applications. From 1936 on I also checked applications which were sent in. However, during the war period there was not so much of this work. Then from about 1941 or 1942 up to the present time there was a sort of pick-up on railway business, particularly in regard to points other than in Great Britain itself, such as Australia or South Africa, and we checked applications and made recommendations to British Timken on those applications in accordance with our practice.

Q. Now, when you say you checked applications for the British Timken Company, will you tell the Court what you mean by that?

A. Why, British Timken would send in drawings, generally arrangement drawings, covering the general picture [fol. 2109] of the application, and we would go over these and check the bearings recommended, that is the capacity of the bearings, and see whether the bearing had ample capacity and whether it was applied to the piece of equipment in the manner in which it should be or in the manner which we had it here in America.

Q. Now, that involved such things as sizes of bearings?

A. Yes, size and type of a bearing, that is the size for the particular type, particular piece of equipment.

Q. Well, in the railway bearing field, without being too technical in your description, will you tell the Court generally where anti-friction bearings are used on railway equipment?

A. Well, they are used on all axles of passenger cars and locomotives, including tenders of locomotives, and in recent years we have been making applications to crank pins and cross-head pins of steam locomotives. They are also used on Diesel equipment, and in recent years we have been getting into the freight line more. However, the freight business is confined largely to this country.

Q. Now, what do you mean by crank pins and reciprocating parts?

A. Well, the crank pins are the members of a steam locomotive that are placed in the wheel, the driving wheel of the locomotive, on which the bearing is mounted, and in [fol. 2110] turn in which the driving rods and connecting rods of the locomotive are placed, which in turn connect to a member called a cross-head. It is merely the connection between the main driving rod of the locomotive and the piston rod, and that in turn carries on to the piston and the cross-head being this connection between the piston rod and the main rod.

Q. Now, this checking of applications from British Timken, was that all done by you in the Engineering Department of American Timken, or were there other engineers in the department who also worked on that?

A. There were other engineers who also worked on that.

Mr. Ketterer: Now, if the Court please, in respect of the business of checking of the applications we have had collected here in one group all the material that has been submitted to British Timken in handling one such type inquiry, by way of illustration of the type of work that has been done by American Timken in connection with British Timken. And I should like to have marked and offer as one exhibit the entire group of material, and then by reference to it I should like to have the witness show how the thing was carried on, and by reference to various things in connection with the exhibit show the type of information that has been supplied to the British Company in this type of [fol. 2111] work.

The Court: All of those will be offered as one exhibit?

Mr. Ketterer: As one exhibit, that is correct.

Q. Mr. Eastburg, I have here a collection of papers I have collectively marked for identification as Defendant's Exhibit No. 157. I will ask you to tell the Court what they include and who collected them.

A. These are the letters that passed between British Timken and American Timken and interorganizational correspondence of American Timken, with prints dating back from August 27th, up to the present time, covering an inquiry from British Timken on axle applications, light weight reciprocating part applications and crank pin applications

to a 484 class locomotive on the South Australia Railway. These letters and prints were collected by myself and represent the work we go through in order to prepare such a recommendation.

(Whereupon, the documents above referred to were marked by the Clerk, for identification, Defendant's Exhibit No. 157.)

Mr. Ketterer: I should like to offer at this time Defendant's Exhibit No. 157 in connection with the testimony of Mr. Eastburg.

The Court: How will you fasten these together so there [fol. 2112] will be no question arise?

Mr. Ketterer: I just suggested to Mr. Wilson I thought they should be tied together all the way around, both longitudinally and latitudinally, and with the exhibit number clipped onto them on a separate tag, or we can have each one of the sheets lettered with the same number.

The Court: Well, it doesn't matter which way you do it, so there will be no confusion result.

The exhibit will be received.

I want to be sure there will be no difficulty as a result of the numerous letters that are included in this exhibit.

Mr. Ketterer: Well, we will endeavor to see they are fastened together so they won't become separated and any problem on that score.

Q. Now, Mr. Eastburg, will you keep this file in front of you so I can ask you some questions to show the character of the work that was done? In connection with that job, what was the date of the original inquiry from British Timken in respect of the bearings on the locomotives on the South Australia Railway?

A. Based on a letter dated July 1, 1941 from Mr. Gibson of British Timken.

[fol. 2113] Q. In Australia?

A. In Australia.

Q. And how many locomotives did that cover?

A. The inquiry originally was for five locomotive sets. It was later increased to eight locomotive sets. That was for axle applications only.

Q. That covered only axle applications for those locomotives?

A. That is right.

Q. Tell the Court, if you will, please, what was done by American Timken in respect of that inquiry for anti-friction bearings or tapered roller bearings on the axles of the locomotives?

A. We made preliminary mark-up drawings to typify the application we would recommend on each of the several applications on the locomotive, that is the lead truck, or engine truck, the main driving axle, other than the main driving axle, and the tender axle.

After these preliminary prints had been submitted to British Timken they submitted further data, and as time went on revisions were made, and as we assembled all of the data that were required to prepare a permanent application for the job. And when the order was received on the basis of these preliminary prints we made final assembly and detail drawings with complete details of material [fol. 2114] covering all of the material necessary to make the mounting parts for the roller bearing application. In the design of these applications we designed all the housings, the axles, and all of the mounting parts, closures, and all the parts which go to make up the application.

Q. Now, was all of that work done and submitted to the British Timken representative in connection with this particular job?

A. That is right.

Q. Do you have any of those blueprints there that show the final recommendation of the Company as to that work?

A. Yes.

Q. By the "Company" I mean the American Company.

A. There are included in these prints the prints of the arrangement drawings only. That is, if we had taken all of the detail parts we would have had quite a massive stack of prints, so we have tried to boil it down to just the arrangement drawings and the arrangements of the bearings themselves. But here is a typical arrangement drawing of the driving applications.

Q. And that was submitted to the British Timken representative?

A. Yes.

Q. Now, how about these detailed drawings? You say you have not collected them because of their volume. Were [fol. 2115] they also submitted?

A. They were all submitted to British Timken who in turn submitted them to their customer for their approval, and upon approval of these detail drawings we would go ahead and make up the parts.

Q. At any time after the original inquiry was received was there any change or addition made to the inquiry covering the application of bearings, to other parts of the locomotives?

A. Well, there were changes, of course, as we went along, but then this application was finally built, so far as the axle applications were concerned, and in, I believe it was 1946, an additional inquiry came from British Timken in England requesting the preparation of recommendations on the light weight reciprocating parts, and crank pin application for the single locomotive.

Q. The same class?

A. Same class locomotive only it was a trial, a single locomotive.

Q. Had that been included in the original inquiry you had received?

A. No; the original inquiry covered only the axle applications.

Q. What was done in respect of the additional inquiry for bearing applications in the other parts of the locomotive, the crank pin and reciprocating parts?

[fol. 2116] A. We prepared our recommendations, we prepared arrangement drawings and our bearing recommendations on these applications and submitted them to British Timken.

Q. How were they submitted?

A. Well, the first draft of the application was submitted by mail and at a later time Mr. Dewar and Mr. Pascoe had made a visit to our plant and it was decided at that time that inasmuch as British Timken had not had any experience on the design of these particular types of applications that someone be sent to England to familiarize them with designing of light weight reciprocating parts and crank pin applications.

[fol. 2117] Further direct examination of Clifford L. Eastburg.

By Mr. Ketterer:

Q. I think, Mr. Eastburg, when we concluded yesterday, you had just said that Mr. Dewar and Mr. Pascoe had come to America and there was some discussion as to the knowledge and experience of British Timken in respect of crank pin and reciprocating parts applications. Do you recall that?

A. I do.

Q. Did you have any discussion with Mr. Dewar or Mr. Pascoe yourself on that subject?

A. I did.

Q. And was that in Canton?

A. In Canton, yes.

Q. And what happened following that discussion in respect of anybody going to Europe?

A. It was decided that I be sent to England to familiarize the British Timken engineers with our methods and our designs of lightweight reciprocating parts applications, and crank pin applications, as well as bringing them up to date on all other types of railway roller bearing applications.

[fol. 2118] Q. Now, did you go to Europe following that discussion?

A. I did.

Q. And when did you leave for Europe?

A. On June 20, 1946.

Q. And approximately how long was that after the discussion with Mr. Dewar and Mr. Pascoe?

A. About four weeks.

Q. How long were you in England after you left here in June, 1946?

A. I returned from England, arriving in New York October 21, 1946,—about four months.

Q. Now, what if any material did you take with you when you went to England?

A. Well, in preparation for the trip I spent approximately three weeks gathering data and prints and material to take to England with me and I took enough material with the thought of actually setting up a railway engineering department there if necessary.

Q. And by "material" what do you mean, what type of material was it?

A. Well, we had selected prints covering the typical applications for all types of railway equipment,—cars, locomotives, diesels and anything comprising a roller bearing application to railway work. That is, we took arrangement [fol. 2119] drawings and detail prints covering each specific type of application and in addition to this we took all of our assembly and dis-assembly and construction files, photographs, motion picture films,—well, most everything that would be required in an engineering line to bring their engineers right up to our latest practice.

Q. Now, were the drawings that you took along in the quantity you have described similar to the ones attached to this exhibit that we identified yesterday and marked Defendant's Exhibit 157, or were they more detailed than those?

A. They were in much more detail. As a matter of fact there were approximately 1200 prints and all the fitting practices and stress sheets and everything pertaining to the applications, as well as photographs of those applications.

Q. That covered American Timken's practice in the railway field?

A. That is right.

Q. Now, after you arrived in England where did you go?

A. I went immediately to Birmingham and I spent most of my time in the drawing offices at the Birmingham plant at Aston.

Q. And what arrangement was made for you and what did you do at the Birmingham plant after you arrived there?

A. I was assigned an office in the engineering department [fol. 2120] and an engineer was selected to work with me, whom I was to train in the design particularly of reciprocating parts and crank pin applications. This young engineer worked with me each morning and in addition to this engineer their regular railway engineer, an older man, also spent most of the day with me. In the afternoon their advisory and development engineer, Mr. Doughty spent from two to three hours with me.

Q. What was done during the period of time each day in the morning with the young engineer who was assigned to you for training, what sort of course did you follow in respect of him?

A. Well, we would take a job and carry that job through from the time that we received an inquiry on it, and carry it through just the way, and familiarize them just the way we would process a job through our department. That is, we reviewed the information that was given to us by the railroad or the customer and from this information we developed our assembly drawings and our detail drawings, our fitting practices, our stress calculations, and everything that was necessary to bring this job to a conclusion.

Q. Now, what if any different method was used in the afternoon when Mr. Doughty and any other of the older [fol. 2121] engineers of the British Timken organization were with you?

A. Well, they also reviewed these same jobs but possibly not in as much detail as the younger man. The younger man went into it more from the drawing room standpoint, where the older man took more of the engineering angle into consideration.

Q. What use if any did you make of the blue prints and drawings that you took over there in connection with the discussions that you had with the British Timken engineers?

A. Well, we used these drawings for reference and they were left with British Timken for future reference.

Q. Did you revi w all of the drawings you had with respect to the different types of applications that American Timken had made in the railway field?

A. Practically every application was reviewed and all typical applications were reviewed. That is, where we had a number of applications that were almost identical we would pick out a specific application and follow that through.

Q. Now, did you do anything else while you were over in England, aside from training the British Timken engineers in the railway field in the fashion that you have outlined?

[fol. 2122] A. Yes, I was sent out on various trips with the railway sales engineers of British Timken to contact their customers.

Q. Do you know how many sales calls of that kind you made while you were in England?

A. I believe I made approximately 18 calls of that type.

Q. And with whom did you make contact when you went out on such calls?

A. The chief mechanical engineers of the four major railways in England, the chief engineers and officials of the

various car building or carriage building companies, that is, I visited three of the four principal carriage building companies, and I visited three of the principal locomotive builders in England and Scotland. And we went over the history of our railroad engineering, the application of roller bearings to railway equipment in the United States, and gave them our background on it.

Q. And was there anything else done while you were in England aside from these sales calls?

A. Well, on six occasions we gave, I gave film shows. British Timken had arranged for these shows at various points, to show about fifteen or sixteen hundred feet of motion picture film that I had taken with me to England.

Q. And that motion picture film covered what subject?

[fol. 2123] A. Well, the one of principal interest was a slipping test conducted on the Chicago, Burlington & Quincy Railroad to demonstrate the advantages of lightweight reciprocating parts and crank pin applications on steam locomotives. Then there was also a film showing some of our laboratory work in connection with our railway equipment at our Canton plant, and there were two rolls of films covering the application and maintenance of Timken bearings on locomotives on the Chicago, Burlington & Quincy Railroad.

Q. Now, to whom were these films exhibited?

A. Why, there was one show given to the officials of the Southern Railway. They in turn requested that the films be shown to their mechanical people at Brighton, and there was one show given to the Chief Mechanical Engineer of the London, Midlands & Scottish Railway at Darby. Another show at the Vulcan Foundry, which is a large locomotive builder at Manchester. That was given before a picked group of their officials and supervisors. And then a show was given at the North British Locomotive Works at Glasgow, before a group of railroad men and locomotive builders. And the last showing was given in the Mayfair Hotel in London before a selected group of chief mechanical engineers and mechanical officers of the railroads throughout England.

[fol. 2124] Now, at those film shows did you discuss American Timken's practice in respect of the use of tapered roller bearings in all railway applications?

A. I did. I gave a talk along with the picture, the picture

being a silent picture, and after each meeting the session was thrown open for discussion and there was usually three-quarters to an hour's discussion.

Q. On a question and answer basis?

A. That is right.

Q. You say these were selected groups of engineers from the various railroad-. Who made those selections?

A. The officials of British Timken, and in the case of some of these showings at the railroads the railroads themselves made their selection of their audience, but at the Mayfair meeting in London the British Timken officials made the selection.

Q. Now, was there anything else done while you were in England during the period you have described other than the items you have gone into?

A. Well, as I mentioned before these calls and discussions were not only with the railway officials but with consulting engineers who represented and specified the materials to be used in the various railroad applications throughout the British Empire.

[fol. 2125] Q. Now, did you go on to the Continent to visit French Timken on that trip?

A. I spent one week at French Timken.

Q. And that was on the occasion of this 1946 trip?

A. That is right.

Q. What was done at French Timken while you were there during that week?

A. Well, the matter of our engineering practice on railway applications was reviewed with Mr. Robert Beauvivier and Mr. Beauvivier took me to various railway offices and shops in France. I believe we made six calls.

Q. And what was discussed there?

A. Well, principally the interest was in the recent group of engines equipped with Timken roller bearings acquired by the French National Railway. I believe 1340 locomotives were involved.

Q. And where were those locomotives built?

A. Those locomotives were built in America and Canada. There were 480 built by the Baldwin Locomotive Works, the same number by the American Locomotive Company, and there were 260 built by the Lima Locomotive Company, and I believe 100 by the Montreal Locomotive Company and 30 or 40 by the Canadian Locomotive Company.

Q. Were they purchased by the French Government or [fol. 2126] French buying mission in Washington?

A. I believe they were purchased by the French buying mission and handled under the Lend-Lease arrangement.

Q. Had some of those locomotives arrived in France while you were there in 1946?

A. There were quite a number of them there, they were still being shipped, but they had the majority of them in service at that time.

Q. And were they equipped with Timken roller bearings?

A. They were equipped in varying degrees with Timken bearings. Where Timken bearings were not used plain bearings were used. As an instance, the leading truck and the trailing truck on all of the locomotives were equipped with Timken bearings. There were 260 locomotives equipped with Timken bearings on the main driving axles, and 460 locomotives had all driving axles equipped with Timken bearings; and 640 locomotives equipped on the tenders with Timken bearings.

Q. The discussion related to what with respect to the locomotives, on the call you made to Mr. Beauvivier?

A. Principally on the service of these engines and the manner of handling the application and servicing of them.

Q. Was French Timken at that time making any tapered roller bearings for use on railway applications?

A. I believe they were making some of the smaller sizes.

[fol. 2127] Q. Were they making a complete line?

A. No.

Q. Did you go with their engineering department into the subject of American Timken railway practice in the field of railway applications, with the engineering department of French Timken, as you did in England?

A. I did, but not in as much detail.

Q. Now, we were talking yesterday, Mr. Eastburg, about a job that arose in 1941 for the South Australia Railway, and I think we had gotten up to about 1946 when there were some additions made to some parts of the job. I think you said there were some additional anti-friction bearing applications to be used on the locomotives. Do you recall that?

A. Yes. Inquiry came to us from British Timken for designs to cover the cross-head for lightweight reciprocating parts applications as well as crank pin applications.

Q. Now, was anything done in respect to that particular order on your European trip in 1946?

A. That inquiry had been in our office a few months prior to my going to England and our arrangement drawings, the preliminary arrangement drawings, had been prepared and taken by me to England for discussion with their engineers. And British Timken, after this discussion, submitted these prints to their representatives in south Australia and [fol. 2128] in turn they were submitted to the railroad.

Q. Well, then, is it correct to say that the order and inquiry was finalized while you were in England under your supervision at the British Timken plant?

A. No, there was considerable work completed on this after my return to America. As a matter of fact there were changes made in things due to the distance and time involved in transmitting this information to Australia. I was unable to take care of it all while I was in England.

Q. But there was some work done on it while you were there?

A. Definitely.

Q. Do you know who supplied the bearings on this order ultimately when the railway company in South Australia finally determined what they were going to do on the subject of anti-friction bearings?

A. Is this in regard to the reciprocating parts applications and crank pins?

Q. Yes.

A. American Timken furnished bearings on the crank pin applications and British Timken furnished the bearings on the cross-head applications of the reciprocating parts.

Q. And has this order that is covered by the material in Defendant's Exhibit 157 been completed now to your [fol. 2129] knowledge?

A. There is some of the material still being made up. As a matter of fact the application has not been put on the locomotives as yet, or on the locomotive, one locomotive.

Q. Now, I will ask you, Mr. Eastburg, whether or not the material that has been collected in this Defendant's Exhibit 157 is illustrative of the type of work that you have done? By "you" I mean the American Timken engineering force has done, in conjunction with British Timken in respect of railway applications over the years to your knowledge?

A. It is.

Q. Now, do you know whether or not at any time there have been any representatives of British Timken who have come to Canton during the time you have been with the railway division of American Timken?

A. Yes, there have been a number of representatives here. There was a Mr. Bowden, in about 1928. Mr. Spear, I believe he was here in the early '30's. Then a Mr. Robert Beauvivier—well, he is from French Timken. Mr. MacNichol. Then there was a young man here just recently, he spent about a year at our plant for training in various divisions.

Q. Do you recall his name?

A. I recall his first name, Ashton. I don't recall his last [fol. 2130] name.

Q. His name was what, did you say?

A. I don't recall his last name. I remember his first name only.

Q. What was that?

A. Ashton.

Q. What if anything did you do with these people, Mr. Bowden, Mr. Spear, the man you identified as Ashton, or Mr. Beauvivier when they came to Canton?

A. They spent some time in our department reviewing our railway applications and we showed them various arrangement drawings and prints, or anything that they might have been interested in and anything we thought would be of interest to them.

Q. Have you any recollection now as to how much time they were in the engineering department working with you or with other engineers in the railway division?

A. Well, that would vary. Sometimes it was a matter of just a few days to a few weeks. I recall this young man's name now, Dennis Ashton.

Q. Ashton was his last name?

A. Yes. There was another gentleman from Australia here not long ago, a man named Fall, also.

Q. Now, what was done with those people when they were in the engineering department for varying periods of time?

A. Well, in the case of Ashton we had him working on a [fol. 2131] drawing board and going through a typical job with us, and then we let him review all of our data and prints covering various applications, and it is my understanding that he did the same thing throughout the other engineering

divisions of Timken, as well as working in the laboratories and with the shop and development people.

Q. Well, was Mr. Ashton in the engineering department for any substantial period of time working on railway applications?

A. I believe he was with us about three weeks, three to four weeks.

Q. You mentioned Mr. Fall's name. What did he do when he was there?

A. Well, he spent a few days in our division, in our railway division, going over the various designs, and then he spent several days visiting our sources of supply for mounting parts, and also he accompanied our service engineers to a few of the railroad shops.

Q. Now, I want to ask you this, Mr. Eastburg, has there been any part of American Timken's practice in respect of railway applications that has not been discussed and gone over with the representatives of British Timken either when they came over here to the United States or when you were in England in 1946?

A. We have made every effort to keep them advised and [fol. 2132] up to date with our practice. When their representatives call we show them everything that we have that could be of interest to them, and inquire if there is anything we can show them in addition, and when my visit was made to England every attempt was made to familiarize them with our practices, and some of the information that was given them was in the form of a volume of data that I had personally compiled over a period of twenty years covering practically all of the applications that we have made.

Mr. Ketterer: I think that is all.

Mr. Nitschke: No questions.

[fol. 2133] Thereupon the Defendant called as a witness in its behalf JOHN B. BAKER, who, being first duly sworn, testified as follows:

Direct examination of John B. Baker.

By Mr. Ketterer:

Q. Will you state your name, please?

A. John B. Baker.

Q. Where do you live, Mr. Baker?

A. Canton, Ohio.

Q. By whom are you employed?

A. The Timken Roller Bearing Company.

Q. In what capacity are you employed by The Timken Roller Bearing Company at the present time?

A. I handle the product and design of both roller bearings and rock bits and also the tool engineering for the product, that is the gauges and the tool engineering.

Q. Are you the head of any department in the plant?

A. I am the chief engineer of the rock bit division and also the chief tool engineer.

Q. Of the company?

A. Of the company.

Q. Do you have any engineers working under your [fol. 2134] direction?

A. About 60.

Q. And they perform what services?

A. They handle the general design of the product, the detailing of the product and the tool engineering for the product.

Q. Now, when you say they handle the general design of the product, will you tell us what you mean by that?

A. When a bearing is required, that is, a new bearing, the external dimensions of it are set by the requirements of the job or by the customer. Certain specifications in regard to the bore and o.d., outside diameter, the width of the bearing, the angularity of the bearing and the bearing capacity are prepared. It is the function of these people under my supervision to develop a bearing which fulfills those requirements. That is done through calculation and by detailed drawings.

Q. Now, in respect of tool designing, you say you are the chief engineer of the tool designing division. Will you explain to the Court what that is, please?

A. The tools required for producing the various parts are those which are applied to the machine itself. The tools can be changed for each individual job. These tools may be heading tools for rolls, they may be press tools for the cages or retainers, and they may be cutting tools for the [fol. 2135] inner race, the cone, or the outer race, the cup. For each operation there must also be a gauge, and a proving gauge and a master to determine if these operations are

figured correctly, and it is our function to provide the drawings or the engineering for those tools.

Q. And if new bearings are designed and developed for new applications in your department, is it necessary to design any tooling for the new bearings as they are designed?

A. Absolutely, and the amount of the tooling depends on the production quantity which is anticipated for the bearing. We may, in the case of a large bearing, have very few tools, but on a small bearing which is going into automotive production we have a great many.

Q. That difference is dictated by what factor principally?

A. By the anticipated production quantity.

Q. How long have you been acting for the company in the capacities you have described, for what period of time?

A. Since 1934 as bearing designer and tool designer, and since 1932 as the rock bit engineer.

Q. Were you employed by the company in any other capacity prior to that time?

A. I have been with the company since July, 1925. For the first three years as sales engineer and district manager, then as steel mill engineer and steel mill finishing mill {fol. 2136} superintendent for three years, and as new development engineer for two more years. That would take it up to 1932.

Q. During the time you have been serving the company in the capacities you have described, especially since 1934, what if any contact have you had with British Timken or the French Timken organizations?

A. The contact has been mostly with the British Timken organization, and it has been continuous in a routine manner.

Q. I will ask you this question. You have described the methods that are followed in respect of designing bearings for new applications and designing tooling for new bearings as the new bearings are designed. What if anything is done with the blue prints that are developed in connection with that work?

A. Part of our job has to do with the routine revision of prints on a product which is already established. The drawings, after they are revised, are released to the factory for use. When I say "factory" I mean all of our plants, and as far as our engineering department is concerned we regard the British Timken plant, and have always regarded British

Timken plant, as one of our regular plants, and they are on [fol. 2137] the all-concern run and receive prints the same as any of our other plants.

Q. Is it correct to say, then, that if a new bearing is designed and tooling for that bearing developed in the engineering department, that those drawings are sent to the different Timken plants?

A. That is correct. Now, if British Timken has asked us for a new bearing, a specific bearing for a special job, then we send the drawings to them in a separate manner, that is, with a covering note.

Q. But before we get to the question of any specific inquiries from British Timken, what if anything is done as a matter of routine as to sending drawings that are developed in America of new bearings and toolings for the production of the new bearings?

A. Those drawings are sent as a matter of routine to British Timken, and have always been handled that way, except during the war years.

(Thereupon group of folders containing list of blue prints was marked by the Clerk, for identification, Defendant's Exhibit 158.)

Q. I have here, Mr. Baker, a group of folders which have been marked collectively for identification as Defendant's Exhibit 158, on the outside of the top folder there is a sticker on which the words appear "List of Blue Prints [fol. 2138] Furnished British Timken by the Timken Roller Bearing Company, 1928." I will ask you if you can identify that group of folders for the Court?

A. This group of folders contains a certain number of sheets on which has been typed the drawing numbers which have been sent to British Timken over a period of years. Each folder contains, according to our file records, a list of prints sent during that year.

Q. And those drawings cover what type of product or tooling, or what?

A. It covers both product and tooling, as I said before, which have been sent them in a routine manner.

Q. Were they compiled under your direction?

A. Yes.

Mr. Ketterer: We would like to offer Defendant's Exhibit 158. Now, if the Court please, this follows the procedure

that was discussed earlier in the trial of the case. By that I mean we have developed in outline form a list of the prints that have been sent to the British Timken, giving the numbers, the general description of what was in it, and whether they were specifically requested by British Timken or whether they just went out. I don't think it is necessary [fol. 2139] to refer to these in any detail beyond referring to the method in which are are prepared. There is one here for each year from 1928 down to the present time, and it shows the number of the blue prints in each year that were forwarded to British Timken from American Timken.

The Court: Is there any necessity for offering those specific blue prints? Would it not be possible to stipulate that a certain number of blue prints were sent? You are going to have a record that will be tremendous if you are going to be offering those blue prints.

Mr. Ketterer: We are not offering the blue prints as such, your Honor. This is just an outline showing the number of the print. There are nc prints in these folders.

The Court: Oh, I see. Even the list of them makes rather a sizable exhibit.

Mr. Ketterer: That's true, your Honor, but there are no prints themselves in the books, because this was to obviate the necessity of having a tremendous number of prints, as such. But this shows in outline form only, or in tabular [fol. 2140] form, the number of prints.

The Court: I believe you have done exactly what I suggested should be done.

Mr. Ketterer: Very well.

Mr. Nitschke: That exhibit is for each year, is it not?

Mr. Ketterer: Yes.

Mr. Nitschke: From 1928 to 1948, is it?

Mr. Ketterer: To 1947.

Mr. Nitschke: To 1947?

Mr. Ketterer: Yes, 1947.

The Court: What is the number of the exhibit?

Mr. Ketterer: That's Defendant's Exhibit 158.

The Court: That's a list of blue prints sent to British Timken?

Mr. Ketterer: That's correct, by American Timken.

Q. I notice, Mr. Baker, in one of the folders that is part of this exhibit, there is one folder covering several years,

principally the war years. Can you explain to the Court why they were combined?

A. I think it was in the summer of 1940 that British Timken wrote us and asked us to stop sending prints because [fol. 2141] of the lack of shipping space, and we retained the prints for some time but did not send them, and we have not resumed sending them until the war was over. I think 1945 or 1946 was the first year we began again.

Q. And since that time you have been following the same routine?

A. Since that time we have been following the same routine.

Q. That was followed prior to the war?

A. That's right.

Q. When you send a blue print or a set of blue prints showing the design of a new bearing, do the tooling prints also go along with that?

A. Yes, but usually not at the same time. The way that works out, British Timken develop a need for a certain bearing, and they either write us or cable us, usually cabling, and ask us for a bearing of a certain size or a part number for a certain size which we have already selected. They later send us temporary details of the bearing, that is, they designate major dimensions. They need that so that they can get started in the production of the bearing themselves. We work out the design of the bearing and determine the complete dimensions of the various parts, the details, as we call them, and send them the part number and detailed prints as soon as we can get them finished. The time that elapses is about a week to ten days at the [fol. 2142] outside. Then we proceed with tool engineering and forward that as fast as we complete that. That usually takes another three weeks' time.

Q. Will you step down here and select from the material that is on the table an example of an inquiry from British Timken for a specific bearing so that we can follow through from that what is done in respect of it?

(Witness steps down and selects data.)

Mr. Ketterer: I would like to have that marked Defendant's Exhibit 159.

(Envelope containing data was thereupon marked by the Clerk, for identification, Defendant's Exhibit 159.)

Q. Mr. Baker, I have here some photostats of blue prints that have been marked collectively for identification as Defendant's Exhibit 159, and I will ask you if you can identify that?

A. This exhibit shows a collection of photostats and prints submitted with British Timken's letter of December 23, 1947, with which they enclosed details of a bearing they had provisionally numbered EX-9633. That was a single roll, steep angle bearing, as we refer to it, and they requested us to proceed with the symbol numbers and the details.

Q. Did they send along any preliminary print in connection with that inquiry?

[fol. 2143] A. Yes, their preliminary prints are identified with certain drawing numbers and show a bearing with 3½ inch bore, 6⅜ inch o.d., 1 5/16 inches wide.

Q. And these preliminary prints of British Timken came along with their inquiry to which you have just referred?

A. That is correct, and they show the details of the cone or inner race profile, the cup or outer race, the cage and the rolls.

Mr. Ketterer: We offer Defendant's Exhibit 159.

The Court: It may be received. I don't believe you offered the prior exhibit.

Mr. Ketterer: I beg your pardon. I thought we had. That is Defendant's Exhibit 158. We offer it.

The Court: It may be received.

Mr. Nitschke: How much of this which is in this envelope is Exhibit 159, Mr. Ketterer?

Mr. Ketterer: All of it.

Q. Now, after you got these preliminary drawings from British Timken, will you explain to the Court what was done in respect of this particular bearing by the engineering organization at American Timken under your direction?

A. We proceeded with the required calculations to determine if the original calculations were correct, found them to be so, and then continued with further details which [fol. 2144] we require for the tool engineering. We also assigned a part number, and I wrote them advising them of the part number, and sending them prints of our detailed drawings. A photostat of that letter is included there.

Q. To digress for just a moment, Mr. Baker, what has

been the practice since 1934 in respect of the assignment of part numbers for bearings that are manufactured by British Timken?

A. We usually assign the part numbers and keep a record of them in our master book in our engineering department in Canton. However, there is an arrangement with British Timken to the effect that they can adopt a new part number, or adopt an existing part number by using the suffix letter "X" after the part number, advising us later of their action.

The Court: Now, let me get that. The practice has been to assign the part numbers on all bearings manufactured by British Timken by the company in Canton?

The Witness: That is right, your Honor.

The Court: They assign the number. Other than that, they were permitted to do it but they would have to put an "X" at the end of the number and advise you about it, is that correct?

The Witness: That is right, your Honor. That can [fol. 2145] occur, however, only in an existing series or family group of bearings, not in a new bearing.

Q. And under what circumstances—

The Court: What can occur in a family group?

The Witness: The bearings are grouped in series. For instance, when we have a certain bearing, we may vary the bore in that bearing, or we may vary the o.d. Every time a variation is made a new part number is required. Those part numbers all carry a certain identifying arrangement of numbers so that we can determine if they belong in that series.

Q. Under what circumstances does British Timken use this "X" business of numbering a bearing, and use the part number that has been assigned in that series?

A. They may have a customer over there who wished to use an existing part number but with a variation in the radius of the cone, and if they change that radius they put the letter "X" after the existing part number.

Mr. Ketterer: Does the Court understand that now?

The Court: Yes.

Q. What is the fact as to whether American Timken is [fol. 2146] advised of that change in the number by British Timken?

A. In due course we receive prints from them which show that part number, and we keep a file of it.

Q. Going back again to this job that we identified as Defendant's Exhibit 159, after you had gotten the preliminary drawings and prints from British Timken, did you prepare the detailed drawings of the design of the bearing, after checking their preliminary prints?

A. Yes, sir.

Q. And are the blue prints that are attached to this Exhibit 159 the prints that were sent to British Timken, or copies of them, in respect of the design work that was done by your department?

A. Yes, these are copies of the drawings.

Q. Now, those drawings that were sent to them, did they cover all the details of the design that were necessary for the production of the bearing?

A. Yes, for this particular bearing.

Q. By the way, was that a bearing that was being manufactured at that time, or had it ever been manufactured, to your knowledge, by American Timken?

A. Not as yet.

Q. And you referred to that, I think, a while ago as a steep angle bearing.

A. That is correct.

[fol. 2147] Q. What do you mean by a steep angle bearing?

A. By steep angle bearing we mean one whose angle of the internal parts is such that the bearing has considerably more thrust capacity than it has radial capacity, although it has both.

Q. Was there anything done in respect of tooling for the production of this bearing at the time the design drawings were prepared that are in this file marked Defendant's Exhibit 159?

A. Yes, tool engineering operations followed immediately after and were completed in a few weeks.

(Thereupon two envelopes containing data were marked by the Clerk, for identification, Defendant's Exhibits 160 and 161.)

Q. I hand you two envelopes that are marked for identification as Defendant's Exhibits 160 and 161, and ask you if you can identify those?

A. Defendant's Exhibit 160 bears a label reading "Cone Tools for Part No. LM-919447, cup tools LM-919412, roll tools LM-919401." This envelope contains prints of the tooling required for those three parts.

Q. Were they the parts that were covered by the design of the steep angle bearing that you referred to and described in connection with Defendant's Exhibit 159?

A. Yes, sir.

[fol. 2148] Q. What about Exhibit 161?

A. Exhibit 161 is an envelope bearing label reading "Caging, LM-919405, Hardening Plug LM-919447, Cone; Hardening Plug LM-919412, Cup."

Q. Are the blue prints contained in those envelopes that have been marked for identification as Defendant's Exhibits 160 and 161 reproductions of the ones that were sent to British Timken covering the tooling for the production of the steep angle bearing that you have referred to?

A. They are.

Mr. Ketterer: We offer Defendant's Exhibits 160 and 161.

The Court: They may be received.

Q. As I understood, from what you said a while ago, this material that is covered in Defendant's Exhibits 159, 160 and 161, represented the type of information that is sent to British Timken in cases in which they request information as to a particular type of bearing that they have under consideration for manufacture?

A. That is right. It is typical of the work we do for them on one single bearing.

Q. And that is illustrative of the type of thing that is done any time they make such a request?

A. That is right.

[fol. 2149] Q. Now, am I correct in this, that that is a separate type of information that is submitted to them, quite aside from the routine drawings both for bearing design and tooling that is submitted in respect of bearings that are developed in this country?

A. You are correct.

Q. That's an entirely different type of material that is submitted to them?

A. It is.

Q. What is the fact as to whether or not it is necessary that British Timken have substantially the same machine tools for the manufacture of their bearings if they are going to use the tooling that is designed in your department for the manufacture of bearings?

A. We assume that they will use the same tooling when we send them the drawings. However, they may not. If they do not, they have an engineering department over there in which they can convert our figures and our designs to tools suitable for use on the machines which they select.

Q. But if they use the tooling design, they have to have substantially the same equipment?

A. They will use it on the same machines.

Q. Now, have you, during the time you have been in the engineering department, had anything to do with the training of any representatives from the British Timken Com-
[fol. 2150] pany who have come over here at any time since 1934 down to the present time?

A. I have.

Q. Can you recall the names of any of the people who have come over during that period?

A. Dennis Ashton's name was mentioned recently. He spent a year with us, and I think half of that time he spent in my department.

Q. What did he do while he was in your department for that period of approximately six months?

A. He went through the various phases of our work, working first on design work on bearings, then on detail work, then on tool engineering for the different parts of the bearing, including the cone, the roll, the cup, the cage, the hardening plugs, and finally the special tools.

Q. What if any assistance was given him to familiarize himself with the practices of American Timken, either as to design of bearings themselves for different applications, or as to the design of tooling for the production of the bearings?

A. We gave him everything that we could. We opened our books, our notebooks, our formula sheets to him, and gave him every help that we could. However, he was not a

greenhorn when he came over here because he had been working on exactly that same sort of work in England.

Q. Have there been any other people here, to your knowl-
[fol. 2151] edge, aside from Mr. Ashton, who worked in your department or had any training there?

A. No, Mr. Ashton is the only one from British Timken, although when Mr. McNichol comes over here he always spends some time with me, as he is particularly interested in factory gauges.

Q. Who is Mr. McNichol?

A. I believe he is the works manager of British Timken, or factory manager.

Q. What has he done when he has been here, what has he done in the department?

A. We have discussed the different types of gauges used on different operations, and we have shown him anything new which we have developed.

Q. Is there anything in respect of the engineering practices of American Timken as to the design of bearings or as to the tooling used for the production of bearings that has been withheld from representatives of British Timken, to your knowledge?

A. Not to my knowledge.

Q. Have you given them openly anything that they have asked for, or anything that has come into your department over the years?

A. We have given them everything they have asked for, and we have given them everything that we could think of.
[fol. 2152] Mr. Ketterer: I think that's all.

Mr. Nitschke: No questions.

Mr. Ketterer: Just a minute, Mr. Baker, I want to ask you one other question.

Q. Over the years, to your knowledge, has there been any information that has come from British Timken to American Timken, either in respect of design of bearings or in respect of tooling?

A. Since 1934 there have been occasions when they have supplied us with information.

Q. As to what?

A. In respect to types they have made of bearings, new designs they have made, and on one occasion they have, during the war, asked us to make a thrust bearing for use

on the Rotol engine and propeller parts, and they furnished us with drawing specifications, test results, and a sample bearing.

Q. Did American Timken make that bearing then during the war?

A. Yes, we produced, I think, 35,000 of those for them, for the British Air Ministry.

Q. Can you recall any other items of either design information or tooling information that has come from British Timken over the years, aside from the air screw bearing that you mentioned?

A. Yes, they sent us information one time on the Emmer- [fol. 2153] ton plug gauge—that's E-m-m-e-r-t-o-n—which is a modified plug gauge with small balls at the entering end to facilitate entering the plug.

Q. Did we make any use of that plug gauge?

A. We tried it. We did not like it as well as the plugs which we had already been using.

Q. We didn't change over to the use of the Emmerton plug gauge?

A. No, we did not. We had information on some self-aligning double bearings, I think that was around 1936 or 1938, and we never made any of those for sale, although we tested them and used them in our mill. There may be other occasions too, but I can't recall the specific instances.

Q. Am I correct, then, that when they present the material on a new bearing, such as the air screw bearing or the steep angle bearing that you have testified about, American Timken checks over the design and works up the details on those occasions?

A. Yes, although they give us more information at that time than they do when they ask us to design a bearing for them.

Q. What happened to Mr. Ashton after he had finished in the engineering department? Do you know whether he returned to England, or what happened to him?

A. When the year was up he returned to England and is now working in their engineering department, as far as I know.

Mr. Ketterer: That is all.

Mr. Nitschke: No questions.

[fol. 2154] Thereupon the Defendant, further to maintain the issues on its part to be maintained, called as a witness WALTER F. GREEN, who, being first duly sworn, was examined and testified as follows:

Direct examination of Walter F. Green.

By Mr. Ketterer:

Q. Will you state your name, please?

A. Walter F. Green.

Q. By whom are you employed, Mr. Green?

A. Timken Roller Bearing Company.

Q. How long have you worked for the Timken Roller Bearing Company?

A. Since January, 1935.

Q. In what capacity are you employed at the present time?

A. I am manager of the division of development and research.

Q. How long have you been manager of the development and research division?

A. Since September of last year, 1947.

Q. What kind of work is done in the development and research division of the company?

A. We—our main job is to develop more economical methods of manufacture of bearing parts and to develop methods for making more accurate bearing parts.

[fol. 2155] A. Yes.

Q. Is that development and research division in the main plant of the company, or do they occupy a separate plant of their own?

A. It's in a separate building in Canton.

Q. But it is not in the main plant of the company?

A. No, it's on—it's in the other end of town.

Q. How many people work in that division?

A. Approximately 70.

Q. Is their time devoted exclusively to the business of producing new methods and new tooling and things of that sort in respect of the production of tapered roller bearings?

A. We also make small quantities of new designs of bearings with the intention of testing those out and comparing them with present designs.

Q. Prior to the time that you became manager of this experimental division of the company, what was your connection with the Timken Company?

A. Just prior to that I was assistant works manager.

Q. And back to 1935, what have you done at various times?

A. I was employed by the company in the experimental department as experimental engineer in January, 1935. In September, 1935, I was transferred to the works engineering department as a machine designer. I continued [fol. 2156] in that until 1938, the latter part of 1938, at which time I started to assist in the supervisory duties of the department under Mr. Makely. I continued in that until Mr. Makely's death in May, 1941, at which time I was made assistant works manager in charge of the specification and development and design of manufacturing equipment for all the bearing factories.

Q. Now, during the period of time that you have worked for the company in these various capacities that you have just described, have you had anything to do with the matter of machines or tooling for British Timken?

A. All of the methods, manufacturing methods that we work out, more or less as a matter of routine, are passed on to them. When we try to develop a new machine for a certain operation for bearing manufacture, that work is done for the benefit of all bearing plants, and more or less as a matter of routine that method is adopted by British Timken.

Q. How is that information passed along either to British Timken or to any other plants of American Timken?

A. Periodically there are visits back and forth by the management personnel, either by American officials going there or British officials coming to the States. During these visits, whenever they come, the British officials come to Canton, they are shown through the division, where [fol. 2157] they are shown the things we have under development, and at the same time they are taken through our plants to show any new methods that have been adopted since their last visits.

Q. What discussions have you had with British Timken representatives in respect of what is going on in the experimental and development department?

A. Well, Mr. McNichol, the works engineer in Britain, has been over here on at least two occasions. At these times we get together and discuss our more or less mutual problems, and we give him what we think are the best methods, and quite often he gives suggestions that are valuable to us.

Q. Can you recall when Mr. McNichol came to America?

A. Well, the first contact I had with him was in the summer, I believe, of 1945, and he has been over here, I am sure once since then, and I believe the third time. I wouldn't swear to that last.

Q. Where did you see him on those occasions?

A. In any of his visits he contacts the research division.

Q. Have you talked with him personally?

A. Many times during those visits.

Q. Now, what is the fact as to anything that is under development in the way of equipment, or methods, or tooling, in the experimental and research division, being made [fol. 2158] available to British Timken, and discussed, when they come over here?

A. Yes, they are advised of everything we have either under trial or even under consideration.

Q. And is there anything that is being developed in the experimental and research division that is withheld from them?

A. Nothing.

Q. Now to your knowledge, has American Timken at any time had anything to do with the procurement of machines for British Timken?

A. Yes, to my knowledge, almost continuously since the latter part of 1938. It was carried on before that time by my predecessor in the works engineering department.

Q. State for the Court what procedure was followed in respect of the procurement of machines for use in the British Timken plant.

A. Well, you would have to break that down a little bit. Quite frequently, or at least at numerous times, we have sold them existing equipment from our plants. Now, in a case like that all that is done is that the machine is operated as it is expected to operate in England before shipment, and then it is shipped to them. In other cases, where we are to supply them with machinery, it is built to our own design, that is, Timken Roller Bearing Company's [fol. 2159] design. We get estimates from outside con-

cerns and choose the lowest bidder, assuming he is responsible, and have the machinery built to our drawings and specifications, shipped into our plant for final test to make sure it's all right, then it is boxed for export and shipped to them. The third class would be more or less standard machine tools that are manufactured by American machine tool companies. In a case like that we would furnish them the complete tooling details to show them how the operation was to be set up. After they had the machine ready for operation in their plant, we would forward them test samples, cups, cones, or rollers, whatever the case might be, for test on their floor.

Q. By "their floor" you mean the manufacturer of the machine tool?

A. That's right. Then the machine would be tested there and the samples returned to American Timken for final inspection to make sure they are satisfactory. After that was done the machine would be shipped direct by the American machine tool builder.

Q. That is, direct to—

A. British Timken.

Q. To British Timken?

A. Or French Timken, as the case might be.

Q. That same thing was done on occasions for French [fol. 2160-2163] Timken, as well?

A. Yes, although during the time I have been active on that end of it not nearly so much as for British Timken. There was one big order of equipment we got out—I think shortly after the war started, in 1939, September, 1939, the orders came to us and we shipped over roughly $125,000 worth of machinery to French Timken. That was delivered early in 1940.

Q. Was that new equipment, or was that equipment that was taken out of the American Timken plants?

A. I am quite sure all the equipment that went to French Timken was new.

Q. Was all new?

A. No, there were some exceptions to that. There were some Gridley automatics included in that that came out of our plants. That's right.

[fol. 2164] Q. Mr. Green, I would like to ask you this question. At the plant where you say that the experimental

and development work is done in Canton, is everybody in the Timken organization permitted access to that plant?

A. No.

Q. Is entry to that restricted?

A. Yes.

Q. And to whom?

A. Well, there is a list of about ten individuals that we normally have business with more or less continuously. Other people from the organization are admitted only on a pass that can be issued by four members of the organization.

Q. I will hand you, Mr. Green, three folders that have been marked for identification as Defendant's Exhibit 162, 162-A and 162-B, and I will ask you if you can identify those?

A. Those were lists of machine tools that were sold to British Timken.

[fol. 2165] Q. From American Timken?

A. It goes back to 1928 and up to the present time. The labels are not marked that way but it does go up to the present time.

Q. And were they prepared under your supervision from the files of the company?

A. They were.

Mr. Ketterer: We offer Defendant's Exhibits 162, 162-A and 162-B.

The Court: They may be received.

Q. Now, I take it from what you say that represents the one type of machine business that is handled with the British Timken Company, that is the type involving sales of equipment from American Timken's plants,—that is the Exhibits 162, 162-A and 162-B?

A. Yes.

Q. Now, the other two instances, in which we order for them machine tools of American Timken's design, or standard machine tools, with specifications that we-- prescribed, are not covered in those lists?

A. They are covered. All three types of sales to them are covered by samples in these lists. In some cases the machines are marked as used, that means they came out of the American Timken plant and were shipped to them.

Q. At any time have representatives of British Timken

[fol. 2166] come to the experimental and development division of the company?

A. Yes.

Q. Who has been there to your knowledge?

A. Mr. Dennis Ashton was up there twice for two different periods during the year he spent in our plant.

Q. And what did he do while he was there, to your knowledge?

A. Well, during the first visit he spent about five weeks there in our division. He went over all the different projects that we had under development at that time. He was so much interested in some of the projects that we had underway that he got special permission to come back again for about two weeks before he went to sail for England.

Q. Now, was there any work that was in process of development there that was not exhibited to the representatives of British Timken, either Mr. Ashton or Mr. McNichol, whom you say was there also?

A. No, they had complete access to everything we worked on.

Q. To your knowledge has data concerning development work that has been finalized, been sent to British Timken from time to time since your connection with the experimental and development division?

A. Yes.

Q. Has at any time anything been withheld from them?

A. No, absolutely not. In one particular case they even [fol. 2167] had a machine in operation in the British plant before it was adopted as standard operation in the Columbus and Canton plants.

Q. What machine was that?

A. An automatic honing machine for cups.

Q. Automatic honing machine?

A. Automatic honing machine, that is right.

Q. Do you receive from time to time any requests for information from British Timken in respect of machines and tools, have you any recollection of that?

A. That doesn't come directly to me, no.

Mr. Ketterer: That is all.

Mr. Nitschke: No questions.

[fol. 2168] Thereupon the Defendant, to maintain the issues on its part to be maintained, called as a witness

SAMPSON M. WECKSTEIN who, being first duly sworn, was examined and testified as follows:

Direct examination of Sampson M. Weckstein.

By Mr. Ketterer:

Q. Will you state your name, please?
A. Sampson M. Weckstein.
Q. Where do you live?
A. Canton, Ohio.
Q. By whom are you employed?
A. Timken Roller Bearing Company.
Q. In what capacity.
A. Chief engineer of the industrial division.
Q. How long have you been employed by the Timken Roller Bearing Company?
A. Since December, 1923.
Q. Have you always been connected with the industrial division of the Timken Roller Bearing Company?
A. Yes, I have.
Q. How long have you been chief engineer of the industrial division?
A. For the last ten years.
[fol. 2169] Q. And generally what type of bearing applications are handled in the industrial division of the company?
A. The industrial division handles everything which is not a railroad application or a strictly automotive application, such as buses, trucks and passenger cars.
Q. And any other bearing applications go through the industrial division?
A. That is right.
Q. What sort of work is done by the industrial division in that connection?
A. The work that is done varies depending upon how the work originates. We get some work from our sales engineers. They call on the prospects, discuss the job which is to be analyzed and for which bearings are required and they make preliminary recommendations for the job. Their preliminary recommendations are sent into Canton and are

studied in the industrial engineering division. After they are reviewed by the engineers they are finally checked by my assistants. If the jobs are of special or new nature they are brought to my personal attention before they are returned to the field for final transmittal to the customer.

Q. Are there any engineers who work under your direction in that department?

A. I have 20 engineers working in Canton, and then all [fol. 2170] of our field engineers, we have about 35, all but three of them are graduates under my supervision of the industrial engineering department.

Q. And what is the fact as to whether the territory in the United States, for example, and elsewhere, is divided up into districts or divisions?

A. We have approximately 18 districts in the United States. We classify Canada as a district and we also classify everything outside of Canada and the United States as a foreign district. Each one of those is carried as that district under the manager of the district for the purpose of following the jobs as they come into the engineering department.

Q. By "jobs" you mean the work involving applications that customers inquired about in the various districts?

A. Yes, sir.

Q. Are there any reports made to your department with respect to these various districts?

A. Yes, sir. We receive on the average 100 to 110 inquiries on jobs every week. In order to keep a proper record of them I have my secretary prepare a weekly report. This weekly report is classified according to the respective territories, and under each territory we list the name of the company from whom the job is sent in, the type of [fol. 2171] application it is, the type of work which has to be done on it, the date the job is received and the date the job is completed. This weekly report goes to the heads of the sales department, the heads of the engineering department, and to British Timken. The sales department takes this report and analyzes it and then they take a copy of the report and chop it up to the different territories, return the portions to each territory so the manager of the territory will know exactly the status of his job in the engineering department.

Q. I have here, Mr. Weckstein, a reproduction of reports

bearing the heading "Industrial Engineering Department Report," which have been marked for identification as Defendant's Exhibits 1613 and 163-A. Are they the type of reports that you have just described as being handled in the engineering department?

A. Yes, sir, they are. One of them is a report for the week of October 27 to October 31, 1947; the other for the week of March 8 to March 12, 1948.

Q. And those are typical of the reports that are prepared weekly in the industrial engineering department?

A. Yes, sir.

Mr. Ketterer: We offer Defendant's Exhibits 163 and 163-A.

The Court: They may be received.

[fol. 2172] Q. Now, I notice that on the report, on the various pages under the heading "Territory #1 Mr. Jehu, Territory #2, Mr. Crouch", and so on down through the report. Who are those individuals?

A. The name that appears under the territory is the name of the manager of the territory. Some of the territories have two men, some five, some only one, but the name that appears is the name of the person in charge of that territory.

Q. And then underneath that appears the list of names of companies, of applications, of work done, of delivery dates and date completed, and so on?

A. That is right.

Q. What is that supposed to show?

A. That is supposed to show who the job is received from, that is, the name of the company, the type of application it is, what is to be done with it, whether it is merely to be checked or lay-out made, or analysis made; when this job was received in the engineering department and when it was completed.

Q. I notice on the last page of Exhibit 163-A there is a heading "Territory of Foreign week of March 8 to March 12, 1948". Then there appears underneath that "British Timken, French Timken" and some Chinese name. Is that the foreign territory classification to which you referred [fol. 2173] a while ago in your testimony?

A. Yes, it is.

Q. Now, you say that sections of this report are sent to the heads of the various territories in the United States?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And the section being the part that relates to the manager of that territory, that is what he gets?

A. That is right.

Q. What, in respect of British Timken, is done as to these reports?

A. At the head of the report there is a tabulation giving the names of the people who received the copy of the report. Mr. Doughty's name is there, he is the chief engineer or senior engineer of British Timken, and his name appears on the report. He gets a complete copy of the weekly report.

Q. In other words his is not split up as to any territory in the United States, he gets an entire copy of the report?

A. That is right.

Q. Does he have to make any special request for that or is that done as a matter of routine?

A. That was set up by Timken in 1928, when Mr. Hess [fol. 2174] requested we send copy of everything we do to British Timken.

Q. What if anything does British Timken do as to these reports, to your knowledge?

A. In view of the fact they receive a complete copy of the report we occasionally receive requests from British Timken making reference to a certain job in a certain territory and advise us it is a new application to them and they are interested in it, and they would like to have information. We have sent them complete information on anything they have asked for except confidential data which we handle with the Army and the Navy.

Q. And to your knowledge has that occurred on frequent or infrequent occasions?

A. I would say it probably occurred several times a year.

Q. Now, what sort of data do you send to them on the basis of inquiries that originate through these weekly industrial engineering reports that have been marked Defendant's Exhibits 163 and 163-A.

A. Do you refer with reference to their territories, other territories or their particular territory?

Q. No, I am referring to the case where they make a request based upon receipt of this saying they are interested

in a particular application that appears some place on the report. What sort of data do you send British Timken after you receive a request of that kind from them?

[fol. 2175] A. We analyze their request as well as the job they refer to, and if there is nothing confidential on the job —by confidential I mean if the customer has not asked us to keep the data on that job confidential—then we will send them a copy of our work sheet which shows our analysis and computations as well as a copy of the specifications, a sketch or lay-out. In other words we will give them the same information that we give to the field man who originally requested the information from the company.

Q. The same data and the same information?

A. That is right.

Q. So that the record will be clear on this, your department or your division does not design bearings as such?

A. No, sir, we may receive requests from our customers for bearings that we do not have at the present time. In other words there may be a special application. When we receive such a request we usually go back to the customer in order to obtain complete information on the job. After we get that information we analyze it very carefully and try to establish the limits of the bearing that is required, after that is established we obtain approval from the management to design such a bearing. When that approval is obtained it is turned over to Mr. Baker who proceeds with the design.

[fol. 2176] Q. That is the Mr. Baker who testified this morning?

A. That is right. When Mr. Baker completes the design of the bearing he returns it to me. We then make a study of the application of the bearing and send it back to the field man or to the customer. If the application is satisfactory then we proceed with the design, tool design and manufacture of the bearing.

Q. And is all that data with respect to design, tool design, does that go to British Timken, too, if they make an inquiry about it?

A. Yes, sir.

Q. I hand you here, Mr. Weckstein, four sheets of paper that have been clipped together and marked for identification Defendant's Exhibit 164, bearing the heading "Engineering work done in our industrial engineering depart-

ment for British Timken Limited", and another set for Francaise Timken. Can you tell the Court what they are, please?

A. These sheets cover the tabulation of all the work which we have done for British Timken from 1937 to date. The information was obtained by going back to the files, pulling out all the weekly reports from 1937 to date and tabulating the jobs handled during those years for British Timken.

Q. And was the same procedure followed in preparing the table in respect of the engineering information sent to French Timken?

[fol. 2177] A. Yes, it was.

Mr. Ketterer: We offer Defendant's Exhibit 164.

The Court: It may be received.

Q. Now, was that data or information that was sent by reason of inquiries that originated on the basis of the weekly reports that were marked Defendant's Exhibits 163 and 163-A, or were they that plus any independent inquiries that British Timken might have asked American Timken for?

A. It covers all types of inquiries.

Q. Both types?

A. Yes.

Q. Now, under the heading on this exhibit, Defendant's Exhibit 164, there is a heading "Work done" and the words appear under there "Check" or "Recom.", or words of that type, "Typicals". What do they indicate?

A. When a job is listed, the job having the "Check" means that British Timken, or for that matter the customer, for that refers to the complete report, had sent us some preliminary design which they have worked out. In other words they may have prepared a lay-out showing the application of a Timken bearing or it may be a new design, and one they have not previously had experience with, and they sent it to us so that we may check it to see whether it follows some applications in the States, and whether the design is the best possible for the particular applica-

[2178] tion. We check their work, comment on it and make suggestions and return it to them. Where it says "recommendation" it means either they have sent us an inquiry on a proposition on which they have not previously worked, and we have either made bearing recommendations,

or we have prepared lay-outs showing just how the bearing should be applied.

Q. Now, has that information come not only in instances in which they want data about bearings and application and for use in the manufacture of bearings, but otherwise, too?

A. We get into the subject of manufacturing bearings only at infrequent intervals. Those subjects come up when we get into the multiple type of bearing, that is the double row, the four-row type, that are used in heavy duty rolling mill equipment, rubber machinery, plastic machinery of that type. In those bearings, since we regulate the adjustment or the set-up of the bearing in Canton before the bearing is shipped, there are questions come up as to the amount of lateral or looseness that comes into the bearing, or just how the bearing should be fitted into the machine so that the proper looseness will be had in all parts of the bearing. In those cases we go into the manufacture and set-up of the bearing, but, primarily, in my division we are restricted to the application of the bearings.

Q. To your knowledge have there been any representa- [fol. 2179] tives of British Timken or French Timken who have spent any time in your industrial engineering department of American Timken?

A. Yes, sir, there have been quite a number.

Q. Can you tell the Court the names?

A. Well, Bill Snedden came there, I believe in 1933, and spent considerable time, a lot of time with me personally in the study of the application of our bearings in rolling mill equipment. He spent a number of months in our engineering department. I made a number of trips with him to visit various rolling mills as well as the manufacturers of rolling mill machinery so that he could get a picture of what we were doing in the States. In addition to the work I personally did with him he did a lot of work with other representatives, both in the field and in Canton.

Q. Do you recall anybody alse who has been over from British Timken or French Timken?

A. Mr. Riley was over in this country, I don't remember the year but it was at the time when Richard Thomas were buying a lot of rolling mill equipment.

Q. Richard Thomas was an English concern?

A. Yes, an English concern. Mr. Riley came over here to follow the application of Timken bearings in that equip-

ment. He spent quite a number of months with us, not so much on the direct engineering but in following and watch-
[fol. 2180] ing the builder of the machinery to make sure that the proper size bearings were incorporated in the rolling mill equipment.

Q. And did you accompany him at any time he made any calls or visits?

A. Yes, sir, I made a number of calls with him to plants of mill builders in this country.

Q. Do you recall anybody else who has been there?

A. Two gentlemen, one by the name of Gibson and one by the name of Fall, representatives of British Timken in Australia, have been in Canton on several occasions. These men did not spend time at actual engineering work but spent quite a bit of time with me in discussing special or particular jobs which they happened to have under consideration at that time.

Q. And they were jobs in the industrial engineering field?

A. That is right.

Q. Anybody else you can recall?

A. Beauvivier was over in this country, I believe in 1931. He spent three or four months with me in the engineering department, and after he got through we sent him out into the field with some of our service engineers so that he could study the actual installation and application of bearings in industrial equipment.

Q. Mr. Beauvivier was a representative at that time
[fol. 2181] of French Timken?

A. That is right.

Q. Do you remember anybody else who has been here?

A. Within the past year Dennis Ashton spent about three months in the engineering department. He spent a considerable time in Canton and before going back to England he wanted some information on industrial applications, so he spent about three weeks in the industrial engineering department working on checking and analyzing industrial applications.

Q. Did you have anything to do with training him with respect to industrial applications while he was in the department for several weeks?

A. I talked to him on several occasions, yes.

Q. What work did he do with any of the other engineers in the industrial engineering division?

A. When a man comes in for a short period like that I usually turn him over to one of our head checkers and have him work closely with him, trying to give him jobs of various types so he will get an idea of the different types of jobs we have to handle in the engineering department.

Q. In talking with these various representatives of British Timken and French Timken in the fashion you have described when they have come to America, has there been any item of information involving the industrial bearing [fol. 2182] department of the Timken Roller Bearing Company that has been withheld from them aside from the confidential material?

A. Not to my knowledge.

Q. And have you given them everything that has been available in the department?

A. Everything except what has been designated as confidential by the Army and Navy.

Q. What is the fact as to whether or not American Timken publishes from time to time engineering journals on various phases of industrial applications of bearings?

A. We divide up the industrial work into about 51 various classifications, such as machine tools, road building machinery, farm implements, transmission machinery, marine equipment, conveyors, materials handling, mine cars. In these major industries, in order to distribute as much information as possible on the application of Timken bearings we publish additions to our general catalogs and we refer to these as engineering journal sections covering particular industries. Some of these books are only 10 or 20 pages, some 50 or 60 pages. Every time such a new booklet is published or revised copies are automatically sent to British Timken and French Timken.

Q. I will hand you, Mr. Weckstein, three bound books all of which have been marked for identification as Defendant's Exhibit 165, and I will ask you whether or not they are [fol. 2183] samples of the type of engineering journals which you say the company has been putting out from time to time in the industrial engineering field?

A. Yes, sir, they are.

Q. And those three marked Defendant's Exhibit 165 cover what branches of the industrial engineering field?

A. The first is crane and hoisting equipment section, the

second, conveyor and transfer equipment section, the third, marine and hydraulic section.

Q. And are they typical of the things that you have described in the 50-odd divisions of the industrial application field of Timken roller bearings?

A. Yes, they are.

Mr. Ketterer: We offer Defendant's Exhibit 165.

The Court: It may be received.

Q. What sort of material do you collect in these engineering journals? I notice that there are a great many sketches and drawings of one sort and another in the booklets that have been identified as Defendant's Exhibit 165.

A. Well, in a given industry there may be as many as several hundred various places where Timken bearings can be properly used. As we recommend bearings for these various applications we get approval from the manufacturer to whom the recommendation is made to reproduce that recommendation of industrial application in our engi- [fol. 2184] neering journal. You find in many of these sections we publish at least 90 per cent of the lay-outs shown are actual reproductions of installations which have actually been made and are in service; the other 10 per cent may be ideas which we have originated, which may as yet not have been adopted.

Q. You say those go as a matter of routine, as fast as they are published, to British Timken?

A. Yes, sir.

Q. Are they also sent to French Timken?

A. Yes, sir.

[fol. 2185] Direct examination of Samson Weckstein (continued).

By Mr. Ketterer:

(Material submitted to British Timken by the Industrial Engineering Division of American Timken was thereupon marked by the Clerk, for identification, Defendant's Exhibit No. 166.)

Q. Mr. Weckstein, before the adjournment you testified generally about the form in which material from the Indus-

trial Engineering Division is submitted to British Timken and to French Timken from time to time.

A. Yes, sir.

Q. I have here a group of papers and blueprints that have been marked for identification Defendant's Exhibit 166, and I will ask you if you can identify that?

A. Yes, sir, I can.

Q. And will you tell us what it is, please?

A. This is an inquiry from British Timken, which originated in the form of a letter dated November 12, 1947, requesting information on the application of tapered roller bearings in America to rubber roll mills. We replied to this letter through our Mr. Sauer, giving them blueprints covering typical designs for three different sizes of mills which covered the applications which have been made in this country.

[fol. 2186] Mr. Ketterer: We offer Defendant's Exhibit 166.

The Court: It may be received.

Q. Now, is the material contained in Defendant's Exhibit 166 illustrative of the form in which you have, from time to time over the years, submitted data and information from the Industrial Division to British Timken in response to inquiries from them for data and information?

A. Yes, sir, it is.

Mr. Ketterer: That's all.

Mr. Nitschke: No questions.

[fol. 2187] Thereupon, the Defendant further to maintain the issues on its part to be maintained called as a witness WILLIAM E. SLOAN, who, being first duly sworn, was examined and testified as follows:

Direct examination of William E. Sloan.

By Mr. Ketterer:

Q. Will you state your name, please?

A. William E. Sloan.

Q. Will you keep your voice up, please, so that we can all hear what you have to say?

A. Yes, sir.

Q. Where do you live, Mr. Sloan?

A. Mt. Vernon, Ohio.

Q. By whom are you employed?

A. Timken Roller Bearing Company.

Q. How long have you been employed by the Timken Roller Bearing Company?

A. Since 1918.

Q. And in what capacities have you worked for the Company since that time?

A. I started there as a toolmaker and then was in the Experimental Department for about 15 years, and in 1935 I took charge of the rock bit manufacturing.

Q. At Mt. Vernon, Ohio?

[fol. 2188] A. At Canton, first, and then I went to Mt. Vernon in the latter part of 1935.

Q. You have been in charge of the rock bit plant in Mt. Vernon since 1935?

A. That's right.

Q. At any time prior to your going to Mt. Vernon in charge of the rock bit plant, did you make any trip or trips to England, to British Timken, or to French Timken?

A. I did, in 1929, and went back in 1930 again.

Q. Can you tell us approximately when it was in 1929 that you went to British Timken?

A. It was the latter part of February when I left New York. I arrived in Southampton about March 7th.

Q. And you were there for approximately what period of time?

A. Three and a half months.

Q. And on that occasion did you visit both British Timken's plant in Birmingham, and the French Timken plant?

A. I did.

(Report of Mr. Sloan was thereupon marked by the Clerk, for identification, as Defendant's Exhibit No. 167.)

Q. Did you make a report on what was done at the British Timken plant while you were there?

A. I did.

[fol. 2189] Q. I hand you here some sheets that have been clipped together and marked for identification as Defendant's Exhibit 167, and I will ask you if you can identify that?

A. These are reports sent by me to Mr. Hess of The Timken Roller Bearing Company, in Canton, Ohio, while I was at the British Timken plant.

Q. Is that based upon your observations there?

A. That is right.

Mr. Ketterer: We offer Defendant's Exhibit 167.

[fols. 2190-2212] The Court: It may be received.

[fol. 2213] Q. I will ask you, Mr. Sloan, whether, when you were at the British Timken plant in 1929, you examined the entire plant from one end to the other?

A. That is right.

Q. And the report that I have just read, which has been marked Defendant's Exhibit 167, represents your own observations and recommendations, and discussions that you had, at the time you were in the British Timken plant?

A. That's right.

Q. How long did you say you were there?

A. Three and a half months the first year.

Q. Three and a half months?

A. That's right.

Q. Now, did you go to the French Timken plant thereafter?

A. I was at the French Timken plant one week that year.

Q. Generally speaking, at the time you were there in 1929, was the French Timken plant making bearings complete?

A. No, they were just doing some grinding and assembly.

Q. Grinding and assembly?

A. That's right.

Q. The preliminary operations prior to that were not being done at the French Timken plant?

A. They were being done in the English plant and shipped to France.

[fol. 2214] Q. Now, I want to direct your attention to the last page, which is part of this record—

The Court: What was it the witness said was done in England?

The Witness: The component parts were practically all manufactured, with the exception of the grinding and assembly which they did at the French plant.

The Court: The only thing that was required was the grinding and assembly?

The Witness: That's right.

Q. That was in 1929?

A. That's right.

[fol. 2215] Q. I want to direct your attention to this last page of this document which has been marked for identification Defendant's Exhibit 167, and I will ask you what that is?

A. This is a report by me to Mr. Hess, at the request of Mr. Dewar, requesting me to go to France to set up two Gridley machines.

Q. That was the report of the 1929 trip?

A. That's right.

The Court: I'm sorry, you sort of clipped your words off there. Will you repeat that?

Mr. Dewar requested you to do what?

The Witness: Mr. Dewar requested me to go to France and set up two 3-¼" Gridley automatics.

Mr. Ketterer: Reading from Defendant's Exhibit 167, the last page, under the heading "Francaise Timken":

"Mr. Dewar requested the writer to go to France and set up the two Gridleys, one 3-¼" machine for #29177 cone and one 4-¼" machine for #29334 cup which he had sent to the French Timken plant. Mr. Fegan, their efficiency expert, accompanied me.

"The Gridleys sent over were badly worn and should have been overhauled. The writer started Mr. Fegan to set up the 3-¼" machine while he was setting up the cup machine. The cup set gave a machine time of 2 min. 50 [fol. 2216] seconds as compared to the British Timken time of 4 min. 37 seconds on D.O.H. steel."

Q. Stopping there, what do you mean by D.O.H. steel?

A. That's high carbon steel. It's direct oil hardening steel.

Q. Direct oil hardening steel?

A. That's right.

Q. Is that what was being used in France at that time?

A. That's right.

Mr. Ketterer: (Reading:)

"The cone set up had not been completed when the forming tool broke due to a hardening crack, and as they did not have an extra tool on hand they had to make up one. They are using Direct Oil Hardening Steel for their product which made it quite difficult to approach Moly steel time. Mr. Fegan has got the production idea well in mind, and will get the machines running as fast as possible.

"Mr. Seward had the French furnace man come and get the furnace adjusted properly. However, the 15 cups hardened in a test run had a thin skin which was soft to a depth of .002" whereupon Mr. Seward sent for the steel man and they blamed each other. It is the writer's contention that the air and gas mixture was not quite right and a slight decarburizing action occurred as the cups were [fol. 2217] quite hard under the skin."

Q. Now, I would like for you to take this cup that has been offered in evidence here and explain to the Court briefly what you meant in that report by having a soft skin on the surface?

A. Well, in carburizing or hardening, if the air condition in the furnace isn't right, it leaves the outer surface of the cup to a depth of .002 soft while that under it is hard. This soft surface causes trouble in your grinding operations.

Q. And that was what you meant by soft skin?

A. That's right.

Q. Soft surface on the outside of the cup?

A. That's right.

Q. The carburizing process is intended to develop a hard surface?

A. That's right, it puts the carbon in the cup to make it hard.

Mr. Ketterer: (Reading:)

"The #3 Centerless Cup Grinder was set the same as in England so the writer changed it but having only 15 cups to work with it was impossible to arrive at any time. The Heald time was 1 min. per cup.

"I went over the entire plant with Mr. Seward and Mr. Fegan. They intend to repair the automatics and work everything to the Canton standard.

[fol. 2218] "My passage was booked for the 4th of May but owing to the poor condition which the Gridleys were

in it was cancelled so as to be sure of getting everything started right.

"Mr. Seward would like to have prints of the green and finish cone gauges sent direct to him as he has been having a hard time in getting them from England. He gave the writer a list of bearing part numbers on which he wants the gauge prints."

Q. I will ask you whether or not you arranged to supply those gauge prints, as requested by Mr. Seward?

A. I did.

Q. Now, you said you were at the French plant on that occasion for one week?

A. That's right.

Q. Did you at a later time go to the British Timken and French Timken plants?

A. In 1930.

Q. In 1930?

A. Yes, sir.

Q. And when was it in 1930 you left this country to go to England or France, or both?

A. It was in February.

Q. Of 1930?

[fol. 2219] A. That's right.

Q. And where did you go first?

A. To England.

Q. And how long did you stay in England?

A. Oh, possibly, a week.

Q. And what was done while you were in England during that week?

A. I was just rechecking what I had done the year before.

Q. And what was the purpose of that recheck?

A. Why, to see if everything was being done that I started over there.

Q. And what did you learn?

A. I learned that most of it was being done, with the exception of some parts of it, they didn't have the supplies and materials to do it with yet.

Q. Then, where did you go after that one week's stay at the British Timken plant?

A. I went to the French plant then.

Q. What was the purpose of your going to the French plant?

A. To put in the necessary equipment to completely manufacture the bearings in the French plant.

Q. So that the entire bearing could be manufactured there?

A. That is right.

Q. I believe you said a while ago that when you were there in 1929 they were only doing grinding and assembly [fol. 2220] at the French plant?

A. That's right.

Q. And how long were you at the French plant on that occasion?

A. I couldn't exactly say, but in that year I was over there seven and a half months, and I made a few trips back to England for a day or two at a time. Practically all the time was in the French plant.

Q. And that was for the purpose of setting up the plant for a completely integrated bearing manufacturing operation?

A. That's right.

Q. I will ask you, Mr. Sloan, whether while you were at the French Timken plant in 1930 you made reports from time to time of what you did there?

A. I did.

(Reports of Mr. Sloan marked by the Clerk, for identification, Defendant's Exhibit No. 168.)

Q. I will hand you a group of photostats that have been clipped together and marked for identification Defendant's Exhibit 168. Will you tell us what these are, please?

A. These are reports sent by me to Mr. Hess in 1930 on the installation of equipment in the French plant.

Mr. Ketterer: We offer Defendant's Exhibit 168.

Mr. Nitschke: Well, your Honor, I wonder just what the necessity is of putting in this detailed data as to the phys- [fols. 2221-2223] ical operations of the British and French plants?

[fol. 2224] The Court: I now understand that you are urging the introduction of this testimony to show a joint enterprise or joint venture on the part of French Timken, British Timken, and American Timken, not for the pur-

pose of restraining trade, not for the purpose of making an agreement to enter into a restraint of trade, but for the [fol. 2225] purpose of carrying out a lawful agreement.

Mr. Day: A lawful basic agreement.

The Court: That's the basis of it?

Mr. Day: Yes, and that's what I said in the opening statement.

The Court: I believe I understood that, but you had made some comments about the defense of joint venture not being—

Mr. Day: Your Honor, I want to clear this up in the record. The reason I made the remarks I did about joint venture yesterday was that if we simply say our defense was a defense of joint venture without explaining, and if our brief treats of the defense of joint venture without any explanation, then somebody might say, as Mr. Nitschke said yesterday, "Well, the mere fact it is a joint venture doesn't constitute a defense, because there might be a joint venture to do something good and there might be a joint venture to do something bad."

The Court: That's exactly what I said a moment ago.

Mr. Day: Our claim here is, as stated in the opening statement, that to the extent that there are agreements here dividing territory between British Timken, French [fol. 2226] Timken and American Timken, and to the extent that it could be found that they impose any restraint whatever, that those agreements as to the territorial division are ancillary to a main agreement between Dewar and American Timken, and main agreements between American Timken, British Timken, and French Timken, to manufacture and sell Timken roller bearings and, being ancillary and purely ancillary, and being reasonable, whatever restraint they impose, if the Court finds they impose any, is lawful.

The Court: I believe I understood your point, and I don't think there is any doubt about it. There was some confusion created by your comments yesterday when I pointed out the fact that you yourself referred to the defense of joint venture in your brief.

Mr. Day: We do, but it is a joint venture.

The Court: The only confusion that resulted was undoubtedly because of what you just said, when you refer

to joint venture without limiting it or qualifying it to the extent that you qualified it a moment ago.

Mr. Day: Yes.

The Court: Mr. Nitschke's objection to all of this, of course, is the fact that it goes to such endless quantity in discussing technical installations, that it could be short-[fols. 2227-2247] ened by simply relating the fact that the installations were made. The whole discussion, of course, I think is for the purpose of shortening the record, possibly. However, the record is long enough now so that I think a few sheets more added to it isn't going to make a great deal of difference. Certainly, if that's the only purpose served by excluding it, I don't see how we gain anything by it.

[fol. 2248] Q. Now, Mr. Sloan, I would like to ask you this question: What is the fact as to whether or not in setting up the French Timken plant as outlined in these various reports in 1930 you set it up so that it conformed to the methods of American Timken for the production of bearings?

A. That is right.

Q. And the practices, as you instructed the operators over there in the operation of the equipment, which I understand from the reports came there from American Timken or British Timken, what is the fact as to whether or not [fol. 2249] they were the American practices in the operation of the machines?

A. That is right.

Mr. Ketterer: I think that is all.

Mr. Nitschke: No questions.

Thereupon, the Defendant, to maintain the issues on its part, called as a witness PAUL SHULER, who being first duly sworn, testified as follows:

Direct examination of Paul Shuler.

By Mr Ketterer:

Q. State your name, please.

A. Paul Shuler.

Q. Keep your voice up so we can all hear what you have to say, Mr. Shuler.

Where do you live?

A. Columbus, Ohio.

Q. By whom are you employed?

A. Timken Roller Bearing Company.

Q. In what capacity are you employed by that Company at the present time?

A. I am in the Labor Relations Department.

Q. How long have you worked for the Timken Roller Bearing Company?

[fol. 2250] A. About 36 years.

Q. Have you always been in the Labor Relations Department?

A. No, sir.

Q. Have you always worked in the Columbus plant?

A. No, sir.

Q. Where were you first employed by the Timken Roller Bearing Company?

A. At the Canton plant.

Q. And in what capacity did you first go to work for the Company?

A. As a roll grinding operator.

Q. What other jobs have you had with the Company since you first went with it?

A. I became a roll grinder lineman and then I became assistant foreman in the roll grinding department in Canton.

Q. And is that when you were transferred to the Columbus plant?

A. In 1935 I was transferred to the Columbus plant as foreman.

Q. In the roll grinding department?

A. That is right.

Q. You continued as foreman in that department until you went into the Labor Relations Department?

A. I worked out of the superintendent's office for about a year before going into Labor Relations.

Q. And you transferred from the Roll Grinding Department when you worked out of the superintendent's office?

[fol. 2251] A. Yes.

Q. Did you at any time make any trip to Europe for the purpose of visiting either the British Timken or French Timken plants?

A. Yes, I did.

Q. When was that?

A. That was in 1930.

Q. Do you remember what time of the year it was you left?

A. It was the latter part of August.

Q. And how long were you gone?

A. Until the latter part of October.

Q. Did you visit both the French Timken and British Timken plants or just one of them.

A. Both.

Q. And how long were you at the British Timken plant?

A. I imagine about five or six weeks.

Q. And how long were you at the French Timken plant?

A. Approximately two weeks.

Q. And what was the purpose of your going to the French Timken and British Timken plants in 1930?

A. To try to increase the efficiency of the roll grinding department.

Q. What type of roll grinding equipment was being used in those plants at that time?

[fol. 2252] A. The same type as in America, as in the American plants.

Q. And what was the name of the grinders they were using for roll grinding at British Timken and French Timken?

A. Well, they were called Churchill Grinders but they were exactly the same grinder as we used in this country.

Q. And what did we call them over here?

A. Cincinnati.

Q. Now, did you take any information along with you in respect of roll grinding when you went over there?

A. Yes, sir.

Q. I have here, Mr. Shuler, a group of papers that have been clipped together and marked for identification as Defendant's Exhibit No. 169. Can you tell me what they are, please?

A. They are copies of reports and copies of the information that I gave to the French and English plants.

Q. Now, what does that information generally cover?

A. Methods they used in the Roll Grinding Department.

Q. At American Timken?

A. At American Timken.

Q. And does it have anything to do with tolerances to be

followed in the grinding of rolls as exemplified in the American Timken practice?

A. Oh, yes, all American tolerances, our entire methods that we used in grinding.

[fol. 2253] Q. And you took that with you when you went over to England or France, or copies of those when you went over to England and France in 1930?

A. That is right.

Mr. Ketterer: I would like to offer, if the Court please, Defendant's Exhibit 169.

The Court: It may be received.

Q. Now, to what extent while you were there did you discuss the details of the practices as were outlined in these various reports as to American Timken practice with the representatives of British Timken and French Timken?

A. We went over them all completely.

Q. And what did you find the condition of their Roll Grinding Department to be when you arrived there in 1930?

The Court: What are you talking about, British or French?

Mr. Ketterer: British Timken first, if the Court please.

A. The machines were not set up to any standard. Each one was set up differently and the control wheel dressers were not on the machines, they just had one control wheel dresser for 12 machines which made it very—cut the efficiency way down on the operation of the machine. And the set-ups weren't standard. The work rests weren't ma- ined up right, and they were all 3/8 of an inch too low. [fol. 2254] And the machines were, some of them, as much as a half an inch off center in the grinding position.

Q. What if anything did you do at the British Timken plant in respect of the conditions that you found their roll grinding equipment in, if anything?

A. Well, I explained to them they had to get a feed wheel dresser on each machine and get it lined up and keep it right on that machine, and that the grinding rest was very important, and I had plates fastened to the bottom for all these work rests, and made them of a standard height, and explained to them the importance of keeping each machine set to a certain standard. What we call the drop-off on

the machines were off. There were no two alike. I tried to explain all of this to them and showed it to them.

Q. Was anything done while you were at the British Timken plant in respect of putting these machines in operating condition so that their practice and operation would conform with the American Timken practice and operation?

A. Yes, the necessary parts or equipment were ordered immediately as soon as they were shown.

Q. Did you assist them or direct the operation of revamping these machines while you were there?

A. I did.

[fol. 2255] Q. And how many of them were placed in operating condition while you were there, do you recall?

A. I don't just remember exactly how many, but at least half of the machines in the department were operating very efficiently when I left.

Q. And in the work of revamping the machines were you assisted by any of the British Timken personnel?

A. Very much so.

Q. And did you instruct them about the steps that were necessary to place the roll grinding equipment in the British Timken plant in proper operating condition?

A. I did.

Q. Now, you say you also went to the French plant in 1930. How long were you there?

A. Approximately two weeks.

Q. What was done while you were there,—first of all describing what the condition of the roll grinding equipment was in the French plant?

A. The machines were in just a little better shape in France than they were in England but they still had to have quite a bit of work done on them. The same condition existed with regard to the dressers for the feed wheel, and they also didn't have the proper prints to turn up their feed wheels, which I later secured for them.

[fol. 2256] Q. That is the prints for the feed wheels?

A. In France.

Q. Now, was any work done on the machines in France to put them in proper operating condition?

A. Yes, I worked on those quite a bit also. I did find that the spindles were in a little bit better shape on the French machines than on the English machines, but they

had them operating much slower than what they were supposed to run.

Q. What if anything did you do in respect of operating time?

A. Well, we increased the speed from about 50 to 70 a minute.

Q. Was that after the condition of the machines had been corrected and they had been revamped?

A. That is right.

Q. What if anything did you do about the instruction of operators to operate the machines?

A. Well, we had them instruct operators through an interpreter, and we also gave them written reports so that they could follow the written reports.

The Court: Who do you mean by "we"?

Q. Who do you mean by "we"?

A. Well, my interpreter.

Q. And you, jointly?

A. That is right.

Q. Who was your interpreter?

[fol. 2257] A. Mr. Fegan.

Q. And he was with you. Did he go from the British Timken plant to French Timken plant when you were there?

A. Yes.

[fol. 2258] Paul Shuler thereupon resumed the stand for further direct examination by Mr. Ketterer.

By Mr. Ketterer:

Q. Mr. Shuler, just before the adjournment yesterday I started to ask you about the subject of hoppers on the roll grinding equipment at the British Timken plant. I would like for you to describe for the Court now what the situation was at the British Timken plant in respect of the hoppers on the roll grinding equipment.

A. The machines were not equipped with hoppers.

The Court: What are hoppers?

Mr. Ketterer: I was just going to ask that.

Q. Will you explain to the Court what the hopper is on the roll grinding machine and what its function is?

A. It is a sort of bin affair that the rolls are placed in and fed into the machine automatically from the bin.

Q. Now, in the absence of the hoppers or bins on the roll grinding equipment at the British Timken plant how did they feed the rolls into the roll grinding machine?

A. There was one girl at each machine and she fed each roller in one at a time by hand.

Q. What effect did that have upon the rate of production at the British Timken plant?

[fol. 2259] A. It slowed the production down quite a bit because the girls didn't stay at the machine as steadily as they should have.

Q. What if anything did you do in respect of this hopper situation while you were at British Timken?

A. I had hoppers installed on all the machines.

Q. Now, there was some reference made to feed wheels in connection with the hoppers, I believe. What did they have to do with the hoppers?

A. Well, the feed wheel they were using was an obsolete type and in conjunction with the obsolete feed wheel they were using they were using an obsolete loading device that was also changed, and a new feed loading device and new feed wheels were installed on all the machines.

Q. What was the loading device, what function in the operation of the equipment did that serve?

A. Well, it carried the roll from the hopper across the face of the grinding wheel, then as it passed across the face of the grinding wheel it ground the surface of the roll.

Q. And you say that was replaced while you were at British Timken, too?

A. That is right.

Q. What is the fact as to whether or not in revamping the roll grinding equipment at British Timken when you were [fol. 2260] there in 1930 that you equipped their roll grinding machines so that they functioned on the same basis and with the same methods as had been employed and were employed in American Timken?

A. You say did I?

Q. Yes.

A. That is right, I did.

Q. What is sound testing in the manufacture of roller bearings?

A. Well, after a bearing is assembled it is placed in a

machine that is called a sound testing machine. It rotates the bearing at a very fast speed and if there is any defect in the grinding or any defect in the surface anywhere it will make a slight whistle or noise.

Q. That is done by air?

A. By air, and also there is a radio attachment to the machine.

Q. Now, prior to the time that you went to England had any sound testing equipment of the type that was used in the American Timken plant been sent to British Timken?

A. Yes, there was one machine, one American type machine sent to England.

Q. Was it in operation there when you arrived?

A. No, it was not in operation. They described it as a very [fol. 2261] crude affair and wouldn't use it.

Q. Well, did you have any discussion about the use of sound testing equipment?

A. I told them the importance of sound testing and also explained to them that the machine would work and had been working in America for years.

Q. Was any arrangement made with them at that time about getting more sound testing equipment and installing it?

A. They decided then they would contact the American plant and get another sound testing machine.

Q. Now, there has been some statement made in the course of your testimony and also in the course of Mr. Sloan's testimony about chatter in bearings and testing for chatter. What do you mean by chatter in respect of roller bearings?

A. Well, I guess you would call it an irregularity in the grinding surface, very minute hills and valleys. I don't know how else you would explain it.

Q. And that produces what effect?

A. It causes noise.

Q. And in the practice of American Timken were tests made of the bearings to determine whether there was any chatter in respect of the rolls as they were ground?

A. In the English plant they were being tried for chatter [fol. 2262] but not in the French plant.

Q. Now, at French Timken when you went over there in 1930, what was the situation in respect of hoppers on the roll grinding equipment?

A. The French had hoppers on about half of their machines.

Q. Will you state whether or not those hoppers were the same and operated the same as the ones that were used in American Timken?

A. They operated the same but we had quite a bit of trouble installing them and keeping them in operation because of the difference in the—well, the screws and things wouldn't fit, and their screws and things were made by the metric system, and any screw or anything had to be made up special.

Q. What if anything was done at the French plant while you were there in respect of this hopper situation?

A. Well, we went over all the prints and we sort of revamped the prints so that they could make parts and things that would fit these hoppers.

Q. By prints, you mean prints as to these feed rolls and screws?

A. That is right.

Q. For use in the operation of the roll grinding equipment?

A. That is right.

[fol. 2263] Q. And will you tell the Court whether or not they were prints that had come from American Timken?

A. They were.

Q. How long did you say you were in France in 1930?

A. Approximately two weeks.

Q. And was all the time that you spent there devoted to the matter of working on the roll grinding equipment at French Timken?

A. That is right.

Q. By the time you left France after having spent two weeks there, what was the condition of the roll grinding equipment as to its conforming with the practice of the American Timken Company?

A. Well, it wasn't completely the same as ours because it would take quite some time to get it all changed, but we had some of the equipment changed over to exactly the same type that we had in America.

Mr. Ketterer: That is all.

Mr. Nitschke: No questions.

[fol. 2264] Thereupon the Defendant, to maintain the issues on its part to be maintained, called as a witness

HOWARD I. NAUMAN, who, being first duly sworn, was examined and testified as follows:

Direct examination of Howard I. Nauman.

By Mr. Kettèrer:

Q. Will you state your name?
A. Howard I. Nauman.
Q. Where do you live?
A. Canton, Ohio.
Q. By whom are you employed?
A. Timken Roller Bearing Company.
Q. How long have you worked for the Timken Roller Bearing Company?
A. 30 years.
Q. In what capacities have you worked for the Timken Roller Bearing Company over the past 30 years?
A. I started in as an operator, and to lineman, and to general machinist and repair man, machine builder.
Q. And what is your position now?
A. Machine repair work.
Q. Did you at any time have occasion to make a trip to Europe to the plants of British Timken and French Timken?
[fol. 2265] A. Yes, sir.
Q. And when was it that you went over there?
A. Thanksgiving Day 1932.
Q. And you were there for what period of time?
A. Six months.
Q. Where did you go first on that trip?
A. Birmingham, England.
Q. And for what period of time out of the six months were you at Birmingham?
A. I spent approximately five months in Birmingham and one month in Paris.
Q. Will you tell the Court the purpose of your going over there in 1932?
A. I was sent over there to put in the same system we have in the Canton plant in regards to condition of machines and production.
Q. And were there any particular machines relating to any especial operations that you were concerned with?

A. I was concerned with the 4-spindle Acmes.

Q. And what operation in the manufacture of tapered roller bearings is performed on the 4-spindle Acme machines?

A. They make rolls, cones and cups.

Q. And what is done on the Acme in respect of rolls, cones and cups,—is it the grinding operation?

[fol. 2266] A. No grinding operation. Turned from the green to the green cups, from the green stock to the green cups.

Q. And is that true also of cones and rolls?

A. Yes.

Q. That is before the hardening operation?

A. Yes, sir.

Q. Now, going first to the British Timken plant what did you find as to the condition of the Acme 4-spindle machines when you arrived at the British Timken plant in 1932?

A. I found that they were completely worn out.

Q. In what respect?

A. Well, that would say that they needed a complete overhauling and there was nothing working right on the machines, they weren't in condition. The tooling was bad. They had practically the same tools and equipment we used in this country but it was misused.

Q. In what way was it being misused?

A. Well, in regard to the tools their men did not understand tool grinding. Instead of cutting steel they were pushing steel. They had no clearance in their tools. The spindle speeds and the r.p.m. surface travel and camming was all wrong.

Q. Will you tell the Court what you mean by surface travel and camming?

[fol. 2267] A. Well, surface travel, on what we used to call the MM steel should be about 85 feet per minute in order to get the right travel on your cross slides, and your end slides. In other words on cross slides we should get about .002 per inch, or the end slide .007 to .008. On these machines they had their spindle speed and surface travel very high and tools were not ground right and they were cutting about .010 per inch on the cross slides instead of .002. In other words they were burning their tools.

Q. What if anything did you do in respect to the camming?

A. In the first place we got the correct surface travel, r.p.m. and made the proper cams.

Q. You say you made them. Did you actually cut the cams yourself?

A. No, I went over there in a supervising capacity. We weren't allowed to machine anything ourselves. It was done by the English people.

Q. But it was done under your supervision?

A. Under my supervision.

Q. And the cams were actually cut under your supervision over there?

A. Yes.

Q. What else was done with the Acmes?

[fol. 2268] A. I overhauled three complete machines from the floor up and made them as new machines to our Yankee standards.

Q. When you say you overhauled them, does that mean you tore them down completely to the floor?

A. That is right.

Q. Was that work also done by employees of British Timken under your supervision?

A. Yes, sir, Mr. Calicote of the English plant was instructed by me.

Q. How many machines did you say you tore down and rebuilt?

A. Three completely.

Q. In connection with that job were any employees of British Timken instructed as to the construction and maintenance of these Acme 4-spindle machines?

A. Yes, sir.

Q. And was that work done by you, too?

A. Yes, sir.

Q. Now, after the tearing down of this equipment and after it had been rebuilt, what was done then in respect of its operation, if anything?

A. It was put on what we call Yankee production, the same as we had in America.

Q. And did you supervise work of the employees of the British Timken plant in respect to the operation of the [fol. 2269] machines that had been rebuilt?

A. Yes, sir.

Q. Over what period of time?

A. Well, I usually stayed with one machine as I rebuilt it about a week with the operator to make sure we were getting the right production, which we did.

Q. And after the machines had been rebuilt were they operating in accordance with American Timken practice then?

A. As long as I stayed in England they were.

Q. Now, you say you went to France after you had been in England approximately four months?

A. I went to France on the 29th day of January and returned the 2nd day of March.

Q. And what did you observe in the French plant as to the 4-spindle Acmes?

A. Well, they had sent three 4-spindle Acmes from Canton to France to be operated and someone had got hold of them and tore them all apart and they were throwed in the junk pile in one corner when I got there. Of course it was my job to rebuild those machines and get them into operation.

Q. Before we go to the French plant, there was one thing about the English situation I didn't ask you about. [fol. 2270] You said at the British Timken plant in England when you were there the tooling was not being properly used on the 4-spindle Acme.

A. That is right.

Q. Will you tell us a little more in detail about what was done with that?

A. As I said before, first we had to get the surface travel and r.p.m. correct and proper cams, and then grind the tools correctly.

Q. What did you have to do with grinding the tools correctly?

A. I had to instruct a man, an operator to do so.

Q. And did you do that?

A. I did.

Q. And by the time the machines had been rebuilt in the fashion you have described, had you instructed their operators about the method of grinding tools for use on the 4-spindle Acmes?

A. That is the first thing I done when I got into England.

Q. And the tool grinding practices you instructed them about how did they conform, if they did conform, to the American Timken practice?

A. I did them exactly the same as we did in America.

Q. All right, now, going back to the French Timken plant. You say there were three machines that had been disas-
[fol. 2271] sembled and were lying in the corner of the plant?

A. True.

Q. What was the first thing that was done in respect of that at the French Timken plant?

A. I started to rebuild those machines.

Q. Did you have any assistance from any of the employees of French Timken?

A. I had the foreman of the general tool room, a man by the name of Mr. Travis.

Q. How long did you say you worked at that?

A. Approximately a month.

Q. Did you get all three machines assembled in that period?

A. I did.

Q. What was their condition after you had completed their assembly?

A. I set up one job for them, that is all the time I had. Of course we used D.O.H. steel in France, solid bars. The D.O.H. steel is oil hardened steel, and the production is just half the MM steel. I set up the new 9074 and had most of the tools made. We didn't have floating reamers, and such things in France, which I made. The one machine I set up had run three weeks, hadn't been a tool out of it, had 100% production.

Q. Was the tooling put on the Acme machine at French
[fol. 2272] Timken the same as at the American plant?

A. With the exception of the floating reamers. The floating reamers we made in this plant were two pieces and adjustable. I was forced to make floating reamers out of solid stock which answered the purpose.

Q. Other than that the practice was the same?

A. Yes, sir.

Q. Did you do anything about instructing operators in the French Timken plant about the operation of the Acme 4-spindle machines?

A. To the best of my knowledge. I had no interpreter and it was rather hard to deal with those boys.

Q. You didn't speak French?

A. Not very much.

Q. Did you return to England before you came back to the United States?

A. Yes, sir, I returned to England the 2nd day of March.

Q. Did you spend any time at the British Timken plant?

A. I stayed until the 24th day of May.

Q. What was done in that period?

A. I was still working on rebuilding machines and we had three machines sent over from this country.

Q. Did they come while you were there?

A. They came while I was in France.

[fol. 2273] Q. They were there when you came back from France?

A. That is right.

Q. What was done with those three machines after you returned from France to the British Timken plant?

A. They were put on the Ford series, 14,000 cones, and the one machine was run at 78 pieces per hour and it run 100% as long as they had steel and oil.

The Court: What do you mean by "we"? I have heard the expression used "we". This is the third or fourth witness who referred to "we had something sent from the United States". What do you mean by "we"?

The Witness: The only way I can explain, we figure we are part of the Timken plant.

The Court: What do you mean by "we sent them over"? Do you know who sent them? Do you know how they were sent? Do you know who paid for them? Do you know who ordered them?

The Witness: Really, I don't know.

The Court: Do you know how they got there? Do you know who was responsible for the shipping of them? Do you know where they were purchased? Do you know anything about it?

The Witness: The machines were from Timken Roller [fol. 2274] Bearing Company because I rebuilt the machines before they were sent there.

The Court: They were machines that you had at the Timken plant in Canton?

The Witness: Yes, sir.

Q. So that they came from the American Timken plant?

A. Yes, sir.

Q. Now, as I understand it, these three machines that arrived in England while you were in France were machines you had rebuilt in Canton before you went to Europe?

A. Yes, sir.

Q. Did you have anything to do with their being set up?

A. Yes, sir.

Q. After you returned from France?

A. Yes, sir.

Q. What did you do about that?

A. Set the machines up, three machines, and got them on 100% production with an operator.

Q. And were the machines set up by you at the British Timken plant in conformity with the practice of American Timken in the operation of Acme 4-spindle machines?

A. Yes, sir.

Q. For how long had they been in operation before you left England, if you can recall?

[fol. 2275] A. The French machines?

Q. No, the British Timken machines, the three that came over there while you were in France?

A. They waited on me to get them in operation.

Q. After you got them set up how long did you stay in England?

A. Approximately two months.

Mr. Ketterer: I think that is all.

Cross examination of Howard I. Nauman.

By Mr. Nitschke:

Q. Mr. Nauman, you made a distinction between MM steel and some other type of steel.

A. D.O.H.

Q. Would you explain what those symbols mean?

A. Well, D.O.H. is a harder steel. It is a direct oil hardened steel. The MM steel is what we call as a "moly" steel, a softer steel.

Q. You say "moly" you mean it has molybdenum?

A. I am not a chemist, I couldn't explain that. It is a term we used in describing the steel.

Q. Which were they using in the French plant?

A. The D.O.H.

Q. And that is harder?

A. That is harder.

[fol. 2276] Q. And you have to use different speeds?

A. Different speeds.

Mr. Nitschke: That is all.

[fol. 2277] Thereupon the Defendant, further to maintain the issues on its part to be maintained called as a witness

HARRY H. TRAVIS who, being first duly sworn, testified as follows:

Direct examination of Harry H. Travis.

By Mr. Ketterer:

Q. Will you state your name, please?

A. Harry H. Travis.

Q. You live where, Mr. Travis?

A. Columbus, Ohio.

Q. By whom are you employed?

A. Timken Roller Bearing Company.

Q. How long have you worked for the Timken Roller Bearing Company?

A. Since August, 1919.

Q. And you are employed in what capacity?

A. At the present time I am a foreman.

Q. In what department?

A. Screw department, automatics.

Q. Did you at any time go to Europe to visit the plants of either British Timken or French Timken?

A. I did, yes.

Q. And when was it you went over there?

A. I left New York January 15, 1932, and arrived in [fol. 2278] England on January 21st.

Q. Of 1932?

A. 1932.

Q. How long were you there?

A. Well, between four and five months.

Q. Did you spend all of that time at the British Timken plant or did you go to France?

A. No, I spent three and a half months in British Timken and one week in French Timken.

Q. What was the purpose of your going over to Europe in 1932?

A. To supervise the repairing, re-tooling and job setting on 3¼ and 4¼ Gridley automatics as near to our methods here in the U.S.A.

Q. Had you had anything to do with the operation of automatics in the American Timken plant at Columbus?

A. I had, yes.

Q. And what had you to do with that prior to going to Europe in 1932?

A. Well, at that time I was what they call a head lineman.

Q. In the automatic department at the Columbus plant?

A. That is correct.

Q. And what does a lineman do? We have had that expression from time to time in the testimony here.

A. Well, do you mean the head lineman or just an ordi-
[fol. 2279] nary lineman?

Q. What does a head lineman do in the Timken plants?

A. Well, he is over all the other linemen, all of the operators and helpers, and so on. In other words, he is next to the foreman.

Q. What does the head lineman have to do with setting up machines or supervising the tooling that is to be done on machines?

A. Well, he has a lot to do with it.

Q. Well, I know he has a lot to do with it, but what? Describe in general what his duties are.

A. Well, the head lineman's duties are to see, if he is not setting the jobs up, that the other linemen set them up properly.

Q. By "setting up" you mean what in respect of installing tooling on the machine?

A. Put tools on the machine, recam them, getting it into operation on time, that is, the time you're supposed to run the part.

Q. Am I correct in saying that for every part made on the automatics the tooling has to be changed and the speed controlled by the cams on the machines?

A. That's correct.

Q. They have to be changed?

[fol. 2280] A. That is correct.

Q. And the job of the lineman is to supervise that job?

A. That is right.

Q. Now, when you got to England in 1932, what did you find as to the condition of the automatics in the British Timken plant?

A. Well, they needed quite a bit of repairing and they needed some retooling and resetting.

Q. What was the condition as to state of repair?

A. Well, the spindles were not properly adjusted and the turrets were bad.

Q. The turrets?

A. The turrets.

Q. Yes.

A. And the tool holder housings were not in line with the spindles.

Q. What did you do in respect of the repair of those machines?

A. I supervised the repairing of all the machines.

Q. By supervising, do you mean that the employees of the British Timken Company did the work under your direction?

A. That is right.

Q. And what period of time was required to place the machines in what you regarded as proper operating condition?

[fol. 2281] A. Well, I had personally four of them repaired, and I set the jobs up myself on four of them.

Q. By setting them up, you mean you installed the tooling and cams?

A. That is right.

Q. Now, about the tooling, what was the condition of that when you arrived in England in 1932?

A. Well, some of the tooling I found was being ground by hand where it should have been machine-ground.

Q. What if any change did you make in that practice while you were there?

A. That was all corrected properly, as we do back here in the States.

Q. I would like to ask you, Mr. Travis, whether or not the automatics that were being used in the British Timken plant were the same as the ones that were being used in the American Timken plant?

A. They were.

Q. So that the operation of them was the same and the method of using them was the same as you were accustomed to in the American Timken plant?

A. That is correct.

Q. Now, after the jobs had been set up, as you described it, on the automatics in the British Timken plant, what did [fol. 2282] you do then?

A. We instructed the men how to operate the machines and grind the tools properly.

Q. By "we" who do you mean?

A. We—well, I, then.

Q. Those were operators that were employed by the British Timken Company?

A. They were.

Q. And after you had finished the putting of the machines in operating condition and changing the toolings and setting up the jobs, in the fashion you have described, will you tell the Court whether or not they were in the same operating condition, to produce the same results, as similar equipment in the American Timken plant?

A. They were.

Q. What was the effect on production as a result of the work that you did there?

A. Well, the efficiency increased approximately 30 to 35 percent on these machines.

Q. What do you mean by efficiency?

A. Well, increase in production.

Q. Do you mean the number of pieces produced?

A. That is right.

Q. After you left England, did you go to France?

A. I did.

[fol. 2283] Q. And how long were you in France?

A. One week.

Q. What did you observe about the automatics in the French plant?

A. Practically the same condition existed there as in British Timken.

Q. And what did you do in respect of the automatics at the French Timken plant in 1932?

A. Well, meanwhile, I had some prints forwarded to me at the British Timken from America, some more prints were made at British Timken, and Mr. Fegan accompanied me to French Timken, as he had been there before.

Q. Who was Mr. Fegan?

A. Well, he was kind of a factory man or engineer, and he acted as my interpreter.

Q. Was he a part of the British Timken organization?

A. That's right.

Q. What did you do in respect of the automatics with the prints that you had forwarded from America and also the ones that were taken from England?

A. They were taken—we took those directly over to French Timken with us and there we gave them to the management of French Timken.

Q. And what was done in respect of the automatics, if anything?

[fol. 2284] A. Well, while I was there they had some radius trouble, some under-cut trouble in the green, and that was corrected.

Q. What do you mean by radius trouble and under-cut trouble?

A. Well, their tools weren't being properly ground, the same as existed in England. I was there only one week and I had the tools corrected and the under-cut fixture or attachment was not put on the machine properly, and I had that changed, and instructed them in the use of it.

Q. And when you left France at the end of that week what was the character of the operation of the automatics in the French Timken plant?

A. I don't just understand. Please state that again.

Q. What was the character of the operation of the automatics in the French Timken plant after you had gone over them during the week you were there?

A. Well, the under-cut and the radius were corrected, but the rest of the conditions still existed, and that's the reason we gave them the prints to correct them.

Q. But you didn't spend enough time there to supervise the actual correction?

A. Not enough time, that's correct.

Mr. Ketterer: That's all.

Mr. Nitschke: No questions.

[fol. 2285] Thereupon the Defendant, further to maintain the issues on its part to be maintained, called as a witness

Stephen P. Moreland who, being first duly sworn, was examined and testified as follows:

Direct examination of Stephen P. Moreland.

By Mr. Ketterer:

Q. Will you state your name, please?

A. Stephen P. Moreland.

Q. Will you keep your voice up, please, Mr. Moreland, so we can all hear what you have to say?

A. Yes, sir.

Q. Where do you live, Mr. Moreland?

A. I live in Indianapolis.

Q. By whom are you employed?

A. By the P. R. Mallory & Company.

Q. Where were you born, Mr. Moreland?

A. I was born in Russia.

Q. And you came to this country when?

A. In 1912.

Q. How old were you when you came over here?

A. About 14 years old.

Q. Now, were you ever employed by the Timken Roller Bearing Company?

[fol. 2286] A. Yes, I was.

Q. And for what period of time did you work for the Timken Roller Bearing Company?

A. Roughly, four years, from 1929—I left the company in September, 1933.

Q. And you had worked for the company for a period of about four years?

A. About four and a half years.

Q. What kind of work did you do for the Timken Roller Bearing Company when you were employed there?

A. I was doing the engineering work on heavy bearings and mostly applications of roller bearings to rolling mills and heavy machinery.

Q. Was the entire four years and a half you spent with the company spent in that kind of work?

A. Most of it, yes, but I was sent to Europe by them to help in the sales of Timken roller bearings in Europe.

Q. When did you go to England?

A. In December, 1931.

Q. And that was the first time you went?

A. That was the first time I went.

Q. And how long were you in England at that time?

A. Almost one year. I don't remember the exact date, about eleven months, roughly.

[fol. 2287] Q. Did you spend all of that eleven months period in England, or did you travel out of England?

A. I spent most of the time on the Continent, I would say probably 55 per cent of the time I spent in Germany, France, Switzerland, and in Russia.

Q. As to England, first, what did you do during the period of time you were in England?

A. I attempted to teach the English, the British Timken engineers, in American methods of incorporating Timken bearings in heavy machinery.

Q. In that connection, was anything done as to setting up any engineering department for that purpose in the British Timken plant?

A. Yes, we established a separate department for engineers who worked on nothing but on applications of Timken bearings to rolling mills, sugar mills, cement mills, rotary machines, and other heavy machinery. A great deal of it was done on the application of bearings to heavy drives on rolling mills and other heavy machinery.

Q. What if any data did you take with you when you went to England?

A. I took the Timken engineering journal and photostatic copies of calculation sheets and also a vast number of drawings showing the application of Timken bearings to various machines.

[fol. 2288] Q. What use did you make of this data that you took to England?

A. I had the English engineers study the drawings and calculation methods with me, and later on I did the same thing with Dr. Wrba in Germany. Dr. Wrba was the manager of the German Timken Company.

Q. Over what period of time did you review the drawings and the data that you took with you with the engineers at British Timken?

A. It was continuous. I mean all the time I was there I worked either with their engineers or their sales people, and

the engineers and sales people were coached in figuring loads and in incorporating Timken bearings in machinery.

Q. Had there been any experience in England up until the time—or in the British Timken plant, I should say, up until that time, in respect of the installation of Timken bearings in heavy equipment like rolling mills and rubber mills, things of that kind?

A. No, I don't believe there was any because most of the engineering work for them before that was done at the Canton office.

Q. Before you went to England in 1932, had you had anything to do with supplying data as to applications to British [fol. 2289] Timken in respect of these heavy applications?

A. Yes, I would say all of the work pertaining to the application of Timken bearings to heavy machinery passed over my desk.

Q. That was at Canton?

A. Yes, in Canton. I handled all of that.

Q. Now, you said something about sales contacts, that you also spent some time with the sales organization of British Timken. Will you tell the Court what that was, what the character of it was?

A. In England there were two sales people with whom I called on different machinery builders, like Frazer-Chalmers, and a company in Sheffield, Davey Brothers, I believe it is, or Davey Rolling Mill, associated with the United Machine in this country, and also a good many steel mills like the Baldwin Company in England, and other steel companies whose names I don't remember now.

Q. What was the purpose of the calls that you made on these various companies?

A. To sell the Timken bearings in England either for the English mills or for the mills that were built in England for export, for example, for export to Italy or to Spain or to Russia or to other countries in Europe, also to Australia. [fol. 2290] Q. Now, do you recall any specific mill jobs on which you worked that resulted in sales of bearings for use in rolling mills?

A. Oh, yes, the Baldwin Mills in England. The company was owned by Mr. Baldwin, who was in the British Cabinet, the Prime Minister, I believe—

The Court: Stanley Baldwin.

The Witness: Yes, Stanley Baldwin.

A. (Continued) Also several mills in the Scotch districts, the Fiat mill in Italy, and one mill in Spain, and numerous gear drives that they used in England and abroad.

Q. Now, the practice that you followed in engineering bearings into these various heavy mill applications that you refer to, was that the same practice that had been employed in American applications, to your knowledge?

A. Yes, it was exactly the same, because I followed the American method of calculating loads and selection of Timken bearings for these loads, for these machines.

Q. Was any effort made to check the design of bearings with American Timken while you were there?

A. Yes, those bearings that we had to design over there, because at that time we didn't have the full range of bearings available for every job, those bearings that were de-
[fol. 2291] signed in England had to be reviewed in Canton and they had to be okayed by Mr. Riblet, I believe—yes, Mr. Riblet.

Q. Mr. Riblet was who?

A. Mr. Riblet was the engineer in charge of designing Timken bearings.

Q. Now, you said a moment ago something about "we" not having a full line of bearings in England. By "we" you mean whom?

A. The British Timken.

Q. Was British Timken, at the time you were first over there in 1932, equipped to make the large size mill bearings?

A. No, they were not. It was after I had been there for probably six months that we started making Timken bearings in England, and we built a furnace there and bought machinery. The machines came to England from America through an English machinery dealer. I don't remember the name of the machinery dealer, but the machine supplier was an English company, but he sold American machines.

Q. And the bearings at that time that were used on the heavy applications were supplied by American Timken, is that correct?

[fol. 2292] A. Until that time, yes, and a good many bearings even after that because British Timken was not in a position to manufacture all the bearings that the sales demanded.

Q. Now, you said something a while ago about having

gone onto the Continent and spending considerable time there. Going first to Germany, whom did you contact there?

A. In Germany I contacted the steel mills, like Vereinigte Stahl Werke and a company in Magdaburg, I believe, that built heavy machinery, and a company in Dusseldorf, the Schloanan Company, in the Dusseldorf area, and in Saarbruken we called on a company whose name I don't remember, that built mills, rolling mills, and that company was interested in the use of Timken bearings, because until that time they were using the brass bearings and SKF bearings which were manufactured in Germany. But they told us that because our bearings are made in America and are not made by the German labor they couldn't buy our bearings unless the bearings were at least assembled in Germany.

Q. And that statement about the assembling of bearings in Germany, and the manufacture of bearings in Germany, were you given that response more than one place when you contacted these people?

A. In every case. In every case I had the same answer, [fol. 2293] and the only bearings we were able to sell in Germany were for the mills outside of the German Reich, where the customer specified the Timken bearings.

Q. And those mills were going where?

A. They were going into the Soviet Russia.

Q. Did these German representatives of the German companies say why it was necessary that the bearings be manufactured in Germany if they were to be sold there?

A. First was the necessity of employing German labor, second was the cost of Timken bearings, and the high duties, the high import duties was the last. They liked Timken bearings because they would carry the loads much better than others did, but I believe it was the German Government that did not want the American bearings used on German machinery, the same as they did not want the Timken bearings made in the United States used on the German railways.

The Court: What was the second point you mentioned? First was the necessity of employment of German labor.

The Witness: The second was the cost of the Timken bearings.

The Court: The cost?

The Witness: Yes.

[fol. 2294] Q. And the cost was based on what factors, did you say?

A. The cost of what?

Q. Of Timken bearings made in America.

A. Well, the American labor is so much higher that the SKF, for example, who had factories in Germany, could make bearings over there, and also their bearings were not a tapered type, they were the spherical type, and they were able to sell them where we could not sell any.

Q. Was Dr. Wrba, whose name you mentioned a while ago, was he with you when you made these contacts of the machine builders in Germany?

A. Yes, Dr. Wrba was with me all the time. In fact, he was the man who made the contacts, and my duty was to help him engineering-wise. He did all the sales work himself.

Q. Now, about the data in respect of prints, and that sort of thing, that you described that you took with you when you went to Europe, did you make any use of that in Germany in dealing with Dr. Wrba there?

A. Dr. Wrba and I spent every spare moment we had studying the Timken drawings, lay-outs. He studied the design of Timken roller bearings, and I left with him a complete set of drawings, and we also had to make a German engineering journal based on the Timken engineering journal, which we first worked out in English and then with Dr. [fol. 2295] Wrba in German.

Q. Do you speak German yourself, Mr. Moreland?

A. Not too well. I speak it, but not too well now. I haven't used it for fifteen years.

Q. At that time did you speak German?

A. I spoke some, yes. I spoke enough to understand it.

(Thereupon two engineering journals were marked by the Clerk, for identification, Defendant's Exhibit 170.)

Q. Do you have the other copy of your engineering journal?

A. Yes, I have it here. Would you like to have it?

Q. Yes, will you get it, please?

A. Here is the original too.

Q. Now, I hand you, Mr. Moreland, two documents, each of which has been identified with the same number, Defendant's Exhibit 170. I will ask you to tell me what they are, please.

A. This is the Timken engineering journal made in German, the one we had made up in Berlin, and this is the translation which you sent to me.

Q. Have you examined that translation?

A. Yes, I have.

Q. And is it correct?

A. I believe it is.

[fol. 2296] Q. You say "we prepared this engineering journal." By "we" you mean who?

A. By that I mean Dr. Wrba and I.

Mr. Ketterer: We offer Defendant's Exhibit 170.

The Court: It may be received.

A. If you need another German copy I have it at home.

Q. Well, we can get along, I think, with this one all right. Now, to what extent was the American engineering journal used in the preparation of this engineering journal that was prepared by you and Dr. Wrba in Germany?

A. Well, the illustrations were taken from the American engineering journal and from the album of photographs I had with me, and the list of Timken bearings was taken from the engineering journal. The only thing we did, we gave dimensions in millimeters beside the inches. If you notice in that book, the sizes of bearings are given in millimeters and inches; while in the American journal the dimensions are in inches only, and the description of different mills was taken from the album of photographs that I had at that time with me.

Q. Now, while you were in Germany, did you have anything to do with any negotiations with representatives of the Russian Government in respect of bearings?

[fol. 2297] A. Yes, we started working on that in the early part of 1932. Before I went to England there were Russian representatives in the United States. I got acquainted with them at Timken Roller Bearing's request, and after the Russians went home I wrote to them and told them that I would be in England and asked for permission to call on them. Dr. Wrba and I went to Moscow where we talked to the different people in the Commissariat on Heavy Industry—I believe that's the correct name of it, but it may not be the exact name, but something like that—and we also

visited the machinery building factory in Donbas in the southeastern part of Russia.

Q. Spell that.

A. D-o-n-b-a-s. We spent in that factory almost two weeks working with the Russian engineers on the application of Timken bearings to the heavy mills, which I believe later were built—some of those mills, were built in the United States, and they used Timken bearings in them, and others mills were built in Germany, but they were built to our designs.

Q. Now, were they the mills you referred to a while ago in your testimony, when you said that some of the mills that went to Soviet Russia had specified the use of Timken bearings on them?

A. That's correct.

[fol. 2298] Q. Now, did you continue your negotiations with the representatives of the Russian Government in respect of the construction of bearing factories in Russia?

A. Yes, sir, in Russia.

Q. And what was the character of the negotiations that you conducted there?

A. The draft of an agreement was made up and initialled by the Russian Government for the Timken Roller Bearing Company to build a factory in Russia, and the Timken Roller Bearing Company was to give the Russian Government technical assistance, for which the Russians would pay the Timken Roller Bearing Company a certain sum of money. I don't remember now what it was. The Russians also obligated themselves to buy Timken bearings for a fixed sum of money each year, and that pertained to bearings of 8 inches and larger in diameter, that is, outside diameter. The contract was—the draft of the contract was given to Mr. Dewar in London, and a copy of it was brought with me to Canton, and I gave it to Mr. Klinedinst. I thought I had a copy myself, but I couldn't find one.

Q. Now, during what part of 1932 was it you were in Moscow?

A. It was early in 1932, I would say around March, early March—probably part of April. I can't remember exactly now.

[fol. 2299] Q. Did you observe whether or not there were any other bearing factories in Russia at that time?

A. Yes, the SKF Company had a bearing factory where

they were building ball bearings and the straight roller bearings. They did not build the tapered roller bearings at that time. I understand they do now, but they did not at that time.

Q. When you were there the first time for those eleven months that ended in the latter part of 1932, was there any agreement finally reached with the Russian Government on that subject?

A. No, the agreement, the final agreement, was not reached until 1933, in the early part of 1933. It was around April or May.

Q. Did you visit any other countries while you were in Europe in 1932, other than the ones you have mentioned?

A. No, I visited France, Germany, Switzerland, and Russia, but we dealt with engineers from other countries too.

Q. You did what?

A. We had contact with engineers from other countries, for instance, we handled a job for Spain and we dealt with engineers from Spain and Italy.

Q. You didn't go to Spain or Italy?

A. No, I did not go there, but to Spain and Italy British [fol. 2300] Timken had sent a service man, Mr. Hill by name, who helped to assemble the Timken bearings in the mills there.

Q. Now, in Switzerland what if any contacts did you make? Was Dr. Wrba with you, first?

A. Dr. Wrba was with me. We called on three mills—I don't remember the names of the towns or the names of the companies, but those mills were used for rolling hot and cold nonferrous metals.

Q. By nonferrous metals you mean what?

A. Copper and brass and German silver.

Q. Were you able to make any sales of Timken bearings in any of those places?

A. No, we couldn't sell any Timken bearings there because the Timken bearings were not made in that country, Switzerland. That was the main reason. The only bearings that were sold, the only Timken bearings that were sold, in Switzerland were replacement bearings for automobiles, which I had nothing to do with, but my inquiries revealed that the only Timken bearings sold in Switzerland were those for American automobiles there.

Q. Now, did you go to France in 1932?

A. Yes, I did.

Q. And did you go to the French Timken plant in 1932?

A. Yes, I did.

Q. What was done there?

[fol. 2301] A. I had a short visit there, probably a week's time, and with one of their sales people I called on several machine builders, but French Timken, first of all, did not need any of my help because their man had been in the United States for almost a year and he had all the information with him that I could have given him.

Q. Who was that, what was his name?

A. Robert Beauvivier, and he had all the information, so I did not spend too much time with him. But I did call with the sales people on several mill builders, and I was not successful, for the main reason that the French at that time were not building any heavy machinery. They were getting that from Germany as reparations.

A. After the first World War the Germans had to give the French a certain number of heavy machines for nothing.

Q. Now, when was it you returned to the United States in 1932?

A. I believe it was in November, 1932, just what time I do not remember now.

Q. Then did you return to Europe at any time after that?

A. Yes, I did. After I reviewed the work that had been done in the United States during the time I was gone with [fol. 2302] the people here, I left for England, for Europe, in February of 1933.

Q. How long were you over in Europe on that occasion?

A. I stayed there until sometime in June, and in June I left England with the agreement from the Russian Government.

Q. Did you visit any countries on that trip other than England?

A. Oh, no, on that trip I was in Germany and in Russia.

Q. Again?

A. Yes, sir.

Q. And was that trip to Russia on that occasion in connection with this contract for the construction of a tapered roller bearing plant in Russia?

A. In part it was that, and in part to talk with the Russians again about the use of Timken bearings in four-high mills. The Russians had been considering buying them at

that time, I went there this last time, to Russia, at the request of the Russian representation in London, I believe it was—yes, in London.

Q. On the request of Russian representatives in London?

A. That's right.

Q. Did anybody accompany you to Russia?

A. Dr. Wrba did.

Q. From Germany?

[fols. 2303-2310] A. Yes.

Q. How long did you stay in Russia at that time?

A. It must have been more than three weeks. It was more than three weeks, but just how long exactly, I don't remember now.

Q. Now, did you discuss with the representatives of the Russian Government in Russia the purchase of bearings for four-high mills that were to be installed in Russia?

A. Yes, sir.

Q. Where were those mills going to be built?

A. They were going to be built in the United States. I reported when I came back, that United Engineering & Foundry Company would get the hot four-high mills and Mesta probably would get the cold four-high mills.

Q. Was this contract for the construction of a bearing plant in Russia, that was to be done by British Timken, was that ever executed?

A. I don't know that because I left Timken Roller Bearing Company in September, 1933. What happened then, I don't know.

[fol. 2311] Mr. Ketterer: That concludes the direct examination of Mr. Moreland, if the Court please.

Mr. Nitschke: No questions.

Mr. Day: Now, we want to offer the deposition of Howard Herbert Coombes, taken on behalf of defendant pursuant to stipulation of parties at 16 West 60th Street, New York City, before Clarence Bonynge, Notary Public, State of New York.

(Questions read by Mr. Day, answers by Mr. Ketterer.)

[fol. 2312] "Q. Will you state your name, please?

A. Howard Herbert Coombes.

Q. And where do you live, Mr. Coombes?

A. Sydney, Australia.

Q. And with what company are you connected?

A. Bearing Service Company.

Q. And how long have you been connected with Bearing Service Company?

A. Twenty years.

Q. And in what capacity are you connected with that company at the present time?

A. Automotive sales manager.

Q. How long have you been automotive sales manager?

A. I cannot tell you exactly; it is a number of years.

Q. Well, approximately?

A. Twelve years.

Q. And what was your previous connection with Bearing Service Company prior to being automotive sales manager?

A. Salesman.

Q. As automotive sales manager what are your duties generally in the operation of the company's business in Australia?

A. Well, primarily sales promotion.

Q. Over what area?

A. Particularly New South Wales and Victoria. The [fol. 2313] policies of course cover the whole of Australia, the influence of those policies would be felt in all other states in the Commonwealth.

Q. Were you connected with Bearing Service Company in 1940?

A. Yes, I was.

Q. And in what capacity at that time?

A. As sales manager.

Q. And are you acquainted with a man named Mr. Jack Harrison?

A. Yes, I am.

Q. How long have you known Mr. Harrison?

A. It is over 20 years.

Q. And is he connected with Bearing Service Company?

A. Yes, he is.

Q. And in what capacity?

A. Liaison officer.

Q. And his duties are what as liaison officer?

A. Primarily to keep all states and franchises posted with

current information on bearings from all agencies that we hold, for distribution of stock amongst the various states.

Q. By stock you mean stock of what?

A. Stock of bearings.

Q. You do not mean corporate stock?

[fol. 2314] A. Oh, no, no, bearing stocks.

Q. Were you acquainted with the fact that Mr. Harrison came to the United States of America in 1940?

A. I was.

Q. And before asking you about the purpose of his coming over here, is he an officer of Bearing Service Company, a corporate officer of that company?

A. Do you mean by that that he is an executive?

Q. Yes.

A. Yes, he is so.

Q. Did you participate in any discussions as to the purpose of Mr. Harrison coming to this country prior to his coming over?

A. I did, yes.

Q. Who gave Mr. Harrison his instructions as to the purpose of coming to this country?

[fol. 2315] A. Do you mean the individuals or the company as a whole?

Q. Either one.

A. The instructions given to Mr. Harrison were given to him by the directors.

Q. And the directors were whom?

A. Mr. Hodgkinson, Mr. Dickinson and Mr. Thomas.

Q. Now will you tell us what instructions he received from those men as to what he was to do when he came to this country in 1940?

A. The sole purpose of the visit was to see—

Mr. Nitschke: I want to object to that unless he says that he heard the instructions given to him.

Mr. Ketterer: He has already testified that he knew.

Mr. Nitschke: His answer was that the purpose was.

The Witness: Leading up to Mr. Harrison's visit there was discussed in detail for many months with all the organization and with all the executives, that it was fair and necessary, due to the critical position so far in England, to supplement that supply by obtaining American bearings. Mr. Harrison was therefore instructed to visit America

[fol. 2316] with the idea of interviewing all American companies from whom we could purchase bearings of all types. And to do that it was necessary for him to see Fafnir Bearing Company, Nice Bearing Company, R. B. C., M. R. C., Ahlberg, Timken, Schafer.

Q. Now his instructions as to interviewing various companies that you have named was to do what?

A. To supplement our supply of bearings that we were formerly getting from England, and which supply was drying up and looked like completely drying up.

Q. Had you previously gotten bearings from any source in America, that is prior to the war?

A. Yes, we had.

Q. And from what companies?

A. Practically all American ball roller bearing companies, I think I could safely say all American bearing companies at sometime or other we had bought bearings from.

Q. Did Bearing Service Company handle the bearings of any American companies prior to the war?

A. Oh, yes.

Q. And what companies?

A. The same as I have listed previously.

[fol. 2317] Q. In the field of anti-friction bearings in the Australian market in 1940 and prior to the war which type of bearings was more important, ball bearings or tapered roller bearings?

A. Ball bearings.

Q. And to what extent?

A. Roughly 80 per cent ball bearings and 20 per cent tapered roller bearings.

Q. The figures that you have given as the relative importance of ball bearings and tapered roller bearings on the Australian market, upon what experience is that based?

A. My knowledge of the bearing business.

Q. Over what period of time?

A. Twenty years.

Q. And does that reflect the experience of Bearing Service Company in the sale of bearings in the Australian market?

A. It does, yes.

Q. I will ask you, Mr. Coombes, whether or not Mr. Harrison had any instructions to request the Timken Roller

[fol. 2318] Bearing Company to terminate any agreement that it had with British Timken, Limited, in respect of supplying bearings to Bearing Service Company on the occasion of his visit here in 1940."

A. Mr. Harrison certainly did not have any such instructions from our company; in fact the only reason that the approach was made to American factories, which of course includes Timken, was wholly and solely for the purpose of supplementing the supply of ball and roller bearings for essential Australian industries.

Q. Mr. Coombes, is there any reason to your knowledge why it is desirable or necessary for you to have an English source of bearings?

A. Oh, yes, it is very necessary and essential.

Q. Will you explain why it is necessary?

A. Well, there are several reasons; the main one is the existing dollar position and the necessity for us in Australia to always make our purchases from a Sterling coun-[fol. 2319] try. That being the case, and having suppliers in England who can supply the bulk of the ball and roller bearings we require we buy from that source. Let me go one step further by pointing out that before being able to make any purchases whatsoever from a dollar source it is first of all necessary to obtain a license, an import license; and to obtain that license it is also necessary to prove to our government that the bearings we require are not obtainable from a Sterling country. Should we succeed with this proof and the bearings are urgently needed for industry, either for manufacturing or replacement purposes, we are granted a license to import from a non-Sterling country; and an allocation of dollars is made accordingly.

Q. How long has that import license arrangement been in effect?

A. I cannot answer that exactly, but I know it was in effect before the war, for some years before the war, but I do not know the period. I cannot answer that question, obviously, because it affects everything that is imported into the Commonwealth, there are various tariffs that give a protection to certain lines, and bearing were included in one of those categories when available from a Sterling country.

[fol. 2320] Mr. Ketterer: You may cross examine."

(Questions in cross examination read by Mr. Nitschke, answers by Mr. Derr, as follows:)

"Cross examination.

By Mr. Nitschke:

Q. What is the full name of your company, Mr. Coombes?

A. Bearing Service Company of Australia, Proprietary, Limited.

Q. Are there other companies in Australia known as Bearing Service companies?

A. There is a company I understand named Bearing Service Company, but they are not in the ball and roller bearing business, they handle journal bearings, white metal and brass bearings; they are not in any respect comparable with us.

Q. What is the Bearing Service Company of Sydney?

A. That is part of the Bearing Service Company of Australia.

Q. Is that a subsidiary?

A. No.

Q. Is it a branch office?

A. That is right.

Q. In other words you call your Sydney branch office sometimes Bearing Service Company of Sydney?

A. No, never—Bearing Service Company of Australia.

[fol. 2321] Q. And you have a branch office in Sydney?

A. Yes.

Q. Is that true of Bearing Service Company branch at Melbourne?

A. That is right.

Q. That is just a branch?

A. Yes.

Q. It may sometimes be designated as Bearing Service Company, Melbourne?

A. No, never. It is all Bearing Service Company in any part of Australia, it is Bearing Service Company of Australia, Melbourne, Sydney, Perth, Brisbane.

Q. Mr. Harrison was liaison officer for these various branches?

A. Correct.

Q. Was he also a liaison officer for Bearing Service Company and any other companies in Australia?

A. We have a company in Adelaide in which we have a controlling interest, called Duncan & Company, Adelaide. On the bearing and roller bearing side of that business they are jobbers.

Q. Are there not some companies like Duncan with which you are affiliated?

A. Connected with us?

[fol. 2322] Q. Yes.

A. No.

Q. Who are the directors again of Bearing Service Company?

A. Mr. Thomas, Mr. Dickinson, Mr. Hodgkinson and Mr. Foxhall.

Q. Do those men have operating positions in the company?

A. Yes.

Q. Do they have other titles?

A. Yes, Mr. Dickinson is managing director, and Mr. Thomas is director in Melbourne, manager, and Mr. Hodgkinson is managing director of the Sydney office. It is a bit complicated.

Q. Who is your immediate superior?

A. Mr. Hodgkinson.

Q. You said that you handled the bearings of these various companies that Mr. Harrison was instructed to visit, is that right?

A. We handled the bearings, that is correct.

Q. Did you include there the Timken Roller Bearing Company of Canton?

A. Yes, I did.

Q. When did you begin to handle their bearings?

A. The Timken Roller Bearing Company of Canton?

Q. Yes.

[fol. 2323] A. I could not tell you exactly, but it has been many years.

Q. Before the war?

A. Oh, yes.

Q. And when you wanted bearings from Timken at Canton how did you order them?

A. We ordered them from Birmingham, England, British Timken, Limited.

Q. Was that under instructions from British Timken?

A. That is correct, yes.

Q. Have you ever heard of a company called Kemsleys?

A. Yes.

Q. What relation does your company have to them?

A. To Kemsleys?

Q. Yes.

A. We do not have any relationship at all.

Q. Do you have any business relationship with them?

A. Yes, we do have from the fact that they are controllers of Timken in Australia.

Q. They are what?

A. Controllers of Timken.

Q. Do you mean they control the distribution?

A. They control who shall be the distributors of Timken in Australia.

[fol. 2324] Q. So you secure your rights to distribute Timken bearings through Kemsleys?

A. That is right.

Q. Have there been any changes in your relations with Kemsleys during the last four or five years?

A. Yes, there have been.

Q. What are they?

A. I cannot tell you exactly all, but I know that the automotive distribution of Timken was taken from Bearing Service Company and split up amongst other companies in Australia.

Q. You mean you had exclusive before that time?

A. Yes, exclusive.

Q. You do not mean that you no longer distribute their bearings for automotive purposes?

A. We do now.

Q. But you did not at one time?

A. We did not at one period. Just from memory it was about 1942 or 1943, I cannot quite recall the time.

Q. For practically those two years?

A. Do not tie me down to that, I am not sure of the years, but I am just taking it from memory, it was about that time.

Q. You now again are distributor of automotive bearings [fol. 2325] for Timken?

A. That is correct.

Q. But there was a time which you think to the best of your recollection was in 1942 or 1943 that you were not the distributor for automotive bearings?

A. I cannot swear to those years, I am merely stating that it could have been 1940, but it certainly was not much before the war and it was not much after the war started.

Q. You stated what instructions were given to Mr. Harrison. Were you present when instructions were given to him, the instructions that you have testified about?

A. I cannot answer that very well. I was present at some of them, and I know the whole of the instructions were worked up until such time as Mr. Harrison left. But the final interview that Mr. Harrison had with our directors I was away. That took place in Melbourne, and I was away from Sydney at the time in an army camp. But I knew what was going on. Really it was discussed that I do the trip that Mr. Harrison did, but I could not be spared at the last moment and Mr. Harrison came in my place.

Q. When did you leave the company to go to the army?

A. I was not in the army, I was just in the army camp [fol. 2326] helping them out on some bearing troubles.

Q. Do you know where you were in October of 1940?

A. That is just about the time that you were referring to, Mr. Harrison visited with us at Albury.

Q. So that at the last meeting that Mr. Harrison had with the directors you were not present?

A. That is so.

Q. And as far as you know were there other meetings had with the directors at which you were not present?

A. That is so.

Q. Did you know of the contract that British Timken had with American Timken respecting the selling of bearings in Australia?

A. The only thing I knew was that we had to place our orders through British Timken.

Q. Did you know that that was because of the contract which British Timken had with American Timken?

A. I never gave it a thought.

Q. From whom do you get these import licenses that you mentioned?

A. From a section of our government, the Customs Department.

Q. And how long is it that you had to get import licenses from the Customs Department in order to buy bearings from outside Australia?

[fol. 2327] A. It has been going on for many years, I cannot tell you exactly, but it was in operation long before the war.

Q. In 1940 did you have to get an import license?

A. Yes, we did.

Q. In order to buy?

A. Yes.

Q. I believe you stated that you had to assert that the bearings were not available from a Sterling country?

A. That is correct.

Q. Did you make those assertions in 1940 to your government?

A. We must have, otherwise we would not get a license.

Q. Well, it was not possible, was it, for you to get bearings from England in 1940?

A. No, it was not possible for us to get bearings from America in 1940 without an import license.

Q. But you said that you had to assert to your government in order to get the import license that bearings were not available from a Sterling country, is that correct?

A. That is correct.

Q. And was it true that in 1940 bearings were not available from Sterling countries?

A. Well, you cannot pin me down to one bearing or any [fol. 2328] number of bearings; it could be that one bearing was obtainable from an English source or from England and that another bearing was not available.

Q. Well, did your government require you to first inquire of a British company whether or not they could supply the bearings before they would give you a license to import from the United States?

A. In 1940?

Q. Yes, in 1940.

A. I could not answer that question; it is impossible to answer, 1940 was a war year in Australia—it was not here—and things happened pretty quickly in Australia in 1939 and 1940, and it became very apparent that we had to supplement our supplies for an essential industry from non-Sterling countries, and quite a lot of these regulations would have been waived, as they were subsequently when the Aus-

tralian Purchasing Commission was set up here and we were able to buy bearings without an import license.

Q. Was that true in 1940 and 1941 also?

A. I could not swear to that, 1940 and 1941.

Q. You just do not know?

A. I do not know the exact date, no.

[fol. 2329] Q. That was two years approximately before the Australian Purchasing Commission went into operation?

A. Yes, but in that period the government did relax certain controls, I could not name just exactly which ones, but they did relax certain controls to keep Australian industries supplied with ball and roller bearings. I could give you that information from my files, but I could not remember it; I had no reason to memorize it.

Q. You think it is possible then that in 1940 and 1941 you did not have to get import licenses—you do not remember the exact period of time—that there was a relaxation of the requirement that you have an import license in order to buy from the United States?

A. I think so, but I would not swear to it now, I could not remember it.

Q. You think there was a relaxation?

A. I think there was, yes.

Q. Do you know whether or not Mr. Harrison had any written instructions as to what he should do when he came to the United States?

A. He did.

Q. Who were those from? Whose instructions were they?

[fol. 2330] A. From the directors.

Q. From the three men you mentioned?

A. It could include other men as well, it might have been a direction of mine or other employees of the company. We were wholly and solely interested in getting bearings, and in many instances we knew more than perhaps the directors would know in respect of certain bearings.

Q. I just wanted to get straight whether or not he had been given written instructions from the directors.

A. That is right.

Q. He had been?

A. Yes.

Q. And did he carry those with him when he came to the United States?

A. He did.

Q. I believe you stated that it was your opinion that the bearing business in Australia was about 80 per cent ball bearings and about 20 per cent tapered roller bearings?

A. Yes.

Q. Do you have any idea what proportion of the tapered roller bearing business was replacement and what proportion was for original application?

[fol. 2331] A. I should say it would be 70 per cent replacement and 30 per cent original equipment.

Q. And by replacement you mean that the bearings were to be used in an installation where the original bearings had worn out or been broken?

A. That is right.

Q. Are there any manufacturers of bearings in Australia?

A. Yes.

Q. What are their names?

A. They are government organized factories. The bearings are made by the Australian government.

Q. How long have they been making bearings?

A. Approximately two and a half to three years.

Q. Are those bearings sold commercially?

A. Yes.

Q. They are not just used for government purposes?

A. No.

Q. What types of bearings do they make?

A. Up to the present moment they have made ball bearings only; although I am not suggesting that they have not at some time or other made a special bearing for a specific purpose. They may have done that, but I have not any knowledge and no way of knowing. It being a government enterprise I could not.

[fol. 2332] Q. Do you recall what time you began sending your orders directly to American Timken for bearings?

A. No.

Q. You did though for a certain period during the war?

A. I am not sure that we sent them direct or that we posted them. We might have posted the actual order for approval from our government or the Purchasing Commission.

Q. To American Timken?

A. Yes.

Q. You say you might have. You do not know whether you did or did not?

A. No, I am not sure of that.

Q. When you order bearings now from American Timken how do you do it, do you write to them direct or to British Timken?

A. We do not order any bearings from American Timken at all unless we are instructed to do so from British Timken.

Q. When you buy bearings from this list of companies which you mentioned before, Nice, M. R. C., etc., do you order those only on the instructions of British Timken?

A. No, they have nothing to do with British Timken at all.

Q. You send the orders direct to Marlin-Rockwell?

[fol. 2333] A. Most of these bearing people, manufacturers rather, have representatives here in New York, or in America somewhere, or in Australia, and the orders are placed through them.

Q. Through their representative dealer in New York or Australia?

A. Yes.

Q. But you do not have to clear those with British Timken?

A. No, they have nothing to do with it at all.

Q. Do you handle bearings for the Bower Roller Bearing Company?

A. We have handled them.

Q. During what period?

A. There have been many times that we have handled them, possibly half a dozen times, for some specific reason, such as Bower made tapered roller bearings that are not made by Timken either in England or America.

Q. You do not represent Bower in Australia?

A. No, but we can buy from Bower in Australia if we wish.

Q. Do you know if Bower has a representative in Australia?

A. A factory representative, yes.

Q. Do any bearing distributors in Australia handle Bower bearings?

[fol. 2334] A. Not that I know of.

Q. Do you know a company by the name of Machin & Company?

A. I do.

Q. Do they handle Bower Bearings?

A. Not that I know of.

Q. Are you in any way related with Machin & Company?

A. No.

Q. Are any of your directors directors of Machin & Company?

A. No.

Q. Do you know if any of the directors of Duncan & Company are directors of Machin & Company?

A. Not that I know of.

Q. Do you know who the directors are of Duncan & Company?

A. No, I do not—know any of them, did you say?

Q. Do you know who they are?

A. I do not know any of them—I know Harold Peake, who was the managing director.

Mr. Nitschke: That is all."

(Questions read by Mr. Day, answers read by Mr. Ketterer as follows:)

"Redirect examination.

By Mr. Ketterer:

Q. Mr. Coombes, have you purchased any bearings from Timken Roller Bearing Company since the conclusion of [fol. 2335] the war?

A. We have.

Q. Have you any idea as to what quantity you have purchased since the conclusion of the war?

A. Roughly $90,000 to $100,000 worth.

Q. Now, before you gave any order to American Timken for those bearings had you attempted to purchase them from a British or Sterling source?

A. We had.

Q. And what if any showing did you make to the Customs authorities of the Australian government in respect of their being available from a Sterling source?

A. We first of all asked British Timken to supply the order in question or orders in question, and they replied that they were unable to help us and would be unable to help us for some considerable time, and instructed us to

place our order with American Timken. With this evidence we approached their government, and they in turn issued us the necessary import license and dollar allocation.

Q. Now you were asked a while ago about whether there was any time when you did not represent British Timken both in the automotive and in the industrial field, and you said there was some period that you did represent them [fol. 2336] in both fields, is that correct?

A. That is correct.

Q. What happened that you lost the representation of one of those fields?

A. If I understand it it was due to some personal feeling between Kemsleys and our company.

Q. And in which of the two fields did you lose the representation?

A. The automotive field.

Q. And who was appointed representative of the British Timken in the automotive field during that period?

A. In Sydney, Bennett & Wood; in Melbourne, Motor Traders, Limited; and there were a couple of others, I forget who they were now because it was relatively unimportant to us.

Q. Now you said that you could not fix the time absolutely but it was sometime you thought in 1941 or 1942 when you lost that representation?

A. I think so; I am just not quite certain of the year.

Q. How was the relationship re-established so that you again represented British Timken in both fields?

A. One of our directors, Mr. Thomas, went to England, and we were re-appointed both automotive and industrial distributors.

[fol. 2337] Q. Do you recall about when it was that he made that trip to England?

A. The end of 1945 or the beginning of 1946.

Q. And you have continued since that time to represent British Timken both in the automotive and in the industrial fields?

A. That is correct.

Q. Now we asked you at the beginning of your examination about the instructions that Mr. Harrison had, and Mr. Nitschke asked whether those instructions were in writing. You said, I believe, that some of them or all of them were in writing?

A. I know he had a set of questions that he had to find the answers to.

Q. A set of questions?

A. Yes.

Q. I will ask you whether or not they were in the nature of memoranda to remind him of what he was to do when he was in this country.

A. That is correct.

Q. Now the instructions that he had, I understood you to say a while ago, were formulated over a considerable period of time, is that correct?

A. That is correct.

[fol. 2338] Q. And over what period of time prior to his leaving Australia would you say that the matter was discussed and the instructions developed?

A. I should say from the outbreak of the war.

Q. That is in 1939?

A. Yes, that is right.

Mr. Ketterer; I think that is all."

(Questions read by Mr. Nitschke; answers read by Mr. Derr as follows:)

"Recross examination.

By Mr. Nitschke:

Q. When you buy bearings from Nice or the other companies that you buy bearings from in the United States do you make inquiry of some British company first?

A. Where the bearings are made in England, yes.

Q. What company do you make inquiry of?

A. Hoffman Ball Bearing Company.

Q. Any other company?

A. It could be Salter, British Timken, Ransom & Marles.

Mr. Nitschke: That is all."

(Questions read by Mr. Day; answers read by Mr. Ketterer as follows:)

"Redirect examination.

By Mr. Ketterer:

"Q. One other question, Mr. Coombes. You said a while ago that perhaps 20 per cent of the bearing business in

[fol. 2339] Australia was for original equipment and 80 per cent replacement business. I want to ask you this, where the customer wants replacement bearings to replace bearings that have failed in a piece of equipment, what is the practice generally as to whether you try to replace them with a bearing of the same type and make as the one that was in the equipment originally, or do you undertake to get some other type of bearing?

A. We usually try to replace it with the bearing that was in the machine, not necessarily in make but in type.

Q. Now in connection with this business that you described a while ago of purchasing from a Sterling source, what is the fact as to whether that applies to other items than bearings when you import items into Australia?

A. Apart from bearings?

Q. Yes.

A. All imports from a non-Sterling country must have an export license.

Q. What is the fact then as to whether the equipment in Australia in which bearings were originally installed is British made in the main?

A. I would say yes.

Q. And are the bearings in that equipment in the main [fols. 2340-2343] British made also?

A. Yes.

Mr. Ketterer: That is all."

(Questions read by Mr. Nitschke; answers read by Mr. Derr as follows:)

"Recross examination.

By Mr. Nitschke:

Q. There are large quantities of American made equipment in Australia, are there not?

A. There are now, but there were not in pre-war times.

Q. In pre-war times weren't there large quantities of automotive equipment?

A. Yes, but more in the nature of automotive cars, trucks, tractors, and things of that nature, rather than machine tools.

Q. Automotive equipment was largely American made?

A. Yes."

[fol. 2344] Thereupon the Defendant, to maintain the issues on its part to be maintained, called as a witness

IMRIE DEVEGH, who, being first duly sworn, was examined and testified as follows:

Direct examination of Imrie DeVegh.

By Mr. Ketterer:

Q. Will you state your name?

A. My name is Imrie DeVegh.

Q. Where do you live?

A. In New York City.

Q. What is your business or profession?

A. I am a consulting economist. I do economic research work for corporations.

Q. And in what particular field do you do economic work?

A. A very substantial part of my practice is in the international field.

Q. Where were you born?

A. I was born in Budapest, Hungary.

Q. Will you tell the Court something of your early education?

[fol. 2345] A. I grew up mostly in Hungary and I went to the University of Budapest. I am a Doctor of Law of the University of Budapest. Then I went and studied economics at Trinity College, Cambridge, England. Then I came to the United States where I worked first for the National City Company. Then for ten years for a firm called Scudder, Stevens & Clark in New York City. I was head of the foreign department for eight years and head of all the economic research for two years. Then I worked for Charles E. Wilson, at the War Production Board, as assistant to the Production Vice-Chairman in 1942 and '43. For the last five years I have been practicing as an independent consultant in New York.

Q. What was the nature of your work with these various companies that you have described in respect of whether you specialized in the field of international economics or international trade?

A. Well, of a very great variety, I would say. I have gone to South America on questions of whether to establish branch plants; made market surveys in Canada. I have

been consulted on subsidiaries in Europe, various countries in Europe. I have done economic surveys in South American countries. In other words, I have had a great variety of jobs.

[fol. 2346] Q. Have you written any books in the field of economics?

A. Ten years ago I wrote a book on the pound sterling.

Q. And the title of that was what?

A. "The Pound Sterling, A Study of the Balance of Payments of the Sterling Area". Published in New York, I think late in 1938 or early in 1939.

Q. And what is the fact as to whether or not you have kept abreast of international trade developments?

A. Well, I have in the last twenty years.

Q. And you have made a study of that particular field?

A. Oh, yes, I have written many articles, papers in the American Economic Review, in the Review of Economic Statistics, Political Science Quarterly, those are the three in which most of my articles appeared.

Q. What was the nature of the work you did while you were at the War Production Board?

A. I was first Mr. Wilson's assistant on the Naval ship building program, and then I did other economic research jobs.

Q. At the War Production Board?

A. That is right.

Q. Now, in connection with your preparation to testify in this case have you made any particular study of the bearing industry, its situation in the field of international trade?

[fol. 2347] A. I have studied the statistics of international trade relating to anti-friction bearings in a large number of countries, in fact in all the major producing countries of anti-friction bearings, and I have looked at the production statistics that were familiar and available, such as the U. S. Census and British Census.

Q. Now, I would like to ask you, going back to the 1920's, whether or not you have been and are familiar with the international trade situation, especially in Europe, and as it involved the United Kingdom and the British Empire during that period?

A. Yes, sir.

Q. Will you describe generally and as briefly as possible what the economic situation was in Europe in the United

Kingdom and in the British Empire generally during the 1920's following the termination of the first World War?

A. The first thing I ought to say on that is the nature of the transformation caused by the first World War, which was that whereas until 1914 international trade was generally unrestricted except by tariffs, in other words, it was a trade in which price competition, within tariff limitations, was the virtually sole or at any rate the dominating form of competition, the first World War established in all the [fol. 2348] belligerent countries for the first time a system for trade control by administrative actions and trade prohibitions.

Q. Let me interrupt you at that point, Mr. DeVegh. What was the nature of the controls that first came into existence in the international field after the beginning of the first World War in 1914?

A. Well, a system of control developed gradually, whose salient characteristics were that all transactions across borders were very completely prohibited except under license, or permitted only subject to administrative approval. The belligerent countries were motivated by a number of well-known and easily conceived points of view, such as preserving the maximum resources within the country for warfare, preventing goods from seeping through neutrals into the hands of the enemy, and so forth. The control systems established in this second World War largely, at first, had their inception in the first World War precedent. The effect [fol. 2349] of the controls and of the prolongation of the first World War was that the neutrals increasingly applied the same kind of controls as a defense against the impact of the war upon them. There was a very spectacular and well-known and much quoted case when the Swedes, for example, refused to accept additional imports of gold in 1917 or '18 from Germany because Germany was dumping so much gold into Sweden in order to obtain war materials from Sweden that there was additional inflation caused in Sweden. This is a very famous case because it was, I believe, the first case where a country refused to accept gold and allowed its currency to go to a premium in terms of gold temporarily. This is a much quoted example. Much more serious controls were those imposed on all foreign exchange transactions in order to economize to the maxi-

mum the resources in each belligerent country for the purpose of warfare.

Q. Do I understand that the controls put into effect during the first World War related not only to the importation or exportation of goods but they also related to control in the field of currency?

A. Yes, sir.

Q. In other words both types of controls were put into effect during the first World War?

A. Yes, sir, both trade and exchange.

[fol. 2350] Q. Now, what was the situation at the end of the first World War, say in 1920 in Europe, in the British Empire and in the United Kingdom generally?

A. Well, in the British Empire and in the United Kingdom the situation was that a major effort was made to what was conceived of as getting back to normal. In 1920 or maybe it was until 1919, I don't remember the exact date of the termination of the agreement, but there was an inter-allied agreement by which American authorities supported the pound sterling at the old official rate of exchange of $4.86 per pound. This inter-allied agreement was abandoned and thereupon the pound sterling collapsed to about $3.20, from which it gradually recovered over a period of five years to its original par value. The British Empire was thus closest back to normal except for the violent fluctuation in the exchange rate and for the inception of the protective system with respect to industry. This protective system, the first step towards it was the imposition of the so-called McKenna's duties in 1915. The next one, the next legislative step was the Safeguarding of Industries Act in 1921. In addition, it is well known that during the war British industry was very completely integrated for the purposes of the war and there is the famous report of the Committee on Trusts, indicating the extent to which [fol. 2351] the industry was integrated, and this industrial integration for the purpose of the war effort continued, of course into the post-war. During the 1920's, while England had considerable difficulties that resulted from wartime disruptions, violent fluctuations in the exchange, internal inflation; and increase in industrial costs within England that resulted from the war, everybody in England was very much concerned about the bad defensive position into which England had been crowded, as opposed to the dominating

industrial position that England occupied throughout the 19th century.

Q. The dominating position that England occupied during the 19th century, how had that been changed or how had it changed by the 1920's?

A. From the final quarter of the 19th century on Great Britain was outstripped industrially by the United States and by Germany. And when I say "outstripped" I mean both in quantity of production and in quality of production, principally in the field of metallurgy. The United States became the leader of the world, and Germany a close second by the turn of the century, and since metallurgy was one of the basic British industries that was a very serious problem. The technilogical situation received a great deal of comment and also the quantity of output, [fol. 2352] the much larger and stronger American and German organizations were considered a considerable menace. Therefore, the British, during the 20's, started extensive movements to "Buy British", which is a very familiar slogan, to insist on British components in industrial production, to do everything within their power to still preserve the traditional industrial system, to maximize the cohesion to a British economy,—and by "British" I mean in this respect both England and the Dominions and Colonies,—against what they felt were the aggressive encroachments from the outside, in other words the competition for international trade by the newer and bigger industrial powers.

Q. Now state whether or not these defensive operations and the resort to the defensive measures you have described in England was the result of a realization in English business circles that the war and the developments prior to the first World War had placed England in a disadvantageous position in the field of international trade?

A. I believe that that was the case. I should mention in this connection that the impact of the first World War upon English metallurgy was accentuated by very high costs. In other words both the costs of the new industrial installations during the first World War and the costs of the operation at British wage levels which had something [fol. 2353] like trebled during the first World War, they had been very low prior to the first World War, resulted in cost distortions that were the major problems through-

out the 1920's and brought one great English metallurgical company after another into financial difficulty.

Q. Now, will you turn to France and tell the Court what the situation was during the war and immediately after the war in the 1920's in respect to the French economy?

A. The French economy was much more disrupted than the English because thirteen provinces of France were occupied by the Germans throughout the war and the war was fought in France, at least so far as the west was concerned.

Q. Coming to the matter of controls, what developed in France during and after the war in the 1920's?

A. During the war the French benefitted from the same inter-allied agreement to keep the franc at par, which was abandoned after the war, whereupon the French franc collapsed. Then in France the next five years were five years of continuous crisis in making an attempt to get back to normal. They emerged from the war with complete import restrictions which they tried to maintain. When they abandoned it and the new franc collapse began, they reinstated it in 1922, that is the system of import controls then, and that system continued until 1925, I believe, when [fol. 2354] they reconstituted the tariff on a high protective basis. In 1926, after the French franc had lost 80 per cent of its value, in other words after it had depreciated in France from 5 francs to the dollar to 25 francs to the dollar, they stabilized the currency. From then on for the next four years a considerable effort was made by France to try to return to normal, that effort being aimed at the institution of normal as it was in 1914 but not in 1926. Certain strategic factors weighed very heavily with the French government as you know, because France was very much weakened by the first World War, and was very much afraid of a rival in Germany, and as the French saw it, robbed of its guarantees by the weak British and American support at Versailles, at the Peace Conference and thereafter. So the French army was by far the biggest in Europe, and the French Government purchases played a very large part in French metallurgical production.

Q. What was the attitude of the French Government during the 20's in respect of developing industry in France that had any war implications or war uses?

A. Strongly nationalistic. Of course they were extremely anxious to have everything they felt necessary for defense within France. I believe this is a matter of completely common knowledge, after all France had been invaded four [fol. 2355] times, excuse me, only three times up to that time,—1815, 1870 and 1914, in each case with equally disastrous results, so that the whole French nation was always extremely conscious of the menace of German aggression, and of the need of having everything that could be had for defense within the country.

Q. State whether or not the resort in 1925 that you have described to the use of a high protective tariff in France was an expression of the view you have just discussed?

A. In part and in part it was also an attempt to get back to a price mechanism in international trade. In other words, to get away insofar as possible from this system of controls which they knew and many people in business in France felt was strangling production. The French Government made several efforts to get back to a freer and more rational basis of international trade at that time. The French Government originally proposed, for example, the International Economic Conference of the League of Nations in 1927, which was an attempt to get better international integration of industry, but it was not prepared to do anything on its own hook without wide-spread international agreements, to get rid of its nationalistic and essentially defensively-minded attitude towards industry.

[fol. 2356] Q. Now, what was the situation in Germany following the termination of the first World War and in the 1920's?

A. Germany emerged from the first World War in a chaotic condition. There was a very violent inflation which ended at the end of 1923 in the complete breakdown of the German currency system. After that time, through the large foreign loans, the German economy was rehabilitated during 1924 and 1930, so that Germany had, as it were, one more year of a return to normal period, longer by one year, in which conditions were going towards what was considered as prewar normal than did France, because German stabilization occurred about a year and a half before France's, or two years before France. But the German economy, of course, plunged into the depression about a year ahead of the French economy. Throughout this

time the Germans had developed a rather unsatisfactory psychology from the viewpoint of international cooperation and international trade, which was a residue of the defeat and of the very unhappy experiences from 1919 to 1924. Of course, German industry was always in cartels and cartelization was viewed as an instrument of national policy, as it were. The poverty of Germany, which was looked on as a great poverty that resulted from the first World War, the lack of foreign assets, the heavy foreign indebt- [fol. 2357] edness, the obligation to pay large reparations, were all economic factors very strongly pushing both administrative bodies and the cartels and the leaders of industry into a direction in which, although they were sympathetic to the idea of trading internationally, and so forth, one of the points of view was the national interest rather than a purely and completely unhampered price competition regardless of the nationality of the buyers and sellers.

Q. And as to the possibility of importing goods from outside of Germany on any substantial basis, how did this development of national interest and the lack of stabilization, things of that sort, affect the possibility of importing goods into Germany during the 1920's?

A. During the early 1920's, during the transition period, during the inflation period, just as in France during the inflation period, imports and foreign exchange transactions were subject to direct controls. During this brief period of the attempt to return to normal, broadly 1925 to 1930, during those four or five years there were no legal impediments to what I would describe as normal competition in international trade on a price basis, but there were these very great nationalist pressures. It was sort of immoral to buy foreign goods just as it was immoral in France to buy foreign goods that could be bought within France from [fol. 2358] French producers, just as in England it was very much a point of good behavior that you should buy British whenever you could.

Q. State whether or not in Germany there was any resort to the use of tariffs during the 1920's as a means of protecting German industry?

A. Oh, yes, Germany was always, since the 1870's, a high protectionist country, and the wartime controls were superimposed on a relatively high tariff structure which, of course, meant that tariffs, although irrelevant while the

direct controls were in effect and during the period after the stabilization of the currency, during this period of relative normalcy the Germans once more relied on a protective tariff structure.

Q. And that was from what date in the 1920's, if you know?

A. I don't exactly recall.

Q. How about other European countries, what was the situation in respect of them as to whether they resorted to controls of one kind and another as to imports into their countries during the 1920's?

A. Well, I think I can sum up the situation in one sentence, namely, that the further you got away from the West the worse control situations were. Then when we go east of Germany into the fragmentation area between Germany and [fol. 2359] Russia, where the small countries were struggling—

Q. Such as what?

A. Well, Poland, Czechoslovakia, Hungary, Roumania, Yugoslavia, Bulgaria, Greece, Turkey. I mean each one of those countries underwent violent inflation, each one of them had emerged from the first World War in 1919 in a situation very close to complete chaos, and international trade didn't start up immediately. I mean each country was so well withdrawn into its shell and trembling for its life. Actually, warfare didn't end in some of those countries until 1922, but very gradually they loosened up a bit. During this period of 1925 to 1930, there was a relief from restrictions which went to various lengths and in various directions, but there was an interval, half-hearted interval, in which each country was very much worried about the repetition of the horrible experiences that went before and in which, therefore, they had an essentially defensive point of view to international trade. Of course, since the depression broke out everybody interpreted the appearance of the depression as a justification for their worst misgivings, and from 1931 on import controls and exchange controls were universal in every one of those countries with trivial exceptions, which we can go into if you feel it necessary.

[fol. 2360] Q. I would like to ask you, Mr. DeVegh, this question. What is your opinion as to whether or not an American anti-friction bearing manufacturer would have

been able to have sold its products in the United Kingdom or in the British Empire generally, from the United States during the period of the 1920's that you have just described, in competition with an anti-friction bearing industry that was at that time operating in England?

A. With the greatest difficulty only, and to a very limited extent, if at all.

Q. And in your opinion would that have been practical from a commercial standpoint, on a commercial basis?

A. Well, I would be very much surprised if it had proved profitable, if that's what you mean.

Q. That is what I mean.

A. It would be surprising if it would have.

Q. I would like to ask you the same question in respect of France and Germany. Would, in your opinion, an American anti-friction bearing manufacturer have been able to have sold its product made in the United States in either France or Germany in competition with the anti-friction bearing industry that was at that time operating in both of those countries, on a profitable basis?

A. I would say that the case against the possibility was [fol. 2361] much stronger even than in the case of England and the British Empire, because France and Germany were that much further removed from the effort to return to normal than the British, and the considerations applying to war potentials weighed much more heavily even than with the British. Moreover, in the case of Germany you had to consider not only that domestic industry but the fact that Sweden was the next door neighbor and Sweden was a neutral in the first World War, and usually the Germans considered Sweden as a dependable second choice next to their own domestic supply, and they would have had no incentive to go further afield.

Q. In other words, the geographic closeness of Sweden to Germany—

A. And to England and to France, and the British industries within France.

Q. Would have some bearing upon the opinion that you have expressed?

A. Yes, sir.

Q. One further question in respect of the British Empire, economically what has been the historical basis on which the British Empire has operated as a source of raw mate-

rials and as a source of manufactured goods? Will you describe that briefly for the Court?

[fol. 2362] A. The British Empire throughout the 19th Century was the outlet for a large part of the manufactured goods, and especially capital goods, produced in the United Kingdom and, in turn, supplied the United Kingdom with food stuffs and raw materials. The large British investments abroad, which were such an important factor in both World Wars, were developed by the export of manufactured products and capital goods during the 19th century in very large quantities.

Q. And to what extent was the manufacturing economy in England dependent upon the rate of exchange of imports from the Colonies and Dominions and the rate of export of manufactured goods in the United Kingdom proper?

A. Very substantially. I believe I could say—I'm quoting from memory, but I believe in the 1920's something like 38 per cent of Great Britain's imports came from the Empire and 40 per cent of her exports went to the Empire and, of course, since the United Kingdom was the world's biggest foreign trader, this represents an extremely high percentage for the world, and for the other economic units very much smaller than the United Kingdom.

Q. And to what extent did the organization and operation and the development of the Empire along the lines that you have just described have a bearing upon the [fol. 2363] development of the attitude in England that you have described of buying British wherever possible?

A. Well, I believe that that was an Empire-wide movement, and I believe the Empire always has been and is now, and perhaps more than ever, saturated with British manufacturers and British made goods.

Q. Now, I would like to go from the 1920's to the 1930's. What if anything happened in the early part of the 1930's that had a bearing upon the international economic picture?

A. Well, the decisive factor on the international economic picture was the sequence of financial and foreign exchange crises that began in May, 1931, in Austria, spread from there in July, 1931, to Germany, and in September, 1931, to Great Britain.

Q. What happened in Austria, first?

A. The largest commercial bank collapsed because of excessive short-term borrowing, chiefly from the German banks. The German banking system was in the situation of having borrowed on short-term from England and the United States the funds that it lent to Austria, and thereupon a run developed on the German banks, and these two runs necessitated the imposition of foreign exchange controls, in other words, a prohibition of foreign exchange transactions except under license in both of those countries. [fol. 2364] Q. And that happened when?

A. In May and July, 1931, respectively. I think the actual dates were May 3rd and July 13th when these things went into effect.

Q. In 1931?

A. In 1931, yes, sir.

Q. And you say that resulted in the imposition of currency controls?

A. Of controls on all international payments, and from there on in an ever-widening sphere on all imports and generally all international economic transactions in Germany.

Q. And the imposition of currency controls following the collapse of the Austrian and German banking systems, would have and did have what effect upon the importation of goods into those areas, Austria and Germany?

A. Seriously restrictive, because from then on the question of whether to import and what to import was completely removed from all considerations of price competition and became a matter of government license, which was granted or not granted according to whether foreign exchange was available and whether the particular kind of foreign exchange that was required was available. Subsequently, of course, after the change of the German Government in January, 1933, namely the coming of the Nazis to [fol. 2365] power, to these considerations there was added the consideration of the foreign policy, war preparations, and prior to the war preparations also, of the economic penetration and economic aggression. In other words, from then on the international trade in Germany was very much directionally removed from international price competition in the point of view that dominated import trade. In exports, of course, from Germany, that's an entirely

separate chapter that we are not discussing. Of course, the Germans had to meet American and British competition there.

Q. That is, in respect of imports the factors--

The Court: Will you repeat what you said about exports?

The Witness: The exports—I was merely trying to emphasize that I was talking about imports into Germany, because it was in respect of imports that the German Government was able to impose its will 100 per cent.

The Court: In other words, Germany did control the imports?

The Witness: The German Government controlled imports.

The Court: But not as far as exports were concerned?

[fol. 2366] The Witness: As far as exports were concerned, Germany had to find a buyer and the buyer couldn't be so controlled. Therefore, Germany had to compete with exports from other countries.

The Court: In other words, the control was one-sided?

The Witness: Yes, sir.

The Court: Germany controlled the imports but did not control exports.

The Witness: That essentially would be so, yes, sir.

Q. Was the same thing true as to Austria at that time?

A. Until 1935 it was true of Austria. Then from the end of 1935 for about two years the Austrians made an attempt to go back to a freer system, but that lasted only two years and ended with the German occupation of Austria in March, 1938.

Q. What was Germany's position in the Central European picture as to being a manufacturing nation of considerable proportions?

A. Well, Germany was the world's second largest manufacturing country.

Q. And as to supplying the market in the Central Euro-[fol. 2367] pean area, what was its position?

A. Well, its position was very strong, and further strengthened by the use of international trade and exchange controls. They worked out a very elaborate system of so-called payments agreements and clearing agreements with their smaller, weaker, and equally insolvent neighbors. These agreements generally were rather comprehensive

regulations of trade and payments between the two contracting parties. The most typical agreement was an agreement by which each country agreed to have its own exporters to the other country collect from its own importers from the other country, so that no exchange, no money passed between the two countries, but there were two U-shaped transactions that approximately equalled each other. That is to say, if you want me to illustrate with an example, Germany would export machinery to Hungary and import bauxite from Hungary. Thereupon the German bauxite importer would not pay the Hungarian but would pay the Reichsbank of Berlin, and the Reichsbank would use those marks to pay the German machinery exporter, you see, so that no currency went out of the closed circuit. In Hungary, conversely, the Hungarian bank would collect in Hungarian currency from the importer of the machinery and pay it out to the exporter of the bauxite.

[fol. 2368] Q. And that made it unnecessary, then, to have international—

A. International exchange transactions, and enormously increased the volume of trade within the clearing to the exclusion of countries outside the clearing.

Q. And that was based upon a system of agreements between Germany and other countries?

A. Individual foreign countries, yes, a very comprehensive system of agreements.

Q. What if anything happened in England about that time?

A. In 1931, since the biggest short-term creditors of the German banks were English banks and American banks, but in terms of total resources of American banks the items were very small, a run developed on London and very heavy capital exports took place from England through the summer of 1931, so that by the time September 21st came the English had virtually no net gold reserves. The bank of England's statements still showed, I think 130,000,000 pounds, but foreign deposits, call deposits in London were still considerably in excess of that sum, so that for all practical purposes in terms of gold Great Britain was insolvent. So on September 21, 1931, they suspended gold payments and the pound sterling suffered a very severe collapse which, at its worst, somewhat over a year later, exceeded, I think by a small fraction, the depths of col-

[fol. 2369] lapse in 1920-21. Since at that point there was a world depression and the United Kingdom market was very important to British Empire countries, the Scandanavian countries and Baltic countries, all of these with the exception of Canada and Newfoundland followed the collapse of the pound sterling. In fact, in the case of Australia and New Zealand, the Australian pound and New Zealand pound were devalued more and were fixed at a discount of 25 per cent from the pound sterling. So that when the pound sterling would be $4, the Australian pound would be $3.20. This ratio has held ever since, that is the situation today. The ratio was never altered.

The Swedish crown, the Norwegian crown and the Danish crown followed the pound sterling in the same way.

Q. You mean they suspended gold payments?

A. They suspended gold payments and declared their currencies to be pegged to the pound sterling, so that the exchange rate between Swedish crowns and the pound sterling was stable, and both the pound sterling and the Swedish crown would jiggle in terms of dollars exactly parallel.

Q. In what countries was this pegging of currency to the pound sterling, in what countries did that take place?

A. All the Empire except Canada and Newfoundland, the Irish Free State, the three Scandanavian countries, and [fol. 2370] subsequently in a slightly modified form, the Baltic countries and Portugal joined what thereupon was described as the Sterling Area, and I believe also Iraq.

Q. You say that was then known as the Sterling Area?

A. It became known as the Sterling Area, and its principal criterion was that these countries maintained their central banking reserves in London. In other words, that London, essentially the Bank of England, acted as their central reserve, which meant that when Portugal or Australia would run up a big credit balance in dollars, they would transfer those dollars into sterling and not into gold. They wouldn't buy gold and put it into Lisbon, they would buy sterling and put it on deposit in London.

Q. What was the effect of that on the currencies of those various countries in respect of dollars?

A. The effect was essentially the same as that of the pound sterling. I mean, in other words, that they had

pounds sterling available in unlimited amounts at a fixed rate of exchange. An importer from England would know exactly how many Australian pounds or how many escudos or how many Swedish crowns or Norwegian crowns he would have to pay for his imports, how much he would realize on his exports. With respect to the dollar an uncertainty was introduced, because first the pound dropped from $4.86 to $3.15 or $3.14, then it ran up again to over $5 to the pound. Then from an average rate of $5 and [fol. 2371] odd cents from 1934 to 1937, it went down again to $4.68 at the time of Munich, and it was held with great difficulty at $4.68 until the outbreak of the second World War when it dropped again to $4.03. These violent fluctuations in the exchange rate, of course, are very disruptive for the trade of countries.

Q. What was the effect on international trade, as to the possibility of an American exporter having a favorable or unfavorable position, in the area or countries whose currencies were pegged to the pound?

A. It made the position of the American exporter very much more difficult, very much less favorable, and in discussing these Sterling Area countries it should be added that import controls were imposed in addition to the change of exchange rate, and in some cases even further exchange controls were imposed, in addition to the change in the exchange rate. By this I mean that, for instance, in Australia, where the crisis was especially severe, in 1931 the Commonwealth Government obtained powers to make merchandise trade and foreign exchange transactions subject to license, and this subjecting of trade and payments to license was in operation with varying degrees of severity, of course, according to conditions, ever since. I mean in 1936-1937 when Australia was getting good [fol. 2372] money for its wool and wheat export there was a relaxation of the control, and you could trade a little more freely, but, as soon as the exchange position becomes a little more difficult, they tighten. You see, they considered themselves very much dependent on the British market and, therefore, while you could transfer freely into and out of sterling, they did not welcome transfers into and out of dollars. The same thing was true as to Portugal and Denmark. Denmark and Sweden, where a very large proportion of their foreign trade is with England and

Germany, they had their exchange pegged to the pound, but they were very much affected by the impact of the German exchange control system. So for them there was an additional problem.

Q. That is, for Sweden?

A. And Denmark also. Of course, the Danes were financially weaker than the Swedes and had more difficulty. The Baltic countries kept a large part of their currency reserves in England. You see, all shipping and exporting countries are naturally highly dependent, were always historically highly dependent on England. This is just as true historically of Greece, which is a large shipping nation, as it is of Norway or the small Baltic countries, whose principal economic occupation was, except for the export of forestry products, to be an intermediary between the [fol. 2373] Russian Empire, and subsequently the Soviet, and the West. I mean, in referring to these Baltic states, that they were seafaring propositions concentrating on the export of raw materials from their own hinterland and importing the manufactured products, and that was true since the 16th century.

Q. What are some of the impediments in the way of exports into this geographic area of countries whose currencies were pegged to the pound that existed and served as a deterrent to those outside of the area?

A. During the 1930's?

Q. During the 1930's.

A. Well, the depreciation of exchange was equal to a 50 per cent tariff, or even 60 or 70 per cent tariff.

Q. Will you explain to the Court how that works out; the depreciation of currency operating as a 50 or 60 per cent tariff in those countries?

A. Well, let's assume that I am an American manufacturer selling into England an object that costs $5, or roughly speaking, 1 pound in 1930, the pound being $4.86. Well, then the pound drops to $3.20. That means—I hope my arithmetic will be correct—that the object will still cost $5 because, after all, it is produced in the United States, its price is fixed in dollars, but in pounds it isn't going [fol. 2374] to be a pound, it's going to be a pound and 8 shillings, or something like that.

Q. That is, to acquire the foreign exchange for the importation of the product?

A. I beg your pardon?

Q. That is, to acquire the foreign exchange for importing the product?

A. The cost is $5, and you will have to pay a pound and 10 shillings, or, roughly speaking, 1½ pounds. My arithmetic is not correct, but it's approximately on that order. Now, this was the, so to say, competitive advantage that the members of the sterling family acquired in both directions. Inward, the depreciation acted as a tariff making imports more expensive. Outward, the depreciation acted as an export subsidy making the domestic product cheaper because, since this was in depression time, the cost of production in England did not go up. So assuming that you have one producer who is producing in the United States for $5, and one producer who is producing in England for 1 pound, by the time the pound sterling had gotten down to $3.20 the Englishman was selling at 66 per cent of the price in dollars that he had been selling at before, whereas the American was selling into England at 150 per cent of the price at which he was selling before. [fol. 2375] Q. Was that true as to other countries in the area where the currencies were pegged to the pound, the illustration you have given?

A. The illustration would be exactly the same with respect to Sweden, Norway, or Denmark. It would be 25 per cent worse with respect to Australia. In other words you would have encountered that much more difficulty in selling goods in Australia because the Australian pound was cut practically in half, so that what used to cost 1 Australian pound, that is, a $5 object, would be practically a 2 Australian pound object because $5 became about 2 Australian pounds.

Q. That's in the import business?

A. That's in the import business and, of course, in the opposite direction, Australian exports were to that extent benefitted by a bonus, as it were. Now, this effect on the United States, as you know as a matter of common knowledge, was so severe that President Roosevelt in the spring of 1933 elected to depreciate the dollar, virtually in retaliation. I mean that was the famous debate about the currency warfare and economic warfare, but the currency depreciation, the depreciation of the dollar was essentially in retaliation for the depreciation of the pound

sterling, and the reestablishment of the competitive position for the United States that should not be as unfav- [fol. 2376] vorable as it was between 1931 and 1933. However, with regard to the countries that remained on the gold standard for another three years, namely, France, Holland, Belgium and Switzerland, and with respect to exchange control countries that pegged their exchange in the old parity like Germany, Italy, and various countries less important, this condition developed a distortion of the international price structure that persisted, so that from 1931 on international trade was a very sharply compartmentalized proposition, in which there was a maze of exchange regulatory and trade regulatory measures brought into being by the wide disparity that existed between exchange rates and internal price structures, by duties and exchange rates, and the agreements I referred to, so that some of the countries retired in a hard shell of license measures, exchange controls, trade controls, and sought to do business through peep holes rather than across their borders over the tariff wall, whether it was low or high.

Q. Was there anything else done in England in 1931, or immediately thereafter, to develop British trade and to restrict the manufacturing to England and depress imports to England from the outside?

A. Yes, sir. In the spring of 1932 Great Britain aban- [fol. 2377] doned what was left of its free trade and imposed a blanket tariff of 10 per cent on everything except a few food stuffs and raw materials and, in addition, imposed additional duties varying in rates, but most frequently 33-1/3 per cent over-all on a large variety of manufactured products. An Import Duties Advisory Committee was also established which had power to recommend upon the subject of duties, and the Board of Trade, which is the equivalent of the Department of Commerce, and the Treasury were given very wide powers further to modify rates.

Q. And was anything done on an import basis in respect of trade in the 1930's?

A. Yes. Just let me mention also that the power extended also to quantitative restriction of imports, and great variations of those quantitative restrictions existed. In 1935 a quota was imposed on steel imports into Great Britain, and that lasted for about two years, the quota being found

inadequate. About three months after the Tariff Act of 1932, the Ottawa conference took place where the principle of Imperial preference was established. In other words, where, in addition to the stable exchange rate advantages and the other natural trade advantages that they enjoyed, a differential tariff rate was established in both directions [fol. 2378] by which Empire products benefitted against non-Empire competition in the United Kingdom market, and United Kingdom products received additional protection against non-Kingdom products with reference to competition within the Empire.

Q. And that had what general effect throughout the Empire?

A. Of diverting trade from non-Empire countries to Empire countries.

Q. Now, did England resort to any other devices during that period of intensifying the manufacture of goods in the Empire or in the United Kingdom?

A. Well, several industries became more and more directly wards of the State. The economic penetration of the British Government into British industrial production, and the supervision and special legislation, and so on, was extended continuously.

Q. In respect of the type of bilateral trade agreement that you described that Germany resorted to in the early stages, in the 1930's did England follow that practice to any extent in the 1930's?

A. Yes, but not to the same extent as Germany. They had about nine payments and clearing agreements. They had, of course, such agreements with Germany and Italy, they had agreements with several Balkan countries, they [fol. 2379] had a very important agreement with Argentina, they had an agreement with Uruguay. As far as I remember, there were nine of these, and they were specifically payments and clearing agreements. Now, in addition to that they had the Imperial preference system which was a set of agreements, they also had the Anglo-American most favored nation treaty, and a very complex system of agreements with practically every one of the countries with which Great Britain was conducting trade.

Q. Was there any such agreement with Spain, for example?

A. As far as I remember, there was an agreement with

Spain but, of course, the agreements with Spain are a very complex subject because for three years Spain had two governments, the Republican Government and the Franco Government, and subsequently there was an agreement with the Franco Government, and throughout the war there was a system of agreements with the Franco Government and there is a payments agreement with Spain today.

Q. Will you turn to the situation in France during the 1930's, and following 1931, what was the situation in France in respect of the matter of controls?

A. The French held on to what was becoming more and more the old theory of free international payments with respect to the French franc, but by 1931 or 1932 some- [fol. 2380] thing like two-thirds of France's imports were subject to direct quantitative controls, in additon to tariff protection and, of course, as the war menace approached the French Government took a steadily increasing interest in the structure of industrial products within France. French currency during this period was very troubled. The French stuck to their original 1926 gold parity until 1936, when they hoped for an orderly devaluation, but a disorderly devaluation brought about a chaotic collapse in the French franc, which was from 1926 to 1936—excuse me, I would like to correct myself—which was from 1926 to 1933 4 cents, or fractionally less than 4 cents, 3.92 cents, which meant 25 francs and 50 centimes per dollar, and it went to close to 6-⅔ cents as a result of the depreciation of the dollar. In other words, 15 francs per one dollar. Then in 1936 it began to tumble and eventually wound up at approximately 2 cents or less than one-third of what it was worth in 1936, or an equivalent of about 45 francs per dollar. This was the rate at which the French exchange was fixed, I believe, when they went to war, and they emerged from the war at 50 francs to the dollar and at present they have two exchange rates, if not three, and the principal rate is 214, 214 francs per one dollar, or somewhat less than one-half of one cent per French franc.

[fol. 2381] Q. Has that devaluation of the French franc over a period of time had the same restrictive effect on imports from a dollar country as you described in respect of the devaluation of the pound sterling?

A. Well, it had extremely disruptive effects, of course. The French situation was further complicated by great

internal disorders in the years 1936, 1937 and 1938, and also by constant war preparations, all of which were reflected in the structure of foreign trade, in the kind of trade that was permitted, the kind of trade that was made difficult, and the kind of policy with respect to metallurgical purchases for national purposes that were undertaken. French metallurgy during the 1930's was almost completely dependent upon French government orders. You see, the 1930's were a period of very serious depression in France. I think that should be emphasized, as a matter of fact. The depression and recovery record in France during the 1930's is about the worst of any country, and France never recovered industrially the way other countries did in the mid 1930's, and in that situation, of course, in a situation of unemployment and depression, it is the metallurgical industries that normally suffer worst because people don't buy [fol. 2382] new capital goods when there is a slump, they don't need new capital goods. However, in France the metallurgical industries were actually kept going by what the Government wanted for the army, for the railway system, for war potential and military purposes. These played a very large part in the French economy, chiefly because the French economy was so depressed, not because French armaments were so enormously big, although they were substantial. As we know, France did not have a very great set of armaments when the Germans arrived.

Q. Now, going to the situation in Europe generally, what if any practices were followed throughout Europe, and the other European countries, as to the imposition of either currency controls or import controls, or both, following the collapse of the pound sterling in 1931 and the Austrian and German difficulties that you described a while ago?

A. Spain, Portugal and Italy had controls throughout the period. These controls were, of course, especially serious in Spain through the existence of the civil war, and in Italy throughout the regime, the control of industry existed in Italy throughout the period, and in Italy the exchange controls were hardly lifted at all during the 1920's. Import controls were, of course, operative both as import controls [fol. 2383] and as production controls through the system of national corporations, the famous corporate system of the fascist regime. In eastern Europe, with the exception

of Austria, as I have already mentioned, the German penetration was the most important economic factor in this period.

Q. How did that manifest itself?

A. By rigid exchange control, and import trade controls, payments agreements and clearing agreements with Germany and, of course, agreements also with other countries. I mentioned, I think, that Roumania, Yugoslavia and Turkey had payments agreements with England.

Q. Based upon what you have said, Mr. DeVegh, in respect of the situation in England from 1931 until 1939, what would you say as to whether or not an American manufacturer of anti-friction bearings would have found it possible to have sold his product manufactured in America in the United Kingdom, or in England, or in the British Empire, in competiton with the anti-friction bearing industry in England or the United Kingdom or the Empire, on a profitable basis?

A. I think that the situation was very much worse than during the 1920's, and all difficulties proportionately very much increased.

[fol. 2384] Q. And would you say it was possible to have traded in that area on a profitable basis from America under the conditions as they existed then?

A. I do not believe so.

Q. And directing your attention to France, and asking you the same question, what would you say as to whether or not an American anti-friction bearing manufacturer could have sold his product manufactured in America on a profitable basis in France in competition with the anti-friction bearing industry that was then operating in France during this period from 1931 until 1939?

A. I think that with respect to France, and even more strongly with respect to every other country with tighter controls and these exchange and trade regulations, the answer would be the same, only more so. In other words, that unless some far-fetched possibility existed of negotiating directly with the government, on a commercial basis I do not believe that any substantial trade could have taken place.

[fol. 2385] Q. Mr. DeVegh, before we adjourned you were talking about a type of restriction that was resorted to by various countries in Europe during the 1930's called

"clearing and payments agreements." I have here a sheet that has been marked for identification as Defendant's Exhibit 171. I will ask you if you can tell us what that is, please?

A. This is a summary table that appeared in a publication of the International Chamber of Commerce, called International Clearing and Payments Agreements. The International Chamber of Commerce maintained this as a serial publication in order to bring to its members' attention these agreements that affected international trade in great detail. This is a rather mammoth publication of which the present sheet of paper is the summary table.

Q. And state whether or not that indicates the various countries in tabular form that had various types of such agreements?

A. That is exactly what it does, as of March, 1939.

Mr. Ketterer: We offer Defendant's Exhibit 171.

The Court: It may be received.

[fol. 2386] Q. Now, I want to direct your attention to some of the countries that appear on this exhibit 171. As to Germany, for example, what does the table show as to the existence of such agreements between Germany and other countries?

A. It shows that Germany has had the most comprehensive system of such agreements.

Q. That is as of 1939 it had a comprehensive system of such agreements?

A. Yes, sir. Of the approximately thirty or forty countries that are included in this summary table, Germany had an agreement with every one except two, namely, Spain and, rather surprisingly, Japan.

[fol. 2387] Q. Now, with respect to England what does the table marked Defendant's Exhibit 171 show?

A. With respect to England it shows that England had such agreements in the number of nine.

Q. With nine different countries?

A. With nine different countries.

Q. Were there any such agreements between the French Government and any other European governments?

A. Twelve such agreements between France and other countries.

Q. And they operated currency-wise and exchange-wise

and import-wise in the fashion you have described a while ago before the recess?

A. Yes, sir.

Q. And what if any effect did such agreements have as to the possibility of a country that had no agreements of that character being able to trade with the two countries that were parties to such agreements?

A. It would increase the difficulty.

Q. I want to ask you whether or not on this able, Defendant's Exhibit 171, there appears anything to show that the United States Government had any such agreements in 1939?

A. The United States does not appear on the table and the United States Government did not have such agreements.

Q. I have here a group of photostatic sheets that have [fol. 2388] been clipped together and marked for identification as Defendant's Exhibit 172. I will ask you to tell us what they are?

A. These are photostated excerpts from a U. S. Department of Commerce publication entitled "The United States in the World Economy" which was published by the Department of Commerce in Washington in 1943.

Q. Now, I notice that attached to this Exhibit 172 are a series of, I believe of tables—

A. Charts.

Q. Or charts, I should say, beg pardon. Will you identify those, please?

A. These charts are photostatic copies of charts that appear in this book on Pages 6, 8, 56, 55, 57, 67, 68 and 69.

Q. Generally what do these charts show or the exhibits show?

A. These charts summarize in very convenient form the over-all impact of foreign restrictions on trade exports from the United States.

Q. To the different countries?

A. To the different countries and to the world as a whole.

Mr. Ketterer: We offer Defendant's Exhibit 172.

The Court: It may be received.

[fol. 2389] Q. Now, I want to call your attention to the first set of charts which are labelled here "Chart 2, Indexes of Economic Activity and International Trade." Will you

explain to the Court what they show on the subject you referred to a moment ago?

A. These charts show the relationship of national income and industrial production to imports in general, and for foreign countries also to imports from the United States. The small photostat preceding this chart shows the Department of Commerce figures derived from this same publication indicating how the supply of dollars to the rest of the world had diminished between 1929 and 1932.

Q. And what does it indicate as to the diminution of the supply of dollars for the rest of the world in that period?

A. That the supply of dollars was reduced, according to this table, from 7.4 billion dollars to 2.4 billion dollars or 68 per cent.

Q. And am I correct in understanding from that, then, that that means that the supply of dollars in the United States of either foreign governments or foreign nationals had decreased in the amount that you have indicated?

A. More specifically that the yearly supply had decreased. This is a table showing the yearly supply of dollars and not the reserve of dollars. The reserve that they [fol. 2390] may have had from previous times are a separate subject. The chart, however, that follows this table shows how this decrease in the yearly supply of dollars was reflected in a decline of imports from the United States into foreign countries. Imports from the United States into foreign countries are the same thing as the exports of the United States.

Q. And referring to that first table that you have there, the first chart, what does that show as to the relationship between any diminution of exports from the United States and the level of world trade generally?

A. The most significant of these four are the two charts on the right which show, for instance, that industrial production declined abroad approximately 25 per cent. The total imports of all foreign countries declined approximately in proportion between 1929 and 1932, but imports to foreign countries from the United States were approximately cut in half.

Q. During that period?

A. During that period. In other words, the decline was twice as bad.

Q. As to export trade from the United States?

A. As to export trade from the United States versus export trade from all countries together.

[fol. 2391] Q. Will you refer to some of the other succeeding charts that you have there and tell the Court what they show in that regard?

A. They show further details of the same information. Pages 56 and 57 show this information by broad geographic groups.

Q. Such as?

A. The first one, North America, South America, Asia, Oceania and Africa. And the second group shows for the United Kingdom, Canada, Australia, New Zealand, Denmark, Norway, Sweden, France, Netherlands, Germany and Japan.

Q. Now, you have shown what the general chart, the first one, showed as to the diminution of exports from the United States in relation to imports generally over the world. Is there any difference shown by the individual charts shown of individual countries in that regard as they show United States exports?

A. The general pattern is the same, although there are individual differences between individual countries.

Q. Directing your attention to the chart for the United Kingdom, what does that chart show as to the United States exports to the United Kingdom in relation to other items?

A. It shows that the United Kingdom suffered relatively little in its national income in the depression as expressed [fol. 2392] in pounds sterling, and that the national income of the United Kingdom rapidly reached new high levels after the depression. In spite of this the total imports never got significantly beyond eighty odd percent of the pre-depression imports. Imports from the United States dropped in 1933 as low as 40 per cent of what they were before, and didn't recover significantly until the 1936 boom, but continued high in '37 and '38 notoriously because of rearmament purchases. By 1938 Europe had a pronounced rearmament boom. As is reflected in production and income statistics that are readily available in the United States, the 1938 depression was a United States specialty because we weren't in the armament race, but the industrial production throughout Europe was maintained high principally

because of the increased rearmament expenditures. These increased rearmament expenditures are reflected in the relatively high level of the 1938 and '39 exports from the United States. Relative, that is, to immediate previous periods of exports from the United States.

Q. Preceding the initiation of this rearmament program in 1936, '37 and '38 in England and on the Continent of Europe generally, do these charts indicate or do they support the conclusion you expressed a while ago that the [fol. 2393] imposition of controls in Europe operated as a very definite deterrent of exports from the United States into those countries?

A. Both the imposition of controls in Europe and the depreciation of exchange, have been a major factor making the exports from the United States drop faster than exports from other countries and stay lower until the beginning of the major rearmament program.

Q. I have here Mr. DeVegh, some photostats that have been clipped together and marked for identification Defendant's Exhibit 173. I will ask you to identify those.

A. This is a report of the United States Tariff Commission issued in October, 1934, on the subject of anti-friction bearings.

Q. And I notice that there are some tables attached to that exhibit. What do they cover, generally?

A. These tables cover generally the production and trade in anti-friction bearings. Trade of the United States and also trade of foreign countries.

Mr. Ketterer: We offer Defendant's Exhibit 173.

Mr. Nitschke: Your Honor, I haven't had a chance to read this but it appears to me from just looking at it casually [fol. 2394] it contains more than just statistics; it contains comments about competitive conditions. I don't think it is being offered for that.

Mr. Ketterer: Well, it is being offered for whatever is contained in it, Mr. Nitschke. After all, that is an official Government report on the subject of anti-friction bearings.

Mr. Nitschke: That certainly doesn't affect its authenticity, I am not objecting to its authenticity, but that certainly doesn't prove the person relating it knew anything

about the competitive conditions. As a matter of fact he was just expressing general opinion.

[fol. 2395] Mr. Ketterer: Could we do this? Could I read the report and if there is any paragraph, as we go along, that appears objectionable or an opinion, the Court could rule on it?

[fol. 2396] The Court: Well, the only solution as I see it is to do as you suggest. Suppose you proceed to read from the report and if there is any place it may appear it expresses an opinion the Court will then rule.

Mr. Ketterer: Very well.

Mr. Nitschke: I think the last three sentences are the ones that caught my eye.

Mr. Ketterer: You mean on Page 28?

Mr. Nitschke: Page 26 of the photostat.

The Court: Page 26 beginning with: "Production costs in Europe are lower than in the United States, but under the present rate of duty, the price advantage is not sufficient to overcome the prestige of the domestic bearings."

Are those the only ones?

Mr. Nitschke: The only one I see right now. Let me [fol. 2397] look at them.

The Court: Those are clearly expressions of opinion.

Mr. Ketterer: I didn't so regard them, if the Court please. If the Court feels that way we won't read that.

The Court: If there is some method by which you can show they are the conclusions reached because of figures that appear in the report, then I should like to have you point that out to me. It does seem to me it is an expression of opinion rather than a conclusion based on figures.

Mr. Ketterer: As we examine the charts and tables that are attached to this exhibit we can show the basis of the statements made there. I will undertake to do that.

The Court: Of course if the witness on the stand wishes to testify as his opinion, that is one matter.

Mr. Ketterer: I understand.

The Court: If you are offering it as a report by some individual who reaches that conclusion who is not here to testify, that becomes again a different question.

[fol. 2398] Mr. Nitschke: Also Page 23 with respect to markets, there is the same type of opinion expressed by the writer as to the advantages of price, and so forth.

The Court: What page?

Mr. Nitschke: Page 23, really the fifth page of the batch of papers marked Defendant's Exhibit 173. Photostat bears the page number 23. It is the section entitled "Factors affecting exports". Two paragraphs. Those are just the writer's opinions of ability to compete.

The Court: Well, those two paragraphs in my judgment fall in the same category as the other two I pointed out. If there is some data in this report which is the basis on which these conclusions are predicated, and which can readily be discerned from the data, I see no objection to it, but if it is an expression of an opinion by someone which is not justified, I see that the objection is well taken.

Mr. Ketterer: Of course the parts which are referred to as to location of plants owned by foreign producers, has already been introduced in the evidence, there is not any difference of opinion as to location of plants. The last [fol. 2399] sentence in the first paragraph as to the advantage of foreign producers in price not only in their home markets but in all sections of the world is something that has already been put in the record in this case.

The Court: If Mr. DeVegh has testified and has come to the same conclusion, I see no objection to his testifying to it, but to offer a document in which someone who is not even identified expresses an opinion, it is certainly objectionable. Those matters, I say again, will not be received which express an opinion, even though it is contained in this document which is marked a "Summary of Tariff Information" prepared by some Government agency.

Mr. Ketterer: I should like to read the balance of this report. (Reading)

"Antifriction Bearings.

Tariff Act of 1930—Paragraph 321.

Antifriction balls and rollers, metal balls and rollers commonly used in ball or roller bearings, metal ball or roller bearings, and parts thereof, whether finished or unfinished, for whatever use intended, 10 cents per pound and 45 per centum ad valorem.

Comparison of Tariff Rates

[fol. 2400] 1930, par. 321—10 cents per pound and 45 percent

1922, par. 321—10 cents per pound and 45 percent
1913, par. 106—35 percent

Description and Uses

Antifriction balls, rollers, and bearings are used to reduce friction to a minimum between a revolving part and a fixed part in many mechanical devices. Complete bearings consist of metal balls or rollers which are fitted between two metal cases or race rings so that a shaft may be inserted into the inner ring, and the outer ring may be fitted into the machine frame. In some instances, the outer case for the balls or rollers is an inherent part of the machine or device, while the shaft forms the inner race, in which case only the balls or rollers are supplied by the bearing manufacturer.

Antifriction bearings are used in many types of machines, in airplanes, in railway cars, machine tools, electric motors, hardware articles, etc. The automobile industry is the greatest consumer in the United States and Europe of both ball and roller bearings, but the proportion used for this purpose is considerably larger in the domestic industry than in Europe.

[fol. 2401] One of the leading domestic automobile producers owns two large bearing plants, one manufacturing ball bearings and the other roller bearings. The bearings from these plants are sold also to the general trade.

Two of the principal domestic ball bearing companies are principally foreign owned—one Swedish and the other English, while one domestic manufacturer has affiliates in several European producing countries.

Foreign Production

The principal foreign producing countries are Sweden, Gemany, Italy, the United Kingdom, France, and Switzerland, probably ranking in the order named. Roller bearings are a rather recent development of the industry and are of less importance in relation to total production than in the United States.

The principal foreign company is Swedish controlled, and is known in the trade as S.K.F. It has 3 plants in Sweden, 2 in Germany, 2 in France, 1 in England, 1 in Czechosiovakia, and 2 in the United States, and has nearly 200 agencies and offices throughout the world. This com-

pany owns rich iron ore mines in Europe and is equipped [fol. 2402] to produce bearings from raw material to finished product. In its Swedish plant over 1,000 standard types of bearings are manufactured while its foreign factories concentrate on the production of types most in demand in their respective areas. Its normal capacity for ball bearings is 190,000 daily and it supplies approximately one-third of the world markets. S.K.F. bearings produced in Sweden represent about 95 percent of the total production of bearings in Sweden. Production in Sweden amounted to $9,370,000 in 1930, and to $6,410,000 in 1931. Approximately 99 percent of the total bearings exported from Sweden are S.K.F. bearings. Total Swedish exports amount to about 90 percent of production.

It is reported that approximately four-fifths of the German consumption, placed at $20,000,000 annually, is supplied by S.K.F. subsidiaries in Germany.

There is one large producer in Italy specializing in the production of automobile ball bearings. This company is a subsidiary of an Italian automobile company which also has a bearing plant in France.

There are about six producers in France, four of which are affiliated with companies in other countries, including [fol. 2403] a subsidiary of an American roller bearing company.

Production in the United Kingdom amounts to about $10,000,000 annually.

Production methods in Europe are similar to those in the United States, and in many instances the machines used are of the same type and are largely American made. Foreign producers are as favorably situated in relation to high grade iron ore as are the domestic manufacturers.

Ball bearings were first produced in Europe where the metric system is in general use. The metric system is also used in the United States in the manufacture of ball bearings, both European and American producers using standard S.A.E. metric specifications. Roller bearings were first made in the United States where inch-measurements were established, but in Europe they are made both to inch and to metric measurements. Ball bearings, and roller bearings made to inch-measurements are generally interchangeable.

No statistics are available on the number of bearings exported as parts of automobiles, machine tools, and indus-

trial machines, but they far exceed those of separate bear-
[fol. 2404] ings shown in table 12."

Skipping the discussion of the factors affecting exports, going to the heading (reading)

"Domestic exports to principal markets.

Domestic bearings are exported principally to Canada with lesser amounts going to European countries, Latin American countries, Japan, Australia, and the Philippine Islands with occasional large shipments to Soviet Russia. Export statistics, by principal markets, are given in the following table."

Those are the tables attached at the end, which we will refer to later.

(Reading) "Character of exports as to types and grades.

Exports from the United States are principally bearings used in the manufacture of automobiles in Canada in plants affiliated with American automobile producers. The balance of the exports are largely repair and replacement parts for American-made machines and devices, and types of bearings not produced in Europe.

Competitive Conditions.

The United States is the largest world market for bear-
[fol. 2405] ings, due principally to the extensive use of automobiles, electrical devices, and other machinery.

Domestic production is far in excess of any other country, amounting to $120,000,000 in 1929 and to $41,000,000 in 1933. Imports amount to less than one percent of production."

The Court: Is that correct, "the domestic production is far in excess of any other country, amounting to $120,000,000 in 1929 and to $41,000,000 in 1933"?

The Witness: That is correct.

Mr. Ketterer: Yes, that is correct.

(Continuing reading.)

"The domestic producers have established a high reputation through high quality products and service. Mass production methods are generally used in the American plants, and two of the largest bearing factories are owned by one of the principal domestic automobile producers.

Production in Europe is principally in Sweden, Italy, Germany, the United Kingdom, and France. The principal foreign company is Swedish controlled (S.K.F.) and has plants in each of the above countries, except Italy, and in [fol. 2406]the United States and Czechoslovakia and has agencies and offices throughout the world. This company is as favorably situated as the domestic producers in relation to raw material, equipment, and skilled workmen, and produces high quality bearings. Imports into the United States are principally from the S.K.F. plants and from Hoffman of England. These imports go largely to their American affiliates and are largely sizes and types which they do not advantageously produce here. In earlier years large quantities of bearings came from Italy. There is no foreign competition in domestic markets in cheap bearings which represent a very small part of the total domestic consumption."

Skipping the next paragraph.

(Continuing reading) "Lines of expansion of exports." Did Mr. Nitschke object to all of that or just the last sentence?

Mr. Nitschke: Just a minute. I object to all of that, the whole paragraph. The first sentence, where it expresses an opinion, it says, "there is little likelihood of any material expansion in export."

The Court: That is clearly an expression of opinion, that [fols. 2407-2408] last phrase. I don't see how the sentence would be complete or mean anything if you left out that phrase.

Mr. Ketterer: Very good.

The Court: Of course it is perfectly evident that the same testimony has been offered by other witnesses. I can readily appreciate the purpose of your objection. Technically it is objectionable, but as I say the same testimony has been offered by other witnesses and it is not of a great deal of significance whether it is offered by one or two witnesses, but as I said, on the basis of the rule no opinion evidence may be admitted through a document unless the person is here to be examined or cross-examined, I will sustain the objection.

[fol. 2409] Thereupon the Defendant, further to maintain the issues on its part to be maintained, called as a witness

William DeKrafft who, being first duly sworn, testified as follows:

Direct examination of William DeKrafft.

By Mr. Day:

Q. Will you state your name, please?
A. William DeKrafft.
Q. You live where, Mr. DeKrafft?
A. I live in Pine Valley, New Jersey, a suburb of Philadelphia, and I have an office in New York.
Q. What is your age?
A. My age is almost seventy.
Q. What is your present occupation?
A. I am a consultant to industry.
Q. With your offices in New York?
A. With my office in Wall Street.
Q. What do you do, generally acting as a consultant to industry?
A. Well, when managers of industry are in difficulty with problems I try to solve them for them. I have been rather [fol. 2410] successful.
Q. In that connection do you ever advise clients on business probems which have to do with trade abroad?
A. Yes, sir.
Q. Trade between the United States and Great Britain?
A. Yes, sir.

Mr. Day: If your Honor please, Mr. DeKrafft is going to confine his testimony very largely to Great Britain, and not generally.

The Court: I see.

Q. Can you tell us some of the companies for whom you have acted as a business advisor in recent years?
A. United States Rubber Company. I'm still advisor for, the Koppers Company, I'm still advisor for, the Bristol Company, I am advisor for Yale & Towne Manufacturing Company, and also the Pennsylvania Forge Company. I have advised the Worthington Pump & Machinery Company, the Brown Paper Company—

Q. That's enough of them. Some of them have been in connection with foreign problems?

A. Yes, sir.

Q. Where were you born, Mr. DeKrafft?

A. I was born in Philadephia.

Q. Will you give us some idea of your early career?

[fol. 2411] A. I graduated from the Germantown Academy which is a suburb of Philadelphia, and served an apprenticeship in the Baldwin Locomotive Works.

Q. When did you start with Baldwin Locomotive Works, how old were you?

A. I was 16 years old.

Q. How long did you serve the apprenticeship, as you described, with the Baldwin Locomotive Works?

A. Seven years.

Q. How long were you connected with the Baldwin Locomotive Works?

A. 35 years.

Q. Will you tell the Court briefly the different positions you held with the Baldwin Locomotive Works?

A. I was in the shops as an apprentice, in the mechanical end, studying the mechanical end of the business. I was in the purchasing department, in the treasury department, and finally I became in charge of all the commercial end of the Baldwin Locomotive Works, including the financial end. That was for a great many years.

Q. How many years did you hold that position?

A. From 1907 until December 31, 1929.

Q. In connection with your work with the Baldwin Locomotive Works, did you have occasion to observe anything [fol. 2412] as to trading between the United States and Great Britain, let us say?

A. Yes, indeed.

Q. How intimately did you become connected with that?

A. I opened an office in London for the Baldwin Locomotive Works many years ago. I think it was in 1910. That was a very important office for Baldwin. I traveled all over the world for Baldwin.

Q. Can you give us some idea of where you traveled? You say all over the world.

A. Well, I have been in Russia, Manchuria, Mongolia, Japan, Australia, all over Europe, almost everywhere ex-

cept India and South America and New Zealand, I think. I have been in the Balkan countries. I have never been in Austria.

Q. When you were in those countries did you have occasion to observe the manner of their transacting business?

A. That was the reason I went to those countries.

Q. With what other companies have you been connected besides Baldwin?

A. I left Baldwin at the end of 1929 and took over the rehabilitation of the United States Rubber Company, whose main office was in New York, but which had plants all over the United States except California.

[fol. 2413] Q. How long were you connected with the United States Rubber Company?

A. Seven and a half years.

Q. What was the character of your work with that company?

A. I was the chairman of the finance committee and, as such, I reorganized the company. It was in very bad financial straits in 1930.

Q. What if any occasion did you have, in a business way, to visit Great Britain in connection with your work with the United States Rubber Company?

A. The United States Rubber Company had large interests in Italy, France, and England, principally in England, also in Switzerland, and when I had a chance to take my nose from the grindstone I went to England and organized the rubber interests in England, that is, I made a study of them to see how best we could carry on and salvage the money we had invested there.

Q. In connection with your work with the United States Rubber Company, did you have occasion to study the matter of trade as between the United States and Great Britain, and Great Britain and the United States?

A. Yes, sir, we had a very important trade with Great Britain. A subsidiary of the United States Rubber Company sold the greatest volume of rubber goods in Great Britain.

[fol. 2414] Q. With what other companies have you been connected?

A. The Bristol Company of Waterbury, Connecticut.

Q. Are you connected now with that company?

A. Yes, I am advisor and director.

Q. What is the nature of the business of that company?

A. They manufacture precision instruments.

Q. And their principal plant is where?

A. In Waterbury, Connecticut.

Q. Do they have an establishment in England?

A. They have a subsidiary in England.

Q. In connection with the affairs and business of the Bristol Company, have you had occasion yourself to study the matter of business between the United States and Great Britain and between Great Britain and the United States?

A. Yes, sir, I did that last spring, at this time.

Q. And have you had occasion to study generally in connection with all of these companies, over the years, the matter of sending products from the United States, capital goods, into Great Britain, and the other way around, from Great Britain into the United States?

A. That has been continuous.

Q. For how many years have you given attention and study to that subject?

A. I think practically from 1907.

other companies—are you a director now of other com- [fol. 2415] Q. Will you give us some idea now of some panies?

A. I am a director of the Koppers Company of Pittsburgh, the so-called Meilon Company.

Q. What is the business of that company?

A. Their business was largely coal, and I have during the last ten years changed it into a chemical company, utilizing their production of coal as the basis of chemicals.

Q. When did you first begin to spend some time in Great Britain?

A. In 1934—oh, you mean to say before this?

Q. Yes.

A. In 1910.

Q. Then for how many years was it before you got a home in Great Britain?

A. Well, I bought my home in 1936.

Q. And from 1910 to 1936, that's a period of 26 years, how frequently did you visit Great Britain?

A. Well, up until 1914 I was there every year.

Q. Then the war came?

A. The war came on, I was in England when the war came on and I came home, and we were busy with the war,

and thereafter I went out to the Far East instead of to [fol. 2416] England because we had important contracts in the Far East, in Japan and in China.

Q. Which company do you mean now?

A. The Baldwin Locomotive Works at that time.

Q. Yes, and then after the first war you visited Great Britain how frequently?

A. Well, not until 1934. I was in touch, however, with our London office weekly.

Q. Do you have a home in England?

A. Well, some people call it a home. I have a very interesting house in England.

Q. Of course, you home is in the United States?

A. My home is in the United States.

Q. You are an American citizen and have been?

A. Yes.

Q. But you have a place over there?

A. I have. Would you like to know how I acquired it?

Q. This may not be directly in point, but will you describe briefly how you acquired the home, and the situation there. I am sure there will be no objection to it.

A. If you please, your Honor. I found that I was spending so much time in England that I thought that I would take some time and see what there was in England, and I found a magnificent ruin, and it had great historical inter- [fol. 2417] est, and I thought so long as I had a holiday I would try to restore that building, and I did. I always thought it was rather providential, because it became the headquarters of the British southeastern division during the war, we had the heads of the British Army and also General Smuts and Mr. Churchill visited us there, so I was pretty well repaid for it.

Q. That was during this last war?

A. That was during this last war.

Q. When did you go to England last?

A. Last April, last year.

Q. How long were you there?

A. I was there nearly two months.

Q. And prior to that time when were you there before that?

A. 1939, during the first two or three months of the war.

Q. I will ask you whether or not you were consulted by the British Government in connection with the last war as

to the matter of the British Government buying goods in the United States?

A. Yes, sir. I outlined the plan for British purchases in the United States for this last World War.

Q. Do you know whether or not that plan was in whole or in part adopted?

A. Yes, it was.

[fol. 2418] Q. I will ask you whether or not you were requested by the British Government to head up a plan for conducting the rubber business during the last war, or prior to the last war?

A. Yes, sir. In October, 1939, the head of the—the secretary of the Board of Trade asked me if I would give up my American citizenship and take over the head of the British rubber interests during the war.

Q. And you did not do that?

A. No, I did not.

Q. In connection with your experience generally in the prosecution of your various duties, you had occasion to keep abreast of and to study the question and method of trade between the United States and Great Britain?

A. Oh, yes, indeed, sir.

Q. And the exchange and sale of capital goods as between the two countries?

A. Yes, indeed.

Q. State whether or not you feel that you are able to express an opinion upon questions having to do with the sale of capital goods by an American manufacturer in Great Britain, or by a British manufacturer of capital goods in this country?

A. Well, I have given such opinions to industry, and they [fol. 2419] have carried them out. I am qualified, I think.

Q. When, if at all, did you first have any experience or learn of any restrictions imposed by the British Government with relation to goods sold, say from America into Great Britain, or from any country outside of Great Britain into Great Britain?

A. That was almost common knowledge, Mr. Day, from my earliest experiences in England.

Q. Dating back how long?

A. Oh, dating back from the very first time I established an office there, in 1910.

Q. Will you tell the Court briefly what you observed by way of any such restrictions way back as far as 1910?

A. In 1910 the Baldwin Locomotive Works did not establish an office in England to sell goods in England. We knew that it would be difficult, if not impossible, to sell locomotives in England. But we did expect to sell locomotives in the balance of the world and we wanted to keep our hand on the pulse in England.

Q. You say you knew it would be difficult to sell goods in England. What did you learn as to what created that difficulty, what was the reason for that difficulty?

A. British people and British managers in England did not want to buy American made goods. There was almost a [fol. 2420] cast iron rule not to buy American made goods.

Q. You say that dated back, to your knowledge, as long ago as 1910?

A. Yes, sir. I think we only sold one locomotive in England in my experience, and that was a sample locomotive to show the English how to build better locomotives.

Q. How long has that attitude been in effect, or how long has it been in operation, to your observation, since way back in 1910?

A. Well, in 1938 the pressure against the purchase of even Canadian made goods by our Canadian subsidiary became so great that I advised the United States Rubber Company to establish a rubber plant in England, which they did.

Q. A wholly owned plant?

A. A wholly owned plant.

Q. And do they have it there now?

A. Yes, sir, it's called the North British Rubber Company.

Q. Will you explain a little more now your own personal experience, what it was that prompted you to advise the U. S. Rubber Company to build its own plant in England?

A. It was what I would call a prejudice against the purchase of American made goods or any foreign goods not made in England.

Q. And had that been in existence from 1910 continu- [fol. 2421] ously up until that date?

A. Oh, indeed, yes, only it became worse.

Q. What do you say as to whether or not that prejudice, as you call it, has been in operation since 1938 up to the present time?

A. Well, I know that, because the Bristol Company cannot sell its instruments in England and had to establish a manufacturing plant in 1927 or 1928 for the manufacture of precision instruments in England.

Q. What is the Bristol Company now? I'm sure the Court understands what the U. S. Rubber Company makes, but what does the Bristol Company make?

The Court: He said precision instruments.

The Witness: It's a different kind, your Honor.

Mr. Day: I think it is.

A. For instance, I'll give you an illustration. In the old days the Dupont Company used to have a great big vat, probably as large as this room, and they would have men there that would mix the ingredients, set it in operation and they would have to keep thermometers in the vat to see that it didn't rise too high in temperature, because if it rose too high the steam would explode it, and now we have instruments that automatically control the heat and turn on [fol. 2422] cooling things, so that the temperatures in the vat are kept at a mien temperature. They are controlling instruments, measuring, controlling and recording instruments.

Q. What experience did you have with the Bristol Company?

A. In 1944 they came to me and asked me if I would come up and see if I could save the company. They were in bad financial way and I have been advisor for that company ever since.

Q. And you say they constructed a plant in Great Britain?

A. They constructed a plant in Great Britain, it's a small plant, but it is a plant. I visited it last summer, last spring.

Q. You have been talking about what you call a prejudice against American manufacturers shipping goods for sale in England without any plant there. Is that what was ordinarily known as "Buy British"?

A. That's exactly it, Mr. Day. It's the sentiment "Buy British", which has made it extremely difficult, if not impossible, for an American manufacturer to sell American

made goods in England, and that has been in existence since long before the war.

Q. Is that in existence today?

A. Oh, today it's impossible. I think, to sell goods in [fol. 2423] England because of financial restrictions.

Q. But state whether or not—and I'll come to that in a few moments—is this "Buy British" sentiment or prejudice still in existence today?

A. Oh, yes, indeed. Today, with the British economy such as it is, they will not permit the purchase of anything outside that is not of vital importance to the British economy.

Q. What effects have currency regulations had upon trade between the United States and Great Britain?

A. It has practically made trade from the United States to Britain impossible, practically cut it off.

Q. When did you first experience any trade regulations, currency regulations, when did you first observe they had any effect, going back how many years? When did they first go into operation?

A. They went right in at the end of the war.

Q. The first war?

A. In 1945.

Q. 1945?

A. That is, this present currency, stringent currency regulation, came in immediately after the war.

Q. Will you explain a little more just what that currency regulation is we are talking about?

A. Can I give you a personal example?

[fol. 2424] Q. Well, tell what it is, first, generally and then give the personal example if you will, please?

A. In the event a British manufacturer had to have something that was manufactured outside of Great Britain, he would have to go first to the Board of Trade to get permission to purchase, and then to the Bank of England to get permission to pay for it. The chances are neither one of those would be granted, unless the stringency was quite great.

Q. And why does Great Britain have that kind of regulation now, in your judgment and opinion?

A. Well, they are trying to save Great Britain financially and figuratively, Great Britain.

Q. What if any difficulties, in your opinion, confront an American manufacturer if he wants to sell goods over in

Great Britain, with regard to this currency regulation you are telling us about?

A. I doubt if an American manufacturer could sell his goods in Great Britain today.

Q. You said you knew of some personal illustrations in connection with that rule. Will you tell us what that personal experience was?

[fol. 2425] A. The currency restriction goes to this. I had quite a substantial sum of what is called American accounts in England. American accounts are different from British accounts because until the end of the American loan all British accounts could be converted into American dollars.

Q. You say you had. Do you mean—

A. I personally had.

Q. Go ahead, sir.

A. I applied to the Bank of England last spring, last May, to see if I could take some of these dollars home. They gave me permission to bring the dollars home which I had in my personal account, but the dollars which I had in a wholly owned British Company they refused, and I had to find investment for those sterling pounds in England. The restrictions go further than currency. I had some paintings which I thought I had better bring back to the United States, and I was very anxious to. I had to go to the Board of Trade and to the Bank of England to get permission to bring those paintings out of England, and had I not taken them into England in the first place they wouldn't have allowed me to take them out, because they were afraid I might sell them outside of the British sterling area and get dollars for myself. You saw those paintings in the office.

[fol. 2426] Q. How, in your opinion, would that kind of a restriction have an effect upon the effort by an American manufacturer to sell American made goods, capital goods, in Great Britain?

A. He wouldn't even try, except in one case. If the Treasury Department asks an American manufacturer under some agreement which the American Government had with the other country, then the American company would execute on the Treasury, United States Treasury, orders on that.

Q. Are you familiar with the practice of the British Gov-

ernment in requiring permission to a manufacturer outside of the United Kingdom when he wishes to enter or sell goods in Great Britain?

A. Well, there is no bar to the entering of the man to try. I would never advise anyone to try it.

Q. What permission do they have to get?

A. You have to get first permission from the United States Government to export anything to Great Britain today.

Q. You are referring to a recent regulation of what department of the United States Government?

A. The Department of Commerce, who just recently, within the last month, restricted the export of any manufactured goods outside of food and one or two other stuffs, without permission from the Secretary of Commerce of his department.

Q. From the Department of Commerce?

[fol. 2427] A. Yes.

Mr. Day: I want to say to your Honor, we have that regulation and I think we'll offer it in evidence later, so you can see just exactly what it is.

Q. It became effective the first of March, did it not, Mr. DeKrafft?

A. Yes, sir, I think it was issued then.

Q. Let us assume the American manufacturer gets past that permit so far as our Government is concerned. If he wishes to sell his goods in Great Britain, with what restrictions does he have to comply over there?

A. Well, he would probably find that the purchaser would have to pay a 100% purchase tax in addition to an import tax. The thing is practically prohibitive. I don't know of any commercial way you can do it.

Q. Are you familiar with the British restriction which requires a manufacturer coming in from the outside to apply to the British Commission and get a permit to manufacture goods, let us say, and sell goods in Great Britain?

A. Yes, all of that is closely controlled. You can't start a new manufacturing plant in Great Britain today without getting permission from the British authorities to do so. Is that your question?

Q. Yes, sir.

[fol. 2428] A. Oh, yes, and that has been going on ever since the war and, in fact, I think during the war.

Q. Have you any knowledge as to what kind or character of showing, let us say, an American manufacturer would have to make if he wanted to get that permission in Great Britain?

A. He would have to show necessity for producing something in Great Britain that was not produced there then, I think. I have never tried to get such permission.

Q. Are you acquainted, over the years, with the tariff regulations in Great Britain insofar as they apply to capital goods?

A. Oh, yes, generally. I couldn't give you dates and amounts. I know it's approximately one-third.

Q. And the answers you have given thus far as to the difficulties with relation to capital goods being sold by an American manufacturer in Great Britain, would those answers include as a part of capital goods anti-friction bearings?

A. Any part of machinery, Mr. Day, would come under that.

Q. Including anti-friction bearings?

A. Anti-friction bearings certainly would be included.

Q. How, over the years, has the tariff in Great Britain had an effect upon what I'm asking you about, that is, the [fol. 2429] ability of an American manufacturer to sell American goods in Great Britain?

A. Well, the cost of the tariff is roughly a third for American manufacurers, except Canadian manufacturers. They are less. But the cost of shipment is about the same, and insurance, so it doesn't pay an American manufacturer to sell in England, if he wants to make any money on the transaction.

Mr. Day: I think we'll offer evidence more exactly as to what the tariff is, if your Honor please. Mr. DeKrafft is just estimating that.

Q. What was the Webb-Pomerene Act?

A. The Webb-Pomerene Act was to try to help the American manufacturer sell abroad.

Q. And it provided generally what, as to American manufacturers selling abroad?

A. Why, I think it relieved the manufacturers of all liability under the Sherman Act, if I'm not mistaken.

Q. That is, it permitted American manufacturers to make

some kind of an arrangement to sell goods abroad, is that right?

A. They could sit down in the United States and discuss prices of goods to be sold in England, or elsewhere, if I'm not mistaken.

Q. What if any effect did that Act have upon trade, or the [fol. 2430] ability of American manufacturers to sell over in Great Britain in competition with goods made in Great Britain?

A. Well, it had the effect of scaring the English people, I know, because our agent came over and told us about that. All this is a long time ago, Mr. Day.

Q. That was passed years and years ago.

A. Yes, indeed. I had forgotten it, almost.

Q. Something has been said here about empire preference of imperial preference. What does that mean?

A. On this "Buy British" slogan which England had, the colonies and dominions were beginning to suffer, so they had a conference, I think in Ottawa, which they called the Ottawa Conference, and they gave the Canadians some relief from the tariff. In fact, the Canadians had to pay as much tariff into England as the United States manufacturers had to pay. So the Ottawa Conference reduced the tariff, if my recollection is right, to either ten or fifteen per cent, where we were paying 33%.

Q. That was back in 1932?

A. Way back there, yes, sir.

Q. How does the imperial preference operate?

A. It did operate for years by encouraging the outlying parts of Great Britain to ship their goods into Great Brit- [fol. 2431] ain. That was the idea of the Imperial Preference.

Q. And state whether or not that imperial preference doctrine operated more favorably to the outlying dominions of Great Britain than it did as to American or somebody outside the United Kingdom and its dependencies?

A. Mr. Day, it was because of that imperial preference that the United States Rubber Company shipped all of its goods, 100% shipped goods and sold in England, through its Canadian subsidiary. That's the way it operated so far as an American company was concerned. The Canadian subsidiary of the United States Rubber is called the Dominion Rubber Company, and it manufactured all of the footwear,

rubber footwear that was sold in England, and pretty close to 70% of the rubber footwear that was used in England, and they use an awful lot of it in England, was manufactured in Canada. But the "Buy British" slogan which you speak of started to operate even against Canada, and that was the reason I recommended that the United States Rubber Company establish a manufacturing plant for the manufacture of rubber footwear in England.

Q. Did the imperial perference doctrine make it easier for, let us say, any of the outlying dominions of the United Kingdom, to sell in England?

[fol. 2432] A. Oh, yes, there wasn't the same sales resistance against the imperial—under the Ottawa agreement it was part of the agreement that it was to encourage the sale of dominion made goods in England, England being a tremendous purchaser of goods of all kinds.

Q. Did it make it easier, therefore, for some outlying part of the whole United Kingdom to sell into England than it would be for United States to sell into England, or any other country?

A. Oh, yes. We could ship apples to England very much cheaper than South America or Australia or New Zealand could, but they bought New Zealand apples.

Q. How long ago was it they started this imperial preference back at the Ottawa Conference in 1932?

A. Well, you gave the date.

Q. Wasn't that the date given this morning? How long was that in effect?

A. I think it is still in effect. It sort of fell by the wayside during the war. Canada gave great credits to England.

Q. What experience have you had with the company you are connected with, this Bristol Company, as to the obtaining of licenses in Great Britain?

A. I have had experience, but it has been a very poor [fol. 2433] experience, in obtaining licenses in England to sell Bristol American made instruments there.

Q. You stated a while ago that licenses would have to be obtained to sell the goods in Great Britain, is that right, and also to get paid for them, is that right?

A. That's quite right, and during the later years of the war, for the British war effort, the United States Bristol Company shipped over a great number of parts to help the British Bristol Company manufacture finished instruments

for the various war industries of Great Britain, but they never were able to obtain licenses from the treasury to pay for those parts.

Q. What happened?

A. Well, last month this question came up. Bristol in the United States only owned 78% of the British company, 22% being owned by four people over there, and in a Board meeting I suggested that there was no reason why we should give the British a free ride, why couldn't we ask the British to subscribe for an additional new issue of stock, the American Bristol would put up its proportion, 78%, of 100,000 additional issue, that as the debt owed by the British to the American Company was $75,000—this is dollars instead of [fol. 2434-2435] pounds—the issue was approximately $100,000, the debt from the English Company to the United States company was $75,000. So the United States company subscribed to $78,000 worth of stock and sent that money over to England in a dicker with the Bank of England so that the British Company could pay its debt to the United States company, and that is what happened.

Q. And the American stockholders paid for the new stock in dollars?

A. In dollars.

Q. And the British stockholders paid for it in sterling?

A. In sterling, and the American company, however, got dollars for its $75,000 of debt.

[fol. 2436] Q. Something was testified to this morning by Mr. DeVegh about pegging the pound, and the pound value. What experience have you had with that, what can you tell about it generally, from your own knowledge and experience?

A. I have had a great deal of experience in respect to dealing with the pound sterling, because during the years I was with the U. S. Rubber Company, the U. S. Rubber owned the largest plantations in the world and we had to deal through the sterling area on that.

Q. I think, Mr. DeKrafft, instead of relating specific experiences of a specific company, the court has suggested you might tell generally what the practice has been. Now, if you want to use your own experience in connection with any company in answering the question, that's all right, but his Honor has suggested we ought not devote too much time to specific examples of specific named companies.

A. Do I know how the pegged sterling rate operates?

[fol. 2437] Q. Yes, sir. First, how does it operate?

A. Well—

Q. When did it come into effect, first? Mr. DeVegh told us about that, but will you tell about it briefly from the standpoint of a business man? By the way, you are testifying as a business man here, is that right?

A. That's all I am. Yes, sir.

Q. And I think I asked you before you went on the stand whether you had ever testified before.

A. This is the first time I have ever been asked to testify as an expert witness.

Q. And I think you said you testified once as a character witness years ago, is that right?

A. Yes, that must be 25 or 30 years ago.

Q. Can you tell us what *what* is meant by pegging the value of the pound?

A. Well, that's done by governments or by boards of trade.

Q. What was done in that regard by the British Government?

A. In the last few years the British Government pegged the official rate at $4.04 and a fraction. Well, that means that when you buy through some bank you buy sterling at $4.04, and that is the pegged value of the British pound. It isn't the real value of the British pound. Is that what you want?

[fol. 2438] Q. That's right, and over how much territory would that pegging of the pound spread, how much territory did it cover, how much domain?

A. That covered almost everything dealing with England or the sterling areas.

Q. What effect would that pegging of the pound rule or practice have upon an American company seeking to do business in Great Britain by and of itself?

A. Well, if an American company wanted to sell in Great Britain, it would be difficult because Great Britain wouldn't have to buy more dollars with its pound than it formerly did when it was selling at about $5.00.

Q. Would that become an obstacle, in your opinion, to an American company doing business, as such, in Great Britain?

A. Well, it would prevent the English company from

buying the American goods, if that's what you mean by an obstacle. It's difficult to get dollars to pay for the things in America. It's easy to get pounds in America to pay for things in England.

Q. What would you say, then, based upon your experience and your knowledge of the subject, and your study of it, as to whether or not at the present time it would be a practical, profitable commercial operation for an American Company to sell capital goods in Great Britain at the [fol. 2439] present time?

A. It would be neither profitable and, I think, it would not be possible.

Q. Will you tell the court quite briefly why you reach that conclusion?

A. I take it that all trade and commerce is based upon the profit motive, and American industry must sell at a profit in order to meet its depreciation and its cost of selling, and so forth. You can not obtain as much money in England for American made capital goods as would pay for profit and the cost in America. The British Government wouldn't give export licenses for dollars to pay for them.

Q. And these various matters that you have been detailing here on the witness stand as to "Buy British", the Imperial preference, and things of that kind, would they enter into your opinion that it would be not profitable or perhaps practically impossible for an American company to trade in Great Britain in that manner?

A. All of my experiences on various practices between trade and commerce in the United States and Great Britain have led me to that decision, that conclusion.

Q. In your opinion, was that the fact say in 1927, 1928? [fol. 2440] A. It has been the fact since since long before that, Mr. Day. They didn't have export licenses for money, but they had the British sentiment.

Q. And your opinion upon the subject of impossibility or practical impossibility of an American Company selling its capital goods by itself in Great Britain has been your opinion over how many years, running back from 1948, that has been your opinion how far back would you say?

A. It has been my opinion for the last twenty odd years.

Q. Back as far as 1927 and 1928?

A. Oh, yes.

Q. And before that?

A. Before that. Not only my opinion, it's almost general knowledge.

Q. What would you say, from a practical standpoint, a commercial standpoint, a reasonable, sensible business standpoint, whether or not it would be possible for a British manufacturer of capital goods to sell them in the United States now?

A. That hasn't been possible for a good many years.

Q. How many years back, as far as 1927?

A. Oh, beyond that. I think the last shipment of rails we [fol. 2441] had was at the turn of the century.

Q. Why would you say that it would be impossible to sell the other way, from Great Britain into the United States?

A. Today?

Q. Yes, let's have it today?

A. England has no steel, it has no raw materials, it's a converting nation. The only real deposit of natural wealth it has is coal, it hasn't the raw materials from which to convert. India has taken a great deal of its textile business away from it. We used to buy a good many of our clothes in Great Britain. That was very good for us, because we would go over there with dollars and buy at the depreciated rate of sterling. But now you have to have coupons. Is that answering you?

Q. Is there any tariff in the United States now that operates in that situation?

A. Yes, there is. We have a high protective tariff in the United States, we pay roughly one-third of the value of imported goods. It isn't practical for the British people to sell in the United States even if they had the raw mate- [fol. 2442] rials. We put the protective tariff up against Britain and against other countries to keep the goods out.

Q. You say that it wouldn't be a practical thing. That goes back how far would you say, Britain selling over here?

A. As far back—ever since I have been in business.

Q. That's way back for how long?

A. Well, from 1907, when I first started to observe the foreign trade.

Q. What would you say, then, as to whether or not, coming back to the American company selling capital goods, including anti-friction bearings, made in this country in competition with bearings made in Great Britain, would you say that was possible? I didn't ask the question that

way. From the practical standpoint would that be possible, I mean profitable competition, sensible competition, commercial competition?

A. I doubt if anti-friction bearings could be made in the United States now and sold at a profit in Great Britain.

Q. Has that been true for years gone by?

A. It's been true for a long while.

[fol. 2443] Q. Back as far as 1927?

A. Longer than that. Before that, Mr. Day.

[fol. 2444] Q. Mr. DeKrafft, I think you answered in your examination before the recess that it would be practically impossible from any reasonable commercial profit standpoint for an American manufacturer to sell capital goods in Great Britain. Now, what goods did you have in mind in that answer, goods that were made in Great Britain or in this country, or goods that were made only in this country and not in Great Britain?

A. I think I said, Mr. Day, in answer to your question, that if the goods were now made in England it would be impossible or practically impossible to start a new manufacturing business in competition with anything that is now manufactured in England.

Q. In other words, if the British manufacturing economy included the making of certain articles, you think it would be impossible or very difficult from any practical standpoint for an American manufacturer here in this country making the same articles to compete over in Great Britain with the British people?

A. I think the Board of Trade wouldn't allow the establishment of any such manufacturing company in England today to compete with its own established business.

Q. And would your answer be the same if it involved the question of being a British manufacturer selling over in [fol. 2445] this country something made in both countries?

A. Well, Mr. Day, today there are articles being manufactured in England and sold in the United States. You have probably seen the advertisement of the Austin cars: they are making, shall I say, a desperate effort to sell cars here to obtain dollars for them. Cars are selling at very high prices, and with the low horsepower people may want them. Also there are people who buy Rolls Royce cars in America, even though they cost 25 or 30 thousand dollars.

Q. That is, people who have a lot of money to invest in a particular kind of car, is that right?

A. They must have a lot of money.

Q. Well, are there some goods in your opinion, are there still some goods that are made in America that can be sold in Great Britain if they are required in Great Britain and not produced in sufficient quantities there?

A. Yes, sir, during the past few years we have shipped a very large quantity of coal machinery for use in the British coal mines to help them get their coal out. As I said, coal is practically the only natural resource England has.

Q. That is, if the British people feel that they require, to carry on their internal business or their domestic economy, goods from outside which they cannot get in sufficient quantities within their own borders, they will permit those [fol. 2446] goods to come in?

A. Oh, yes, they do it and they are doing it now. I didn't understand that was your question before.

Q. I wanted to clear it up because I might not have understood what you had in mind, or you might have something other than we are now talking about in mind.

A. Well, that is what I meant when I said that if the British economy required any manufactured goods, any machinery manufactured here, they would get it.

Q. From America?

A. Yes.

Q. That is, if they didn't have it over there or have it in sufficient quantity?

A. That is right. Those goods have been coming in through the United States over there.

Q. But your answer would be the same I take it, insofar as that would apply to the shipment of capital goods, including anti-friction bearings made in this country, and sought to be sold over there in competition with British made goods?

A. I can grant you exceptions to almost any rule, but it would not be a regular practice.

Q. Or profitable practice?

A. Oh, no, not at all.

Q. Not a profitable commercial practice.

[fol. 2447] A. You can find exceptions to all rules.

Q. Now, what would you say in your opinion would be the necessity of an American company seeking to sell

capital goods, such as anti-friction goods in Great Britain, having a company there where the goods are made?

A. If they want to maintain distribution of British made goods they would have to do it.

Q. They would have to have a factory in Great Britain?

A. That is what they should have. They should have established it long before this. They couldn't do it now.

Q. And manufacture in Great Britain?

A. They would manufacture with British workmen, British supervision, and everything. They don't need a British board of directors because in many cases the Americans maintain a majority of the board of directors without any detriment to the English business.

Q. What do you say about the kind of working men they should have?

A. Skilled British working men.

Q. What do you say as to the nationality of the men that go out to contact business, salesmen?

A. The salesmen would all be British salesmen, there should be British management.

Q. You say you would consider that a necessity for an [fol. 2448] American operation in Great Britain now?

A. Yes.

Q. Would that also be a necessity in 1927 or 1928 and over the years?

A. That is about the date when this started to become general practice, Mr. Day.

Mr. Day: I think that is all.

Cross examination of William DeKrafft.

By Mr. Nitschke:

Q. Mr. DeKrafft, I believe you said you were advisor to Baldwin Locomotive Company and the United States Rubber Company in connection with their foreign operations. When were you working with them?

A. I really work with them, you see.

Q. I believe you said since 1936 you have been acting as advisor in connection with foreign operations for several other American companies?

A. Well, in 1938 I came home from Europe impressed with the idea we were going to have a war, I was going to

try to get into production in the United States, and I established my office so that I could do that. Since 1938 I have been advisor with regard to their operations.

Q. And you have been giving advice including foreign operations?

A. Including any problems that arose there.

[fol. 2449] Q. Among those companies, I believe you said you represented, or have represented in that territory United States Rubber?

A. I have been advisor to United States Rubber since 1938, and still am.

Q. And Bristol Manufacturing Company?

A. And still am.

Q. And Koppers Company?

A. Koppers.

Q. And I believe you said you advised Worthington Pump & Machinery for several years?

A. Three or four years, yes.

Q. And several others you mentioned?

A. Yes.

The Court: I would like to ask just one question. Isn't there a considerable amount of exchange of goods between [fol. 2450] Great Britain and the United States today?

The Witness: Oh, there is.

The Court: Isn't there a tremendous amount of British china being imported, for example, at the present time?

The Witness: Well, your Honor, I doubt if it is British china, it may be, because you can't buy china in England.

The Court: I ask you those questions simply because of all those sweeping statements you made with reference to the exchange of goods. I think I marked down here in one place your comment to the effect that the sale of American capital goods was practically impossible to Great Britain on a profitable basis. Then you answered Mr. Day's question that the sale of British goods in the United States was practically impossible on a profitable basis long before the sale of American goods was impossible.

The Witness: Your Honor, I would say that for a great many years I have imported my suits of clothes from England, and a great many other people have used special goods like that. A lot of people prefer English toys for their children.

[fol. 2451] The Court: Aren't those still imported?

The Witness: Well, they are beginning to come in.

The Court: Does that trade barrier you have described apply to those items I have mentioned?

The Witness: I doubt if very many toys are coming in. I saw some at the port, but not any huge quantities.

The Court: Well, hasn't that sales resistance you have described, the policy of "Buy British" been in effect for the last five or six decades or more?

The Witness: Yes.

The Court: Hasn't there been a similar campaign in the United States to buy goods manufactured in the United States?

The Witness: Could I give you an example?

The Court: No. Isn't that true? Isn't it likewise true they even attempted to pass legislation to compel manufacturers to mark goods that were manufactured abroad to be sure that they were so marked?

The Witness: Oh, yes, everything that is manufactured here.

The Court: Then you didn't mean to have your statement as sweeping as you said?

[fol. 2452] The Witness: In connection with the volume of goods, I intended it to be as sweeping as I could state it.

The Court: That is, so far as volume is concerned?

The Witness: Yes.

Mr. Day: I tried to make it clear after the recess, maybe I didn't.

The Court: I think you did. I wanted to have in mind how far his comments went. Whether he meant it to be as sweeping as they appeared on his examination.

Mr. Day: If I understood it, and the witness will correct me if I am wrong, his testimony was to the effect that, because of the various barriers and obstacles and difficulties he has detailed, and which have been detailed by other witnesses, it would not be at the present time a sensible, commercial or practical thing for an American company making capital goods, including anti-friction bearings in this country, to sell them in Great Britain in competition with bearings made over there. That is, to sell them as American bearings through American agencies. Is that right?

[fol. 2453] The Witness: Oh, that is perfectly right.

Mr. Day: And upon the same basis, as applied to the same articles it would not be possible or practical, as I understand it, for a British company to sell anti-friction bearings or capital goods in this country. I think the witness did make it clear he didn't want that answer to apply to all goods made in this country and sold over there.

The Court: I am still anxious to find out the meaning of the words "practically impossible". That is a rather sweeping term.

Mr. Day: What we have in mind—

The Court: Does he mean it cannot be done at all on a profitable basis at any time? That is what those words imply to me. If that is what he means.

Mr. Day: Well, he said, and my question has been, that it would not be practical, or practically impossible from the commercial basis, in having a profit for that trade to be carried on. Is that the way you wish to have it understood?

The Witness: There are exceptions. For instance we are very short of coal tar in the United States, and within the last five months we have been receiving shipments of coal [fol. 2454] tar from England. Well, that is of large volume because we use that to go into anthracene and naphthylene, and other components for our manufacture here. But if the British manufacturer wanted to ship a line of, to use the term, roller bearings—I don't know very much about that—but he would find it would be practically impossible to sell those roller bearings here.

The Court: You say you don't know much about it.

The Witness: I know very little about them. I have experimented with them all my life.

The Court: Does the ERP contemplate such strong barriers as you have described?

The Witness: Well, your Honor, the reason—

The Court: I don't believe you understood my question. I asked you whether the ERP contemplates such strong barriers as you have described?

The Witness: The ERP contemplates setting up strong economies in the countries so they can do business.

The Court: But it does contemplate the exchange of goods rather than keeping the goods that are manufactured [fol. 2455] in this country here and the goods made in Great Britain there?

The Witness: Yes, the goods made here under the ERP will be shipped to England.

The Court: That is what I was inquiring about. I thought the very plan contemplated the shipment of American made goods. Those goods will have to be sold there, will they not? Will the same sales resistance be met in connection with this tremendous plan of rehabilitation of Europe?

The Witness: I told Mr. Day I think that orders received from the United States through that were completely excepted.

The Court: And you are excepting those?

The Witness: Yes. That would also be true of the three billion loan we made.

The Court: You included that.

The Witness: That is what I intended.

Redirect examination of William DeKrafft.

By Mr. Day:

Q. One more question so there will be no misunderstanding. When you have stated that the sale of capital goods, including anti-friction bearings, would be practically impossible, you didn't mean it to be physically impossible?

[fol. 2456] A. No, sir. Americans can do almost anything.

Q. What did you mean when you say "practically impossible?"

A. I think I prefaced my remarks by saying American industry must sell at a profit, and you can't sell goods against sales resistance, high tariff and high costs of transportation at a profit, and it is a great discouragement to American business to have some department losing money.

Q. Then, you mean, if I might suggest it, impossible from a profitable, practical, reasonable, sensible, commercial standpoint?

A. To keep an American industry solvent, yes, sir, that is what I meant.

Mr. Day: That is all.

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II

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TRANSCRIPT OF RECORD

(Pages 833 to 1576)

Supreme Court of the United States

OCTOBER TERM, 1950

No. 352

THE TIMKEN ROLLER BEARING COMPANY,
APPELLANT,

vs.

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

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38—Letter, October 13, 1927, D.P.H. to Lothrop	4138	1387
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40—Letter, February 17, 1928, Hess to Hobley	4141	1388

	Original	Print
Record from U. S. D. C., Northern District of Ohio—Continued		
Government's exhibits—Continued		
41—Letter, March 6, 1928, Hobley to Hess	4142	1389
42—Letter, March 22, 1928, Hobley to Hess	4143	1390
43—Letter, April 18, 1928, Hess to Hobley	4144	1390
44—Letter, July 13, 1929, Hess to British Timken	4145	1392
45—Postal Telegraph, August 3, 1929, Dewer to Hess	4151	1394
46—Cablegram, August 3, 1929, Spray to Dewar	4152	1394
47—Cable, October 11, 1929, Dewar to Hess	4153	1395
48—Cable, October 11, 1929, Hess to Dewar	4154	1395
49—Letter, June 6, 1932, Dewar to Hess	4155	1396
51—Letter, June 22, 1932, Dewar to Hess	4156	1397
52—Letter (Ex. D-4 to Depositions)	4159	1399
53—Letter, July 7, 1932 Hess to Dewar	4160	1399
54—Letter, July 18, 1932, Dewar to Hess	4161	1400
55—Letter, July 29, 1932, Hess to Dewar	4165	1403
56—Letter, August 4, 1932, Hess to Dewar	4167	1404
57—Letter, August 4, 1932, Dewar to Hess	4168	1405
58—Letter, August 30, 1932, Dewar to Hess	4170	1406
59—Cable, November 3, 1932, Hess to Timken	4174	1409
60—Letter, November 4, 1932, Hess to Timken	4175	1409
61—Letter, December 5, 1932, Dewar to Spray	4178	1411
62—Letter, December 13, 1932, Dewar to Hess	4180	1413
63—Hess Report on European Trip, 1933	4185	1416
64—Letter, December 2, 1933, Hess to Dewar	4204	1435
65—Letter, December 22, 1933, Dewar to Hess	4205	1436
65A—Agreement attached to Ex. 65	4208	1438
66—Telegram, December 30, 1933, Dewar to Hess	4217	1444
67—Letter, March 4, 1935, Dewar to Hess	4218	1444
68—Letter, January 18, 1934, Hess to Ernst	4219	1445
69—Letter, February 12, 1934, Hess to Timken	4221	1447
70—Cable, January 22, 1934, Hess to Dewar	4226	1453
71—Hess Memo., "Russian Situation", February 16, 1932	4227	1453
72—Letter, September 3, 1929, Dewar to Hess	4228	1455
73—November 20, 1930, Dewar to Hess	4229	1455
74—Letter, November 24, 1930, Dewar to Hess	4231	1457
75—Letter, Hess to Dewar, Dec. 27, 1929	4232	1458
76—Letter, January 8, 1930, Dewar to Hess	4236	1459
77—Letter, December 16, 1932, Hess to Dewar	4237	1460
78—Letter, January 12, 1943, Dewar to Hess	4240	1463
79—Letter, Dec. 14, 1932, Hess to Dewar	4243	1465
80—Letter, December 29, 1932, Dewar to Hess	4244	1466
81—Letter, February 2, 1933, Timken to Ford	4245	1467
81A—Letter, January 26, 1933, Ford to Timken	4246	1468
81B—Letter, August 31, 1932, Timken to Ford	4248	1469
81C—Contract, September 19, 1932	4249	1469
82—Hess Memo., February 16, 1932	4251	1470
83—Letter, January 26, 1934, Hobley to Hess	4252	1471

	Original	Print
Record from U. S. D. C., Northern District of Ohio—Continued		
Government's exhibits—Continued		
84—Letter, April 27, 1934, Hobley to Hess	4254	1472
85—Letter, September 11, 1934, Dewar to Hess	4255	1473
86—Letter, September 30, 1934, Hess to Dewar	4256	1473
95—Cable, May 16, 1938, Umstattd to Dewar	4257	1474
96—Cable May 20, 1938, Pascoe to Umstattd	4258	1474
97—Inter-office letter, May 23, 1938, Porter to Umstattd	4259	1475
98—Letter, April 25, 1939, Timken to British Timken	4260	1476
99—Letter, August 25, 1939, Klinedinst to Dewar	4261	1476
100—Letter, September 11, 1939, Dewar to Klinedinst	4263	1478
101—Letter, September 27, 1939, Timken to Dewar	4264	1478
102—Letter, October 26, 1939, Dewar to Timken	4266	1481
103—Letter, November 14, 1939, Dewar to Timken	4270	1484
104—Letter, October 23, 1939, British Timken to Timken	4273	1487
105—Letter, December 28, 1939, Timken to British Timken	4274	1488
106—Contract, September 1, 1939	4276	1489
107—Memo., December 5, 1939, Klinedinst to Goodwin	4286	1498
108—Memo., December 6, 1939, Klinedinst to Comber, Moore, Richardson and Sanders	4288	1500
109—Memo., January 29, 1940, Timken	4290	1502
110—Letter, September 20, 1940, Gibson to Forsythe	4291	1503
111—Letter, October 23, 1940, Thomas to Forsythe	4294	1506
111A—Letter, October 23, 1940, Thomas to Gibson	4296	1507
112—Memo., December 3, 1940, Forsythe to Klinedinst	4300	1511
113—Letter, December 4, 1940, Klinedinst to Dewar	4303	1514
114—Letter, December 18, 1940, Gibson to Forsythe	4305	1517
115—Cable, December 24, 1940, Pascoe to Timken	4313	1524
116—Cable, December 28, 1940, Gibson to Timken	4314	1525
117—Letter, December 31, 1940, Gibson to Forsythe	4315	1525
118—Umstattd Memo., February 20, 1941	4317	1527
119—Letter, February 26, 1941, Clapp to Umstattd	4318	1528
120—Letter, March 1, 1941, Umstattd to Clapp	4319	1529
121—Cable, February 18, 1941, Timken to British Timken	4320	1529
122—Letter, February 18, 1941, Timken to British Timken	4321	1530

Record from U. S. D. C., Northern District of Ohio—Continued

	Original	Print
Government's exhibits—Continued		
123—Letter, February 24, 1941, Klinedinst to Dewar	4322	1531
124—Letter, February 24, 1941—Klinedinst to Pascoe	4323	1532
125—Letter, March 14, 1941, Pascoe to Timken	4325	1534
126—Letter, April 15, 1941, Timken to Pascoe	4330	1537
127—Letter, May 6, 1941, Pascoe to Timken	4334	1538
128—Memo., June 12, 1941, Kelly to Turner	4338	1541
129—Memo., March 19, 1942, by Forsythe	4339	1542
130—Memo., February 23, 1944, by W. R. Timken	4341	1544
131—Memo., June 10, 1944, Austin to Baal	4343	1545
132—Memo., June 15, 1944, Baal to Austin	4344	1546
133—Letter, July 10, 1944, Klinedinst to Dewar	4346	1549
134—Letter, November 30, 1943, Dewar to Klinedinst	4349	1552
135—British Timken bearing	Physical	
136—French Timken bearing	Physical	
137—Unit production tabulation	4350	1553

Recross examination of William DeKrafft.

By Mr. Nitschke:

Q. Mr. DeKrafft, in your opinion is it necessary in order for an American company to do business abroad that they enter into cartel agreements to divide up world territory and fix prices?

Mr. Day: I object.

The Court: I think I will permit him to answer that. He has testified to the methods under which business could be transacted in Europe by an American business concern. [fol. 2457] I will permit that question to be put.

Q. Do you understand the question?

A. I understand the question. Might I say I have had experience only with one cartel arrangement. Would you be satisfied with an answer based on that experience?

Q. I would like to have your opinion.

A. That experience was in regard to rubber.

Q. I wonder if you could answer the question?

(Previous question read.)

A. I think the only way I can answer that, without being facetious, would be when in Rome, do as the Romans do. I have no intentions of being facetious.

Q. Is it your opinion that that is necessary?

A. I would say that since you are attempting to do business in any country you have got to conform to the rules, whether they are commercial or whether they are laws.

Q. I didn't ask you whether you had entered into specific written agreements. My question was whether you had to enter into agreements with foreign manufacturers dividing up world territories and fixing prices?

A. I would say that was necessary in some. Perhaps I should not say "necessary". I should say that it has been the practice in some industries.

Q. What industry is that?

[fol. 2458] A. That has been the—

Q. Besides anti-friction bearings.

A. I don't know anything about anti-friction bearings but I do know from reading in reports—

Mr. Day: I want to object to that question. I don't think that is quite the proper question "besides anti-friction bearings". That is his interpretation.

Mr. Nitschke: Well, I will withdraw the remark.

The Court: I believe his testimony was all-inclusive on a profitable method of doing business in Europe by American concerns, and justifies a question of the sort that was originally put, whether or not the only way by which they could engage in a profitable business in Europe is by dividing up the world into respective markets. I believe that is your question.

Mr. Nitschke: It is, yes.

A. (Continued) I think that is that question. I would say that it may be that the cartel is so strong in Europe that you would have to agree to the terms of the cartel agreement.

Q. Your answer is if there is a cartel in Europe it might be necessary. Would it be necessary for an American [fol. 2459] company to arrange a cartel agreement dividing the world territory in order to do business abroad?

A. I think that it would be a strange thing for an American company to make a proposal as such to an English company or a group of English companies.

Mr. Nitschke: That is all.

Mr. Day: That is all.

[fol. 2460] Thereupon Imrie De Vegh being recalled as a witness, further testified as follows:

Further direct examination of Imrie De Vegh.

By Mr. Ketterer:

Q. Mr. DeVegh, before the noon recess we had just completed reading a portion of Defendant's Exhibit 173. I should like now to direct your attention to the first table that is attached to this exhibit which bears the heading "Table 4, Ball and Roller Bearings and Parts: Exports of principal producing companies". That table shows what in respect of exports generally from countries and to countries?

A. The first line after the line showing the dates and the names of the countries indicates the total volume of exports from each one of the countries named in the ovr-all heading, and shows that, for instance, Italy, had exports of between 1 and 5 million dollars a year. The next section gives the same information on Germany, then the following on Swedan, and on the United Kingdom, France, Switzerland, and the United States, and finally a summary showing the total exports of the principal producing countries. Then these total exports of the exporting countries are subdivided by countries of destination to which these exports went from the seven large exporting countries.

[fol. 2481] Q. By that you mean that the names of the countries with the number in the vertical column—

A. On the left.

Q. —are the names of the importers who imported these respective anti-friction exports that were exported by the countries named in the horizontal heading?

A. Yes.

Q. Now, I want to direct your attention on this table to the line that shows the receipts or imports of ball and roller bearings and parts from various countries,—Italy, Germany, Sweden and the United Kingdom: Looking first at Italy, what is the amount of exports shown from Italy to the United States in the various years?

A. Exports from Italy to the United States were $152,306 worth in 1929, $4,233 worth in 1932, and negligible thereafter.

Q. And as to Germany, what does it show as to the exports from Germany into the United States in these same years?

A. Roughly $100,000 worth throughout. The range is between $131,662 and $94,759.

Q. And exports from Sweden to the United States?

A. I do not have the 1929 figure on this table because the original table of course does not contain it. For the two years that it is available it was $11,922 and $85,106.

Q. And what years were they, respectively?

[fol. 2462] A. 1932 and 1933.

Q. How about exports from the United Kingdom to the United States of all types of anti-friction bearings?

A. The highest in 1929 was about a quarter of a million dollars, and much smaller amounts during the depression.

Q. France?

A. Negligible—$7,000.

Q. Switzerland?

A. Even smaller.

And the total imports into the United States shown are, of course, a tiny percentage of total domestic consumption, as will appear from subsequent tables.

Q. Can you tell us where you have the totals of the imports into the United States?

A. Yes.

Q. Can you tell us if this shows the total exports of principal countries into the United States?

A. United States into all countries.

Q. It is not total imports to the United States?

A. One of the subdivisions, that is right.

Q. What does that amount to?

A. If I am not mistaken, in 1932 it was $156,000.

Q. That was total imports into the United States from all countries on the outside?

[fol. 2463] A. That is right.

The Court: What was the question?

Q. Total imports into the United States from all sources of anti-friction bearings in 1932 was the amount of how much?

A. $156,000.

Q. Now, from memory can you tell what the total consumption figure in 1932 was approximately in the United States?

A. 1932 was not a census year, therefore I don't know for certain, but it was on the order of 40 or 50 million dollars, judging by the censuses of 1931 and 1933, which straddle the year. Of course these are depression time figures, but it will appear from subsequent tables which are there presently how much both the trade and the United States production was.

Q. I would like to direct your attention to Page 13 of Defendant's Exhibit 173. I wish you would explain what that shows.

A. This shows imports for consumption into the United States, by years, derived from the same tariff commission publication. This page which is marked 13, and the next page which is number 14 are two related tables. If your Honor will look at it, the first segment is marked Table 5

"Anti-friction bearings: balls and rollers, ball and roller [fol. 2464] bearings and parts". That is the summary table. The next section, Table 6, and the two sections on the following page, marked Tables 7 and 8, are subdivisions of Table 5. Table 5 is the sum of the following three.

Q. Will you explain to the Court what the various headings and data developed in that table mean?

A. The summary table, the first one, the rate of duty is that applied by the various U. S. tariffs, starting with the Underwood tariff rate, in 1923 the Ford-McCumber tariff rate, which was continued in the Hawley-Smoot tariff bill in 1930 and wasn't modified until 1935, but this table having been published in 1934 obviously carries the story only to 1933.

Then the following column shows the quantity of imports in pounds, and the following column shows the value of the imports in dollars. The next column is the unit value, in other words the cents or dollars per pound. The following column shows the computed duty and the last two columns show the effective ad valorem percentage rate of protection that the rate of duty named in the second column from the left yielded. It showed during the 1920's and the 1930's the effective rate was between 54.4 and 61.9 per cent, roughly speaking between 55 and 60 per cent, as an effective rate of protection.

Q. Now, that was applied against value, is that correct? [fol. 2465] A. That is correct.

Q. So that if you had a bearing that represented a value, for examination purposes, of $5, the duty on it would range from 55 per cent to 65 per cent of the $5 value?

A. Yes, roughly speaking 55 to 60, but there are more detail breakdowns available. This is the over-all effective rate and the effective rate by sizes of course varies a little.

Q. You say Tables 6, 7 and 8 are subdivisions of Table 5, and by subdivisions you mean what?

A. I mean that Table 5 shows the sum total of all anti-friction bearings imported into the United States and parts thereof, in the years listed. Table 6 shows balls and rollers separately. Table 7 shows ball bearings and parts separately, and Table 8 shows roller bearings and parts separately.

Q. But other than that the content of those three tables is

the same as the contents of the summary table, which is the first one?

A. That is right.

Q. On Page 13. Now, directing your attention to the table that is marked Table 10 "Anti-friction Bearings", how does that differ from the material contained in the other tables in Defendant's Exhibit 173?

[fol. 2466] A. These are imports into the United States over a longer period of time than the first table included. The reason why we included both tables was because we didn't want to be partial. For instance, the first table was the table giving the exports of seven different countries, broken down by each importing country. It was therefore limited in its comprehensiveness, or limited in coverage from the viewpoint of the number of years covered. Whereas this table gives a fairly complete coverage, that is a biennial coverage with respect to the United States for each census year from 1923 to 1933, and it shows the sources of the imports of anti-friction bearings of countries, imports into the United States, that is.

Q. And that shows the imports from those countries into the United States in those years?

A. That is correct. And the total value fluctuated between just a little over a million dollars in 1923, and a peak value of 1.4 million dollars in 1929, with a low of $150,000 in 1932.

Q. Now, does Table 11 show anything different from the table marked 10 in Defendant's Exhibit 173?

A. This Table 11 gives similar information for the United States, broken down by the three subclassifications, namely, showing balls and rollers separately, ball bearings [fol. 2467] and parts separately and roller bearings and parts separately.

Q. You mean it shows the imports in those years into the United States from all sources of those different classifications of bearings?

A. For the years 1929, 1933, and preliminary figures for 1934.

Q. What does it show as to the total of imports of ball bearings and parts therefor in those years?

A. The value figures are $492,000 for 1929, $67,809 in 1933, and $161,102 in 1934.

Q. Now, there is one other table left attached to this ex-

hibit, Defendant's Exhibit 173. What does that show in respect to the other tables?

A. That shows exports from the United States by countries for the years 1923, 1925, 1927, 1929 and 1931.

Q. And does that cover all exports of anti-friction bearings in those years from the United States?

A. It does.

Q. To—

A. All countries.

Q. And the total exports in the years as shown by that table of all kinds of anti-friction bearings amounted to how much?

A. The highest value was in 1929, 3.2 million dollars, of which almost 2 million dollars worth went to Canada and [fol. 2468] just under three-fourths of a million dollars worth went to Soviet Russia, which, however, must have been a special order since, as you look at the Soviet Russia figures, you will see through the years 1929 and 1931 they are the only years in which even amounts exceeding half a million dollars appear for Soviet Russia. The Canadian figure is consistently the highest for the well-known reason that Canada is in its manufacturing geared to American industry, especially automobile production, and so forth, and is largely supplied by subsidiaries of American corporations located in Canada.

Q. Does Table 13 show a breakdown as to the different classifications of bearings or does it show just the total of all types of anti-friction bearings exported?

A. It is a sum of ball and roller bearings and parts, all classes in one.

Q. As to the United Kingdom, what does it show?

A. As to exports, out of the total shown at the bottom of the first portion of the table, exports from the United States to the United Kingdom have never exceeded $200,000 during the period reflected in this table, which contains the census years from 1923 to 1933, inclusive.

Q. Is there any significance to unit values and the rest of the data set forth in these tables?

[fol. 2469] A. Only for the purpose of tariff specifications; since there is both a specific duty and ad valorem duty on bearings coming into the United States, it is necessary to have a determination of the unit value and to have

a calculation of the ad valorem operation of the tariff for the purpose of being comprehensive.

Q. But that is the sole purpose?

A. It has no other significance than the tariff.

Q. And otherwise there would be nothing to apply that portion of the tariff against.

A. Yes. If it was purely a specific tariff that would be something else.

Q. Mr. DeVegh, before the noon recess you were talking about the inception of foreign exchange controls in various countries and I have here now an exhibit that has been marked for identification as Defendant's Exhibit 174, and I will ask you if you can tell us what that is.

A. May I make an off the record comment?

Q. Just tell us what that is.

A. This is a summary table derived from a document published by United States tariff commission entitled "Regulation of Imports by Executive Action in Countries with Independent Tariff Jurisdictions".

Q. Is that what that is?

[fols. 2470-2477] A. I suppose I can say into the record if you don't want me to say it off the record, that there is a difference between the exhibit which is this black and the white which has been made therefrom owing to the photostating technique.

Q. That is of the photostating office.

A. This contains irrelevant context material. I think you ought to submit as an exhibit a copy which does not contain the irrelevant text material.

Q. I will ask you what you mean?

A. I might add of course we can show this to Mr. Nitschke, the text.

Q. All we want is the title.

Mr. Nitschke: It is irrelevant. I am satisfied to let it go at that.

Mr. Ketterer: We will mark a white copy.

The Court: If there is an admission of irrelevance I don't think there will be an objection.

Mr. Nitschke: (After further examining exhibit) Maybe it is not irrelevant. It seems to qualify the table. I would like to look at it.

The Witness: We have the original documents here in

each case, so that we can in each case compare the original document and the explanatory matter.

[fol. 2478] Mr. Ketterer: If the Court please, at the conclusion of the testimony yesterday we were in the somewhat astounding position of having most everybody agree upon a matter of irrelevance. I have exhibited to Mr. Nitschke this morning the complete text of the article, pamphlet from which this table that was offered in evidence yesterday was taken, and he has suggested that it may be well to put approximately one paragraph of the text that is beneath the table in evidence, and rather than photostat it I think perhaps we could agree I will read that paragraph into the record and let the record show that that was the paragraph that immediately followed the table that was introduced and marked in evidence Defendant's Exhibit 174.

(Reading) "Foreign-exchange control.—The tabulation above shows the countries where foreign-exchange control is or has been officially in effect. Unofficial control exercised by the banks has existed in some other countries as, for example, in Norway (since September 1931), Switzerland (since May 1940), and Peru. In some countries [fol. 2479] foreign-exchange control is not employed to restrict bona fide commercial transactions. In others it consists merely in the obligation to sell to a governmental agency the foreign exchange derived from specified exports, and is not essentially a *restrction* on imports. In still other countries with both foreign-exchange control and import-permit requirements, foreign exchange is issued freely if import-permit requirements have been complied with; consequently, the mechanism of exchange control does not operate directly as a restriction on imports, although the issuance of import permits often depends on the availability of foreign exchange. For a number of countries, the fact that foreign-exchange control is not a direct restriction on imports is indicated by notes. In some other countries the control may be merely partial in that it applies only to transactions exceeding a specified amount, as for a time in Japan and Portugal or to transactions in specified currencies as in some British countries where transactions with sterling countries are not controlled.

"In a few countries control was exercised unofficially [fol. 2480] by the banks for some months prior to official introduction, as, for example, in Austria and Bolivia, and in

some other countries the control was not restrictive on imports until a month or so after the official introduction. A single date in the tabulation indicates that exchange control introduced officially at that time has since been continuously in effect."

[fol. 2481] Set of papers marked by the Clerk for identification Defendant's Exhibit 175.

Imrie DeVegh, thereupon resumed the stand for further direct examination.

Further direct examination of Imrie DeVegh

By Mr. Ketterer:

Q. Mr. DeVegh, I have here a set of papers that have been marked for identification Defendant's Exhibit 175. I will ask you to examine them and tell the Court what they are.

A. This is a compilation that was prepared by myself and my assistants under my supervision showing international trade in anti-friction bearings in the selected years 1934 and 1938. I have taken ten countries, including all major producing countries and major consuming countries, and the tabulation is the result. These figures were taken from the information in the New York Public Library from the original import and export statistics of each individual country.

The top table shows the end result converted into U. S. dollars. The other tables are supplementary tables showing the original breakdown for each country, showing, in other words, in the case of each country, where its exports of anti-friction bearings went and from which countries its imports of anti-friction bearings were obtained.

[fol. 2482] Mr. Ketterer: We offer Defendant's Exhibit 175.

The Court: It may be received.

Q. Now, Mr. DeVegh, in looking at Defendant's Exhibit 175, in the lefthand corner of the summary page, that was the first one, I would like to direct your attention to the list of countries there. On what basis did you select the countries delineated there, Sweden, Italy, Germany, United States, United Kingdom, Austria, Switzerland, Spain, Japan, Netherlands, Belgium and France?

A. On the basis that this list included, to my knowledge, all the important industrial countries that had a significant trade in anti-friction bearings. There were of course, other countries that did have trade in anti-friction bearings but the characteristics of that trade were not significantly different from these, and it didn't seem worthwhile to put down thirty or forty countries.

Q. Now, in the first column of this page is "Imports and Exports." What did the table underneath the heading of that show, on Defendant's Exhibit 175?

A. They indicate the amount in dollars in which these [fol. 2483] countries imported anti-friction bearings and exported anti-friction bearings, respectively, to all other countries.

The export figures are interesting. They include all important anti-friction bearing exporting countries, Sweden being the largest, Italy, Germany, the United States and the United Kingdom being the next largest, and these five countries altogether accounting for the bulk of the world's export trade in anti-friction bearings.

These five countries are the only ones whose total exports of anti-friction bearings amount to more than one million dollars each in the two years for which we have prepared this breakdown. Previous years can be found in that earlier exhibit giving the Tariff Commission's figures converted to U. S. Dollars for the previous years. These figures are intended to bring that information up to date beyond where the Tariff Commission's figures ended.

Q. I think it is correct the earlier exhibit stopped in the year 1933?

A. That is correct.

Q. This shows the figures for 1934 and 1938?

A. That is right.

Q. Now, the total figure as to imports of bearings for 1934, as shown on this table marked Defendant's Exhibit 175 into the United States from all sources is $697,547 in [fol. 2484] 1934. Do you mean by that that that represents the sum total of all imports regardless of the source that came into the United States in that year?

A. That is correct.

Q. And for the year 1938 the total shown under the heading "Imports" is $738,603. And does the same observation apply to that?

A. Total imports of anti-friction bearings into the United States.

Q. From all sources?

A. From all sources.

Q. Looking at the individual table, and the first one that is here "In and out of Belgium." Now, will you examine that and explain to the Court on what basis the figures are arranged on those individual pages, using Belgium as an example?

A. In each case we had to conform to the original sources, in other words we didn't try to re-write the export-import statistics of each country, so that the tables by countries would slightly differ in their set-up and size and detail of the breakdown. This was excerpted, as the source statement at the bottom of the page shows, from the Monthly Belgium Import-Export Statistics for the given year. On the left side are seen the major countries with which [fol. 2485] Belgium had anti-friction bearings trade. In all these tables I tried to omit the complete tabulation, in other words, where there was five or a thousand dollars' worth of trade I just dropped the figures because it would clutter up the record endlessly. But it will be seen from the values shown that these values were relatively low. The Belgium franc was about 5 cents in 1934 and about 3 cents in 1938. So the 26 million francs corresponds to $950,000 worth of imports, and the exports figure of 790,000 francs corresponds to $40,000.

Now the reason why Belgium was even as much of an importer of anti-friction bearings as this table shows is that Belgium was a major metallurgical manufacturing country, very large metallurgical industries, as compared to the total size and population of the country, and of course in 1938 Belgium was engaged in the European rearmament program which required a very substantial amount of anti-friction bearings.

Q. Now, as to imports from the United States, what does that table show in dollars as to Belgium? Can you convert that?

A. Well, imports from the United States—

Q. Into Belgium.

A. —into Belgium were about 6 percent of the total in 1934 and about the same percentage in 1938. In other

[fol. 2486] words, 1,600,000 francs, at about 3.3 cents would be—

A. It's approximately $50,000.

Q. $50,000?

A. Roughly speaking.

Q. That figure represented the exports from the United States?

A. To Belgium.

Q. In what year?

A. 1938.

Q. Now, were there any significant imports into the United States from Belgium?

A. None. I didn't even list these on this table because the figure obviously was less than a few thousand dollars.

Q. Now, I would like to turn—

A. Belgium was a net importer of bearings anyway.

Q. I would like to turn to the table that has to do with the United Kingdom.

[fol. 2487] A. That table is stated in pounds sterling. In 1934 the value of the pound sterling was about $5. In 1938 the value of the pound sterling was about $4¾.

Q. And the exports from the United States into the United Kingdom—before giving that figure, what is included in the general deseriptive language "United Kingdom"?

A. The United Kingdom of Great Britain and Northern Ireland.

Q. What does that set of tables show in respect of exports from the United States of all classes of bearings to the United Kingdom in 1934 and 1938?

A. According to the British statistics, the total imports of the United Kingdom from the United States in 1934 amounted to roughly 11,000 pounds or $55,000 in ball bearings and parts, and to 13,000 pounds or about $65,000 in roller bearings and parts.

Q. And the imports into the United States from the United Kingdom for that period, what does that table show as to that?

A. According to the British statistics exports to the United States of roller bearings and parts in the aggregate amounted to just under 20,000 pounds or just under $100,000.

Q. In what year was that?

A. That was in 1934.

Q. What about 1938?

[fol. 2488] A. In 1938—imports or exports, sir?

Q. Imports into the United States from the United Kingdom first.

A. That is, exports from the United Kingdom?

Q. That's right.

A. Exports from the United Kingdom to the United States, according to the British statistics, amounted to 8,500 pounds or rather less than $40,000.

Q. In 1938?

A. In 1938. That is roller bearings and parts.

Q. And what were the exports shown in that year, 1938, from the United States to the United Kingdom?

A. In other words, the imports into the United Kingdom from the United States, as shown in the English statistics, were for ball bearings 34,000 pounds or $170,000, rather less than $170,000, and for roller bearings it shows 59,000 pounds, in other words, rather less than $300,000.

Q. Those, again, are from all sources?

A. No, this is imports from the United States into the United Kingdom in 1938 according to the British Trade statistics.

Q. What I meant, Mr. DeVegh, when I said "all sources" I meant from all companies exporting bearings either from the United Kingdom to the United States or from the [fol. 2489] United States to the United Kingdom.

A. Indeed, sir. There is no way of distinguishing between companies.

(Thereupon table showing value of United States domestic exports of anti-friction bearings to the United Kingdom, Europe, and the world, was marked by the Clerk, for identification, Defendant's Exhibit 176.)

Q. I have here, Mr. DeVegh, a table that has been marked for identification as Defendant's Exhibit 176. I will ask you to look at that and tell us what that shows?

A. That shows the value of the United States domestic exports of anti-friction bearings to the United Kingdom, Europe, and the world for 21 years, from 1927 to 1947. In other words, this brings the story up to date and includes the war and post war record.

Q. What is shown on that table marked Defendant's

Exhibit 176 as to the allocation of imports between Europe, or the United Kingdom, Europe, and the balance of the world?

A. There is a percentage breakdown showing that the bulk of American anti-friction bearings that were exported went to non-European countries. All of Europe accounted for relatively small percentages in the back years. Of course, very much larger percentages during and after [fols. 2490-2491] the war. In the case of the United Kingdom the percentage was negligible until the war. During and after the war, of course, the percentage was higher.

Mr. Ketterer: We offer Defendant's Exhibit 176, if the Court please.

The Court: It may be received.

[fol. 2492] The Witness: Your Honor, may I be permitted to mention one more thing about the matter of using Europe as a category? Europe, outside of the United States, virtually the entire free world's metallurgical capacity is in Europe. There is a little bit of metallurgy here and there, in Latin America and elsewhere, and other tables show what the imports of Japan in anti-friction bearings have been, but the world's machinery is essentially and has been [fol. 2493] essentially built in the United States and in Europe, chiefly in the western European countries. The anti-friction bearings are components invariably of machinery. The demand outside the machinery producing countries is a derived demand, replacement parts, repair parts, and so on. The original equipment demand must be, your Honor, where metallurgical industries are.

(Thereupon table showing imports of anti-friction bearings into the United States for 1922 to 1943 and for 1947 was marked by the Clerk, for identification, Defendant's Exhibit 177.)

[fol. 2494] Q. Will you tell us what that is, please, Mr. DeVegh?

A. This table shows the value of imports of anti-friction ball and roller bearings and parts thereof, including balls and rollers, into the United States by countries of origin, 1922 to 1943 and 1947. In other words, this is the most detailed breakdown that we have presented so far of imports into the United States of anti-friction bearings by countries of origin over a comprehensive period of time.

Mr. Ketterer: We offer Defendant's Exhibit 177.

The Court: The source of this material is given at the bottom of the table, is it not?

The Witness: It should be the Foreign Trade and Navigation of the United States. Yes, the Foreign Commerce and Navigation of the United States, United States Department of Commerce, annual editions 1923-1943 and for 1947 the figures are from a special preliminary report of the Department of Commerce.

The Court: It may be received.

Q. Now, Mr. DeVegh, what countries, as shown by this table marked Defendant's Exhibit 177, had any significant imports into the United States?

[fol. 2495] A. The countries that are known as the European producers of anti-friction bearings, France, Germany, Italy, Sweden, Switzerland, and the United Kingdom. Among these, however, the only ones that were regularly even as high as $100,000 were Germany, Italy until 1929, Sweden, and the United Kingdom. After the depression, after 1929, the Italian company gave up its merchandising attempt in the United States.

Thereupon a table showing value of production of ball and roller bearings in the United States was marked by the Clerk, for identification, Defendant's Exhibit 178.

Q. Now, I have a sheet that has been marked for identification Defendant's Exhibit 178. I will ask you to examine it, Mr. DeVegh, and tell us what that is.

A. This shows census figures for the United States indicating the value of production of ball and roller bearings in the United States in the census years from 1925 to 1933 and in 1937 and in 1939.

Q. Now, in what are those totals shown?

A. They are shown on the table in thousands of dollars, indicating that in 1925 and in 1927 the total production was just about a hundred million dollars each, in 1929 it was $120,000,000 each, in 1931 and in 1933 this production [fol. 2496] dropped to 50 and 40 million dollars respectively, as I mentioned in my oral testimony yesterday, and by 1937 it was back up to $124,000,000, and in 1939 it was $104,000,000. 1939 is the most recent year for which a census of the United States is available, but it is common knowledge that today the figures on production of all those

products, including anti-friction bearings, runs three or four times the 1939 value.

Q. Now, I want to direct your attention to Defendant's Exhibit 175 again, from which it appears that the total imports into the United States in the year 1934 amounted to $697,545.

A. Yes, sir.

Q. Do you have a comparable figure for the domestic production in the United States on the table?

A. Unfortunately not, because 1934 was not a census year in the United States.

Q. What is the nearest year to that that you have?

A. The nearest year is 1933 when the production was $40,000,000, and in 1937 on this table it was $124,000,000.

Q. And in 1934 the exports are shown on a table marked Defendant's Exhibit 175 to all sources from the United States as $1,429,184. The nearest year you have there is what?

[fol. 2497] A. Still the same, one showing 40,000,000 and the other showing 124,000,000, recovery progressing from the low of 1933 until 1937.

Q. That represents roughly what percentage—the imports of 1934 represented roughly what percentage of the nearest figure you have there?

A. Well, certainly not more than 1 per cent—on this, about 1½ per cent, isn't it? But I should say that would be about the highest. Normally, the imports were constantly less than 1 per cent for census years, the comparisons which are available.

Mr. Ketterer: We offer Defendant's Exhibit 178.

The Court: It may be received.

Thereupon two sheets, the first showing production in the United Kingdom for 1924 and 1930, and the second sheet showing production in Sweden for 1930, 1931 and 1932, were marked by the Clerk, for identification, as Defendant's Exhibit 179.

Q. I hand you here two sheets, Mr. DeVegh, that have been marked for identification Defendant's Exhibit 179, and I will ask you to tell us what they are, please.

A. These are copies taken from the Department of Commerce Summary of Industrial Machinery Production, the [fol. 2498] first one quotes the United Kingdom census of production indicating ball bearings and roller bearings,

including steel balls and steel rollers for bearings, to have been produced in the United Kingdom in 1924 in the amount of 2¼ million pounds, or slightly over $10,000,000, and in 1930 approximately 2½ million pounds, or approximately 12½ million dollars at the then rates of exchange. The next table attached to it quotes from the same source Swedish production statistics, together with comment from the same source, referring to the table. It shows that Swedish production of ball bearings and roller bearings in the year 1930 amounted, in the aggregate, to about 42,000,000 Swedish crowns, which at that time were worth roughly a quarter. In other words, this again is the production in Sweden on the order of somewhere between 10 and 15 million dollars. The production, of course, declined in 1931 and 1932. The figure further down gives imports and exports of ball and roller bearings of Sweden in the amounts of imports of about a million crowns, exports of about 20 million crowns for the year 1933, in which year the Swedish crown was selling at a discount, in other words, about 20 or 21 cents.

The Court: To the dollar?

The Witness: To the dollar, yes.

[fol. 2499] Mr. Ketterer: We offer Defendant's Exhibit 179.

The Court: It may be received.

Thereupon Tariff Schedules from the Department of Commerce showing prevailing rates effective on varying dates in 1947 were marked by the Clerk, for identification, Defendant's Exhibit 180.

Q. I have, Mr. DeVegh, a series of photostats that have been marked for identification as Defendant's Exhibit 180. I will ask you if you can identify that, please?

A. The originals of these photostats were obtained from the Office of International Trade in the Department of Commerce, and they show as of the dates indicated at the heads on each page on the righthand side the tariff applying to anti-friction bearings in the foreign country named in the center heading on each page.

Q. By that you mean that those are the rates that would prevail against the importation of bearings—or that did prevail against the importation of bearings from the United States or any other country into the country whose name appears on the top of the sheet?

A. That is correct, Mr. Ketterer.

Mr. Ketterer: We offer Defendant's Exhibit 180.

[fol. 2500] The Court: It may be received.

Mr. Nitschke: Did the witness state that this is the tariff as of March 12, 1948?

The Witness: If that's the date on the top of the page, then that's what it is.

Mr. Nitschke: There are two dates on the pages I have, one is in the righthand corner and the other shows the date March 12, 1948.

The Witness: No, if you read the text it says immediately below "Statement of rates of import duty on ball and roller bearings, prevailing rates effective November 15, 1947." This is for Australia, which is the top page on my schedule, and on the following page, which is another Australian sheet—they apparently obtained two Australian sheets for two different dates. The next one is Austria and it shows a statement of rates for import duties on anti-friction bearings, and there the first date is August 6, 1947, which is when this original was typed, and it appears it was written on March 12, 1948, when it was obtained.

Mr. Nitschke: Then this does not include the changes made by the Geneva Trade Agreement?

[fol. 2501] The Witness: No, sir—excuse me, sir. The Geneva Agreement antedates March 12th. Somewhere, I think it shows that—it would depend upon the up-to-dateness of the Department of Commerce information.

The Court: Austria shows August 6, 1947.

The Witness: That would include it, yes. In the case of France, for example, we have both an old schedule and new schedule, and I know we have shown in the case of Belgium the original schedule corrected for the new schedule. In other words, wherever it was possible corrections were made.

Q. By that you mean wherever the data was available in the Office of the Department of Commerce it was corrected to show the effects of the Geneva Trade Agreement?

A. And we have also checked the corrections in my own office from my own copy of the Geneva Agreement, but schedules show anti-friction bearing rates in the official text for a few countries only.

The Court: The import duty is predicated on weight rather than on amount?

The Witness: On bearings, in many cases, your Honor. [fol. 2502] Mr. Ketterer: I think, if the Court please, you will recall that yesterday in respect of the United States tariff it was pointed out that they apply both as to weight and as to value, there being a specific duty and an ad valorem duty into the United States.

The Court: Yes, I recall that, and that's the reason I asked the question. I notice on the second sheet here, which I think deals with Belgium, it is given as to weight only and not as to value.

The Witness: Your Honor, most of these countries in Europe have the specific rates by quantities rather than rates ad valorem, but some idea of the quantity value relationship can be derived from the statistics relating to the United States imports, which have divided through the the quantity in pounds by the dollars in each year. Those tables are in the exhibits. They are the photostats from the United States Tariff Commission study of 1934 that contains some such information as to the relationship of weight to value by sizes in international trade. Unfortunately, for foreign countries we have no such evidence because the figures are not available in this country. But [fol. 2503] the weight value relationship must be about the same as in the United States. In other words, I believe the weight value relationship shows that a pound of anti-friction bearings stands on an average between 50 cents and a dollar in value in international commerce, as it appears for the United States.

Q. Now, Mr. DeVegh, yesterday you discussed in your testimony the situation, general economic situation in Europe in the 1930's up until 1939, which marked the beginning of the second World War. I would like to direct your attention to the situation that has existed in Europe since 1939. First of all, during the war period what was the general situation as to imports from Europe or exports to Europe to and from the United States?

A. Virtually the entire trade was strictly supervised and government controlled, and completely subordinated to war requirements in each country. A certain amount of trade took place for civilian commerce accounts, but even that was very rigidly supervised subject to export licenses at

both ends, and in the case of Europe usually also subject to import license. In the United States it wasn't, of course, necessary to have an import license.

Q. Now, directing your attention to England and the United Kingdom, what was the general situation in the [fol. 2504] United Kingdom on the termination of the second World War trade-wise?

A. The United Kingdom was in need of very large quantities of imports. During the war the United Kingdom obtained immense quantities of imports from the United States on Lend-Lease. I believe that the total amount of Lend-Lease given by the United States amounted to roughly 40 billion dollars to all countries, or even more than 40 billion dollars, and of this amount the United Kingdom got, as I recall it, 26 billion dollars. Lend-Lease consisted very largely of moveable goods. In other words, a very large part of Lend-Lease shows up in the trade statistics of the United Kingdom. Other parts of Lend-Lease do not show up in the trade statistics because they were military supplies directly given, occasionally to English forces in the field, so that the trade statistics are not an accurate measure of the total amount of Lend-Lease appropriations in any sense. But, as I say, during the war the United Kingdom converted to war more of its civilian economy than any western power, and the result was that the United Kingdom practically ceased to export for commercial purposes. The United Kingdom's exports of all products dwindled to small percentages of their prewar exports, and the entire [fol. 2505] British war effort and the feeding of the population and the maintenance of the British industrial equipment was largely financed by previously existing capital resources. In other words, by the sale of foreign assets, by borrowing wherever possible, and making foreign countries accept payment in pounds sterling left on deposit in London, since they could not be spent on anything because England did not have anything in export. This was the case very substantially with respect to countries like Argentina, Egypt, and the Near East, the Arab countries generally, and British India. Well, finally by very substantial amounts of Lend-Lease from the United States and so-called Mutual Aid from Canada. The result was that after the war the English had a very major economic problem in that, first of all, they had to acquire continuously

a large supply of food stuffs and raw materials to keep moving and to fill the pipelines of production and start producing its products again. The Island is essentially a fabricating economy, imports raw materials and semi-finished goods and exports finished and semi-finished products. In order to be able to start up operations, the workers have to be fed, in other words, the population's food supply had to be maintained by imports essentially. England is only about 25 per cent, or maybe now 30 per cent self-sufficient in food stuffs, in other words, between [fol. 2506] two-thirds and three-fourths of England's food has to be imported. In addition to that, they have to import the bulk of their raw material supplies except for coal and some iron ore, and then in the situation in which they emerged from the second World War they had tremendous and urgent requirements for reconstruction, not only of the bombed out buildings but for the replacement of worn out machinery. During the war all replacements that were postponeable had been postponed and British industrial equipment was in an extraordinarily run down condition when the war ended. Now, the situation has received so much publicity in the United States that I don't know that it serves any useful purpose for me to go into detail, but the first step in trying to provide for an economic and financial reconversion, in other words, a return to more normal conditions, was the Bretton Woods Agreements. No sooner were they enacted than it became obvious they were grossly inadequate. Under the Bretton Woods Agreements Great Britain was entitled to borrow, as I recall it, $425,000,000 per annum for four years, and that was inadequate. Then a British loan was negotiated. The Bretton Woods Agreements were finally approved by Congress, I think, in June, 1945—Lend-Lease ended in August, 1945, and the loan negotiations started almost [fol. 2507] immediately thereafter, in September of 1945. They were concluded in December, 1945, and Congress approved them in the spring of 1946, and the loan amounted to, as I recall it, 3¾ billion dollars in cash, plus about half a billion dollars in miscellaneous war assets. The loan was accompanied by a stipulation that the English should begin multilateral payments on July 15, 1947. Up to then the British, in their international economic relations with other countries, had built up an extremely complex system or network of special agreements. There were trade

agreements, which were frequently bilateral, and usually very specific as to quantities and stipulations under which the respective quantities moved; there were payments and clearing agreements. For instance, the Spanish agreement which was in effect before the war, in 1939, which appears in our first exhibit, was replaced in 1940 by a different agreement and that, in turn, was replaced by a different payments agreement in 1946. In 1945 and 1946, while the English had these difficulties, they built up a new system of agreements to replace the system of wartime agreements, since they could not trade and make payments without very specific agreements with other exchange control areas.

Q. Well now, Mr. DeVegh, before you go into that, I [fol. 2507-A] would like to ask you this question. You have described the general economic situation of England at the close of the war. Now, did the British Government take any steps in respect of controlling trade based upon the situation that you have described?

A. Oh, very extensive steps. The British economy was, as I said a moment ago, more completely converted to warfare than any other allied economy, except possibly that of Russia. This meant, concretely speaking, that all British industrial activity was under Government supervision, with the various Government authorities in control of production and trade having virtually unlimited powers of directing industrial production. While on a much more limited scale, something similar occurred in the United States as well, but of course here the Government controls on production were much more limited than in England. This entire system of production organization in England implied also an integration of the regulation of imports into this system and, of course, of all construction within the country, and so on, because England, after all, operated on importing raw materials even during the war, and the British Government, therefore, was the principal wartime importer, importing, for instance, all the food. To this day, the bulk of British food purchases occurs in the form known as bulk [fol. 2508] purchases. In other words, the British Government makes an agreement with Argentina's Government saying they are going to take so many million pounds of meat per month or per annum, and a very large part of British trade is to this day so conducted, and during the war virtually all of it was so conducted.

Q. Yesterday we talked about currency controls and we talked about export restrictions and export licenses. What if anything did the British Government do, or continue, after the termination of the second World War, in respect of export restrictions or import restrictions or currency controls?

A. Well, the entire wartime control system was maintained virtually intact, with few local alleviations, and I mean this very comprehensively, including internal production controls, although some relaxation occurred. The entire exchange control system was maintained under the original war powers acts until 1947. In 1947 a new foreign exchange control act was passed, which is a part now of the permanent British legislation, authorizing the treasury to be virtually perpetuated in the control of exchange.

Q. So that by the exchange control act of 1947, the effect was what?

A. Perpetuation of the war powers.

[fol. 2509] Q. In dealing in foreign currencies?

A. That is then subject to the authority and permission of the British Treasury and its appointed agent, which is the Bank of England, and provides for licensing to do certain types of transactions.

Q. Looking specifically at the matter of imports into England from any outside country, such as the United States, what did the exchange control procedure that was adopted and followed in England after the termination of the second World War mean in respect of imports into England?

A. Well, the exchange control act, as such, controlled merely the importation of cash, securities and other evidences of ownership and indebtedness. But since it comprehensively controls sterling out-payments, and the most important part of the out-payments of sterling being the payment for imports, it by implication makes imports subject to exchange control, and as a matter of practice foreign exchange is not made available for the purpose of importation to British subjects in the United Kingdom unless it can be shown that the purpose of the importation is approved by the Government authorities that otherwise supervise the particular activity. I mean, in other words, the approval of the Board of Trade or of the Regional Industries Committees and of other organs is a prerequisite for prov-

[fol. 2510] ing that the importation is meritorious and, therefore, deserves an exchange permit.

Q. What general test is applied in determining whether or not a given import will be permitted and foreign exchange made available to purchase it?

A. Well, the general tests are as many as there are cases. The basic principles are, first of all—well, if we generalize with respect to all imports, that's one case. With respect to all imports the governing considerations are the source, insofar as foreign exchange supplies are concerned. I referred previously to this very extensive network of international agreements. The entire world, through this network of agreements, was broken down into five broad groups of countries. Within each group the rules were different, and the availability of exchange was also different. The commitment of the British Government to provide or not to provide exchange is different. So, therefore, that is the first consideration from the viewpoint of the exchange control authorities. From the viewpoint, then, of the individual internal control authorities, from the viewpoint of whether they approve and support the application for exchange, the situation then breaks down according to the announced policies of the British Government with respect to various industries, various situations, [fol. 2511] and with respect to the established policy whether there is an announcement or not.

The Court: Is that policy determined by law, or is it a policy determined by the respective administrative groups?

The Witness: With respect to foreign exchange?

The Court: I understand the foreign exchange is a legal enactment.

The Witness: That is a legal enactment supported by international treaties.

The Court: Yes, but this matter that you have described where you assume that a British manufacturer or merchant wants to import goods from the United States or elsewhere and pay for it in pounds sterling, you described a policy. Is that policy a matter that is statutory, or is that a policy to be determined or to be applied by the particular group that acts on the application for import?

The Witness: The original statutory authority was the defense regulations of 1939. I do not know the full legal history of how the British Government's war powers were held, if they were continued or re-enacted or terminated

[fol. 2512] and replaced by new enactments, so I cannot state this in detail. But, for instance, last November Mr. Harold Wilson, who I believe was the Minister of Commerce at that time, made a statement with respect to the export policy, in which he publicly stated that the industries producing for export, or replacing export, or indirectly promoting export, will receive favored treatment with respect to all materials, as opposed to industries producing for domestic consumption, and they had their special designations of regional export committees and regional industrial committees to supervise that situation in their respective regions. Now, what the statutory authority of these regional committees is, other than what continued under the old defense regulations, I do not know. But from the statement of Mr. Harold Wilson, we do know they not only exist but are continuously being used by the respective Government agencies to execute their policies. You see, the big constitutional change which has occurred in the country is this, that whereas during the 1930's the official declared ideology of the British Government was non-interference in private business and, therefore, any interfering occurred first indirectly by moral suasion, then, [fol. 2513] if necessary, by legislative enactment, but just as little as possible, and trying to keep down control devices—it rather opposed, for instance, the German and Italian method of industry control—during the war there occurred what amounts substantially to a very extensive socialization of British industry, not from the viewpoint of ownership but from the viewpoint of integrating the operations.

The Court: In other words, the attitude of non-interference has given place to Government domination?

The Witness: During the war entirely so, and since the war the British Government has been a Labor Party Government which has believed in the giving of direction to the economy from above, insofar as a number of industries are concerned, and forcing the other industries to pursue the objectives of the State, as the Government sees it, and, therefore, they very deliberately go on using the wartime control measures and their successor measures as methods to enforce what they consider the most desirable policy or the necessary policy from the viewpoint of rebuilding England.

[fol. 2514] Q. Mr. DeVegh, going directly to the question of availability of a given product in the United Kingdom, what has been the practice of the British authorities, the Board of Trade, with respect to issuing import license for products for importation into Great Britain with respect to availability within the confines of the United Kingdom?

A. It is my understanding that the British Government will not permit the importation of goods that are produced in quantities they consider sufficient in the United Kingdom.

Q. Now, yesterday you were talking to some extent about the original formation of a sterling area or sterling block that commenced in the early 1930's and continued throughout the 1930's up until 1939, and you described in some detail how the thing operated within that area from 1930 after the collapse of the pound sterling in 1931 up until 1939. Now, has there been any development in respect of the sterling block or sterling area since the beginning of the war in 1939 and since the termination of the second World War in 1945?

A. Well, I touched upon this briefly before when I said a complex network of agreements was built up by the British Government classifying all the countries in the world in five small groups.

Q. Will you talk a little louder?

[fol. 2515] A. I am sorry. During the war the control system was of course very complete, but this development of the postwar currency agreements did not begin until 1945. In 1945 the British Government began to negotiate systematically with most countries in the world with respect to the mutual handling of their foreign exchange and trade relationships. A series of agreements was concluded during 1945 and 1946 which were set up along these fairly standardized patterns, although according to the individual requirements of each foreign country there were slight deviations. Moreover, with each country there exists now a minimum of three agreements on foreign exchange and in some cases many more; and the reason for this is as follows: that in 1945 and 1946 the first objective of the British Government was to continue the control system and to adapt it to postwar requirements by making it more flexible, as flexible as seemed indicated under the circumstances.

These agreements which I shall refer to as control system 1946 agreements, although some were negotiated before

and some a little later. These 1946 agreements distinguished rigidly between strictly speaking sterling area countries, which were the United Kingdom, the Dominions with the exception of Canada and Newfoundland, but of course [fol. 2516] including both India and Pakistan later on in that definition, all Colonies, Protectorates and Mandates, and in addition Iceland, the Farroe Islands, Iraq and Trans-Jordan. This group of countries were the sterling area countries, and among themselves sterling was interchangeable. Transfers out of the sterling area countries to the other four groups, however, were prohibited except under license.

Q. By that you mean that if anybody in the sterling area countries you have just delineated wanted to purchase outside of the area so described it was necessary to get a current import license?

A. Bank of England permission.

Q. All right, now, were there any other groups of countries involved in this network of agreements?

A. Yes, sir, the next group in importance from our point of view, was the so-called American area accounts. The American area accounts were sterling accounts derived from current transactions belonging to residents of the United States and its possessions, the Philippines Republic and sixteen out of the twenty Latin-American Republics. I can give the names of all the sixteen but I don't think it is necessary, the exceptions are, the four that are not in the American account system, it is perhaps easier to list, are Argentine, Brazil, Uraguay and Paraguay. Now, [fol. 2517] in American area accounts sterling was transferable into dollars, and dollars and other currency of the American area accounts were transferable into sterling, and into other countries' currencies—this is getting to be very confusing—into other currencies in the so-called transferable account area, which is the next group of countries. But those transfers did not work in the reverse direction.

Q. By that you mean what?

A. By that I mean that a Peruvian, for example, could pay New York in sterling and ask dollars for his sterling if obtained from current transactions, and he could also ask London to pay Buenos Aires with his sterling, but the Argentine would not be allowed to reverse the transaction and ask London to pay Peru. The logic of this complicated

arrangement was that the British had to have an increasing area of transferable accounts through the inclusion in a British sterling area, within which multi-lateral trade and payments would take place along organized patterns to the exclusion of the American area accounts from the benefits of the transferable account area.

The transferable accounts countries and the next group, namely, the bi-lateral account countries frequently changed place. For instance, Netherlands was a transferable ac- [fol. 2518] count country. Belgium was a bi-lateral account country. I do not know yet what the outcome of the Benelux negotiations were with respect to the new agreements. There is a new agreement but I don't have the text of it. France was a bi-lateral account country. Its presently negotiated customs union with Italy might protect that status. The devaluation of the franc presumably resulted in a supplement to the previous agreement, of which I don't have the text as yet.

The bi-lateral account countries were countries with which a strictly bi-lateral arrangement existed, so that transfers from that country to sterling and from sterling to that country were permitted either unconditionally or under very liberal licensing agreements, but no transfers into and out of other currencies, including the transferable accounts currencies, were permitted.

Q. By that, then, I take it you mean the bi-lateral countries. You said Belgium was a bi-lateral.

A. At one point Belgium, and for instance most of the iron curtain countries were bi-lateral countries. That meant England would have an agreement with Yugoslavia, by which the payments were handled by the Bank of England and through one bank in Yugoslavia, and the transactions would have to go into that one account, and no [fol. 2519] transfers into or out of that account were permissible without the Bank of England license.

Bi-lateral accounts were with former iron curtain countries, and Turkey, and in the course of various changes also Denmark, Belgium and France. The transferable account countries are countries like Spain, I believe also Portugal, Sweden, Norway, Egypt, Iran, Siam, those countries that were economically rather closely tied to the British Empire and where the Empire trade relations and payment relationships were traditionally in effect. I mentioned also the Netherlands in this connection.

Then there was a fifth group called the residual accounts, which included the Soviet Union, and then a few other territories, Albania, for example, was a residual account, and a few very minor other countries, the only one of any importance in the residual accounts was the Soviet.

Now, this system, as I said had been first negotiated through 1946, then in 1947, and when the multi-lateral convertibility clause of the British loan agreement—

Q. That is with America?

A. —of the American-British loan agreement was about to go into effect on July 15th, new supplementary agreements were negotiated with the transferable account coun- [fol. 2520] tries making their accounts multi-laterally convertible. In other words, the system then was that both transactions had to be licensed according to the internal requirements of Spain, for example, and England, respectively. The Spanish Government had to approve the importation, and the British Government had to approve the exportation. And exportations were subject to controls. However, once the transaction was approved the exchange was not permitted to be an obstacle. And in the case of the Spanish clearing, the Bank of England and the Instituto Nacional de Moneda Extranjera in Madrid agreed they will accept each other's overdraft to the amount of 2 million pounds sterling, one way and 88 million pesetas the other way, and beyond that, after July 15, 1947, it permits multilateral transfers from the Spanish monetary area into any other area of the world through London, and from the sterling area into any other part of the world through Madrid.

Now, this network of agreements was all predicated on the expectation that those other countries will not use the freedom so obtained for a run on the dollar balances of the Bank of England, similar to the run in 1931, but actually, this is exactly what happened. As soon as the multi-lateral provision went into effect on July 15, 1947, [fol. 2521] everybody began to draw out not only all current sterling but also some other sterling accounts which the Bank of England hoped they would not do and which under rigid administration of the agreement they weren't entitled to do. And the result was that the bulk of the British loan was wasted, a very high percentage, something like half of it or more disappeared in 35 days. And those

35 days from July 15, 1947, to August 20, 1947, were virtually the end of the British loan and the end of the liberalizing provisions in the agreement system.

On August 21st the British Government in exchange of letters with the U. S. Treasury announced it was not able any more to maintain multi-lateral transferability of sterling on current transactions. The Treasury agreed, and all these separate agreements were cancelled and renegotiated, and this process of renegotiation, which resulted in the third of the three economic agreements which I mentioned before, was in process throughout this fall and this winter, interspersed of course with the Geneva, the ITO and the Western Union negotiations which went on, and which of course have a bearing on the agreements that will result foreign-exchange-wise as well.

Q. Now, the operation of the sterling area in the four general classifications of accounts you have described, [fol. 2522] what effect if any does that have upon trade from a country like the United States that is listed as an American area account country for the purposes of trade in sterling exchange?

A. It tends to remove that trade from what might be described as normally competitive trade and makes it strictly administered trade. I mean, in other words, the British Government is going to administer that trade according to how much there is available in dollars, which depends on how much Lend-Lease they get, how much in loans they get, how much in European economic aid they get. They will spend those dollars and they will spend them in a manner that they consider appropriate to the public interest. And questions of comparative costs, regardless of exchange considerations, competitive price considerations, and so forth, do not enter into this form of trade, although the total of this trade has been very substantial, in fact higher than ever before in history in the aggregate.

Q. To what extent is that reflected by the fact the American Government has made dollars available to the American import-export bank in the Bretton Woods Agreement and the British loan now contemplated under the ERP?

A. Well, as I just said, it is these loans and gifts and subsidies and other forms of aid that have maintained [fol. 2523] United Kingdom imports from the United States at their highest level in history during the last seven years.

Q. I will ask you whether under the existing circumstances in respect of the British Empire or United Kingdom and the sterling area countries generally, the ones you listed in the first group, whether it would be possible for an American manufacturer of anti-friction bearings to sell any substantial quantity of bearings into that area on a competitive basis in competition with the anti-friction bearing industry in the Empire or in the United Kingdom as of the present time?

A. I do not believe that it would be possible on a competitive basis. I believe that it is not only possible but presumably taking place in a substantial scale on a non-competitive basis. In other words, after the British Government has decided that the entire bearing manufacturing capacity of England is wholly occupied as far as can be seen ahead and has sold its entire output forward as far as it can be seen ahead, if then it develops in connection with reconstruction or expansion of industry or for whatever other purpose the United Kingdom still needs bearings, then the British Government will consult the Board of Trade, the respective trade associations, and so forth, and see where else they could get bearings; and, presumably, [fol. 2524] first they will look within the sterling area, then within the transferable accounts area, because there there are no special problems, and if they find that there also the manufacturers are operating at capacity as far as can be seen ahead, as a source of last resort they will come to the United States, say, to use as an actual state, and say, "Well, how much can we get?"

This, in fact, is the significant change that has occurred in international trade as a result of the disruptions of two World Wars and the gradual drift towards increasing administration of trade production in each country but especially in the European countries. Namely, that whereas twenty years ago, or thirty years ago—well, thirty years ago was the first World War, let's say forty years ago—companies would compete internationally in international trade against each other across national borders regardless of whether the industry behind the tariff protection was a hundred per cent employed or not, today, with the full employment policy in each country, the insistence of each country in maintaining full employment, increasing foreign exchange restrictions regardless of whether that

means too much imports, too little exports, and so forth, the situation with respect to trade will be that the administered trade will flow through administratively [fol. 2525] approved channels. A system of ranks of imports is established in which domestic production has to be completely taken care of, has to have full employment, after that you look around and see whether the other countries with whom you have intimate, mutual agreements, clearing payment agreements, or that are members of the proposed Western Union System, whether they are also all fully employed or have extra capacity; and it is only after all those sources have been exhausted that the question arises whether additional imports should be taken in from the American area.

Now, it so happens that since the end of the war the need for products was so substantially beyond the ability to be satisfied from current capacities, that the United States that is the country accounting for two-thirds of the world's manufacturing capacity today, and at the same time being a country which was not devastated by war, was the source of last resort for a tremendous quantity of manufactured products. It made these products available and made these products available in virtually heroic amounts, and that is the reason trade out of the United States has been so substantial in recent years and is likely to continue very substantially, as long as this European recovery program, I think it is now called the Economic Cooperation Admin- [fol. 2526] istration, is in operation. During this time it is the deliberate policy of our government to help Europe to reconstruct itself, thereby to permit Europe to consume and absorb industrial products on a very large scale.

Q. Would it be correct, Mr. DeVegh, to say that volume of export trade from the United States would continue as long as the United States makes dollars available for the purchase of the products in America?

A. Only as long as dollars are available. It is, after all, very easy to foresee once Europe is reconstructed, once this capacity of production in Europe has been built up to the targeted levels, the present need of Europe for additional manufactured imports will very sharply decline, and at the same time with the end of the loans its ability to pay for them will decline very sharply, except insofar as by their

system of transferable accounts, widening their area of export trade, they manage to take export trade away from the United States, and from third countries, but the third countries have become very few in number.

Q. What do you say as to whether or not an American company could compete under existing conditions within a sterling area by any other method than by having a plant over there either wholly owned or partially owned?

[fol. 2527] A. That is the only way in which it can compete with an English producer, because that is the only framework within which it can place itself in a competitive position with the English producer.

Q. And why do you say that, Mr. DeVegh?

A. Well, I say it because of and with reference to this institutional transformation that has taken place. During the last thirty years under the Sherman Act the American companies are obliged to compete. Under European practices and methods, legislation and regulation, relating to the administration of foreign trade, that type of competition has become impossible for all practical commercial purposes across national borders. Therefore means have to be found, if production and trade is to be increased and enlarged, by which those American companies can still compete with the foreign companies within the territory of the foreign country. The only way that I can see that that can be done is by local manufacturing procedures in those cases in which there exists a substantial local industry. Of course that is not true of cases in which a local industry either does not exist or is obviously inadequate or is obviously not of strategic significance. A consideration of strategic significance enters in two ways into administered trade. One is that when the industry is strategically signifi-

[fol. 2528] cant each country tries to maximize its own output so as to be independent of imports. If it is strategically irrelevant then the countries don't want to waste any money in dealing with that under the foreign exchange system. So there are many distinctions, including the two named, in undertaking to compete with an important industry which exists in a given country which has an exchange control system. The only way you can compete with it from the outside is by going into the country and producing it.

Q. We haven't said anything about France and the

continent of Europe generally. What is the situation of France and the continent of Europe generally as to import controls or currency restrictions?

A. Well, the situation varies in its detail from country to country. The over-all generalization stands that every country in Europe applies exchange controls today. The only country in which these exchange controls do not operate significantly in the sense of trying to administer trade according to ultimate State policy is Switzerland. I mean that Switzerland has accumulated tremendous gold reserves during the war and the Swiss controls largely serve defensive purposes, like the prevention of inflation within Switzerland, and so forth. In the belligerent countries [fol. 2529] the primary consideration—I mean the former belligerent countries, of course including Italy—the primary considerations are reconstruction and the use of the dollars obtained on loans to the best possible advantage for the national economy as determined by the government and not by competitive conditions, of course.

Q. I have here, Mr. DeVegh, what has been marked Defendant's Exhibit 181. Will you identify that, please?

A. This is a reprint from the Foreign Commerce Weekly, which is a weekly publication put out by the United States Department of Commerce, and it has the title of "A Summary of Import License and Exchange Control Regulations in Principal Foreign Countries". It is merely a short reference table to give at a glance the requirements for traders, and if additional details are necessary they can be gotten by referring to the Department of Commerce, applying to the transaction in which they want to engage.

Mr. Ketterer: We offer Defendant's Exhibit 181.

The Court: It will be received.

[fol. 2530] Direct Examination of Imrie DeVegh (Continued.)

By Mr. Ketterer:

Q. Mr. DeVegh, before the adjournment you were asked this morning whether or not the matter of import restrictions as they were followed in England were based upon policy of administrative bodies in England, or whether they were based on statute. Have you made any check of that during the recess at noon?

A. I have, Mr. Ketterer.

Q. And what is the situation?

A. The situation is that under the Supplies & Services Act wartime controls in England were continued, and I believe that the Act, whose text I did not have with me, sets provisionally a time limit of five or six years to the continuation of the wartime powers, but it does continue all wartime powers.

Q. Now, I asked you this morning whether or not an American anti-friction bearing manufacturer could compete in England from the outside with the anti-friction bearing industry operating in England, and you gave your opinion about that. I want to ask you whether or not an American anti-friction bearing manufacturer at the present time could compete in France with bearings manufactured in the United States, with an anti-friction bearing industry op-
[fol. 2531] erating in France, on a profitable basis, by exporting bearings from the United States to France?

A. The answer is no, on a commercial basis. The possibility of selling to the French Government exists, under Lend-Lease—well, not Lend-Lease, but under the European Recovery Program and similar forms of aid.

The Court: Except selling to the French Government?

The Witness: Except selling to the French Government, yes, or to French Government approved purchasers.

Q. Does that also apply generally as to sales in the European market?

A. Generally, yes. Individual exceptions, I should imagine, could be found but they would be trivial in amount.

The Court: May I interrupt to ask a question?

Mr. Ketterer: Yes.

The Court: Was Citroen taken over by the French Government? I don't recall. It seems to me some time ago I had read accounts of Citroen being taken over by the French Government.

The Witness: That I don't know, your Honor. I believe that Renault was so taken over, but I'm not sure about
[fol. 2532] Citroen.

The Court: I think that's right. I do recall the fact that Renault was taken over by the French Government, but I did not recollect whether Citroen was.

The Witness: I'm sorry, your Honor, I don't know.

Schedule of import duties of the United States to

June, 1946, was thereupon marked by the Clerk, for identification, Defendant's Exhibit 182.

Q. Mr. DeVegh, I have three sheets here clipped together, marked for identification Defendant's Exhibit 182. I will ask you to examine those, please.

A. This is the United States import duties brought up to date, on June, 1946, prepared by the United States Tariff Commission, and two pages that have been photostated are the pages showing anti-friction bearings, that is to say, showing United States tariff rates and their changes on anti-friction bearings.

Q. That shows the tariff rates over what period?

A. It shows them under the Tariff Act of 1930 and amendments.

Q. And up to what time?

A: Up to June, 1946.

[fol. 2533] Q. That covers the imports, or the rates that apply to the imports of anti-friction bearings into the United States?

A. That is correct.

Mr. Ketterer: We offer Defendant's Exhibit 182.

The Court: This tabulation includes things other than anti-friction bearings.

The Witness: That is correct, your Honor, but you see we just had this part of it photostated.

The Court: Paragraphs 321 and 322 refer to bearings. Were there any other portions that are relevant to this matter?

The Witness: As I sit here, I do not believe so, but there might be something on the next page (examining exhibit). As far as I can see now the only page that matters is Page 174.

The Court: And only those two paragraphs?

The Witness: That is correct.

The Court: It may be received. I didn't know whether you wanted to offer the entire exhibit or just the one showing the import duties which obtained as to anti-friction bearings only.

Mr. Ketterer. That's the part, your Honor.

Thereupon a document was marked for identification, by the Clerk, Defendant's Exhibit 183.

[fol. 2534] Q. I have here four sheets that have been

clipped together, Mr. DeVegh, marked for identification Defendant's Exhibit 183. I will ask you what they are, please.

A. These are excerpts from the United States Tariff Commission study of anti-friction bearings, and the first sheet shows the 1929 invoice analysis of the weights of bearings and shows the ad valorem rate of duty on bearings of different sizes arranged in the order of size. It shows that there was only one item, the smallest size, on which the duty was less than 50 per cent, and on the biggest sizes the duty went over 100 per cent.

Q. And as to the succeeding pages?

A. On the succeeding pages there are three parallel tabulations containing the identical information with respect to the three tariff classifications of anti-friction bearings in the United States for the years 1926 to 1943. They show the rate of duty prevailing in each year, the amount of duty, the imports for consumption, both by weight and in dollars, then the equivalent ad valorem duty rate, and finally the average price per pound of the imports. Of course, the war years show trivial imports, but they are explained because of the complete interruption of international trade. The first of these tabulations refers to balls and rollers, the second one refers to ball bearings [fol. 2535] and parts, and the third one refers to roller bearings and parts.

Mr. Ketterer: We offer Defendant's Exhibit 183.

The Court: It may be received.

Q. Now, Mr. DeVegh, having in mind the equivalent ad valorem duty rate percentage-wise as is shown on the sheets that form a part of Defendant's Exhibit 183, I will ask you whether or not foreign anti-friction bearing manufacturers could sell in this country products manufactured in any European countries over a tariff barrier that size on a profitable basis, in your opinion?

A. Over a tariff barrier of that size, it would seem to me extremely unlikely. As a matter of fact, it would seem to me very unlikely even over a somewhat lower tariff.

Thereupon a document was marked by the Clerk, for identification, Defendant's Exhibit 184.

The Witness: As a matter of fact, your Honor, I don't know whether I may add to my previous answer, that the

matter is not even a question of likelihood or opinion, it's a matter of record, in that the tariff was in such amounts as shown on these tables, and the amount of imports accordingly was never more than 1 per cent of the domestic [fol. 2536] production, except I believe in one year in which it was 1½ per cent.

The Court: Why do you think it was necessary to impose that sort of rates? The likelihood of imports was almost impossible because of the testimony you have given previously.

The Witness: Your Honor, I believe—

The Court: Was it just simply a protection against a possibility?

The Witness: That would be my belief. The industry, the anti-friction bearing industry, I believe is older in Europe than in the United States—

Mr. Day: Would you talk a little louder?

The Witness: I'm sorry, sir. I believe that the anti-friction bearing industry is older in Europe than in the United States, and I believe that the tariff protection was high even in the 1913 Underwood tariff, and remained high in the 1923 tariff, and I believe also that once a high tariff rate gets established it comes down rather slowly. We have always been a high protectionist country, and manufactured imports into the United States of a kind in which American production was substantial was seldom encourage by tariff [fol. 2537] policy. Now, the reciprocal trade agreements act provides for two reductions in the anti-friction bearing rates, and I believe there is a somewhat further reduction under this general agreement that was negotiated a couple of months ago. But in the meantime the American industry has grown to be outstandingly the biggest in the world, and presumably for American production requirements of long runs a low cost producer, although I have no firsthand information on specificially ball and roller bearing costs, so I am merely generalizing from what I know to be the pattern in most of this kind of capital goods industries.

The Court: The question I had in my mind was whether or not, in view of your testimony of the inability of foreign manufacturers engaging in business in anti-friction bearings in the United States, this sort of tariff was a mere

reprisal for similar enactments or similar measures on the part of European countries.

The Witness. No, your Honor, it antedated them.

The Court: It antedated them?

The Witness: It antedated the European enactments.

[fol. 2538] The Court: Then the others were reprisals for this?

The Witness: Yes, in specific instances that may be.

The Court: But both barriers are still maintained, despite the economic impossibility of engaging in trade?

The Witness: Both tariff rate schedules are in existence. Tariff schedules have not been repealed. There exists instances where they have been superseded by direct controls. For instance, in the case of France, I believe that the French have actually suspended the application of their tariff system for the period of controlled importations, but the tariff act remains on the statute books.

The Court: Do you feel that such tariff rates are necessary, in view of your conclusions relative to the inability of foreign manufacturers engaging in business in the United States?

The Witness: As a permanent measure, I wouldn't think so. As an anti-dumping measure, we might arrange to have [fol. 2539] a high tariff, it might be indicated, but that would come under the Anti-dumping Act anyway, not under the regular tariff structure.

The Court: Then the regulations of the European nations, and those that you have made reference to, which control the market on imports and exports are not sufficient to control the situation thoroughly?

The Witness: Oh, they are sufficent. The European tariffs are at present the relatively least important impediment to trade, although they have been important in the past.

The Court: I wasn't referring to the tariffs, I was referring to the regulations to which you have made reference, such things as the exchange regulations, and the various other regulations, whether or not in view of all of those regulations there is any necessity whatsoever of maintaining a tariff wall such as is set up and sought to be introduced in this case?

The Witness: Well, quite frankly, your Honor, at present the Europeans don't have an excess of bearings for export and they wouldn't export, probably, even if we didn't have

any tariff at all. On the other hand, there existed situa-
[fol. 2540] tions in the 1930's when countries anxious to secure foreign exchange were dumping abroad below cost, and we had anti-dumping duties against them.

The Court: That was in the 1930's.

The Witness: In the 1930's.

The Court: The reason I asked the question was because it seemed to me your conclusions were quite definite on the inability of a European manufacturer being able to engage in business in the United States on bearings—

The Witness: Over the tariff barrier.

The Court: No, no, selling in the United States irrespective of the tariff barrier, such as is imposed by the United States tariff. That is, you described such situations as the licenses, that it was difficult to obtain export goods, you described the situation with respect to the sterling block, you described various other things which added to the inability of a manufacturer of anti-friction bearings and other goods of similar type selling any of their merchandise in the United States.

The Witness: Your Honor, the primary importance of European controls is with respect to goods going inward [fol. 2541] into those countries. With respect to goods going outward from those countries, there is an export licensing system in those countries, but it is generally the policy of those countries to try to stimulate exports to the dollar area. It is the in-flow of goods into the United Kingdom from the dollar area, that is restricted.

The Court: I know, that was your statement a moment or two ago with reference to the situation in reverse. That's the reason I asked the question, that's what prompted me to ask the question. I believe Mr. Ketterer asked the same question in respect to goods being brought into the United States.

Mr. Ketterer: I think, if your Honor please, the question I asked was tied to the tariff barrier that has been in evidence.

The Court: That's the reason I asked the question. I'm now saying exactly what the witness has tried to show, that the reverse of the situation, that is, the import into the United States by foreign manufacturers, became im-

possible, as you say, because of the high tariff wall set up by the United States.

The Witness: That is so.

[fol. 2542] The Court: And that is the reason you say that becomes impossible?

The Witness: That is so, your Honor, and because of the enormous industry that has grown up behind this tariff wall.

Q. Mr. DeVegh, I have some photostats marked together as Defendant's Exhibit 184. I will ask you to identify those, please.

A. This is the most recent report of the United States Tariff Commission on metals manufacturers in general, and the pages that have been photostated from this report are the pages relating to anti-friction bearings.

Mr. Ketterer: If the Court please, there is a part of this report that I think comes within the realm of opinion evidence, on the page that—it's on Page 361, under the heading "Post War Long Term Consumption, Products, and Imports." The balance of that page, I think, is pretty much a matter of opinion from the standpoint of the writer of the report. I would like to offer the report with the exception of that portion that appears on Page 361.

Mr. Nitschke: Your Honor, I think there is a further portion of this report that also comes within the definition of opinion. That's the portion beginning about the middle of [fol. 2543] Page 360, where the author of this report says, "If any bearing in the first class should come to be in substantial demand, its production would probably be undertaken in domestic plants" and so forth. He also talks about probabilities further on, what may be expected, what is likely if certain things happen. That comes down to that portion headed "Post War Long Term." It's a prediction on the part of whoever wrote this as to what would happen under certain conditions.

Mr. Ketterer: I think perhaps that one sentence you refer to, Mr. Nitschke, is in the nature of opinion. The balance of that paragraph, however, it seems to me would be factual.

The Court: You are now referring to the paragraph which says: "It is probable that the cost of producing those types of bearings which are made on a small scale is lower in Sweden" and so on? You think that is not opinion?

Mr. Ketterer: No, he is expressing a probability as to a fact, and in the part that Mr. Nitschke mentioned—

The Court: Do you think an expression as to probabilities as to facts is any different? One is opinion and the other [fol. 2544] is an expression of probability as to what might happen. It undoubtedly comes under the same objection, does it not? I take it that the other portions of the exhibit which are offered serve the purpose for which you are offering it and there is little need of entering into controversy about the balance of it, because it certainly does not tend to prove the proposition you are seeking to prove.

Mr. Ketterer: Oh, no. As a matter of fact, your Honor, I don't want to take the Court's time at this point to read this because it is in the nature of cumulative of material that has been offered both in written form, in tabular form, chart form, and by the testimony of witnesses, but I should like to offer the portions of it that are not within the opinion ban.

The Court: Either opinion or forecast of what might come.

Mr. Ketterer: That's correct.

The Court: Is there any objection to offering it under those conditions, Mr. Nitschke, if only those portions of it are offered which do not purport to give an opinion, or [fol. 2545] those portions which purport to forecast what may happen in the future?

Mr. Nitschke: Or which attempt to guess at what exists at the present time. Some of these are statements of probabilities.

The Court: That's your third point, and I don't imagine there is any objection to excluding those portions of it.

Mr. Ketterer: No.

The Court: Inasmuch as you do not propose to read it, if it is offered only in support of the contentions which are not predicated on opinion evidence, or the things that Mr. Nitschke has referred to, it may be received.

Mr. Ketterer: That's perfectly all right, your Honor.

Q. One further question, Mr. DeVegh. Have you an opinion as to whether or not the control system both as to

imports and currency in the United Kingdom and England will continue for the foreseeable future?

A. I see no evidence by which I could set any reasonable time of termination. It seems to me that the conditions which brought them into being are such as to be with us for a long, long time. I have previously indicated my [fol. 2546] serious doubts as to whether the end of the period of large foreign loans was going to be a period in which these countries will be particularly anxious to receive additional imports from the United States. It seems to me that the end of the European Recovery Program subsidies will be a period in which exports from the United States have to be very sharply curtailed, not only because the subsidies will end, but also because the domestic manufacturing capacity of those countries will have been very substantially increased. This is merely with respect to the economically obvious. In addition to that, we have no reason to assume that the extreme unbalance of international political power which now prevails on the Eurasian continent is going to change, and as long as western Europe feels as vulnerable, and menaced by Soviet power and by the existence of Soviet power, almost regardless of the expressions of that power in aggression, it is likely that the shell within which these nations are living will continue and get intermittently even harder, rather than softer, although undoubtedly from time to time there will be brief, or possibly even, let's hope, not so brief intervals in which there are or there will occur relaxations.

Mr. Ketterer: I think that's all.

[fol. 2547] Cross Examination of Imrie DeVegh.

By Mr. Nitschke:

Q. Mr. DeVegh, during your testimony, from time to time, you expressed the opinion that you did not think foreign companies could sell in the United States, or American companies could export, on a profitable bases, antifriction bearings. What do you mean by the words "profitable basis"?

A. I think that the expression that I tried to use was "on a commercial, or commercially competitive basis." I had in mind very much the characteristics of the capital goods industries and the part that components play in

capital goods production. I was referring especially, therefore, to these commercially competitive aspects rather than to the fact whether any single transaction was profitable or unprofitable.

Q. In other words, you are familiar, are you, with the practice of some American companies, I think particularly in the electrical equipment field, for example, of selling for export at much lower prices than they sell domestically, in order to increase production and, therefore, lower unit cost?

A. I'm not particularly familiar with that particular practice in the electrical equipment industry, but it's pos- [fol. 2548] sible that that practice exists.

Q. You are familiar with the fact that it does exist in some industries?

A. I don't like to say that. I have heard of it.

Q. A profitable selling price for export might be different than a profitable selling price for domestic consumption?

A. Well, I don't really know. I would have to know more about the specific case you have in mind in order to be able to say yes or no. I mean the idea of profitable exportation was not my idea. I know I was referring to commercially competitive exports over a long period of time, and how in any particular instance the cost accounting should be handled is a matter for the individual instance.

Q. In other words, then, you wouldn't want to express any opinion as to whether or not sales could be made on a profitable basis?

A. I was expressing an opinion on the point that in export trade, if over a period of time you want to engage in export trade, obviously you will expect profits on that operation, but whether the operation was profit-wise soundly planned or not is one question, whether it in [fol. 2549] effect constitutes a commercially practicable, competitive operation is something else again, I think, over a long time.

Q. You were referring to the latter?

A. I was referring to the latter, yes.

Q. Now, I believe you stated that you thought it would be impossible for any American firm to sell in England today on a competitive basis, I believe you used the expression "competitive basis" in that connection.

A. Yes, sir.

Q. Did you mean by that that the entire area of competition was closed?

A. The entire area of competition on a price basis within the United Kingdom today is substantially closed. That does not mean that sales are impossible. What I meant, and I think stated in some detail, was that in making sales in the United Kingdom in an industry that exists and has substantial capacity within the United Kingdom, the considerations that will determine whether a sale will be made or not will not be price considerations, such as would enter into competition with respect to imports into the United States. In other words, if, for instance, a Canadian were manufacturing something of which there existed United [fol. 2550] States consumers, that Canadian could sell into the United States over the tariff barrier, provided he got the export permit from Canada, and sell his product in the market on equal terms, from the viewpoint of the buyer, as anybody situated on the spot. The buyer of that product would not have to look at the fact that one potential seller comes from Detroit, Michigan, and the other potential seller comes from Windsor, Ontario, whereas the English buyer is, indeed, compelled by his government to see whether the seller is physically located within England or within a transferable account country, or within an American account country, and the buyer has no choice to buy the cheapest product. The buyer has to buy the product that his government tells him to buy, whether it's cheaper or more expensive, according to the location of the plant to which the government wishes the business to go.

Q. Well, now, does the British Government tell the purchaser in England which plant he shall buy from?

A. No, sir. I meant to say according to the location, the British Government will say, "These bearings are available within the United Kingdom. You wait until the British producer will deliver to you the bearings," and the British [fol. 2551] Government will say so regardless whether the British producer charges 20 cents more or 20 cents less.

Q. What if the bearings aren't available, and the man who wants to purchase, say it's a man who makes Rolls Royce automobiles—

A. Yes.

Q. —and he tells his government, "I can't get these bearings from anybody in England," and he gets a permit from

the British Government to buy them in the United States, that could be possible, couldn't it?

A. I suppose so, although he would probably have to have very specific reasons why he wants them. He can't just because he would like to have them, that's no reason, that's what I mean.

Q. If he has reason—

A. Let's say, if I may suggest this, let's say they want them for airplane engines, military necessity.

Q. All right, I was thinking of something different, of someone that might export Rolls Royce cars.

A. All right. The British want the exports, all right.

Q. Let's say the manufacturer of the product gets his permit from the British Government to buy outside the United Kingdom, and gets dollars to buy in the United States.

[fol. 2552] A. Yes.

Q. Does the British Government tell him who to buy from?

A. No, sir.

Q. It doesn't? He can buy from the manufacturer in the United States who can transport them to his plant in England the cheapest, is that right?

A. From within the United States, he can, as far as I know, from the viewpoint of the British Government he can pick out some manufacturer within the United States for this excess of demand that can not be satisfied within the sterling area.

Q. Under the British law, then, or under the administration of any of these import regulations, there is nothing to prevent him from buying from the cheapest producer in the United States, buying from any producer he wants to in the United States?

A. After he has had his license.

Q. After he gets his license.

A. After he gets his license he can use it in the United States. Presumably the license form specifies the contract, so that it goes on a previously established sales contract, but *csentially*, as far as I know, the British Government does not interfere in the choice of individual manufacturers [fol. 2553] outside of the United Kingdom.

Q. So that we can say there is some permissible area of

competition, as far as the sale of export bearings from the United States to Britain is concerned?

A. Well, there exists competition within the United States.

Q. For that purchase?

A. For the foreign business.

Q. As far as the law is concerned?

A. As far as the law is concerned—as far as the British law is concerned.

Q. As far as the British law is concerned, yes.

A. Yes.

Q. Throughout your testimony, Mr. DeVegh, you have told us about the many trade barriers that exist in the world today to the sales back and forth from one country to another country of goods. There have been efforts, have there not, made by men and nations in recent years to remove trade barriers of that sort?

A. Oh, yes, extensive efforts, and also, in the meantime, the United States Government, as I indicated, advanced very substantial sums of money to bridge over various countries and to stimulate the total volume of trade, yes, sir.

[fol. 2554] Q. And one of those was the Trade Agreements Act, which is known, I believe, as the Reciprocal Trade Agreement Act, commonly known?

A. Well, you are referring to the 1934 enactment?

Q. Yes.

A. In the United States?

Q. Yes.

A. Yes, sir.

Q. Which permitted reduction of American tariffs in order to promote trade between countries?

A. Yes, sir, and the Swedish agreement and the United Kingdom agreement that reduced the anti-friction bearings tariffs in the United States, were both agreements under that Reciprocal Trade Agreements Act.

Q. And that gave the President the power to reduce tariffs up to 50%?

A. That is correct.

[fol. 2555] Q. Mr. DeVegh, what are some of the other efforts that nations have made in recent years to remove trade barriers between countries?

A. Well, in the last lend-lease agreement there is a sec-

tion, Section 7, I believe, where rather extensive promises were made with respect to the future among the contracting parties to remove barriers if and when practicable. Then the Bretton Woods agreements stipulated that after the transition period which, I believe, was contemplated to be four or five years, exchange controls on current trans-
[fol. 2556] actions should be abandoned, as far as practicable, but, of course, there is an escape clause in the Bretton Woods agreement, as you know, which was put in at the insistence of the weak currency countries and is fairly comprehensive. Then there was this International Trade Organization negotiation in progress over a period of years, with several consecutive drafts of an international trade charter aimed also at the elimination or reduction in restrictions. The reason why those negotiations took such a long time, and why there have been such very great difficulties even recently in the Havana conference in ending the deliberations of the conference on no matter what terms, was that, whereas the United States has been promoting the policy of multilateral conduct,—it has been the avowed policy of the Government of the United States to restore the international end payments put in the constitutional framework that existed, shall we say prior to 1914,—in the rest of the world this attempt provoked the most violent resistance and in many cases violent resentment, even. And finally each nation insisted on the escape clauses that each country considered necessary in order to safeguard its own economy, according to its own institutional approach to economic questions.

[fol. 2557] Q. Well, now, the International Trade Organization has as its objective removing some of these governmental trade barriers, such as import restrictions and exchange restrictions, and also private trade barriers, has it not?

A. I believe so.

Q. And are there any other efforts on the part of nations to remove trade barriers?

A. Well, in a sense, indirectly, I should imagine, the European Reconstruction Program could be considered as an effort hoping to achieve some such result, but I believe that that is already stretching the point.

Q. How about the Geneva Trade Agreement?

A. The Geneva Trade Agreement, yes. I believe I referred to them, yes.

Q. A practical step in that direction?

A. Yes.

Q. Have you read the Economic Cooperation Act, Mr. DeVegh?

A. No. I said this morning it's very recent and I haven't had a chance to read it yet.

Q. Now, I believe you said, in connection with the I. T. O. and some of these other efforts to remove trade barriers that you're not very hopeful because the underlying [fol. 2558] economic conditions make it difficult for some of these countries.

A. Well, some of them in that in certain cases I do not believe that the institutions and the institutional framework permits any more the satisfaction of those ideals.

Q. That's in certain countries?

A. Yes.

Q. But there are some countries where that isn't true?

A. Yes, but those certain countries would certainly include the United Kingdom. What I mean by that is—I have tried to avoid the word "socialization" because it has an ideological connotation, and it's an awkward word to handle, but fundamentally the British Labor Party has been a socialistic body, shall we say, and it certainly does propose to administer the British economy and it is proceeding to do so. A number of industries have been nationalized, the commitments have been made to nationalize other industries, to have, in other words, a substantial socialized segment of British economy and to preserve full employment at all cost. Now, it is quite obvious that if the prime requisite of an economic policy is to maintain full employment regardless, then, from time to time the [fol. 2559] balance of international payments of that country will get hopelessly out of gear because the full employment production level determines about how much imports they will need, if they permit imports to come in on a competitive basis, but there is nothing in a full employment program that will tell you how much of your exports the foreigners might take, if the foreigners don't happen to have a full employment program, or if the foreigners' full employment program doesn't work. In other words, the reason why controlled economy has found such difficult

foreign exchange problems is not that they are mismanaged, or this or that or the other thing, although they might be mismanaged. The real reason is that in that kind of economy the equilibrium of international payments is a consideration wholly secondary to the prime considerations of domestic political objectives. By contrast, the prior to 1914 international system was predicated on the fact that international payments adjustments come first, and that the domestic economy will expand and contract, employment will rise and fall, according to whether there exists a foreign exchange basis, according to whether the international payments are in equilibrium. This is a completely [fol. 2560] fundamental institutional change that the policies of our administration in these international trade conferences have not sufficiently taken into account, in my opinion, and which, therefore, resulted in these hybrid agreements in which ideological commitments were accepted by the other nations with escape clauses that will nullify them whenever the requirements of the foreign country requires their nullification. Now, to come back to the classical instance where we have already seen the practices of this administration policy, let us turn to the British Loan Agreement. In the British Loan Agreement the multilateral clause was put in at the insistance of our government and—

Q. If I may interrupt you, this is all very interesting, but I'm afraid we're getting off the questions I'm asking.

A. All right, sir.

Q. I was asking with respect to the Economic Cooperation Act whether or not its objective wasn't to remove some of these problems which have caused the nations to set up restrictions and I believe your answer was yes, and you qualified it to some extent.

A. Well, I haven't seen the text, but by and large, it's a matter of common knowledge that it is a benevolent piece [fol. 2561] of legislation.

The Court: I don't understand that. What do you mean by that last expression, "benevolent"? Benevolent to whom? Is it benevolent only to one side, or does it contemplate a reciprocal proposition? Does it contemplate benevolence simply to those who are recipients of money, or does it contemplate a mutual exchange by which both sides are benefitted?

The Witness: It is my understanding that it's perhaps a fair generalization that the material benefits go *esentially* to one, in one direction, in other words, towards Europe, and that our compensation is partly ideological and partly the hope that in the future we will therefore be able to have both economic and better political relations with those countries.

The Court: That's the very proposition I wanted to have answered, if it was purely ideological. If I understand you correctly, the purpose of it is only one-sided insofar as economic gain is concerned and, again, one-sided insofar as ideological benefits are concerned?

[fol. 2562] The Witness: *Esentially* it's my opinion that these economic measures to help Europe have primarily benefitted, in the economic sense, the recipient. One can argue, of course, that a large part, for instance, of the British loan was spent in the United States and that therefore our exports from the United States were bigger than they would have been otherwise and that, therefore, certain American producers benefitted, but whether the benefit extends to the nation as a whole is questionable since those exporters in those years did not need additional exports to be fully occupied, and the very heavy exports of 1947 undoubtedly contributed to inflation within the United States. So that, therefore, the economic benefit to us from the British loan as an immediate proposition is questionable, although the political benefits and the moral benefits may have been very substantial and may have justified the expenditure of that money. To the British the economic benefits were, of course, immediate and substantial, and I believe with the European Recovery Program a very similar analysis could be made as a practical generalization. Our producers, our export men, and to that [fols. 2563-2566] extent the country, shall we say, benefit, but the primary purpose is to help Europe to recover, and by European recovery we get perhaps a valuable trading partner and a valuable political ally. Both of these counter-compensations are of a speculative nature. We don't know how real the political alliance will be after the recovery program moneys are spent, we don't know how real the economic benefits are going to be after the money is spent, and I submit that these are matters of rather remote speculation on which one can be pessimistic or optimistic according to how one is inclined.

[fol. 2567] Q. Mr. DeVegh, to the extent that the objectives of these various conferences and statutes that we have been talking about are successful, would you say those objectives would be frustrated by private cartel agreements between American and foreign industries prohibiting trade between the various countries of the world?

A. Well, if they are frustrated then they aren't successful. I thought you mentioned that cartel agreements were objectionable to the international trade organizations charter, and I don't remember now whether they are mentioned in the ECA preamble or not.

Q. Well, to the extent that these acts and international activities are successful in removing government trade barriers, which are the ones you testified about the last day or so, would those objectives be frustrated by private cartel agreements between American and foreign companies prohibiting trade between the countries?

A. Well, if such cartel agreements existed prohibiting trade between the United States and England by cartel members who would otherwise be competitors of each other, [fol. 2568] and if the parties live up to the territorial clauses of those agreements, I would say that what you have said would automatically follow.

Q. Then your answer would be yes?

A. Yes.

The Court: Mr. DeVegh, is it your opinion that the controlled economy of the international nations forecloses international trade or does it simply result in keeping international trade along the lines so controlled by the controlled economy of this country?

The Witness: My opinion is that the regulations alter the character of the trade. Sometimes, as under Lend-Lease, the trade is quantitatively bigger than it has ever been before, so that one cannot even say with certainty necessarily there will be an impediment in the sense of the reduction of the total. What we can say with certainty is that the consideration which will determine whether trade takes place or not will not be competitive considerations across the borders but will be administratively determined considerations which might be in practice anything like foreign [fol. 2569] exchange requirements, armament requirements, national security requirements or international treaties with other countries, or anything, but that have nothing to

do with normal commercial conditions as they exist within the borders of the United States.

The Court: Is it your opinion that the controlled economies of foreign nations forecloses competition in international trade or does it impede competition in international trade?

The Witness: It at present almost forecloses in large areas of control competitive international trade. The hope exists that there will occur alleviations from time to time but over the long run we have seen no evidence that the European nations want to abandon altogether their administrated controlled economy, their full employment programs. And we see even less evidence at this time that the international political situation will change so radically that the peaceful pursuits can be taken for granted. What I am referring to in this connection is a factor that has been very major in determining the protective patterns of various nations and the attempted capital movements, the [fol. 2570] actual flow of goods, namely the fear of a conflict between the United States and Soviet Russia at some time in the future, which time in the future may always remain some time in the future. I am not making predictions now, I am pointing out the obvious fact that with the existing size and armaments of Russia, all the western European countries are living in a state, relatively speaking, of long term terror, if I may use the expression.

The Court: Would the long term terror cause the isolated nations to live within their national borders in economic vacuum or will it tend to draw them as a magnet to the United States and draw them together in a union of western nations which will ease up that economic tension rather than to strengthen the tension?

The Witness: Well, your Honor, these are—

The Court: You expressed an opinion before, and that is what prompted me to ask you that.

The Witness: Well, I would say this, obviously the western European union is taking shape and to that extent the fears are removing barriers, among the sixteen western European nations.

The Court: That is my question exactly, whether or [fol. 2571] not that fear of that menace, as you have mentioned it, will tend to remove the isolation of the various nations and draw them together and set them up as against

the Soviet group, and economically as well as politically?

The Witness: Within that group; yes. Now, as to what the future economic and political relations of that group are going to be with the United States and in the long run both with the United States and Soviet Russia, is a matter completely hidden in a mist of the future. There is no certainty that if Russian armaments should become controlling at some future date the western European countries may not declare themselves neutral or try to withdraw from a conflict. I am not suggesting anybody has any such intention in any of those governments today, but these governments aren't permanent and we can't tell what the future will be in the long run. So the point of my reference to the troubled foreign political condition was that I don't know certainly that the hopes expressed in the recent legislative enactment are more certain of fulfillment in the future than the hopes expressed at the International Eco- [fol. 2572] nomic Conference in 1927 or the Lend-Lease Agreement or the British Loan, or other measures which were equally desirable, of which all of us equally approved in intent and execution, regardless of how much many of us felt grave apprehensions at the time as to whether they would achieve their avowed purposes or whether they would simply represent a temporary solution, after which new solutions will perhaps be sought once more.

The Court: Just one other question. You have expressed the opinion as to what the prospects would be in the future with reference to those matters bearing on international trade. What is your opinion as to what would happen should the Atlee government be replaced by a conservative government in England? Would your opinion be still the same as to what the prospects are of trade with the United Kingdom?

The Witness: Substantially, yes. The Conservative Party as of last year said that it did not propose to take back any of the nationalizing legislation of the Socialist government, and as to their nationalism as such, it is of a higher order than that of the Labor Party. The Labor Party is more internationally minded and idealistic than the Conservative [fol. 2573] Party, even though in their domestic policies they are more administrative minded than the Conservatives.

Mr. Ketterer: We have no questions on redirect examination.

[fol. 2574] Thereupon the Defendant, further to maintain the issues on its part to be maintained, called as a witness WHITLEY B. MOORE, who, being first duly sworn, testified as follows:

Direct examination of Whitley B. Moore.

By Mr. Ketterer:

Q. Will you state your name, please?
A. Whitley B. Moore.
Q. Where do you live?
A. In Canton, Ohio.
Q. By whom are you employed?
A. The Timken Roller Bearing Company.
Q. In what capacity?
A. Director of sales.
Q. How long have you been director of sales of the Timken Roller Bearing Company?
A. Since January, 1944.
Q. And prior to that did you have any connection with that company?
A. I did.
Q. And how long have you worked for the company?
A. Since February of 1919.
Q. And will you tell the Court generally what different positions you have had with the Timken Roller Bearing [fol. 2575] Company since you first started to work for it in 1919?
A. I was employed first as an engineer and was in the engineering department for two years. At the conclusion of that period I was assigned to the West Coast as district manager of sales. I was on the West Coast for a period of three years, then transferred to Canton as assistant manager of the industrial division, which position I occupied, I believe, until 1934 at which time I was made general manager of the industrial division. In 1940 I was given the assignment as general sales manager for the steel and tube division and occupied that position until 1944 when I took over the present assignment.
Q. Now, Mr. Moore, there has been testimony offered here that the market for anti-friction bearings generally fell into two classifications, the classification that relates to sales for original installation and sales for replacement

purposes. Do you recognize those as generally the two classes in which the market for anti-friction bearings fall?

A. I do. And I might add that the market for original applications is by far the most important, currently taking some 95 per cent of our production.

The Court: 95 per cent?

The Witness: 95 per cent of our production.

Q. And has that generally been the quantitative per- [fol. 2576] centage of the company's production in the field of its sales?

A. I would say so, plus or minus a very few percent.

Q. Now, as to original equipment sales, which you say occupies 95 per cent of the sales of the company, in what respect do you rate efficiency of the sales organization of the company in respect of sales?

A. Well, experience has shown that there are several factors which are important in measuring the efficiency and productivity of our sales force. We started in at first by setting a quota for a number of calls upon prospects. If those calls are productive, if our men present the Timken story effectively, we can assume that the prospects will call upon us to prepare engineering recommendations and lay-outs. By the same token, if those engineering lay-outs are executed well and interest the customer, we can assume that a certain percentage of our customers will say, "Well, that lay-out looks interesting to us but we would like to subject it to tests. We would like to build up a few units and actually try them out." If we follow those test applications carefully we can expect in turn a certain percentage will result in productive accounts, in other words, the design will be incorporated into production. By the same token, those production accounts, if they are followed by our sales [fol. 2577] department and our service department faithfully eventually result in a so-called after market or replacement market. And it is that replacement market that falls into the category of the final 5 per cent of our business.

Q. And if it were not, then, for the original replacement sales, is it correct to say that there would not be the replacement business representing 5 per cent of the company's business?

A. That is quite true.

The Court: I am afraid I didn't get the question.

Q. If it weren't for the original installation sales, there

would not be the after-market that represents 5 per cent of the company's business for replacement purposes?

A. That is quite true. I might qualify it to this extent that we might possibly be called upon to supply bearings to replace other makes of tapered roller bearings which are of similar size, but the extent of such business would be very very small indeed.

Q. Now, as to sources of replacement bearing sales, assuming that a bearing fails in the field, whether in the United States or any place else, on a piece of equipment, what is the source to which the customer may go or the user may go for the replacement of the bearing that has failed?

[fol. 2578] A. Well, to take a typical example, let's take an automotive vehicle, a car or bus or truck, ordinarily if a bearing fails in such vehicle the owner of that vehicle would go to his car or vehicle dealer. In the event that that vehicle dealer does not have that replacement bearing he would very likely go to what we term an authorized distributor, a concern which makes a business of stocking of sizes of adequate parts, standard parts. Such concerns might stock not only tapered roller bearings, and other parts of anti-friction bearings but also spark plugs, brake bands and other parts entering into the replacement of those particular vehicles. In the event that neither the vehicle dealer *or* the authorized distributor has replacement parts available it is quite likely that the owner would address an inquiry, if he located domestically, directly to the Timken Roller Bearing Company, or if it is an export or a foreign user, he probably would direct an inquiry to some import-export house in New York asking them to obtain parts and delivery on the replacement bearing.

Q. On occasion would such a potential customer look to a competitive source for replacement?

A. It is very unlikely unless a Timken bearing is not available. And I might say in that connection, your [fol. 2579] Honor, that to do a satisfactory job in the replacement or after-market availability of product, the first requisite, the first consideration that we give to the service of after-market, is to set up available stocks in those areas or communities where there are Timken equipped pieces of equipment.

Q. What system do you use in setting up that stock of

bearings for the replacement market, through what type of dealers and under what circumstances do they handle that business?

A. Well, we have a so-called discount schedule which takes care of the various classes of trade in the after-market. For example, we set up an authorized distributor. The authorized distributor might in turn have under his jurisdiction a stocking jobber, so-called, a much smaller concern, stocking a limited number of parts. We might have the classification of trade we call the fleet owners, and there are a number of others.

Q. Now, as to these distributors has the company any policy or requirement as to authorized distributors maintaining any stock of bearings on hand for use to take care of this replacement market?

A. Yes, sir, we go to considerable pains in setting up an authorized distributor, to make a survey of the Timken equipment in his particular area or community. In other [fol. 2580] words, we might discover there were so many Studebakers or Chryslers or *Cincinatti* Milling machines, or LaPlant road graders or what not, all incorporating Timken bearings, and we would counsel with the authorized distributor and see that he had a representative and adequate stock of Timken bearings for replacement purposes.

Q. Now, in respect to the foreign field, what steps if any, do you take to see that there is an adequate supply of replacement bearings available?

A. Generally we follow exactly the same practice in foreign markets. Going back a number of years, the number of vehicles and other pieces of equipment using Timken bearings was so small, so scattered, that we weren't justified in going to the costly market analyses that we might use domestically, but basically we use exactly the same procedure.

Q. Now, in respect of prices for the sale of bearings to authorized distributors, what practice has the company followed in determining the discount rate to be applied to the sale of bearings to the authorized distributor?

A. Well, we have had such discounts on prices that we place which we think would give the authorized distributor a fair return on his investment in Timken bearings, and we try to protect his investment by not underselling him [fol. 2581] through our own field offices.

Q. Now, why is it necessary that you follow that procedure in respect of the authorized distributors who are handling bearings in this replacement market?

A. Well, if we wouldn't give these authorized distributors price protection they would soon lose interest in the Timken account, we couldn't depend upon them to carry a comprehensive or adequate stock of Timken bearings, and consequently it becomes very important for us to honor the discount schedules that we have put into effect. By the same token, it is equally important that we do not appoint too many authorized distributors in a given area. In other words, if we appoint too many the line becomes unattractive, the authorized distributors do not have an attractive turnover, they lose interest and everybody loses as a result.

Q. Now, is that the practice in both the domestic field and the foreign field?

A. It is.

Q. To your knowledge does the British Timken organization maintain a system of distributors who take care of this replacement market throughout the territory in which they operate?

A. They do.

[fol. 2582] Q. And to your knowledge do they follow the same general practice as does American Timken in respect of protecting the authorized distributors in the markets in which they handle the replacement business of Timken bearings?

A. Yes, sir.

Q. Now, there has been something said in this case about a subject that has been referred to as a protective discount. Are you familiar with that phrase in the pricing structure of the Timken Roller Bearing Company?

A. Well, I have heard it used, particularly within the last four weeks. Just how the term originated as protective discount, I couldn't say. I would like to offer this as my opinion, that all discounts are basically protective. They protect not only your authorized distributors who maintain a stock of Timken replacement parts, they also protect motor car dealers who in turn may have a stock of Timken parts, or dealers in different equipment who may be using Timken bearings.

Q. In other words, it is your view, as I take it from what

you said, that as a matter of company policy the company feels that it must offer protection and not compete with the people who are acting in this replacement market, whether they are at home or whether they are abroad?

A. That is true. And that applies not only to foreign [fol. 2583] distribution but also to domestic distribution.

Q. Now, do you know what the discount was that was quoted on what has been referred to in the record as unsolicited foreign replacement business back in 1927 and 1928?

A. Yes, sir. 50 per cent from list.

Q. And did it make any difference where the bearings that were covered by such an inquiry were destined for?

A. By that you mean, Mr. Ketterer, whether the bearings were destined for foreign areas under our jurisdiction or under British Timken's jurisdiction?

Q. Yes, that is what I mean.

A. The 50 per cent discount from list applied equally to all foreign territory.

Q. It didn't make any difference where the bearings were going?

A. That is right.

Q. Now, have there been any changes from time to time from that discount rate you have described as having been in effect for all unsolicited replacement business, orders for replacement purposes?

A. There have been some changes. In 1932 the discount was changed from 50 per cent from list price to 50-5 per cent discount.

Q. On what type of sales?

A. On all types or classes of sales.

[fol. 2584] Q. To what territories?

A. All foreign territories.

Q. Then what happened after that?

A. Well, in 1934 that discount was increased to 60 per cent for all classes.

Q. Now, have there been any changes since then?

A. Yes, sir, that has since been changed to 70 per cent to authorized distributors; 65 per cent to car dealers or car importers; and 60 per cent to fleet owners and other classes of trade.

Q. Now, were those changes made in the discount rates after consultation with British Timken or were they made

without any consultation with British Timken, to your knowledge?

A. They were made without consultation, as far as I know.

Q. What was the purpose of making changes in those discount rates?

A. The purpose was to meet competition. And I might add that similar increases in discounts were being made domestically at generally the same time. There may have been a difference of a few months but changes were made both in our foreign discounts as well as in our domestic discounts in order to meet competition from other tapered roller bearing manufacturers. That competition might come either from domestic *manufactuers* or from foreign manufacturers.

[fol. 2585] Q. Now, are you familiar with any other change in the discount rate applicable to any other territory that has been put into effect since 1934?

A. Yes, sir. A change was made in our discount schedule in the territory of Hawaii, and that was made, I believe, on the first day of January, 1948. Those discounts were 70 per cent to authorized distributors, 58 per cent to stocking jobbers, who fall under the general jurisdiction of our authorized distributors, and a discount of 45 per cent to fleet owners and general replacement business of that character.

Q. Now, will you explain to the Court why the discount rate of 45 per cent was applied to the ones you have generally described as fleet owners or general industrial users?

A. You are talking about Hawaii now?

Q. Yes, that is correct.

A. Well, that was to meet American competition on other types of tapered roller bearings, and those discounts fall into agreement with the discounts which we are quoting in the various states within the United States.

Q. And what had that to do by way of protecting the authorized distributor of Timken bearings in Hawaii?

A. Well, it has everything to do with protecting the authorized distributors. If we were to have maintained our [fol. 2586] old discount schedule other distributors of competing companies would undoubtedly have put in stocks of bearings, either putting our own distributors out of business or seriously curtailing their activities.

Q. And is it correct to say that discount change was made for the purpose of protecting the authorized distributors of Timken bearings in Hawaii?

A. That is right.

Q. Now, I used the term a while ago in asking you a question in respect of this protective discount phrase as it having been something that applied to unsolicited service business for the export market. Will you explain to the Court what that means, what the phrase "unsolicited service business" for the export market means?

A. Yes. Let's take as an illustration a vehicle owner perhaps in South Africa, in some remote location in South Africa who is not familiar with any authorized distributor of British Timken in his area. He might therefore correspond with some exporter or concern that has a commission house in New York City to obtain price and delivery on a Timken bearing, and from such a commission house we might in turn receive an unsolicited inquiry.

Q. So by unsolicited inquiry you mean one that has originated with somebody who has had no connection with [fol. 2587] the sales organization of the Timken company or the Timken organization, whether American Timken, British Timken or French Timken?

A. That is right.

[fol. 2588] Further direct examination of Whitley B. Moore.

By Mr Ketterer:

Q. Mr. Moore, yesterday at the adjournment we were talking about the discount situation in respect of unsolicited foreign export business. I would like to ask you whether or not you can tell the Court what that amounts to in volume per year approximately?

A. That amounted to between $18,000 and $19,000 in 1947. I do not have the prior years in mind.

Q. From your experience would you say that that was a fair sample of the volume of that business?

A. I would. I would estimate that the amount of that business might run between $15 and $25,000 a year.

Q. And that covers unsolicited export business to any place in the world of the type that you have described?

A. That is right.

Q. Now, I asked you yesterday, too, about the various discount rates that have been in effect from time to time since 1927. I will ask you whether or not those rates as you gave them yesterday apply in all countries or whether there has been any difference in any countries in that regard?

A. They do not apply in all countries. Our discount in [fol. 2589] the territories coming under the jurisdiction of British Timken, we had a discount of 50 per cent whereas in South America and in other foreign territories under the jurisdiction of American Timken that discount is currently 70 per cent to authorized distributors, it is 65 per cent to car importers, and it is 60 per cent to fleet owners and people in that general category.

Q. And the Hawaiian discount that you gave yesterday of 45 per cent to general industrial users and fleet owners is applicable only to Hawaii?

A. That is right.

Q. That is, as far as export business is concerned?

A. That is right.

Q. Now, going to another subject, what if anything is done by American Timken in respect of sales of bearings to manufacturers of the equipment in this country when those manufacturers of equipment use bearings for replacement purposes at any place in the export field. Does American Timken control that or make any effort to control it price-wise, quantity-wise or anything of that sort?

A. There is no way in which we can control the distribution of bearings sold to American manufacturers. By that I mean if the Chrysler Corporation orders a quantity of bearings, we presume that a certain percentage of that [fol. 2590] quantity of bearings is used for service replacement in Chrysler products, and we have no control as to where they may ship those bearings.

Q. Whether they are used for replacement purpose domestically or whether they are used in the foreign markets?

A. That is right.

Q. Do you make any effort to control the price at which they are sold abroad or domestically?

A. No, sir.

Q. And have you at any time to your knowledge ever consulted with either British Timken or French Timken in that regard?

A. It has been generally understood between French Timken, British Timken and ourselves that manufacturers in America buying bearings would be exporting a percentage of their bearings into these foreign areas for service replacement business.

Q. Now, do you recall when the Russian Government first undertook to purchase any products in this country, and through what agency?

A. My memory takes me back to 1928 when I believe Amtorg was first set up in New York City to control the purchase of materials in this country for the Russian Government.

Q. And have you from time to time either had direct contact with representatives of the Amtorg Trading Corpora-
[fol. 2591] tion or had reports from other representatives of American Timken who have had contact with representatives of the Amtorg Trading Corporation in respect of sales of bearings over the years?

A. Yes, I have. I might say in that connection that it was the practice of the Russian Government through Amtorg to set up certain commissions for the express purpose, perhaps, of purchasing steel plant equipment, glass plant equipment, tire building equipment, and those commissions under Amtorg would deal directly with the matters pertaining to engineering of bearing applications as well as to the sale of our goods.

Q. What has been the practice of American Timken in connection with such sales to the Russian representatives of the Russian Government over the years?

A. Well, I am assuming that you mean by that, Mr. Ketterer, our practice with reference to British Timken and French Timken, and I would say that we operate entirely independently of British Timken and French Timken, although at the conclusion of those negotiations or sales, as the case may be, we make a specific effort to advise British Timken and French Timken as to what we did so that they have a record of our engineering recommendations and the prices quoted.

[fol. 2592] Q. Is there any prior understanding or has there ever been to your knowledge any prior understanding with either British Timken or French Timken with respect to the prices that were going to be quoted to representa-

tives of Amtorg or any other trading organization representing the Russian Government?

A. The understanding was that we would negotiate with Amtorg or with the Russian Government independently but would keep one another advised as to the progress of our negotiations.

Q. And in point of practice, how have these inquiries from Amtorg been handled and what has been their general character over the years?

Mr. Nitschke: What period of time is this?

Mr. Ketterer: From 1928 down to the present time.

Mr. Nitschke: Is it your claim this witness is familiar with that practice during that period?

Mr. Ketterer: He certainly is.

The Witness: Will you repeat the question?

(Question read.)

Q. You understand that is from 1928 down to the present time?

A. That is right. There has been no basic change in our method of handling inquiries and orders from Amtorg.

Q. And how have those orders been handled in respect of [fol. 2593] what kind of sales work was required from representatives of American Timken in respect of that business?

A. Well, the Amtorg engineers and our engineers worked very closely on the engineering features. For example, if a steel mill was being purchased it was necessary to satisfy the Amtorg engineers that the bearings that we would recommend were of adequate size, that they were properly mounted, would be properly lubricated. We reviewed with them matters pertaining to the service of the bearings after the mills were once installed in Russia and in operation.

Q. And what competition has American Timken had in respect of that business?

A. We have had plenty. We have had competition particularly from such domestic producers as Bantam, and Messenger, and Morgan Construction Company, and others.

Q. To your knowledge has there ever been a time when the Russian Government asked for quotations from British Timken and American Timken on the same item of business at the same time?

A. I don't recollect of any instance where the Russians made inquiries of British manufacturers and American manufacturers for the same general pieces of equipment. In other words, if they were going to put in a glass making [fol. 2594] plant in Russia they didn't ask producers of glass making machinery in England to compete with glass making equipment manufacturers in the United States.

Q. So you cannot recall of any instance when that question ever came up?

A. No, sir, I cannot.

Q. Do you recall that in a paragraph of the 1938 business agreement there is a proviso in the last portion of it that has to do with the Russian business on the subject of not under-cutting a quotation made by either party?

A. I do.

Q. And do you know what the purpose of that was?

A. While I was not in on the discussions at the time the contract was negotiated; it has been generally understood that we didn't want to be in a position where the right hand of Timken was doing something that the left hand knew nothing about.

Q. Now, I will ask you, Mr. Moore, whether or not you have had occasion at any time to go to Europe for any discussions with representatives of British Timken as to the handling of business?

A. I have. I made a trip last November and December to Great Britain and to France.

Q. And who accompanied you on that trip?

[fol. 2595] A. Mr. Howard Sauer, our foreign manager of sales.

Q. And where did you go on the trip?

A. Well, we visited first the British plant and offices in North Hampton, we went from there to our plant and offices in Birmingham, and again to our plant and offices in Wolver Hampton in England. We made other calls in London.

Q. Now, what was the general purpose of the trip to England and France at that time?

A. Well, Mr. Ketterer, I think that the trip was brought about primarily due to a very acute shortage of anti-friction bearings in Europe, and that shortage naturally reflected itself into an equally keen shortage of tapered roller bearings. So we went over to England, and again to Paris, to discuss with our associates over there what could be

done to expedite the flow of Timken tapered roller bearings into European and foreign markets.

Q. Now, were there any other purposes aside from that?

A. Well, we were quite anxious to see what could be done to expedite the processing of British import licenses on steel, which were required by British Timken for manufacture of the Timken bearings. Some of those import licenses were taking many weeks to process, and in the meantime our British plant was seriously in need of [fol. 2596] seamless tubing and of strip steel and of other unfinished components, and we were quite anxious to see what could be done to expedite the processing of those import licenses. As a matter of fact while we were in London we called upon the British Iron & Steel Corporation, which is the British Government agency for controlling the imports of steel products into Great Britain. Our conversation with British Iron & Steel, I really felt did some good, in that we arranged to have those import licenses expedited.

Q. Well, that was for steel for British Timken for use in the manufacture of tapered roller bearings?

A. That is right.

Q. Now, what was the general nature or the result of the discussions that you had with representatives of British Timken in respect of the matter of supplying tapered roller bearings in various markets of the world?

A. The sale of Timken bearings in original equipment is a matter that requires months and many times years to complete. We recognized that the present shortage of anti-friction bearings in Europe represented an opportunity for the Timken Roller Bearing Company and its associates to get original business that might otherwise require years of continuous effort to accomplish. So we were naturally very anxious to review with our British and [fol. 2597] French associates every possible means of getting prompt shipment of bearings into the European markets.

Q. And on what basis was it understood that that would be done?

A. Well, it was understood that on orders coming into the United States, into American Timken from European governmental agencies—I might illustrate the point by taking Belgium, which has sent an inquiry to us for a very

substantial quantity of bearings—it was understood that American Timken would quote and otherwise complete negotiations with the Belgium Government independently of British Timken. So it was agreed with our associates that in view of the current need for anti-friction bearings and the Timken bearings in particular, that we would operate quite independently but would keep each other advised. We specifically made the point to British Timken that we would refer inquiries to them from sources where engineering or service work might require attention, technically, that we could not give from Canton, Ohio.

Q. And in point of fact has business been handled on that basis?

A. It has.

Q. To your knowledge?

A. It has.

[fol. 2598] Q. And at what prices do you quote on this business that has come in in the fashion that you have described?

A. Well, we can safely assume that any inquiries that we receive in this country from European sources will also be sent to competitive manufacturers of tapered roller bearings, consequently our quotations on that type of business are made with American competition in mind and we quote prices that we think will be competitive.

Q. And are they prices that are agreed to with British Timken in any fashion?

A. No, sir.

Q. Now, what has been the principal export market of American Timken up to the war, commencement of the war in 1939?

A. Why, I would say that our principal export market was into Canada.

Q. And why was that?

A. Well, I think because of the close association between Canadian manufacturing activities and processes to American or United States practices.

Q. Percentage-wise what volume of export business that American Timken has done over the years, approximately what percentage of the export business, has been business to Canada?

A. Well, that of course varies from year to year but as a [fol. 2599] round percentage I would say 40 to 50 per cent.

Q. Of all export business done by American Timken?

A. Of our total export business.

Q. And what has been the next largest source of export business over the years, to your knowlege?

A. The next largest export business would be into European markets, normally those markets falling under the jurisdiction of British Timken.

Q. And that represents, percentage-wise, approximately how much of American Timken's export business as of prior to 1939?

A. In 1939 about 30 to 35 per cent.

Q. And is it a fact that those sales into the European market have been handled through either the British Company or the French Company, generally?

A. Would you repeat that question?

Q. I say, is it a fact that those sales into the European market have been handled through either British Timken or French Timken, that is, up to 1939, the time the war commenced?

A. Most of them.

Q. I have here two sheets that have been marked for identification as Defendant's Exhibit 185. I will ask you if you can identify those?

A. I can.

[fol. 2600] Q. And what are they?

A. This is a tabulation showing the number of bearing sizes made by the Timken Roller Bearing Company for each year, starting with the year 1903 and ending in the year 1948.

Q. And that was prepared under your direction by the engineering department?

A. That is right.

Mr. Ketterer: We offer Defendant's Exhibit 185.

The Court: It may be received.

Cross examination of Whitley B. Moore.

By Mr. Nitschke:

Q. Mr. Moore, yesterday you mentioned the fact that you considered all your discounts protective, is that right?

A. That's right.

[fol. 2601] Q. And I believe by that you indicated when you quote discounts to anyone, whether it is a distributor or

manufacturer or dealer, whatever it is, you feel obligated to honor that discount by not selling yourself at those prices, is that right?

A. That's right.

Q. What you mean, then I take it, is that with respect to your various classes of customers you will not sell at different discounts to customers within the same class?

A. We do not want to undersell our own channels of distribution, if I understand your question correctly.

Q. Would you undersell some other manufacturer's distributor if you could?

A. Well, I'm sure we have no control over that, Mr. Nitschke. We have no control over prices quoted by our competitors.

Q. I'm talking about yours. You say you won't sell—I believe this is your last statement that you would not sell at a lower price than one of your distributors?

A. Not knowingly.

Q. Knowingly?

A. Yes.

Q. Would you sell at a lower price than some other manufacturer's distributor was selling at if you could get the business away from them?

[fol. 2602] A. Well, by manufacturer do I understand you to mean, Mr. Nitschke, manufacturers of tapered roller bearings or manufacturers using tapered roller bearings in equipment?

Q. I'm talking about manufacturers of tapered roller bearings.

A. Well, I have no way of knowing what they would quote.

Q. Well, would you protect their distributors?

A. Why, we would have no way of controlling that, and certainly would make no effort to.

Q. You would not make any effort to protect their distributors?

A. That's right.

Q. The distributors you are talking about that you protect are your distributors?

A. That's right.

Q. The distributors of Timken bearings?

A. That's right.

Q. I take it, then, you have no agreement with other

bearing manufacturers as to the discounts you will quote on replacement sales?

A. We have no agreement.

Q. Now, is that true also in the export trade that you have no agreement with respect to what you quote on replacement sales?

[fol. 2603] A. That's right.

Q. I believe you testified yesterday that—

Mr. Nitschke: Reading from Page 2493 of the transcript, Mr. Ketterer.

Q. "Q. Now, were those changes made in the discount rates after consultation with British Timken, or were they made without any consultation with British Timken, to your knowledge?" And your answer was, "They were made without consultation, as far as I know."

A. That's right.

Q. I would like to call your attention to a document that has been put in evidence in this case, it's marked Government's Exhibit 108. It is a memorandum written by L. M. Klinedinst, and it is dated December 6, 1939. What was Mr. Klinedinst's position at that time, do you know?

A. Mr. Klinedinst was vice-president in charge of sales for our company.

Q. And what position did you have at that time?

A. In 1939 I was general manager of the industrial division.

Q. I will show you this memorandum. You notice at the top it is addressed to four people, one of them being W. B. Moore. Are you the W. B. Moore that that memorandum is addressed to?

A. I am.

[fol. 2604] Q. I would like to read you a part of this memorandum.

The Court: What is that exhibit, please?

Mr. Nitschke: Government's Exhibit 108, your Honor. It is dated December 6, 1939.

The Court: All right.

Q. The first paragraph says: "It is quite evident from past practice in handling export orders that there are some of our men not fully familiar with our contractual arrangements with British Timken regarding territories and the

shipment of bearings into each other's sales territory. So that our men may be fully familiar, we are quoting below from our business agreement with British Timken. The following paragraph covers British Timken's territory as well as our own." I believe you are familiar with those agreements, are you not, Mr. Moore?

A. That's right.

Q. I won't bother to read the next paragraph, then, but going down to the last paragraph of this memorandum, Mr. Klinedinst writes: "It is our interpretation of these arrangements that we are not permitted to sell or ship bearings into or known to be destined to British Timken's territory without paying them a 5% commission, and even under such circumstance our prices must be acceptable to them. We have a mutual understanding with British Timken that on unsolicited inquires for [fol. 2605] bearings going into each other's territory that we are at liberty at all times to quote prices representing a 50% discount from American list on standard bearings and pay a 5% commission on the net sale thereof. We insist that all of our men respect our agreement with British Timken and on any unusual cases to consult the Home Office for further instructions." Now, does that refresh your memory any on the question of whether or not your export discount was made after consultation with British Timken?

[fol. 2606] A. Well, Mr. Nitschke, our control provisions with Britain Timken have not at any time been followed specifically as called for in those contracts. For example, we have had, if you please, fielder's choice, or a license, in making quotations to concerns into British Timken territory, although on these small unsolicited orders which I have already pointed out this morning as representing only some $18,000 worth of business, we have adhered very religiously, I might say, to the 50 per cent discount.

Q. Is your answer that that does not refresh your memory as to whether you consulted with British Timken or that it does refresh your memory that you consulted with British Timken as to that 50 per cent discount?

A. Well, we have had numerous exchanges of correspondence and contacts with British Timken on this subject, but I understood your question was as to whether we had agreements with competitors.

Q. Well, that's not my question, Mr. Moore. I was referring to the statement you made on Mr. Ketterer's examination, where he asked you: "Now, were those changes made in the discount rates after consultation with British Timken or were they made without any consultation with British Timken, to your knowledge?" And you said, "They [fol. 2607] were made without consultation."

A. The changes in our discount schedules were made without consultation with British Timken. In other words, when we went from a 50 per cent discount to a 50 and 5 per cent discount in 1930, and again to 60 per cent discount in 1932, and again to a 70-65-60 series of discounts in 1934, those changes were made without consulting British Timken. But I do want to say that we undoubtedly advised British Timken that we were making those changes. Those changes were brought about by reason of competition from both American and foreign competition on tapered roller bearings.

Q. You did not make those changes, you did not change to 70 per cent, is that your testimony, with respect to sales of unsolicited business to the British Timken or French Timken territory?

A. We made no change in the 50 per cent discount into territories under the jurisdiction of British Timken.

Q. And that retention of the 50 per cent discount was made after consultation with British Timken, isn't that right?

A. Would you repeat that?

Q. Your retention of 50 per cent on sales to British Timken's territory or French Timken's territory was made after consultation with British Timken?

[fol. 2608] A. Why, I presume it was. I wasn't there, but—

Q. You don't disagree with Mr. Klinedinst's statement in this memorandum, do you?

A. No, I do not disagree with that at all.

Q. You also stated that you have no control over American manufacturers who might buy bearings from you for use to install in equipment they are making, to prevent them from taking some of those bearings and shipping them into British Timken or French Timken territory for replacement purposes. I believe you made that statement?

A. That's right.

Q. Or something approximating that?

A. That's right.

Q. But you have made efforts, have you not, to prevent American manufacturers from doing that?

A. We have no way of preventing them. We are very frequently asked by American manufacturers what prices we would quote on replacement bearings, and in more instances than not I believe that American manufacturers follow our price schedule because they recognize that the prices that we have established represent a fair markup which would encourage their own agents or distributors to maintain an adequate stock of bearings for replacement purposes.

[fol. 2609] Q. My question was: have you not attempted to encourage these manufacturers not to buy from you and ship into British Timken's territory for replacement purposes?

A. Oh, I would say that very definitely we encourage them to follow our general price schedule. In other words, we take this position, Mr. Nitschke, that it isn't desirable for the user to get half a dozen different prices on a Timken bearing. But we have no way of controlling that. We have our own schedule, we make that known to our customers. Frankly, we hope that they follow it, but we have no way of insisting that they follow it.

Q. Haven't you made efforts to get these people to have their dealers buy replacement bearings from British Timken and French Timken, and haven't you asked them not to take the bearings they buy from you and ship overseas to British Timken's territory for replacement purposes?

A. Well, I would say not. We may have suggested in certain instances that they follow our practices, or we may have suggested that we are already well covered with representation in these other foreign areas. But, again, I repeat we have no way of controlling the situation.

Q. Yes, I know you have said that time and time again. I'm not trying to dispute that fact with you. I'm asking you, even though you say you can't control them from ship-

[fol. 2610] ping into British Timken's territory, haven't you tried and asked them, attempted to get them not to do that but to buy from British Timken?

A. I presume that in certain cases that is true. I can't give you any specific instances right now.

Q. I would like to call your attention to another document which is in evidence in this case, Government's Exhibit 123. It's written by L. M. Klinedinst, dated February 24, 1941. What was Mr. Klinedinst's position at that time, Mr. Moore?

A. 1924?

Q. No, February 24, 1941.

A. In 1941 he was vice-president in charge of sales.

Q. I would like to read you a part of this letter. Mr. Klinedinst is writing to Mr. Dewar. Do you know who he is?

A. I know who Mr. Dewar is, yes.

Q. He says: "Dear Michael: I am attaching a copy of a letter just addressed to Mr. Pascoe again dealing with the subject of service requirements. We doubt if Mr. Pascoe fairly understands this whole picture." Now, this is the part I would like to call your attention to:

"It took many years, as you will recall, to get foreign [fol. 2611] dealers of American made cars to buy their service bearing requirements through British Timken. The habit has been formed, and up until recently the American car manufacturers supplied very few bearings to the foreign agencies for service. They depended upon British Timken to do that." Do you agree with Mr. Klinedinst's statement that it took many years to get foreign dealers of American made cars to buy their service bearings through British Timken?

A. Well, I have no way of knowing that that was actually the situation. It may have been Mr. Klinedinst's opinion at the time, no doubt was.

Q. Mr. Moore, throughout this period from 1927 and 1928 to date, have you known prices at which the British Timken distributors sell bearings?

A. In general, yes.

Q. What do you mean by "in general"?

A. Do you mean me personally or the company?

Q. I mean whether or not your company knew at what discounts British Timken distributors were selling?

A. Our company has been informed.

Q. Your company has been informed?

A. That's right.

Q. At all times?

[fol. 2612] A. Well, that I can't say. I don't know.

Q. Do you know this as a matter of your personal knowledge, or is this just something—

A. Well, I know that from time to time they have given us information as to the prices that they have been quoted. Whether they have given us all the information or not, I'm not able to say.

Mr. Nitschke: That's all.

Redirect examination of Whitley B. Moore.

By Mr. Ketterer:

Q. Mr. Moore, I would like to clear up this misunderstanding about the testimony that you gave yesterday. You recall that you testified yesterday concerning certain changes in discount rates on unsolicited export service business. Do you remember that?

A. That's right.

Q. Now, when you said yesterday, and I read from the answer that was given here and the question: "Q. Now, were those changes made in the discount rates after consultation with British Timken, or were they made without any consultation with British Timken, to your knowledge? A. They were made without consultation, as far as I know." In respect of that statement, I will ask you whether or not you were referring to these changes in discount rates that [fol. 2613] were made as you outlined them yesterday?

A. I was.

Q. And was there, in fact, to your knowledge, any consultation with British Timken in respect of those changes in the discount rates?

A. There was no consultation to my knowledge.

Mr. Ketterer: That's all.

Mr. Nitschke: That's all.

[fol. 2614] Thereupon the Defendant, further to maintain the issues on its part to be maintained, called as a witness

WILLIAM ROBERT TIMKEN who, being first duly sworn, testified as follows:

Direct examination of William Robert Timken.

By Mr. Ketterer:

Q. Will you state your name, please?

A. William Robert Timken.

Q. Where do you live, Mr. Timken?

A. Canton, Ohio.

Q. With what company are you connected?

A. The Timken Roller Bearing Company.

Q. How long have you been connected with the Timken Roller Bearing Company?

A. Since September 15, 1935.

Q. And your present connection with that company is what?

A. I am vice-president, a director, a member of the finance committee and the executive committee.

Q. How long have you been vice-president of the company?

A. I became a vice-president in the spring of 1941.

Q. And prior to that what was your position with the company?

A. When I first went there I was assistant to the secretary and treasurer, and a year later I was elected a director, a year after that, about October, 1937, I was placed in [fol. 2615] charge of the relations of the company with the British and French Timken.

Q. That was about 1937?

A. In the fall of 1937. In 1941 I was elected vice-president—well, in the spring of 1939 I became assistant to the president and continued as such until I was elected vice-president.

Q. Have you followed the connection between American Timken and British Timken and French Timken since 1937?

A. I have.

Q. And at the time you first started following that connection, I would like to ask you whether or not you made any effort to familiarize yourself with what had happened prior to the time you first had contact with it in 1937?

A. I did in a general way, I studied prior agreements.

Q. And you have followed the relationship, that has been part of your job since 1937?

A. Yes.

(Thereupon statement of investments of American Timken in British Timken, French Timken and German Timken was marked by the Clerk, for identification, Defendant's Exhibit 186.)

Q. I hand you three sheets, Mr. Timken, that have been marked collectively for identification as Defendant's Ex-
[fol. 2616] hibit 186. I will ask you if you can identify those?

A. Those are statements of investments in British Timken, French Timken and German Timken, compiled under my direction by J. A. Riley, assistant secretary—

A. Those are statements of investments in British Timken, French Timken and German Timken prepared by Mr. J. A. Riley, assistant secretary and treasurer of Timken Roller Bearing Company.

Q. Under your direction?

A. Under my difection.

Q. I notice that in this heading on the righthand side of each of these pages there is the statement "The Timken Roller Bearing Company, directly or indirectly," with the number of shares and the percent of the total. What does that "directly or indirectly" indicate?

A. During some period of the time portions of the stock was held by wholly owned subsidiaries of Timken Roller Bearing Company. There was Continental Bearings, and I.C.I., and several others, but the actual ownership was still with Timken Roller Bearing Company, although it was indirect.

[fol. 2617] Mr. Ketterer: We offer Defendant's Exhibit 186.

The Court: It may be received.

Q. Now, I notice on the first sheet of Defendant's Exhibit 186, the one that has to do with the investment in British Timken Limited, in the extreme righthand column of that sheet it shows down to and including 1934 that American Timken had 52½ per cent of the stock of British Timken, and that from 1934 down to the present date that percentage has remained at 30.26 per cent. Was that change made, or did that change occur at the time of the public sale of stock in 1935?

A. It did.

Q. I will ask you, Mr. Timken, whether or not, to your knowledge, the American Timken Company bought any additional shares on the public offering that was made in 1935?

A. At that time the Timken Roller Bearing Company purchased 10,000 shares.

Q. And why was that purchase made?

A. Well, we felt that we should maintain somewhat [fol. 2618] greater ownership than was represented in our joint holdings with Mr. Dewar.

Q. And the total of your joint holding with Mr. Dewar, aside from the 10,000 shares after the public sale in 1935, amounted to what percentage of the outstanding capital stock of British Timken?

A. Approximately 50 per cent.

Q. And with the additional 10,000 shares that was purchased, that gave approximately 5.26 per cent additional, so that the total of your shares—by yours I mean American Timken's—and Mr. Dewar's shares then totalled 55.26 per cent, approximately?

A. Yes.

Q. As to the French Timken Company, I notice on the second sheet of Defendant's Exhibit 186 that the percentage of ownership of capital stock of French Timken was initially 73.37 per cent. Who owned the balance of the stock of French Timken?

A. Mr. Dewar.

Q. And then in 1930 that dropped to 60.5 per cent, and after that drop occurred who owned the other approximately 40 per cent of 39.95 per cent?

A. Mr. Dewar, either directly or indirectly.

Q. By "indirectly" you mean through the medium of holding companies?

[fol. 2619] A. Wholly owned holding companies.

Q. But he was the beneficial owner of that difference in percentage at all times?

A. Yes.

Q. And as to the present time, or from 1934 down through and including 1947, it appears that American Timken has 50 per cent of the outstanding stock of French Timken. Who owns the other outstanding 50 per cent of the stock of French Timken?

A. Mr. Dewar.

Q. And that has been the situation continuously, as shown by this sheet, since 1934?

A. Yes.

Q. On the third sheet of Defendant's Exhibit 186 there appear the words, after the date 1941, "written off." What does that indicate?

A. At that time, I believe, it was written off for tax purposes, the remaining investment in German Timken.

Q. Whatever it amounted to?

A. The value of it.

Q. In the extreme righthand column on the third sheet of this exhibit, which has to do with the ownership of stock in German Timken, it appears that initially American Timken had 56.91 per cent of the stock. Were there other share-
[fol. 2620] holders in the German Timken Company?

A. Mr. Dewar held shares, and it is possible that Mr. Prausnitzer might have at that time.

Q. But they were the only other shareholders in German Timken, unless there were some qualifying shares outstanding?

A. As far as I know.

(Tabulation of dividends was thereupon morked by the Clerk, for identification, Defendant's Exhibit 187.)

Q. Mr. Timken, I hand you a sheet that has been marked for identification Defendant's Exhibit 187, and I will ask you if you can identify that?

A. That was prepared under my direction and indicates for the period from 1928 through 1947 the dividends received by the Timken Roller Bearing Company from British and French Timken, directly or indirectly, and the royalties received during that period from British Timken.

Q. There were no royalties received from French Timken?

A. No.

Mr. Ketterer: We offer Defendant's Exhibit 187.

The Court: It may be received.

[fol. 2621] Q. I want to direct your attention to some items on this exhibit, Defendant's Exhibit 187. There appear the words in the heading "Dividends less tax." What does that phrase "less tax" mean?

A. That means that the dividends were—a British tax was deducted from them before they were transmitted to us.

Q. And those figures, then, represent the net amount that American Timken received?

A. The net amount received.

Q. Also in the third column appear the words "Timken Holdings." What does that indicate?

A. Timken Holdings was a company controlled by Mr. Dewar and ourselves, and it was set up at the time of the public stock sale of British Timken shares as a method of maintaining the control arrangements with Mr. Dewar.

Q. Will you explain that a little further, as to maintaining the control arrangements, just what was the arrangement with Mr. Dewar as to this Timken Holdings Company?

A. The arrangement was that Mr. Dewar was to have control of the Timken Holdings Company so long as British Timken earned 15 per cent on its capital.

Q. Prior to the time that the public sale of stock was made [fol. 2622] in 1935, had there been such a control arrangement in effect with Mr. Dewar?

A. There had been.

Q. And state whether or not the organization of the Timken Holdings Company was to perpetuate that control arrangement between American Timken and Mr. Dewar in respect of the operation of the British Company?

A. That was its purpose.

Q. Now, how was that handled as to the shares of stock in Timken Holdings?

A. There were two classes of shares, there were A shares, of which Mr. Dewar held a majority and American Timken a minority; there were B shares, of which American Timken held a majority and Mr. Dewar a minority. As long as the profits of British Timken were maintained at the required figure, the A shares had 5 votes per share and the B shares had 1 vote per share, thus insuring Mr. Dewar's control of Timken Holdings under those conditions. If the picture changed and those profit figures were not maintained, the B shares had 5 votes and the A shares 1 vote, which would mean that control of the stock held by Timken Holdings would pass to us.

Q. And as long as that arrangement was in effect, was

there an obligation on the part of each party to vote the [fol. 2623] stock in accordance with the Agreement?

A. Yes.

Q. What was done with the American Timken stock as to Timken Holdings, did it hold the stock of American Timken?

A. Timken Holdings held the stock of both parties, partially as nominee and partially outright.

Q. So that the items that appear on here as dividends from Timken Holdings represent the return on the portion of American Timken stock that was held by Timken Holdings outright?

A. Outright, yes.

Q. The portion of American Timken stock that was held by Timken Holdings as nominee, those dividends came directly to American Timken less tax?

A. Yes.

Q. Was there a similar arrangement in respect of the holdings of the stock of the French Company?

A. Yes, the arrangement there was not as formal because there was no public ownership of the French Timken Company. But the essential control provision was that the company should pay $24,000 a year in dividends, and as long as it did that Mr. Dewar had control of the company. If it did not do that, the control was to pass to American Timken.

Q. And was Mr. Dewar obligated to vote his stock in support of American Timken management in the event that [fol. 2624] the earnings fell below the specified figure?

A. Yes.

Q. In other words, it was the same arrangement, essentially, as in respect of the operation of the British Company?

A. Yes, without intervention of a holding company, which was necessary because of the public ownership in British Timken.

Q. Has that arrangement in respect of the control of the British Company and French Company continued down to the present time?

A. It has, in essence.

Q. And what if any provisions in the control arrangement are there in respect of American Timken having any option on the Dewar stock?

A. We have an option on Mr. Dewar's stock in the event of his death or disability for a period of six months.

Q. And has that arrangement continued over the years since 1928 down to the present time?

A. That has been in existence throughout.

Q. Now, you recall that the last business agreement made between American Timken, British Timken and French Timken was dated in 1938?

A. Yes.

Q. And that there was a second agreement made at the [fol. 2625] same time bearing approximately the same date?

A. Yes.

Q. To which Mr. Dewar, American Timken and British Timken were parties?

A. Yes.

Q. Can you explain to the Court the reason for two agreements as of that time in 1938?

A. That second agreement was prepared by French lawyers, the French branch of Sullivan & Cromwell in Paris, and it is my understanding that the purpose of it was to insure that the individual stockholders of French Timken would guarantee, by signing it, French Timken's carrying out the first contract.

Q. That is, the main business agreement?

A. The main business agreement.

Q. And the parties to the second agreement, that is, the second 1938 contract, were the shareholders, all the shareholders in the French Company?

A. That is right.

Q. Now, there has been some testimony offered in this case that from time to time American Timken has purchased or supervised the purchase of machinery and equipment for both the British Timken Company and the French Company. Do you recall that?

[fol. 2626] A. We have.

Q. On what basis has that been done over the years, from a financial standpoint?

A. Generally, where we would buy machinery for them, order it for them from the outside, either new or used machinery, we charged them the actual cost of that machinery to us.

Q. Did that cost involve any administrative overhead, or any profit?

A. Not to us, no. No profit, no commission.

Q. Has that been the way that has been handled, to your personal knowledge, since 1935 or 1936?

A. Yes, on machinery bought on the outside, with one exception. Where we bought for them special machinery which required a good bit of testing, and being set up in our plant and actually run to make sure it was correct, we charged 10 per cent as a commission for our doing that job for them before shipping the machine.

Q. Was that 10 per cent figured on the cost of the equipment without administrative overhead or any item comparable to it?

A. It was. We also, where we sold used machinery from our plant to plants of French Timken, added 10 per cent in order to cover the cost of reconditioning and other incidentals, 10 per cent above the depreciated value on our [fol. 2627] books.

Q. Mr. Timken, I would like to ask you what has been the practice of American Timken in respect of advertising its products?

A. We have used three general mediums: one is national advertising, the other trade paper advertising, and then we have had booklets and pamphlets about the different products.

Q. What has been the practice of American Timken as to supplying British Timken and French Timken with copies of the advertising copy that is developed by American Timken for use in the three types of advertising that American Timken has resorted to?

A. We have supplied them with copies of everything.

Q. And that is done on what sort of a basis, monthly or weekly, or how?

A. As they are prepared.

(Three items clipped together marked by the Clerk, for identification, Defendant's Exhibit 188.)

Q. I will hand you here three items that have been [fol. 2628] clipped together and marked for identification as Defendant's Exhibit 188 and I will ask you to tell the Court what they are.

A. The first is an advertisement of national character concerned with the use of Timken roller bearings on freight cars; the second is a trade paper advertisement, advertising one of our specialty steels; and the third is a pamphlet

showing Timken products, which would be sent out to certain customers to familiarize them with our general line.

Q. Are these samples of advertising illustrative of the type of material that goes to British Timken and French Timken?

A. They are.

Mr. Ketterer: We offer Defendant's Exhibit 188.

The Court: It may be received.

Q. Has that practice of sending out advertising material developed by American Timken to British Timken and French Timken to your knowledge gone on constantly over the years excepting perhaps during the war years?

A. As far as I know it has.

Q. Now, there has been some testimony about the acquisition by British Timken of Fischer Bearings plant in England. To what extent did American Timken participate in that?

[fol.2629] A. When the matter came up we consulted and discussed it among ourselves and agreed with them that the purchase should be made.

Q. And "with them" you mean whom?

A. British Timken.

Q. And who, specifically?

A. Michael Dewar and Pascoe.

Q. And under what circumstances was the opportunity presented to acquire the Fischer plant in England?

A. In about 1936 the Fischer Company, which was one of the large German anti-friction bearing companies, set up a manufacturing subsidiary in England to manufacture ball and straight roller bearings. That was quite a sizable plant and it ran for two or three years until the war broke out, at which time it was seized by the British equivalent of the Alien Property Custodian. The British did not want to see the plant shut down because of their bearing shortages. They therefore looked about to have one of the British bearing companies to purchase it and to continue to manage and operate it. At that time Mr. Dewar and Mr. Pascoe, after consulting with us, made an offer for it, which was accepted.

Q. Do you know what the offer was?

A. I believe it was 200,000 pounds.

[fol. 2630] Q. And that was accepted by the representa-

tives of the British Government, or the equivalent of the Alien Property Custodian in England?

A. Yes.

Q. And what has happened with respect to the operation of the Fischer plant since that time?

A. It has been continuously operated by British Timken as a wholly owned subsidiary and has been expanded. When it was purchased British Timken moved all its own ball and straight roller bearings to the Fischer plant, and they sell those under the Fischer bearing trademark.

Q. Prior to the acquisition of the Fischer bearing plant in the fashion you have outlined was British Timken making ball bearings in addition to tapered roller bearings and straight roller bearings?

A. They were making both ball and straight roller bearings in addition to tapered.

Q. And that manufacture was being conducted at the Birmingham plant of British Timken?

A. Yes, it was a minor part of the production.

Q. You say after Fischer was acquired then all of the ball bearings and straight roller bearing manufacture, and the equipment for performing that work was transferred to the Fischer plant?

[fol. 2631] A. It was.

Q. And has Fischer continued as a wholly owned subsidiary of British Timken since that time?

A. It has.

Q. Now, there has been some reference in some of the written exhibits to a thing called the Westminster Account. Are you familiar with how that came into existence and what it was?

A. Yes.

Q. What was it?

A. The Westminster Account originated when in the middle 30's the French franc became very weak and at that time French Timken had considerable cash. They therefore transferred a goodly portion of this cash, although actually it was transferred I believe in the form of gold, to the Westminster Bank in London in order to conserve it in the event of a further weakening of the French franc.

Q. How was that done, by the prepayment of monies owed, or how?

A. The owners of French Timken, Mr. Dewar and our-

selves, in addition to the stock we owned, held promissory notes which had arisen out of our helping to refinance them after their early operating losses, and the gold was used to prepay a portion of those promissory notes.

[fol. 2632] Q. And that money that was deposited in the Westminster Bank in London amounted to approximately how much?

A. About $225,000.

Q. And that has been referred to between American Timken and Dewar and Pascoe and British Timken as the "Westminster Account"?

A. Yes.

Q. And has it remained on deposit since that time?

A. It has, although a portion of it has been paid out. There is now about $165,000 in that account.

Q. What was the purpose of its being paid out?

A. For several years we used it to pay the $24,000 annual dividend which French Timken was obligated to pay, until the war came long, when we agreed mutually with Mr. Dewar that that provision should be suspended because of the war.

Q. Now, were you in Canton in 1940 when a representative of Bearings Service of Australia, a Mr. Harrison, appeared in Canton?

A. I was.

Q. Did you talk with Mr. Harrison?

A. I did.

Q. What was the purport of the conversation you had with Mr. Harrison with respect to bearing supply of Australia?

[fol. 2633] A. Mr. Harrison felt that Australia was being neglected in the bearing supplies from England because of the war and because the British bearing industry was so fully operated for war materiel in England that they were not keeping adequate supplies going to Australia.

Q. And what did he propose in that regard?

A. Well, he had to find some way to repair the damage that was being done the Australian economy by lack of bearings.

Q. Will you state whether or not at any time he suggested the breaking of the contract between American Timken and British Timken, the 1938 agreement, in the conversations you had with him?

A. He did not.

Q. Now, what was in point of fact done in respect of supplying the Australian market by American Timken after 1940?

A. Well, we felt, too, that the Australian market was being neglected and we felt also that as a result of the German invasion in Norway, SKF in Sweden was cut off from its export markets, and that we could strengthen our Timken position in Australia. We therefore, I personally, went to Washington to see Michael Dewar, who was at that time with the British Government, there for the British Government, and persuaded him that we should temporarily supply Australia with bearings from American Timken in [fol. 2634] order to eliminate the dangers of shipping across the Atlantic, or the other way around, so that the Australian supplies would be brought up to what might be considered normal.

Q. And was that done?

A. That was done.

Q. And on what basis was it done?

A. Well, the British, British Timken maintained a service organization and engineering organization in Australia, and they proposed to continue to do so because they needed a market there. So we proposed to Mr. Dewar that the orders would be direct from Australia to us, with prices attached, that we would ship the bearings direct to their distributors, British Timken's distributors in Australia, and we would credit British Timken with the difference between the prices of those orders and the prices at which we would have sold the bearings to British Timken itself.

Q. Now, state whether or not in that connection you had any discussion with the representatives of British Timken in respect of the prices at which they sold the bearings in Australia?

A. We did not. The bearing orders came in with the prices attached.

Q. And then the sale was made and the shipment was made to the customer solicited by the representative of [fol. 2635] British Timken in Australia?

A. To the distributor in Australia.

Q. To the distributor. And will you state whether or not the transaction was handled the same as if it had been a sale of those bearings directly to British Timken?

A. That was exactly the way it was handled except the bearings themselves were shipped direct to Australia from America rather than to Britain and then to Australia. At first we figured that commission on each order separately, but later on that became such a great task that we figured the average commission over a period, found it to be about 21½ per cent, and made the agreement with British Timken that we would make it a flat 20 per cent in order to facilitate mathematical calculations.

Q. Was that for the purpose of reimbursing British Timken for the expense they had in maintaining the sales force and engineering force in Australia?

A. They were doing the selling and servicing job and we felt they had to be paid for it. Incidentally, they felt they weren't being paid enough to cover that.

Q. During that time did American Timken have any engineering force or sales force in Australia for the purpose of soliciting business?

A. None at all.

[fol. 2636] Q. Now, are you familiar with the fact that American Timken has recently set up a plant in Canada for the manufacture of tapered roller bearings?

A. I am.

Q. And when was that commenced?

A. Shortly after the war the Canadian Government decided that they were no longer going to be dependent for bearing supplies from outside Canada. They had been severely embarrassed at times during the war for lack of bearings and they felt they couldn't allow that condition to exist.

Q. And prior to the war were there any anti-friction bearings of any kind manufactured in Canada?

A. Not to my knowledge.

Q. Now, what was done by American Timken in respect of the matter?

A. Well, we set up a plant at St. Thomas, Ontario, Canada, and that plant I believe was started, started to build in '46, and is now built and operating. That is not a full fledged bearing plant, in that we commenced the manufacture, we originally set up a grinding department with the idea of getting into it gradually, and then later adding the necessary operating devices to make it a full fledged bearing plant.

[fol. 2637]. Q. Has any other anti-friction bearing manufacturer set up a plant in Canada?

A. I believe that General Motors has. They manufacture both the Hyatt and New Departure type of bearings.

Q. That is, both ball and straight roller bearings?

A. Yes.

Q. Now, as to the exporting of bearings from the United States, after the plant that you have established there gets into operation, what effect will that have upon the export of bearings from the United States manufactured by American Timken?

A. That Canadian plant is designed to make primarily the automotive types of bearings, and they will not produce the full range, so the future export of sizes they do not make will continue to come from Canton. But as to sizes they make they will be sold primarily by the Canadian plant, and if a temporary bulge would occur where they couldn't fill the orders, we would probably help them out.

Q. Now, there was some reference made in the early stages of the trial in this case that at the present time British Timken is in the process of raising additional capital. Are you familiar with that matter?

A. I am.

Q. And generally on what basis is the raising of that [fols. 2638-2644] capital to be undertaken?

A. It is proposed to issue preferred stock in the amount of 1,000,000 pounds.

Q. And for what purposes?

A. Well, it has several purposes. The division of that approximately $4,000,000 is about $1,000,000 for the purchase of the North Hampton plant of British Timken, which was built originally by the Government during the war; another million dollars will be devoted to the further expansion, primarily, of the North Hampton plant, but part of which will go into a new hardening department at Birmingham; about $600,000 of it will go into the payment for machinery already on order; and the balance will be used to pay off their overdrafts and to provide additional working capital for the expanded production volume which they will obtain on the completion of the program.

Q. Will you state why it was considered necessary to expand the British Timken plant at this time?

A. The British Government, the Ministry of Supply, came to them—

Q. By "them" you mean British Timken?
A. Yes. And said—

Mr. Derr: I object. He is not saying that he knows it of his own knowledge.

[fol. 2645] The Court: Well, I cannot possibly agree with the contention that any conversations that occurred between Mr. Dewar, Mr. Pascoe and the British Government con-
[fol. 2646] cerning the affairs of British Timken, even though British Timken was the instrumentality of Timken Roller Bearing Company, is admissible.

Mr. Day: Well, then, we will proceed to make the record under the rules, your Honor.

Mr. Ketterer: I would like to make an offer of proof for the record.

(Dictating to reporter.)

If permitted to answer the witness would say that representatives of British Timken were advised by representatives of the British Government—

Mr. Ketterer: I will start over again.

(Dictating to reporter.) That the witness would say that representatives of British Timken were advised by repre-
[fol. 2647] sentatives of the British Government that continued importations of tapered roller bearings into England could not be permitted, and that it would be necessary for British Timken to expand its facilities so that it could take care of the demand in England, and that if British Timken was not prepared to embark upon such expansion program that the Governme.. would try to find some other anti-friction bearing manufacturer who would undertake the necessary expansion program, and if no one else could be found who would undertake it that the Government would undertake to do so itself.

[fols. 2648-2649] Wednesday, April 21, 1948, 2:00 o'clock P.M.

Direct examination of William Robert Timken (Continued).

By Mr. Ketterer:

[fol. 2650] Q. Mr. Timken, there was introduced into evidence by the Government in this case a copy of a letter that has been marked for identification as Government's

Exhibit 98, which was a letter from you addressed to British Timken Limited, dated April 25, 1939. In the second paragraph of that letter the following language appears, and I'm quoting from it to you:

"We are conversant with your relations with SKF in England and understood how you are able to stabilize prices there. It is indeed unfortunate that this does not apply to the world generally."

What did you mean by that statement, Mr. Timken?

A. In that regard I would like to say that in my opinion, there are two different types of competition, one which I would call ethical competition and one unethical competition.

[fol. 2651] Q. Will you keep your voice up, please? We can't hear what you say.

A. We would want to engage in ethical competition, but when we get into places where the competition is unethical we would like to prevent it. By unethical I mean two things in this connection, one is where a subsidiary of a foreign manufacturer brings semi-finished bearings into this country under a misclassification of the Tariff Act, thereby bringing from Sweden bearings that were almost finished, giving them a finishing pass and selling them at very low cost. The SKF has done that; in fact, was convicted in Federal Court shortly after the first World War and paid a fine of several hundred thousands of dollars.

A. That's what I meant by the language in that letter, that we wanted to engage in honest and ethical competition where every manufacturer was trying to make a profit, a reasonable profit, and yet compete with the other, and was [fol. 2652] not doing the unethical things there. Another thing which we found SKF did was to try to freeze out their competitors by selling at what we knew must be far below their manufacturing costs which, again, I think is unethical competition.

Q. Now, there was another exhibit offered in this case, Government's Exhibit 130—

The Court: Was it this paragraph that you have read to Mr. Timken: "We are conversant with your relations with SKF in England and understood how you are able to stabilize prices there"?

Mr. Ketterer: Yes, that was what Mr. Timken meant by that.

The Court: Your reference, then, to the matter of stabilization of prices refers to some of the unfinished bearings under a lower tariff regulation or tariff rate?

The Witness: I meant it was our understanding that SKF was not using those practices in England that I classed as unethical.

Mr. Ketterer: That is, if the Court please, there were two things, one was the shipment of the bearings, the other was selling at prices that were below cost.

[fol. 2653] The Court: Well, candidly, the question is what he meant by stabilizing prices when he refers to a question that relates to fair or unfair competition. That's why I was asking whether that was in reply to the matter of stabilization of prices?

Mr. Ketterer: Well, he says that is what he meant when he wrote that letter.

The Court: That's what I wanted to know, if that was by way of explanation of that paragraph.

Mr. Ketterer: That's correct, that's the one.

Q. Now, there was offered in evidence by the Government a document that bears the heading "General Discussion With Dewar" and which is dated February 23, 1944, and identified as Government's Exhibit 130. That purports to be a memorandum which bears your signature concerning discussions between Messrs. Dewar, Umstattd, Henry Timken and Robert Timken, relative to postwar problems. In the second last paragraph of this exhibit the following language appears:

"We informed Dewar that present feeling in America against international cartels was growing as a natural extension of prohibition of such stultifying arrangements in the domestic economy. This feeling was shared by [fol. 2654] Timken Roller Bearing management who felt that it might become advisable to suspend the business agreements with British Timken although it was felt that primary importance should be given to aggressive competition on a world-wide scale."

Will you explain to the Court what you meant by that language?

A. I meant that whereas we, in the management of American Timken, knew that our agreements with British Timken and French Timken were for the purpose of com-

petition as partners against competitive bearing manufacturers, we felt that they might be misconstrued by someone who didn't know their aims and purposes.

Mr. Ketterer: Subject to recalling Mr. Timken, if we want to put this other agreement in when it gets here, that's all of the direct examination, if the Court please.

Cross examination of William Robert Timken.

By Mr. Derr:

Q. Mr. Timken, there has been some reference here in the course of this trial to the Timken Detroit Axle Company. I wish you would, for the purpose of the record in this case, tell us what the relationship is between Timken Detroit Axle Company and the Timken Roller Bearing Company.

[fol. 2655] A. There is no corporate relationship. My brother and I and my uncle are directors of Timken Detroit Axle Company.

Q. And how many members of the Timken family are directors of Timken Roller Bearing Company?

A. Just my brother and I.

Q. How many directors are there in the Timken Roller Bearing Company?

A. Seven.

Q. And how many are there in the Timken Detroit Axle Company?

A. Seven.

Q. Is it correct that the outstanding capital stock of the Timken Detroit Axle Company is represented by one class of shares, that is, a $5 par common, and that there are about 2,157,000 shares outstanding at the present time?

A. Yes.

Q. What percentage of the outstanding capital shares of Timken Detroit Axle Company does the Timken family own or control?

A. Well, what is your definition of "Timken family"?

Q. Well, for the purpose of that question the three members of the board of directors.

A. I would say directly and through trusts approximately 100,000 shares.

Mr. Day: Did I understand the witness to say that his [fol. 2656] brother and his uncle and he were directors.

The Witness: Yes.

Q. Do you know whether any of the officers of Timken Detroit Axle Company own stock in the Timken Roller Bearing Company?

A. They may. I don't know.

Mr. Derr: I would like to have marked for identification as Government's Exhibit 170 a certified copy of the corporate income tax return, form 1120, of the Timken Roller Bearing Company for the year 1946.

(Income tax return form referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 170.)

Q. Mr. Timken, you have testified you are a director, I believe, and vice-president of Timken Roller Bearing Company?

A. Yes.

Q. And a member of the finance committee?

A. Yes.

Q. Are you familiar with the tax returns filed by the Timken Roller Bearing Company?

A. In general, yes.

[fol. 2657] Mr. Derr: I would like to have marked for identification as Government's Exhibit 171 a copy of the Annual Report on Form 10-K for the fiscal year ended December 31, 1946, filed with the Securities & Exchange [fol. 2658] Commission by the Timken Roller Bearing Company.

(Annual report above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 171.)

I would like to have marked for identification as Government's Exhibit 172 a copy of the instruction book for Form 10-K for corporations published by the Securities & Exchange Commission.

(Instruction book referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 172.)

Q. Mr. Timken, I would like to call your attention to Page 2 of this report under the heading "Affiliations".

You will note at the bottom there is a paragraph marked "Note", which reads as follows:

"The registrant owns exactly 50% of the stock of a foreign company and the remaining 50% is owned by another single interest, but voting control of such foreign company [fol. 2659] during 1946 was held under an agreement by the other single interest. With respect to another foreign company, the registrant held slightly over 50% of its outstanding stock, but the registrant did not have voting control, either directly or indirectly, due to the fact that one class of shares, in which the registrant held only a minority interest, had greater relative voting power than the other securities outstanding. The registrant denies that either of these foreign companies is an affiliate of the registrant."

Are the companies referred to in that note British Timken and French Timken?

A. Yes, they are.

Q. They are the two companies?

A. Yes.

Q. I notice it says with reference to one company that they hold 50 per cent and with reference to the other they hold slightly over 50 per cent. During your direct examination, I believe, you testified, and I think the answer to the amended complaint in this case shows, that the Ameri- [fol. 2660] can Timken Company holds about 30.25 per cent of the British Timken Company. I wonder if you could explain the apparent discrepancy there?

A. Well, I think the second company here referred to is the Timken Holdings Company.

Q. And it's through Timken Holdings that the Timken Roller Bearing Company has a 30.25 per cent stock control?

A. That's held partially as nominee for American Timken and part of it is owned outright by Timken Holdings.

The Court: By whom?

The Witness: By Timken Holdings.

The Court: What are the respective holdings?

The Witness: I think about 80,000 shares is held by Timken Holdings as nominee and about 15,000 by Timken Holdings as outright owner for the benefit of American Timken.

The Court: That's a total of 95,000 shares?

The Witness: That's right.

The Court: Out of how many shares?

The Witness: Out of 400,000, the total of British Timken.

The Court: 95,000 shares held by Timken and the Holding Company?

The Witness: No, this 95,000 is all held by Timken Hold- [fols. 2661-2662] ings, but partly as nominee and partly direct. In addition the Timken Roller Bearing Company owns outright 16,000 shares of British Timken.

The Court: So that makes a total of how much?

The Witness: About 120,000 shares.

The Court: 120,000 out of 400,000 shares?

The Witness: Yes, or about 30 per cent.

[fol. 2663] Q. Mr. Timken, are you familiar with the report?

A. Not specifically with this. I know we do file such reports.

Q. Did you see that report before it was filed?

A. I don't recall that I did.

Q. Are you familiar with the facts set forth in the report?

A. In a general way, yes.

Q. Mr. Timken, who approves the Securities & Exchange Report filed by the Timken Roller Bearing Company?

A. Mr. Brower.

The Court: Mr. who?

The Witness: Mr. Brower, secretary and treasurer.

[fol. 2664] Q. Mr. Timken, you testified this morning with reference to the reasons why the 1938 agreements between British Timken and French Timken and American Timken and Mr. Dewar were in the form of two contracts or agreements, rather than one. I am not clear as to what you said this morning in that connection. I wonder if you would tell us again your answer to Mr. Ketterer's question in that connection?

A. I said that the second contract was drawn up by the Paris office of Sullivan & Cromwell, the law firm, and that it was my understanding that the reason for the second contract was that the individual shareholders of the French Timken were to sign that contract so that it would be guaranteed by them, in effect, that the first contract, or the business agreement, would be carried out by French Timken.

Q. Was that the only purpose that those two agreements were to effectuate?

A. That's the only purpose of which I'm aware.

Q. I would like to read an excerpt from a document which has been marked for identification Government's Exhibit 32, a letter of April 26, 1938, from yourself to Mr. L. C. Weiss of Ernst & Ernst, in which you say:

"As you know, the new contract between French and [fol. 2665] British Timken and ourselves is written so as to show the three companies are equal partners to the agreement in order to avoid a possibility of unfavorable French taxation."

Does that refresh your recollection that the agreements had other purposes?

A. Well, the purpose—one of the purposes of the first or business agreement was to raise French Timken to the status of a more or less equal partner with the other two companies. I am not familiar with French taxation, so I can't testify too much about any other purposes.

Q. But that was your understanding?

[fol. 2666] (Mr. Derr thereupon handed letter to witness.)

Q. Does that refresh your recollection that that was your understanding at the time?

[fol. 2667] A. Well, as I see it, that letter refers to the business agreement and not to the second agreement, because French Timken did not sign the second agreement.

Q. Wasn't one of the purposes of the 1938 agreements to avoid the possibility of French taxation?

[fols. 2668-2670] A. I would say it may have been. I don't specifically recollect that it was.

[fol. 2671] Q. Mr. Timken, wasn't another purpose of these 1938 agreements to satisfy Mr. Dewar in his desire not to have Timken competition in the areas affected by his companies?

A. No, I don't believe so.

Q. You are sure of that, are you? That's your best present recollection?

A. That's my best present recollection.

Mr. Derr: Your Honor, I request permission to use the Grand Jury transcript to refresh the witness' recollection.

The Court: Very well.

Mr. Day: I think, if your Honor please, we would like [fol. 2672] to have the record show that the Grand Jury testimony that is sought to be used by counsel for the plaintiff, as well as the Grand Jury testimony that was used some days ago when Mr. Klinedirst was on the stand, is testimony that was taken before a Grand Jury appointed by this Court, or charged by this Court, acting under the control of this Court, in investigating into an alleged violation of the Sherman Act some time ago, that several of the officers and employees of the defendant in this case were called before that Grand Jury and testified, that there was an indictment returned against certain defendants charging a violation of the Sherman Act and that the defendant was not included in that indictment.

The Court: What is the significance of that, Mr. Day?

Mr. Day: The only reason I make that statement is because your Honor takes judicial notice of what has happened, and your Honor heard the other case, but if this case should go to another court and this statement were not in the record, there might be some feeling that there was a Grand Jury indictment bearing upon the subject [fol. 2673] matter involved in this case. That's the only reason.

The Court: I assure you, Mr. Day, that my memorandum will make it perfectly clear that that was not the case.

Mr. Day: Well, thank you very much.

The Court: So that no reviewing court can ever be influenced by any such inference that may be drawn.

Mr. Day: I know so far as your Honor is concerned, that's true, but your Honor in his experience sees why I make the request.

The Court: Yes.

Q. Mr. Timken, I will now read from Page 708 and a portion of Page 709 of the Grand Jury transcript:

"Q. Mr. Timken are you familiar with the business agreements between Timken Roller Bearing Company and British Timken and French Timken?

A. Generally speaking, yes, sir.

Q. Do you know what the purpose of these agreements was or is?

A. Yes, in general, the agreements were originally formed because Mr. Dewar was putting a lot of money into

a bearing company and he wanted to know where he would stand in the future. Later on, when the British Timken [fol. 2674] stock was put on the open market, the brokers who sold it—at that time the agreement had 16 years to run, the brokers objected to the short time, because at the end of the agreement if no future agreement was made the Timken name was to revert to us, and the British company which was to make the purchase of the business, not be able to use it. The British brokers objected to that short term and insisted that unless it were lengthened, the price of the stock, at which the stock was to be sold, would be some 10 per cent less than it otherwise would be if the agreement were lengthened in term. At that time it was lengthened to 30 years instead of 16.

Q. Now, you said Mr. Dewar wanted to know where he stood.

A. Yes.

Q. In what respect? Would you be a little more explicit?

A. Well, he wanted to know where his—what he was putting his money into. He didn't want to get into a dog fight with us.

Q. About territories in which to sell bearings, you mean?

A. Yes, it would hardly be economical to support two sets of distributors in the same country, for instance. [fol. 2675] Therefore, he wanted a clear understanding of what territories his company would serve.

Q. I don't want to put the words in your mouth, but do you mean he wanted to be sure he wouldn't have competition in certain territories?

A. Well, it was partially that."

Now, Mr. Timken, does that refresh your recollection that one of the purposes of the agreements was to satisfy Mr. Dewar in his desire not to have Timken competition in the areas allocated to his companies?

A. I would say that it was only normal in this case that there should be some understanding as to having sales handled by one company or the other. For instance, in this country we have a lot of branches. We don't have a New York branch cover the San Francisco sales area. We don't have any written agreement on that either, but it's not normal that we would do it.

Q. I don't believe that's quite responsive to my question,

Mr. Timken. My question was: does that refresh your recollection as to one of the purposes of the agreements?

A. Well, I am saying that I think it would be normal in this case to have a more formal arrangement as to that than we would have with one of our branches.

Q. But that was one of the purposes of the agreement?

A. Yes.

[fol. 2676] Q. I believe you testified this morning as to the period in which you took over the markets in the Australian and East Indian territories that British Timken had theretofore been serving?

A. Yes.

Q. I believe you testified one of the purposes of your serving these markets was to protect British Timken, their interests in this area until they could resume taking care of their customers there?

A. No, I didn't say British Timken. I said to protect the Timken position in that area.

Q. To protect the Timken position in that area?

A. And I did not include the East Indies. It was Australia.

Q. Who do you mean by "Timken"?

A. The American Timken and our partners, British Timken and French Timken.

Q. Well, the Timken Roller Bearing Company had not been selling in that territory theretofore, had it?

A. Not in any substantial amount.

[fol. 2677] Q. And the interests you were protecting was a reversionary interest or future interest, is that right?

A. We were protecting the joint Timken interests with our partners.

Q. You were acting together to protect your mutual interests, is that right?

A. We were protecting them.

Q. That is your answer?

A. Yes.

Q. Mr. Timken, did you also begin to serve this market during the period when British Timken was unable to serve it because you wanted to eliminate SKF of Sweden from that market?

A. We wanted to strengthen our position in Australia.

Q. Didn't you also do it because you wanted to eliminate SKF of Sweden from that market?

A. Well, the natural way to strengthen your position is through competition with competitors, and by increasing your sales volume, naturally you decrease theirs, unless there is an over-all increase in the potential market.

Q. And the Timken Company would have done that by [fol. 2678] any means it could, wouldn't it?

A. No.

Q. Wouldn't it have done it by selling below cost?

A. Not to my knowledge. That's what I characterized as unethical competition.

Q. And that's your best recollection at the present time, that the Timken Company would not sell below cost in order to take business away from its competitors, is that correct?

A. I can't recall of any now in which we would have done it.

Mr. Derr: Your Honor, I request permission to use the Grand Jury transcript to refresh the recollection of the witness.

The Court: All right.

(Thereupon Mr. Derr handed the transcript referred to Mr. Dey.)

Q. Mr. Timken, I shall now read from Page 719 and 720 of the Grand Jury transcript:

"Q. Did you make an attempt to get British Timken to permit you to handle orders direct, rather than going through the process of asking their agent what price should be quoted?

A. I don't recall that. What we did at first, British Timken would get the orders themselves and send them out, find out which bearings we could probably make de- [fol. 2679] livery on, and send the letter on to us. But that was so slow, it was very unsatisfactory, and later we got permission, especially in the case of Australia, to have them come through the British Timken representative direct to us.

Q. What is the procedure that you follow now on orders from British Timken territory?

A. Well, I would say it varies, depending upon what territory it is and whether they can make delivery. Where they can make delivery they would naturally get the busi-

ness. You see, during the war we felt there was a very great opportunity to improve the Timken position in Australia and the East Indies, due to the fact that we thought at that time the SKF of Sweden was completely cut off from export, and we were willing to try to undermine their position by any means we could, including selling bearings at a loss if necessary."

Mr. Timken, does that refresh your recollection the Timken Roller Bearing Company was willing to sell at a loss, or any means necessary, to eliminate competition of its competitors?

Mr. Day: You mean SKF? Is that what you mean?

Q. SKF, yes.

[fol. 2680] A. I would say that in the case of SKF we felt that we had to use different means with them than we did with any of the more honorable competitors.

Q. Your statement, which you made to the Grand Jury, was true, was it not, Mr. Timken?

A. I'll agree we would do that against SKF.

Mr. Derr: That's all.

Mr. Ketterer: That's all, Mr. Timken.

Offers in evidence

Mr. Day: That about concludes, we think, our oral testimony. We have a great—I don't want to say a great many, but we have a considerable number of documents and we want to get them in evidence. I would like to offer some first and perhaps some of these can go in without any objection.

In order to preserve the continuity of the introduction of evidence, we want to offer as our exhibits, and have them numbered, Government's Exhibits 6, 7, 8, 9, 10, 11, 14, and 15.

The Court: You want those Government's exhibits marked as your own exhibits?

Mr. Day: I think the only way we could do it would be having the clerk put the next defendant's exhibit numbers [fol. 2681] upon those same exhibits.

The Court: All right, they may be received.

(Government's Exhibit 6 marked Defendant's Exhibit 189; Government's Exhibit 7 marked Defendant's Exhibit

190; Government's Exhibit 8 marked Defendants' Exhibit 191; Government's Exhibit 9 marked Defendant's Exhibit 192; Government's Exhibit 10 (heretofore marked Defendant's Exhibit 88) marked Defendant's Exhibit 193; Government's Exhibit 11 marked Defendant's Exhibit 194; Government's Exhibit 14 marked Defendant's Exhibit 195; Government's Exhibit 15 marked Defendant's Exhibit 196.)

Mr. Day: I next offer an agreement between Timken Roller Bearing Company, British Timken Ltd. and M. B. U. Dewar with respect to carrying into effect certain agreements and other matters. The date of that is March 13, 1928.

(Last document referred to was thereupon marked by the clerk, for identification, as Defendant's Exhibit 197.)

Mr. Nitschke: I have no objection to that at all, your Honor, other than my general objection as to relevancy of matters regarding financial relations.

The Court: It may be received.

[fol. 2682] Mr. Day: I offer as Defendant's Exhibit 198 a copy of resolution of British Timken Ltd. at and extraordinary general meeting of that company duly convened and held at 4 Central Buildings, Westminster, Southwest, on April 20, 1928, and the resolutions duly passed at that meeting.

Mr. Day: The relevancy is that it consists of resolutions of British Timken carrying into the corporate structure of British Timken certain provisions as to voting of stock and control and other matters theretofore agreed upon between the defendant and Dewar in the Heads of Agreement of May 16, 1927. It's a part of what happened between the parties.

The Court: This is corporate approval of the agreement which was offered in evidence?

[fol. 2683] Mr. Day: Yes, it's carrying into the corporate structure certain provisions theretofore agreed upon in the Heads of Agreement of May 16, 1927, between the defendant and Mr. Dewar.

The Court: It may be received.

Mr. Day: The next, as Defendant's Exhibit 199, Memorandum and Articles of Association of British Timken, Ltd.

Mr. Nitschke: Is this being offered for the same purpose, to show that the stock had certain voting rights?

[fols. 2684-2685] Mr. Day: I think so, and also for the purpose of showing the Articles of Association of the British Timken, Ltd. which was organized, we say, pursuant to the agreement between the defendant and Mr. Dewar. It's offered along the same line as the resolution.

The Court: What is the date of that?

Mr. Rudolph: If your Honor please, these are the entire Articles of British Timken, Ltd. It was organized in 1920, June 4th, and then amended Articles of Incorporation were adopted in 1928.

The Court: That's the original organization of British Timken and then whatever modification there may have been to the corporate setup in 1928?

Mr. Rudolph: Yes, that's correct, your Honor.

[fols. 2686-2688] The Court: It may be received.

Mr. Rudolph: Defendant's Exhibit 200 is an agreement made 20th April, 1928, between Timken Roller Bearing Company and Mr. Dewar.

[fol. 2689] Mr. Day: Thank you. We offer Defendant's Exhibit 200. That is the agreement described by Mr. Rudolph.

The Court: It may be received.

Mr. Day: Next, Defendant's Exhibit 201, an agreement dated April 20, 1928, between Timken Roller Bearing Company and British Limited and M. B. U. Dewar, with respect to subsidiary companies. We would like to offer that, your Honor.

The Court: It may be received.

Mr. Day: The next is a letter under date of May 1, 1928, [fol. 2690] from Michael Dewar to J. F. Strough, having to do with some matters relating to the organization of the French Timken company. We would like to offer that as Defendant's Exhibit 202.

The Court: All right, it will be received over the objection.

Mr. Day: Defendant's Exhibit 203 is a letter to Mr. Dewar from Mr. Strough approving Mr. Dewar's proposals as to French Timken, as contained in his letter of May 1st. This is dated May 16, 1928. We offer that, your Honor.

The Court: It may be received.

Mr. Day: The next exhibit, Defendant's Exhibit 204 is a letter from Stibbard Gibson & Co to Timken Roller Bearing

Company under date of June 4, 1928, headed and having to do with the French Company. We offer that.

[fol. 2691] The Court: It may be received.

[fol. 2692] Defendant's Exhibit 205 is a draft of a letter to Messrs. Marchal, Sanz and Ainsworth, dated June 1928, who were to act as the technical committee of French Timken.

We offer Exhibit 205.

The Court: It may be received.

Mr. Rudolph: Defendant's Exhibit 206 is a translation of Statutes, dated July 11, 1928, of French Timken. These constitute the Articles of Incorporation of French Timken.

We offer Defendant's Exhibit 206.

The Court: It may be received.

[fol. 2693] Mr. Rudolph: Defendant's Exhibit 207 is a cable from Porter to Timken, dated March 11, 1929.

We offer Defendant's Exhibit 207.

The Court: It may be received.

[fol. 2694] Mr. Rudolph: Defendant's Exhibit 208 is a cable dated March 12, 1929, from Strough to H. J. Porter.

The Court: Who is Porter? Has he been identified in this case?

Mr. Ketterer: Mr. Porter at that time was vice-president in charge of sales of the Timken Roller Bearing Company and he had gone to Europe to negotiate with Mr. Dewar with respect to the organization of the French Timken Company.

The Court: There is no dispute as to his identity and his capacity to act?

Mr. Nitschke: No. I have some recollection there is some testimony in the record on Mr. Porter.

The Court: All right; that may be received.

Mr. Rudolph: Defendant's Exhibit 209 is a cable from Strough to H. J. Porter, dated March 14, 1929.

[fol. 2695] We offer Defendant's Exhibit 209.

The Court: It may be received.

Mr. Rudolph: Defendant's Exhibit 210 is a cable dated March 18, 1929, from Porter to Timken.

The Court: It may be received.

Mr. Rudoph: Defendant's Exhibit 211 is a cable dated March 18, 1929, from Strough to H. J. Porter.

We offer Defendant's Exhibit 211.

The Court: It may be received.

Mr. Rudolph: Defendant's Exhibit 212 is a cable from Porter to Timken dated March 19, 1929. We offer Defendant's Exhibit 212.

The Court: 212 may be received.

Mr. Rudolph: Defendant's Exhibit 213 is a cable from Lothrop to H. J. Porter, dated March 24, 1929.

I believe Mr. Lothrop has been identified before. He was president of the company at that time.

[fol. 2696] Mr. Rudolph: We offer Defendant's Exhibit 213

The Court: 213 may be received.

Mr. Rudolph: Defendant's Exhibit 214 is a cable dated March 25, 1929, from Porter to Timken.

We offer Defendant's Exhibit 214.

The Court: It may be received.

Mr. Rudolph: Defendant's Exhibit 215 is a letter dated March 29, 1929, from the Timken Roller Bearing Company to the National City Bank, New York, New York, bearing the initials "JFS," which apparently stand for J. F. Strough.

We offer Defendant's Exhibit 215.

The Court: 215 may be received.

Mr. Rudolph: Defendant's Exhibit 216 is a cable dated April 23, 1929, from Strough to Dewar.

We offer Defendant's Exhibit 216.

The Court: 216 may be received.

Mr. Rudolph: Defendant's Exhibit 217 is a cable dated April 24, 1929, from Dewar to J. F. Strough.

We offer Defendant's Exhibit 217.

The Court: 217 may be received.

Mr. Rudolph: Defendant's Exhibit 218 is a cable dated [fol. 2697] April 27, 1929, from Strough to M. B. U. Dewar.

We offer Defendant's Exhibit 218.

The Court: 218 may be received.

Mr. Rudolph: Defendant's Exhibit 219 is a cable dated May 1, 1929, from Dewar to Strough.

We offer Defendant's Exhibit 219.

The Court: 219 may be received.

Mr. Rudolph: Defendant's Exhibit 220 is a cable dated May 3, 1929, from Strough to Dewar.

We offer Defendant's Exhibit 220.

The Court: 220 may be received.

Mr. Rudolph: Defendant's Exhibit 221 is a letter dated

May 28, 1929, from A. J. M. Duncan to the Timken Roller Bearing Company.

Mr. Nitschke: Your Honor, I wish to object to the portion of this letter headed "British Company" on page 2. It seems to me to be nothing but a lawyer's opinion about the prospects of the company.

The Court: I haven't seen it.

Mr. Nitschke: Beginning on the top of page 2, under the heading "British Company."

The Court: (After examining exhibit) It is quite evident that is all it is. The objection to that portion will be sus-
[fol. 2698] tained.

Mr. Rudolph: Then, I take it, your Honor, the rest of the letter is received in evidence.

The Court: The rest of the letter is received.

Mr. Rudolph: Defendant's Exhibit 222 is a letter agreement dated June 7, 1929, between M. B. U. Dewar and Timken Roller Bearing Company, which relates to a proposed readjustment of holdings in German Timken.

We offer Defendant's Exhibit 222.

The Court: 222 may be received.

Mr. Rudolph: Defendant's Exhibit 223 is a letter agreement dated June 7, 1929, between Mr. M. B. U. Dewar and the Timken Roller Bearing Company, relating to the proposed financing of French Timken.

The Court: 223 may be received.

Mr. Rudolph: Defendant's Exhibit 224 is an agreement dated November 8, 1929, between Mr. Dewar and the Timken Roller Bearing Company.

We offer Defendant's Exhibit 224.

The Court: 224 may be received.

Mr. Rudolph: Defendant's Exhibit 225 is an agreement dated November 8, 1929, between Timken Roller Bearing
[fol. 2699] Company and Mr. Dewar.

The Court: 225 may be received.

Mr. Nitschke: Is that the one that relates to Industrial and Commercial Investments?

Mr. Rudolph: Yes.

Defendant's Exhibit 226 is a letter agreement dated November 9, 1929, between Industrial & Commercial Investments, Inc., with Timken Roller Bearing Company and Mr. Dewar.

We offer Defendant's Exhibit 226.

The Court: It may be received.

[fol. 2700] Mr. Rudolph: Defendant's Exhibit 227 is a letter dated November 11, 1929, from the Timken Roller Bearing Company and Mr. Dewar to Bankers Trust Company, New York, N. Y.

We offer Defendant's Exhibit 227.

The Court: 227 may be received.

Mr. Rudolph: Your Honor, we have copies of agreements and correspondence relating to re-arrangements made between the parties in 1934 and 1935 at the time stock of British Timken was sold to the public. I discussed it with Mr. Nitschke, and I believe he objects only to two of these documents, aside from his general objection to their relevancy. Aand it occurred to us perhaps Mr. Nitschke will agree we can put in the rest of these as one bound exhibit.

Mr. Nitschke: Of course, if the two I object to are removed I have no objection to putting them in all at once as a collective exhibit.

The Court: The Court has no objection to it provided they will be fastened together so there will be no possibility of any misunderstandi g as to what is included in them.

[fol. 2701] The Court: Suppose you offer that collective document as Defendant's Exhibit 228, with the objectionable documents removed.

The Court: That is up to you, but 228 is the collection of documents which I assume will be indexed somewhere so the court will know what they are.

Mr. Rudolph: We will supply an index later your Honor if that is agreeable to the Court.

[fol. 2702] The Court: That is agreeable. I want to be sure that is done so I won't be left with a folder of papers without any knowledge as to what they contain.

Mr. Rudolph: Defendant's Exhibit 228 is a collective exhibit consisting of a folder of agreements entered into in connection with the issuance and sale of stock of British Timken to the public in 1934 and 1935 and certain correspondence which took place in connection with the issuance of the stock and those agreements.

We offer Defendant's Exhibit 228.

The Court: All right, they will be received. I understand, though, in your briefs you will point out those portions of [fol. 2703] these exhibits which you feel are necessary to be called to the attention of the Court.

Mr. Rudolph: Yes, we propose to do that, Your Honor.

Mr. Day: We have here to be marked our next exhibit, 229, net sales of the Timken Roller Bearing Company and subsidiaries for the calendar years shown below, these being net sales of bearings from 1922 to 1947, inclusive, and I understand from Mr. Ketterer that the subsidiaries referred to are—

Mr. Ketterer: They refer to the Timken Roller Bearing Company; the Timken Roller Bearing Sales & Service Company, when that company was operated, because it was during part of that period; it refers to the Timken Roller Bearing Company, Limited, of Canada, which is a selling company which was and still is being operated in Canada; and, for a part of the period, to the Timken Roller Bearing Company of South America, which is a selling company operating in South America.

Mr. Day: I would like to offer Defendant's Exhibit 229.

Mr. Nitschke: I have no objection to that.

The Court: It will be received.

[fols. 2704-2708] Mr. Day: I have here what I would like to have marked as our Exhibit 230—and I don't believe Mr. Nitschke has had a copy of this—what is headed "Foreign Royalties," and it is a list of the British and French royalties from 1910 through 1926, estimated in 1927 by quarters, and the net sales by pounds of British Timken purchases from us, that is Timken Roller Bearing Company; and net sales by francs of French Timken. This, I understand was found in our files. I would like to offer that in evidence.

Mr. Nitschke: I take it French was S.M.G.

Mr. Day: From 1910 to 1927, Mr. Ketterer, I think French would be S.M.G.

Mr. Ketterer Yes, that is correct.

Mr. Day: Yes, that is correct.

Mr. Nitschke: I have no objection.

The Court: It may be received.

Mr. Rudolph: Defendant's Exhibit 231 is a cable from Dewar to Henry Timken, Jr., dated June 26, 1936.

We offer Defendant's Exhibit 231.

[fols. 2709-2710] The Court: All right; it will be received.

Mr. Rudolph: Defendant's Exhibit 232 is a letter dated June 29, 1936, addressed to Mr. M. B. U. Dewar and bearing the notation in the lower left hand corner H. H. Timken,

Jr., which appears to have been sent from Mr. H. H. Timken, Jr., to Mr. Dewar.

We offer Defendant's Exhibit 232.

The Court: It may be received.

Mr. Rudolph: Defendant's Exhibit 233 is a letter dated June 30, 1936, from M. B. U. Dewar to Mr. Henry Timken, Jr., Timken Roller Bearing Company.

We offer Defendant's Exhibit 233.

The Court: 233 may be received.

Mr. Rudolph: Defendant's Exhibit 234 is a letter dated July 15, 1936, from M. B. U. Dewar to Mr. Henry Timken, Jr., Timken Roller Bearing Company.

We offer Defendant's Exhibit 234.

The Court: It may be received.

Mr. Rudolph: Defendant's Exhibit 235 is a letter dated July 31, 1936, from H. H. Timken, Jr., to Mr. M. B. U. Dewar.

We offer Defendant's Exhibit 235.

The Court: 235 may be received.

[fol. 2711] Mr. Rudolph: If the Court please, I have had an exhibit numbered 236, which is another collective exhibit which we prepared after discussion with Mr. Nitschke. It is an exhibit which relates to correspondence in the years 1920, '23, '24, '25 and '26 between American Timken, between officials of American Timken and British Timken, and Wolseley Motors, which at that time as your Honor will remember was a subsidiary of the Vickers Company in England, prior to the inception of our relation with Mr. Dewar in 1927.

I understand that Mr. Nitschke has two general objections to this exhibit, which, of course, he will discuss with your Honor. Generally speaking, we are doing this under the arrangement we made yesterday.

We would like to offer this and then point out to your Honor in the brief the pertinent parts of the exhibit.

[fols. 2712-2718] Mr. Rudolph: This is Exhibit No. 236. We offer the exhibit in evidence. We have a copy here for your Honor.

I might say the exhibit is not as yet indexed but we will of course prepare an index and furnish it to your Honor in the event it is admitted in evidence.

[fols. 2719-2722] The Court: All right, I will receive them then.

[fol. 2723] Mr. Day. We have here what has been marked Defendant's Exhibit 59, your Honor, and that's a circular published by the Timken Company some years ago. We only offer the picture of the old plant, not the writing, or the printing underneath it. So we may not be accused of offering only the old plant, on the other side we will offer the picture also of the other plants. But I do want to say to the Court that this includes the pictures of the plants in Canton, Columbus, Gambrinus, Mount Vernon and Wooster, [fol. 2724] and there are some other plants that are not in this picture, which I think came out in 1940. What we are not offering we will cover in some way, the printed part.

Mr. Day: We have here Defendant's Exhibit 241, which I should like to offer in evidence, which I understand is a picture of a bearing, a Timken bearing.

[fol. 2725] The Court: It may be received.

[fol. 2726] The Court: What about 237?

Mr. Day: I have 237, if the Court please. We might as well offer that.

[fol. 2727] The Court: It may be received.

Mr. Ketterer: I have had marked for identification Defendant's Exhibit 238, which shows in tabular form the average number of employees and production of bearings of the Timken Roller Bearing Company for the years 1922 through 1947, inclusive. I should like to offer that.

The Court: Employees and production?

Mr. Ketterer: Employees and production, from 1922 [fol. 2728] through 1947, inclusive.

The Court: It may be received.

Mr. Ketterer: Then, in respect of these contracts, copies of which we did not have available yesterday when Mr. Timken was on the witness stand, I have had marked for identification Defendant's Exhibit 239, which is a contract between The Timken Roller Bearing Company, M. B. U. Dewar, and Timken Holdings, Limited.

The Court: It may be received.

Mr. Ketterer: We have had marked for identification Defendant's Exhibit 240, which is a contract between the Timken Roller Bearing Company and M. B. U. Dewar, dated [fols. 2729-2730] March 22, 1948.

The Court: It may be received.

[fol. 2731] The Court: Let me rule on 236. Those letters,

to which objection was made because it was contended by the defendant that they contained certain information which is offered to prove facts, have been removed.

Mr. Nitschke: Yes, I think that's right, isn't it, Mr. Rudolph?

Mr. Rudolph: That is right, your Honor.

The Court: And the objection made to Defendant's Exhibit 236 is based entirely on the matter of whether or not it consitutes a defense to the charge made?

Mr. Nitschke: Yes, that is correct. As I understand it, the offer of those is not made to show the facts of what is stated in the documents, but only to show that Timken received such information.

The Court: To show that Timken received such information and relied on that information and was influenced in doing certain things because of the information received.

Mr. Nitschke: I suppose that is the inference.

The Court: That was the statement.

Mr. Day: That's right. Of course, by making that stipulation we don't imply—I don't think it's even necessary [fol. 2732] to state this—that there was anything in there that isn't a statement of fact. I mean we don't want to be in a situation of stipulating that anything in there isn't true.

The Court: That anything in there isn't true?

Mr. Day: Yes.

The Court: I appreciate that you are not admitting it isn't true, but yet the Government does not want to waive any objection to a contention that it is true.

Mr. Day: That's right, and we are not offering it for the purpose of showing that the things therein stated are true, but for the purpose stated.

The Court: It may be received.

Mr. Rudolph: If the Court please, Defendant's Exhibit 242 is a letter dated March 10, 1924, from Wolseley Motors, Limited, to Heman Ely of The Timken Roller Bearing Company. We offer Defendant's Exhibit 242.

Mr. Nitschke: I have no objection other than my general objection.

The Court: It may be received over the objection.

(Thereupon letter dated March 25, 1924, from Timken Roller Bearing Company to British Timken Limited was

marked by the Clerk, for identification, Defendant's Ex-
[fol. 2733] hibit 243.)

Mr. Rudolph: Defendant's Exhibit 243 is a letter dated March 25, 1924, from The Timken Roller Bearing Company to British Timken Limited, bearing in the lefthand lower corner the name Heman Ely, who was vice-president and treasurer of the Timken Roller Bearing Company at that time.

Mr. Nitschke: No objection to that except the general objection.

The Court: It may be received.

(Cable dated May 15, 1924, from Stibbard to Timken Roller Bearing Company was thereupon marked by the Clerk, for identification, Defendant's Exhibit 244.)

Mr. Rudolph: Defendant's Exhibit 244 is a cable dated May 15, 1924, from Stibbard to Timken Roller Bearing Company. We offer Defendant's Exhibit 244.

Mr. Nitschke: No objection.

The Court: It may be received.

(Cable dated May 16, 1924, from Timken to Stibbard, was thereupon marked by the Clerk, for identification, Defendant's Exhibit 245.)

Mr. Rudolph: Defendant's Exhibit 245 is a cable dated May 16, 1924, from Timken to Stibbard. We offer
[fol. 2734] Defendant's Exhibit 245.

Mr. Nitschke: What was the date of that?

Mr. Rudolph: May 16, 1924.

Mr. Nitschke: No objection.

The Court: It may be received.

(Cable dated June 2, 1924, from Stibbard to Timken Roller Bearing Company was thereupon marked by the Clerk, for identification, Defendant's Exhibit 246.)

Mr. Rudolph: Defendant's Exhibit 246 is a cable dated June 2, 1924, from Stibbard to Timken Roller Bearing Company. We offer Defendant's Exhibit 246.

Mr. Nitschke: Is that June 2nd?

Mr. Rudolph: Yes, June 2, 1924.

Mr. Nitschke: No objection.

The Court: It may be received.

Thereupon letter dated June 19, 1924, from Stibbard,

Gibson & Company to Timken Roller Bearing Company was marked by the Clerk, for identification, Defendant's Exhibit 247.

Mr. Rudolph: Defendant's Exhibit 247 is a letter dated June 19, 1924, from Stibbard, Gibson & Company to The Timken Roller Bearing Company. We offer Defendant's Exhibit 247.

Mr. Nitschke: No objection.

[fol. 2735] The Court: It may be received.

Mr. Rudolph: We will supply copies of those exhibits to your Honor.

The Court: All right.

Mr. Day: If your Honor please, we have been trying to locate an official document of the Department of Commerce, Office of International Trade, that has to do with a license regulation effective March 1, 1948, which we are advised by a current Export Bulletin that we have here published by the Department of Commerce, Office of International Trade, will require that licenses be required for the exportation of all commodities to territories in Europe and certain contiguous areas. We haven't yet been able to locate the specific document. We would like, if possible, to reserve an exhibit number for it in our case, and just as soon as we get it we will give a copy to Mr. Nitschke.

The Court: I see no objection to that. Do you have a copy of it now?

Mr. Day: No, we don't have what seems to be the official copy of the document. We will try to get it.

The Court: What is that, a Commerce Department regu-

[fol. 2736] lation?

Mr. Day: It seems to be a regulation of the Department of Commerce, Office of International Trade, and I have here this current Export Bulletin and it says what I have just read, and we want to get the document and put it in, and reserve a number for it.

The Court: Well, it's understood that when the official document is located that there is no objection to its being offered.

Mr. Day: I'll show it to Mr. Nitschke as soon as we get it.

Mr. Nitschke: I certainly won't make any objection, your Honor.

The Court: That will be Defendant's Exhibit 248, is that right, Mr. Wilson?

The Clerk: Yes, that's right, your Honor.

The Court: All right.

Mr. Day: The Defendant rests. I would like to say in that connection that we are quite certain there aren't any more exhibits that we wish to put in, and if in the next three or four days, before the argument starts, we find anything we'll call Mr. Nitschke's attention to it. But we do rest.

Mr. Nitschke: Your Honor, before proceeding with rebuttal, I would like to make a few statements for the record. First, I would like to withdraw the Government's [fols. 2737-2742] objections to Defendant's Exhibits 131 and 135. The reason I say that is because we have had a standing objection to the relevancy of the entire defense. In connection with those exhibits, 131 and 135, I just want the record to show that we did not make that objection.

Mr. Day: What are they?

Mr. Nitschke: They are your exhibits. I think they relate—

The Clerk: Defendant's Exhibit 131 is a report by Mr. Hess dated May 31, 1935.

The Court: Those were Exhibits 131 and 135?

Mr. Nitschke: 131 through 135.

The Clerk: Defendant's Exhibit 132 is a cable dated May 31, 1935 from Duncan to Hess.

Mr. Nitschke: Is that all right?

Mr. Day: Yes, if you want to withdraw your objection, it's certainly all right.

Mr. Nitschke: I thought you wanted to hear further what they were?

Mr. Day: No, I think no matter what they are if you want to withdraw your objection we can't stop you.

[fol. 2743] Mr. Nitschke: Your Honor, before putting in evidence these documents I have a stipulation which Mr. Ketterer has agreed to, as follows:

The mark "Timken" is the only mark the Timken Roller Bearing Company has registered with the United States Customs Office;

Secondly, the Timken Roller Bearing Company did not use the mark "Timken" on bearings until 1912, but it did use the mark before that on boxes.

Mr. Ketterer: That is correct.

Mr. Nitschke: I have had marked for identification as Government's Exhibit 173 a portion of a letter dated

February 23, 1924, from Carr & Carr to the Timken Roller [fols. 2744-2749] Bearing Company, and as Government's Exhibit 174 a letter dated November 9, 1927, from Stibbard, Gibson & Company to The Timken Roller Bearing Company which I wish to offer in evidence.

The Court: They may be received.

[fol. 2750] We have Government's Exhibit marked for identification 175, a portion of a letter written by Mr. Hess to Mr. Dewar dated October 22, 1934, and Government's Exhibit 176, reply to that letter dated November 5, 1934, from Dewar to Hess. I wish to offer Government's Exhibits 175 and 176 in evidence.

[fols. 2751-2752] The Court. They may be received.

[fol. 2753] Now your Honor, I now wish to read a very brief portion from the deposition taken in London, in order to identify the author of the next document which I hope to put in evidence. Reading from Page 110 of the transcript, my examination of Mr. Dewar.

(Questions read by Mr. Nitschke and answers by Mr. Derr as follows:)

"Who is E. H. Doughty?

[fol. 2754] A. Doughty is the head of our drawing office. 'Engineering drawing office' is the American expression for it.

Q. What are his duties?

A. He is concerned with the applications of bearings to all classes of vehicles, rolling mills, machine tools. He also deals with patents.

Q. You say he is concerned with applications. Do you mean he is the engineer who determines what applications shall be suggested to the customers?

A. That is so, yes.

Q. Does he have a responsible position in the Company?

A. Yes.

Q. Who is his immediate superior?

A. Mr. Pascoe.

Q. How long has Mr. Doughty held this position, generally?

A. Some years.

Q. Do you know what he did before he became in charge of the technical department?

A. I think he was a member of it, under a man called Wood.

Q. Has he been with British Timken a long time?

A. Yes, a long time.

[fol. 2755] Q. As long as you have?

A. I think longer, to tell you the truth.

Q. Did Mr. Doughty handle trade mark matters also?

A. Yes."

I also wish to read from Page 112 of the deposition, also examination of Mr. Dewar:

"Q. I have here 'Government's Exhibit D. 35', which is marked 'COPY' entitled 'From Technical Department to Mr. W. Dallow. OUR REF, END/E/NC, Date 12th Dec, 1935.' Would you look at that and tell me what it is, if you recall.

A. This is a summary of the position of the trademark 'Timken' as far as it concerned British Timken and British Timken territory.

Q. That was prepared by Mr. Doughty.

A. It is mostly prepared by a man called Skerrett, the Patent Agent for ourselves.

Q. I wonder if you would look at the last page.

A. It is signed by Doughty.

Q. But it contains material written by Skerrett?

A. Yes.

Q. That document was found in the files of the American Company. Do you know how it got there?

A. I would say we sent it to them."

I wish to have marked for identification as Government's [fols. 2756-2770] Exhibit 177 this document which was identified in the deposition as Government's Exhibit D. 35, and which is the report of Mr. Doughty of the technical department to Mr. Dallow.

Mr. Ketterer: We object to that, if the Court please.

[fols. 2771-2776] Mr. Nitschke: Your Honor, I have had marked for identification as Government's Exhibit 178 excerpts from the SEC report and the definition of terms which were marked for identification yesterday as Government's Exhibits 171 and 172. This exhibit contains that portion of the SEC report made by the defendant defining its relationship with the foreign companies as not affiliates.

Mr. Day: We wa to object to that.

[fol. 2777] The Court: Well, aside from all of the discussion, I don't believe it is proper rebuttal.

[fol. 2778] * * * and I will have to sustain the objection.

Mr. Nitschke: I would like to have marked for identification as Government's Exhibit 179 a copy of a letter from Duncan to Timken dated January 11, 1939, entitled "British Timken Trademark."

Letter last above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 179.

Mr. Nitschke: This letter recites that it sends copies of certain documents to Timken, and I have excerpted from one of the enclosures, namely, the opinion of Mr. F. E. Bray, K.C. an expert on trademark law, one paragraph of that opinion which is the only part I wish to offer. I would also like to have marked for identification as Government's Exhibit 180 a copy of the British Trademark Journal for March 1, 1939. I think I better qualify that, it's not a copy of the journal, it's a copy of three pages from the journal.

Document last above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 180.

Mr. Nitschke: As Government's Exhibit 181, a letter from W. Robert Timken to Joseph Gravely dated March 28, 1939.

[fol. 2779] Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 181.

Mr. Nitschke: And as Government's Exhibit 182 a typewritten copy of a portion of a letter from W. Robert Timken to Duncan dated April 8, 1939.

Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 182.

Mr Nitschke: And as Government's Exhibit 183 a letter dated November 2, 1939, from Duncan to Timken.

Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 183.

Mr. Nitschke: This also contains a copy of a telegram, and I offer the telegram not attached to the letter but independently, as Government's Exhibit 184. The telegram is from Stibbard to Timken and is dated November 2nd.

Mr. Day: That's a cablegram, isn't it?

Mr. Nitschke: Yes, I believe it is, Mr. Day. It's dated November 2, 1939.

Cablegram above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 184.

[fol. 2780] Mr. Nitschke: As Government's Exhibit 185

a letter from Gravely to The Timken Roller Bearing Company dated November 4, 1939.

Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 185.

Mr. Nitschke: As Government's Exhibit 186 a letter from W. Robert Timken to Walter Rockwell, Timken Detroit Axle Company, dated November 4, 1939.

Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 186.

Mr. Nitschke: As Government's Exhibit 187 a letter from Robert Timken to A. I. Hawkins, Timken Detroit Axle Company, dated November 10, 1939.

Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 187.

Mr. Nitschke: As Government's Exhibit 188 a letter from Hawkins to W. Robert Timken dated November 22, 1939. This is on the letterhead of the Timken Detroit Axle Company.

Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 188.

Mr. Nitschke: As Government's Exhibit 189 a cable [fol. 2781] dated December 1, 1939, from W. Robert Timken to Hawkins, Timken Detroit Axle Company.

Cable above referred to was thereupon marked by the Clerk for identification, Government's Exhibit 189.

Mr. Nitschke: And as Government's Exhibit 190 a letter from Duncan to Timken dated February 16, 1940.

Letter above referred to was thereupon marked by the Clerk, for identification, Government's Exhibit 190.

[fol. 2782] Mr. Ketterer: If the Court please, we object to the exhibits that are offered, first, on the ground that none of them constitutes anything in the nature of rebuttal. If we apply the test that the Court outlined, which I think is a sound test, as to what is or is not rebuttal, there isn't a single one of these documents that has been offered here that rebuts any proof that has been offered in the defense. If you look at each of them individually, there isn't anything [fols. 2783-2785] here that has been offered that rebuts anything that anybody has said, or anything that is in writing that was offered by way of exhibits in this case.

[fol. 2786] The Court: I think it went further than that, Mr. Ketterer. I think if you look back in the record you will find that the question you put to Mr. Hess was so general

and so all-inclusive that it went fu.ther than that. At least, that is my recollection of it. That is why I am hesitant in immediately ruling on this matter because it is my recollection that you went a little further than simply asking whether or not Timken had such control over Timken Detroit Axle as to enable Timken to influence Timken Detroit Axle with references to prices. I think it included not only prices but everything. You may be right, that it didn't. If I find it didn't, this testimony may go out. I can't very well do anything but this, gentlemen, and [fols. 2787-2788] this group of exhibits, I'll say to you, I will receive with the proviso that if I find it is not in rebuttal of anything that appears in the testimony on the defense, then I will disregard it.

[fol. 2789] Mr. Nitschke: I have one other exhibit, your Honor, which I would like to have marked for identification as Government's Exhibit 191. Government's Exhibit 191 is a publication of the Anti-friction Bearing Manufacturers Association entitled "Export Offices and Foreign Representatives of Anti-friction Ball and Roller Bearings and Steel Balls Manufactured in the United States."

Document last above referred to was marked by the Clerk, for identification, Government's Exhibit 191.

Mr. Nitschke: I would like to offer that in evidence as part of the Government's rebuttal.

Mr. Ketterer: We object to that, if your Honor please.

[fol. 2790] The Court: Well, you needn't go any further. If it does no more than simply rebut the all-inclusive statement that was given by Mr. DeKrafft and Mr. DeVegh—

Mr. Nitschke: That's what it does.

[fol. 2791] The Court: —to the effect that it was impossible profit-wise to engage in foreign trade in roller bearings by Timken, then it is clearly admissible to show whether or not the mere fact that these people were engaged in it does have some bearing or may have some bearing on that all-inclusive statement. Whether it does refute it or not I am not prepared to say, and I am not saying. But you recall that there was a very definite statement—I think Mr. Day towards the end tried to modify that somewhat, as he understood it, and did modify it somewhat—but I think Mr. DeKrafft's statement was a sweeping declaration of a nature that would permit the refutation of it.

Mr. Nitschke: That is all the rebuttal the Government has, your Honor.

[fol. 2792] The Court: Any surrebuttal?

Mr. Ketterer: In the exhibits that were offered by counsel for the Government this morning, there were some excerpts of letters that were read, and in that connection we should like to offer the letters in their entirety so that there will be no question as to the meaning of the writers in these letters.

Mr. Nitschke: I have no objection to doing that, your Honor, and if it would be more convenient I will offer the entire letter as my exhibit.

Mr. Ketterer: That's all right with us.

The Court: I understood Mr. Nitschke made those excerpts for the purpose of cutting down the volume of the exhibits. But are you willing to offer them?

Mr. Nitschke: Certainly.

The Court: I don't believe there is any need for any further offer, then.

Mr. Ketterer: That's perfectly all right. I'll just refer to them as Government's Exhibits 173, 175 and 176.

The Court: Is there anything further, gentlemen, outside of the closing arguments?

Mr. Nitschke: I don't think so, your Honor.

[fol. 2793] Mr. Day: I would like to renew the motion we made at the end of plaintiff's case for dismissal and a judgment for the defendant upon the ground, as I remember the rule, that the plaintiff has not made a showing on the law and the facts which entitles the plaintiff to relief, the same one we made at the end of the Government's case.

The Court: That will be taken under advisement.

[fol. 2794] Mr. Day: If the Court please, your Honor will recall that at the adjournment of court last Friday we talked about our wish to offer in evidence a provision of the Department of Commerce, Office of International Trade having to do with export licenses. We now have a document which I think covers the proposition.

Thereupon current export bulletin, Department of Commerce, Office of International Trade marked by the Clerk, for identification, Defendant's Exhibit 248.

Mr. Day: I would like to have that offered as our next Exhibit 248.

The Court: It may be received.

Mr. Day: We also have one more exhibit, which is the investment of American Timken and Dewar in French Timken. It is a tabulation starting in 1928 and running through 1940. I would like to have that marked our next exhibit.

Tabulation above referred to thereupon marked by the Clerk, for identification, Defendant's Exhibit 249.

[fols. 2795-2922] Mr. Day: Mr. Rudolph talked with Mr. Nitschke about it over the week-end and I understand he has no objection to it.

That is compiled from the books of the defendant, I am advised.

The Court: It is a tabulation?

Mr. Day: It says "Investment of American Timken and Dewar in French Timken."

The Court: I see. It may be received.

[fol. 2923] Mr. Day: If the Court please, as we told your Honor just a few moments ago in chambers, we have talked to Mr. Nitschke about introducing into evidence two additional exhibits. One is Defendant's Exhibit 250, cable sent in my name to Andre Augis of Paris under date of April 24, 1948. And the other is a cable to me signed Murray, M-u-r-r-a-y in answer to it.

The Court: Can you identify Mr. Murray?

Mr. Day: Mr. Murray is connected with French Timken.

The Court: In what capacity?

Mr. Ketterer: Mr. Murray is a tax consultant, adviser, to French Timken and has been for a great many years. He is connected with a French firm whose name I cannot recall at the moment, although he happens to be an Englishman.

The Court: There is no dispute of Murray's position being such that he can state the facts as they are stated in that cable?

Mr. Nitschke: No, there is no objection, your Honor.

[fols. 2924-2986] The Court: They may be received.

Defendant's Exhibit 250, cable dated April 24, 1948 from Mr. Day to Andre Augis; and Defendant's Exhibit 251, cable in reply from Murray to Mr. Day, both received in evidence.

[fol. 2987] Case Submitted

[fol. 2988] Reporter's Certificate

We hereby certify that the above and foregoing is a true and accurate transcript, embodying the changes and corrections pursuant to stipulation of counsel filed herein.

Henry L. Gabriel, A. V. Jarvela, Official Court Reporters.

[fol. 2989] [File endorsement omitted]

In United States District Court

[Title omitted]

Stipulation re Attachment to Defendant's Exhibit No. 248—Filed May 25, 1948

We, the attorneys for the respective parties, do hereby stipulate that Current Export Bulletin No. 434, dated January 28, 1948, Department of Commerce, Office of International Trade, which is attached hereto, may be attached to, and become part of, Defendant's Exhibit No. 248, and that the Court may enter an order accordingly, notice by the Clerk being hereby waived.

(s.) Robert A. Nitschke, Attorney for plaintiff.
(s.) Luther Day, Attorney for defendant.

It is so ordered.

(s.) Freed, U. S. District Judge.

[fol. 2990] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

Civil Action No. 24214

UNTED STATES OF AMERICA, Plaintiff,

vs.

THE TIMKEN ROLLER BEARING COMPANY, Defendant

MEMORANDUM OPINION—Filed March 3, 1949

FREED, J:

1. The instant action was brought by the United States under favor of Section 4 of the Sherman Antitrust Act to prevent and restrain the continuing violations of Sections 1 and 3 of the Act. Permanent injunction with adequate protection to prohibit the violations is sought.

2. The complaint charges, that the defendant and the co-conspirators entered into contracts, agreements and understandings to eliminate competition between themselves and with others, in the manufacture and sale of anti-friction bearings in all the markets of the world, including the United States. It recites that they allocated the respective territories in the world in which each party might manufacture and sell anti-friction bearings and that they prevented one party from selling or shipping anti-friction bearings into the territory allocated to any other party, except in completed articles of manufacture and for replacement bearings in those articles. It further charges that they fixed and agreed upon prices of bearings shipped into the territory allocated to any other party and that they fixed and agreed upon prices of anti-friction bearings sold and shipped to Russia. They allocated the use of the trade mark "Timken" to each of the parties in their respective designated territories and required that the co-conspirators not manufacture and sell bearings, except under the mark "Timken". The agreements required the co-conspirators to surrender to defendant the rights in the name "Timken" upon the termination of the contracts between them. It is

claimed, in certain of the designated territories they entered into agreements with other manufacturers to regulate and allocate the sale of anti-friction bearings and they aided and assisted each other in restricting and eliminating in their respective territories competition from others in the manufacture and sale of anti-friction bearings.

3. It is alleged in the complaint that the combination and conspiracy resulted in unreasonable restraint of imports into and exports from the United States. It is further alleged that the current world shortage of anti-friction bearings and decreased European production caused by the war, has created large potential export markets for anti-friction bearings of American manufacture. Notwithstanding this, the continuation of the conspiracy and combination will restrain and prevent defendant from seeking and ac- [fol. 2991] quiring many world markets with the eventual consequence of reducing its production of bearings and employment of labor.

4. The factual and legal questions to be determined in respect of the charges of the complaint are posed by the Government as follows:

5. Within the purview of the Sherman Act is it illegal for the "defendant and two foreign corporations, which between them manufacture and sell a substantial portion of the world's production of anti-friction bearings, to regulate interstate and foreign commerce by private arrangements embodying the following restrictive practices"?

> "(a) Allocation, by agreement, of trade territories throughout the entire world, each agreeing with limited exceptions, not to manufacture and sell in the other's territory;
>
> "(b) Imposition by agreement, of price restrictions upon products sold by any party in the territory of another;
>
> "(c) Agreement to exclusively exchange present and future know-how and inventions, patented or unpatented;
>
> "(d) Use by agreement, of a common trade mark "Timken" in their respective territories compulsory use of that mark by the foreign conspirators, prohibition against their dealing in products under any other

name and requiring that they cease using the name upon termination of the agreement;

"(e) Mutual co-operation and assistance to protect each others' markets and to eliminate the competition of outsiders;

"(f) Participation in foreign cartels which restrict exports by United States producers."

6. The defendant, The Timken Roller Bearing Co., is an Ohio corporation with its principal offices located at Canton, Ohio. It employes upwards of 16500 employees at its various plants located in Ohio and in Colorado, in the United States and St. Thomas, Ontario in Canada. Its foreign sales are handled by two wholly owned corporations: Timken Roller Bearing and Service Limited and The Timken Roller Bearing Co. of South America, Canadian and Ohio corporations respectively. Defendant manufactures tapered roller bearings, alloy steel, seamless tubing and removable rock bits.

7. British Timken Limited, named a co-conspirator, (hereinafter referred to as British Timken) is a British Joint Stock Company which maintains its plant and principal offices at Birmingham, England. It employes approximately 2400 workmen and manufactures tapered roller bearings and axle boxes for railroad cars. Its wholly owned subsidiary, Fischer Bearings Co., Ltd., manufactures straight roller bearings and ball bearings.

8. Societe Anonyme Francaise Timken, also named a co-conspirator (hereinafter referred to as French Timken), is a French corporation with its plant and offices at Asnieres, France. It employes approximately 510 people and manufactures tapered roller bearings.

9. The assertion of the Government that defendant, British Timken and French Timken dominate the tapered roller bearing market of the world and a substantial portion of the total anti-friction bearing market is challenged by defendant.

[fol. 2992] 10. The evidence discloses that defendant is "many times over" the largest manufacturer of tapered roller bearings in the world. Its gross sales in 1947 were $77,097,756.00.

11. According to the figures compiled by the Anti-Friction Bearing Manufacturers Association, defendant's

percentage of the tapered roller bearing industry in the United States was as follows:

Year	
1941	71.9%
1942	77.9%
1943	82.2%
1944	80.3%
(7 months) 1945	78.9%

12. Presently defendant's output of tapered anti-friction bearings constitutes 25% of the total production of anti-friction bearings in the United States.

13. British Timken, during the period from 1927 to date, produced a large volume of all the tapered bearings in England. It manufactured more than 90% in 1927, the percentage decreased to 70%, and later returned to more than 90%. It produces approximately 20% of all the British anti-friction bearings. British Timken's sales including those made by its subsidiary, Fischer Bearings Co., Ltd., totaled $14,700,000 in 1947.

14. French Timken manufactures about 80% of the tapered bearings in France, which constitutes 10% of all the anti-friction bearings. Its sales in 1947 totaled $2,274,723.

15. Command of such volume of business spells out the dominant position of defendant, British Timken and French Timken both in the tapered and anti-friction bearing industry. Oxford Varnish Corporation et al. v. Ault & Wiborg Corporation, 83 Fed. (2d) 764, U. S. v. Columbia Steel Co., 334 U. S. 495, 527.

16. It was aptly stated during the trial that practically every shaft that turns and every vehicle that rolls is dependent on anti-friction bearings. Their crucial importance to our present industrial economy requires no demonstration. Modern machinery, such as trucks, automobiles, farm machinery, locomotives, aeroplanes, in fact every product which has rotating parts, relies on anti-friction bearings for continued operation.

17. Friction bearings and anti-friction bearings have distinctive characteristics. Friction bearings slide over the shaft and depend solely on oil or other similar substance to reduce friction. Anti-friction bearings, on the other hand, consist of a circular group of steel rollers or balls revolv-

ing between two circular raceways which reduce friction between moving mechanical parts.

18. There are two general types of anti-friction bearings: roller bearings and ball bearings. Tapered roller bearings are a style of roller bearings.

19. While tapered bearings compete with other types of anti-friction bearings and to a much lesser extent with friction bearings, tapered bearings because of their design and applicability for particular use, enjoy freedom from competition, just as for certain definite uses, ball bearings are free from competition.

20. They constitute a distinctive type of anti-friction bearing which fulfills a requirement not supplied or satis- [fol. 2993] fied by others. Whatever competition exists between the different types of anti-friction bearings, is present only up to the point of the adoption, in the design of a specific type of bearing, in the proposed equipment or machinery. Once that particular type of bearing is incorporated, other types cannot be substituted for replacement. The replacement bearings must be of the same size and character.

21. The original installations constitute approximately 95% of the output of roller bearings and the replacement sales the balance of 5%.

22. In our highly mechanized industries, roller bearings serve as vital links in the chain of their assured existence and sustained progress. Defendant, British Timken and French Timken exercise a potent force in the making and marketing of these products, essential to the maintenance of the economic welfare of the United States and of the entire world.

23. In order to view the conduct of defendant in the proper perspective during the period of time when it is accused of violating the antitrust laws, it is essential to examine its prior activities which the Government claims culminated in the agreements, contracts and understandings to eliminate competition, assailed in this action.

24. On June 16, 1909, the first of a series of written agreements, licensing the production and distribution of tapered roller bearing was concluded between defendant and Electric & Ordnance Accessories Company Limited, (a predecessor of British Timken and a subsidiary of Vickers Ltd., a British trust comprised of many companies and described as manufacturing everything from battleships to baby

carriages). Under its provisions defendant granted to E. & O. A. the exclusive license to "make, use, exercise and vend" in the United Kingdom and the Isle of Man roller bearings of all kinds made pursuant to the specifications of British patents which defendant then owned or under patents later to be granted to or acquired by defendant. It contained definite territorial restrictions. Defendant was prohibited from making or selling to others, or from licensing others to do it, or from selling its own manufactured bearings for shipment into the territory of E. & O. A. It was, however, permitted to make and sell or license others to make and sell bearings for vehicles manufactured outside and shipped into the territory of E. & O. A.

25. E. & O. A. was prohibited from selling bearings outside of its territory and from selling bearings in its territory, knowing them to be for shipment outside. E. & O. A. was allowed to sell bearings in its own territory for vehicles manufactured there for export elsewhere. The license was so conditioned that E. & O. A. was prevented from manufacturing or selling any anti-friction bearings, except those made under the licensed patents and except those assembled in other articles produced or sold by E. & O. A. E. & O. A. was obliged to use the designation "Timken" exclusively on all the bearings made or sold by it. It was incumbent on E. & O. A. to use all the instructions for manufacture given to it by defendant which defendant agreed to supply. Defendant in turn was privileged to utilize any improvements made by E. & O. A. in its manufacturing process. E. & O. A. had the right to determine the sale price for its bearings, provided that the deficiency between its lowest price and the lowest sale price of defendant would not be in excess of the United States tariff chargeable on the bearings from any part of E. & O. A.'s territory.

26. In another agreement executed on the same day defendant granted to E. & O. A. the full and exclusive right to "license and authority to make use exercise and vend" roller bearings of all kinds under certain French and Russian patents and under a German patent application as [fol. 2994] soon as the patent or other equivalent grant shall have been obtained in the territories covered by the patents. It provided that so long as the agreement is in force, E. & O. A. shall have "full and exclusive right license and authority until all the said Patents shall have been

granted or after all or any of the said Patents shall have ceased to exist (but only so fa as the Licensor can then lawfully do so) to make use exercise and vend articles embodying the subject matter of such Patents or Patent and Roller Bearings of every kind whatsoever in that part of the said territory where the Patents or Patent shall not have been granted or shall have ceased to exist."

27. Defendant also granted to E. & O. A. an exclusive license to manufacture and sell articles, embodying the subject matter of the British patents referred to in the first agreement and roller bearings of every kind whatsoever (whether covered by patents or not) throughout Europe (except the United Kingdom, France and Russia and except Germany after the patent or grant shall be issued or made there) and throughout the whole of the British Colonies, Protectorates and Dependencies except Canada. It contained the identical restrictions set forth in the first agreement in respect of sales in the other party's territory. The provisions of the first agreement pertaining to price regulations, to the compulsory use of the mark "Timken" by E. & O. A., to the requirement that E. & O. A. use instructions as to method of manufacture, to the furnishing of data by defendant, to the privilege of defendant to utilize improvements made by E. & O. A. were embodied in the second agreement in identical language.

28. The agreements of June 16, 1909 were modified on April 6, 1920, by two separate instruments between defendandt and Wolseley Motors of England (another Vickers' subsidiary). The rights of E. & O. A. were assigned to Wolseley. The territorial divisions remained as they had been designated. The respective areas were redefined as licensor's area (defendant) and licensee's area (Wolseley). Defendant was permitted, however, to sell to manufacturers in defendant's territory who in turn, were allowed to export bearings to Wolseley's territory for use in their products. Wolseley was granted the same privilege in its territory.

29. The price for replacement sets for use in Ford cars in Wolseley's territory was fixed. Defendant and Wolseley placed on record their desire and intention, that bearings made in their respective territories "shall not be sold at prices which shall be unreasonable and unfair to the party in whose territory the Roller Bearings are sold" without accepting any legal obligation for it.

30. The modifying agreements further provided, that if

the principal agreement (June 16, 1909) should be rescinded, Wolseley should abandon the use of the name "Timken" as part of its name (if so used) and in all other respects, and secure to defendant the exclusive use of the name "Timken".

31. In 1924 and 1925 after all the basic patents pertaining to the tapered roller bearing had expired, two agreements were executed between defendant and British Timken. They merely modified the prior agreements and continued them for a term of five years to January 1, 1929. In the meantime British Timken succeeded to the rights of Wolseley Motors (its parent company). Royalties payable by British Timken were reduced from fifteen per cent to five per cent. They recited that the name "Timken" should belong exclusively to defendant and that during the continuance of the principal agreements as modified from time to time British Timken should be deemed to be using it as a part of its exclusive license and upon the expiration of the agreements British Timken should change its name and do everything necessary to secure for defendant the exclusive right to the name "Timken".

[fol. 2995] 32. These various agreements constituted the basis of relations between defendant and British Timken, including its predecessors E. & O. A. and Wolseley Motors, subsidiaries of Vickers. Against the backdrop of these prior relations we must view the conduct of defendant to resolve the questions raised by the charges of antitrust violations beginning in 1928.

33. As to the existence of these license contracts, which contained restrictions of territories, fixing of prices, covenants of defendant and British Timken not to compete with each other there is no dispute. The only comment of defendant in that regard is that, "Vickers in its zeal to protect itself may have exacted too broad a license."

34. The Government points out that in 1927, prior to the time defendant and British Timken associated in their challenged conduct in the bearing industry they were prosperous and growing concerns. This is amply supported by the evidence.

35. Since it was founded, defendant has held a commanding position in its field of manufacture. By 1928 it became the Titan of the roller bearing industry. It had purchased the assets of its principal competitors in the United States. Conflicting claims were made, during the trial, as to the

exact percentage of the total tapered roller bearing market controlled by defendant. It is of no moment what the precise figures were. Defendant's assertions that it was "many times over the largest manufacturer of tapered roller bearings in the world" and that "Timken Tapered Roller Bearings are standard equipment in a majority of all makes of automobiles, trucks and busses. Railroad cars and locomotives, steel mill roll necks, machine tool spindles, oil field machinery, compressor crankshafts, paper making machines—these are but a few of Industry's tough jobs in which Timken Bearings have become dominant" are sufficient indication of the position of defendant in the industry.

36. Although defendant in its advertising characterized itself and its product in this fashion in 1941, its relative position was the same in 1928. British Timken's potent leadership in the industry compared favorably with that of defendant. It showed a substantial growth from the time the principal contracts were made and increased its productive capacity, experience in manufacture and sales output to an extent, that it became a potential formidable competitor in the field of roller bearings. It experienced a relatively greater growth in the business than did defendant. It had but one competitor in Great Britain and sold approximately 90% of all the tapered roller bearings there. So the accused agreements between 1928 and 1938 were made between two manufacturers, who on the basis of the evidence, were properly characterized as the largest manufacturer in the world and the largest manufacturer in Great Britain respectively.

37. Around 1926, Michael B. U. Dewar, an English businessman, became vice chairman of Wolseley Motors. British Timken was then a subsidiary of Wolseley Motors. As a member of a British commission, while on a visit to the United States to make an economic study, he spent some time at defendant's plant. In 1927, shortly after his return to England, he became interested in personally acquiring British Timken. As an officer of Wolseley Motors, he knew of the existing agreements between defendant and British Timken, of their provisions pertaining to territory, royalty and trade mark. He also knew that the contracts were to expire on January 1, 1929.

38. On March 10, 1927, Dewar wrote to defendant's president, advising that he had become chairman of British Tim-

ken and raising the question of the continuation of the existing agreements between British Timken and defendant. In this letter mention was made that he contemplated making an offer to Vickers for the purchase of British [fol. 2996] Timken and expressed the thought that it would require about £300,000. He commented, "I do not know whether your Company would care to be interested if I were to make such an offer either permanently or on the basis of the money loaned being repaid out of profits."

39. On March 28, Dewar cabled defendant, inquiring whether it would be prepared to extend its agreements with British Timken for ten years, if he were to take it over and stating that he had to make up his mind within the next ten days and should like to do it, but did "not think it wise without a ten year's agreement with" defendant.

40. Defendant cabled Dewar in reply, that it was willing to consider an additional ten year license and reduction of royalty, that with its cooperation costs could be reduced 25 per cent or more and further saying that it would be more interested in joining with him in purchasing the British company from Vickers.

41. Additional cables and personal negotiations between an executive of defendant and Dewar followed, which eventuated in a written instrument named, "Heads of Agreement" dated May 16, 1927 signed by defendant and Dewar. It was in effect a memorandum of the concurrence of the parties on the basic subject matters of the negotiations to be later "embodied in more formal documents as soon as practicable".

42. Inter alia, it provided that defendant would contribute £52,500 and Dewar £47,500, for the purchase of the stock of British Timken; that upon the issuance of two classes of shares Dewar would hold the majority of the class which controlled the company; that such control would cease in the event a stipulated minimum net profit was not earned and a specified dividend was not paid periodically; that Dewar was to be the managing director while the shares he owned controlled the company.

43. The contract likewise provided that a new agreement would be entered into between defendant and British Timken "extending for ten years the terms of the existing Agreements between them subject to modifications and generally upon such terms and conditions to be mutually

agreed' including among others "Any practicable steps to be taken for the protection of the name Timken and securing the exclusive reversion of the name in all countries to the American Company at the termination of the Agreement."

44. The control of British Timken accordingly passed from Vickers to defendant and Dewar. Each owned about 50 per cent of the stock, but Dewar was the managing director and conducted its affairs.

45. Under these recited circumstances and following these preceding events, British Timken, defendant and French Timken made a series of agreements and engaged in a course of conduct which are labeled by the Government, "a broad combination and conspiracy to suppress all competition between the parties * * *".

46. What were these agreements and what did these companies do to warrant the charge leveled against them?

47. On January 1, 1928 a "business agreement" consisting of three written instruments of the same date was made between defendant and British Timken, to be in effect for a period of ten years. Simultaneously all existing contracts between them were cancelled.

48. The agreement of 1928 followed generally the pattern of those which preceded it. The world was divided into respective territories for the manufacture and sale of bearings in this language: "For the purpose of this Agree- [fol. 2997] ment the United Kingdom of Great Britain and Northern Ireland and all other countries of Europe and all colonies or dependencies of said United Kingdom and European countries except in or adjacent to North or South America shall be deemed to be the territory of the British Company and the rest of the world shall be deeemd to be the territory of the American Company."

49. Exclusive license was granted to British Timken under existing or future patents and defendant for the duration of the agreement. In turn British Timken was to assign absolutely and for all time its existing and future patent rights in defendant's territory.

50. They agreed to inform each other in respect of all inventions and improvements regardless whether they were patented or not patented. Advice as to methods and manufacture was to be furnished by defendant, and British Timken was obliged to follow it.

51. Each party agreed not to sell bearings directly or to others for shipment into the other party's territory, except as assembled component parts of completed articles manufactured in its own territory and for bearing replacement purposes in such completed articles. In the event such sales in or into the other party's territory were made, they were obliged to advise each other of the details of the sales and pay an amount of ten per cent of the net sales price.

52. They agreed to endeavor to maintain the distinctive character of the trade mark "Timken". British Timken agreed not to manufacture or sell bearings except under the trade mark and only in accordance with the provisions of the agreement, and to eliminate the name "Timken" from its corporate name and to refrain from its use as a trade mark upon the termination of the contract.

53. Prior to 1924, British Timken or its predecessor exclusively licensed a French company, La Societe de Mecanique de Genevilliers," (hereinafter referred to as S.M.G.), to manufacture Timken roller bearings in France and its colonies. S.M.G. registered the trade mark "Timken" in France and her colonies, where it was the only manufacturer of tapered roller bearings until 1928, when its license agreement was terminated.

54. Early that year steps were taken by Dewar, with the consent and cooperation of defendant, to organize Societe Francaise Timken (French Timken) which accordingly came into existence in July of 1928. The ownership of its stock was divided between defendant and British Timken. Dewar, however, during the entire time under consideration, controlled its operations and supervised its business activities. French Timken purchased from S.M.G. the trade mark rights in the name "Timken" for 12,000 francs.

55. A "business agreement" was entered into between British Timken and French Timken, on the model of the one between defendant and British Timken, allocating to French Timken France and her colonies, dependencies and mandates (except those in North and South America) as its exclusive territory for the manufacture and sale of anti-friction bearings.

56. French Timken rented a plant, purchased machinery

from defendant and British Timken and commenced operations by first importing semi-finished products from defendant and British Timken. By 1933 it was engaged in the manufacture of all the component parts of roller bearings.

57. In Germany, one Prausnitzer, the owner of a company called Deutsche Timken Gesselschaft, had registered the trade mark "Timken". Defendant and British Timken [fol. 2998] organized a new German company with the same name, gave Prausnitzer a 20-25 per cent interest in it and named him manager in order to acquire the trade mark and Prausnitzer's assignment of his company. An agreement similar to the one made with French Timken was consummated between British Timken and Deutsche Timken Gesselschaft, which allocated Germany as the German company's exclusive territory for the distribution of anti-friction bearings. In 1934 the German company's business was discontinued and British Timken again took over the territory.

58. Before the expiration of the 1928 contract, another agreement between defendant and British Timken became effective (on January 1, 1935), for sixteen years, which was substantially the same as the 1928 contract.

59. In it were found, however, the following provisions: "The American Company (Timken) in its territory may accept and execute orders for bearings for ultimate destination in the British Company's (British Timken's) territory for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorize sales to or known to be destined for manufacturers in the British Company's territory or sales at prices in conflict with the wishes of the British Company and the American Company from time to time will notify the British Company of the details of the sales authorized under this paragraph and will pay to the British Company an amount equal to five per cent (5%) of the net sale price thereof."

60. Conversely the same provision is made as to prices and payments to defendant for sales of replacement bearings by British Timken in defendant's territory.

61. Russia became the joint territory of defendant and British Timken. Business transacted there was conditioned as follows:

62. "The prices and terms at or upon which offers are

made and orders are accepted shall so far as practicable be mutually agreed from time to time but nevertheless either of the parties hereto shall be at liberty to quote and accept orders at low prices and extended times for payment without the consent of the other party after having first submitted the prices and other terms to the other party for its consideration and remarks provided that any such quotation or acceptance shall not involve under cutting some quotation already made by the other party."

63. The agreement of June, 1928 between French and British Timken was modified in a new contract on July 15, 1935. It too, provided that bearing replacement sales might be made by defendant, French Timken and British Timken in and into their respective territories. The prices had to be satisfactory to the company into whose territory bearings were sold. French Timken was obliged to sell no bearings other than under the trade mark "Timken."

64. The present operations of defendant, British and French Timken in the world market of anti-friction bearings are carried on under the provisions of and subject to the restrictions of two contracts both dated November 28, 1938. They are, the "Tripartite Contract" between defendant, British and French Timken and the agreement between defendant, British Timken and Dewar, which is supplemental to the Tripartite Agreement. These are the final understandings which superseded all the numerous others and are to govern the conduct of the parties until the end of 1965.

65. The lengthy recital of the contents of the prior agreements was felt desirable for the purpose of showing the evolution of exclusive licenses under patents, into agreements which are not based on the prerogatives enjoyed by [fol. 2999] the limited patent monopoly.

66. Defendant and Dewar have to date maintained controlling stock interest in British Timken. In 1935 stock was sold to the general public, which resulted in defendant owning 30.25 per cent and Dewar 25 per cent of the shares Defendant and British Timken own all the stock of French Timken.

67. Considerable testimony was offered to explain the reasons for the making of the large number of contracts, why they were modified and extended from time to time

and various covenants were inserted in them and why the present contracts have such long duration. In the basic questions involved, the reasons advanced are of no significance. The controlling facts are that they were made and that they contained certain provisions which may bring them under the condemnation of the Sherman Act.

68. The 1938 contracts are each entitled "Business Agreements" and contain substantially the same provisions present in the 1935 agreements.

69. To summarize their salient features, the contracts provided for exclusive marketing areas which prevented the parties from selling in each other's territories, fixed prices on all replacement bearings sold in each other's territories, fixed prices on bearings sold in Russia and compelled British Timken and French Timken to manufacture and sell bearings only under the terms of the agreements and under the trade mark "Timken."

70. The evidence is overwhelming and uncontradicted that defendant, British Timken and French Timken religiously adhered to their contractual obligations to make the territorial divisions inviolate. Indeed, in some instances, they refused to disturb the allocated territories even where exceptions were made in the agreements. For example, although the contracts permitted sales of replacement bearings outside of the allocated territory D. P. Hess (assistant to the president of the defendant company), confirmed the arrangements he made with British Timken in a memorandum on February 16, 1932 as follows:

> "*Prices on Service Bearings Into Our Territory*
>
> Arrangements completed to effect that British Timken will not quote on any inquiry coming in and state product should be obtained from us. There are two exceptions to this:
>
> (1) When customer demands British product.
>
> (2) When S. K. F. or F. S. are in competition.
>
> Both the latter are quoting 70 off on the Continent and we are having our trouble.
>
> Hong Kong will be American territory starting at once."

71. Each of the parties refused orders for shipment outside of its territory, referring them to the company in whose territory they were to be used. During the period from July 1, 1945 to February 20, 1947, alone, defendant transmitted 402 inquiries or orders to British Timken and French Timken. In each instance the customer who placed the order was advised that either British or French Timken had the exclusive right to supply the bearings.

72. The study and persistent effort to assure the exclusive right of each party to manufacture and sell in its own domain is emphatically illustrated in the various letters and memoranda of the officers of the contracting parties and particularly of the officers of defendant. They bear out the Government's contention that the respective trade [fol. 3000] provisions were to be preserved regardless of the unsatisfied demand for bearings in the various parts of the world. Over the entire span of years during which the restrictions existed, the parties did not deviate from their course of conduct. Even when the world gradually became engulfed in armed conflict, provisions were made to supply customers by specific arrangements so as to retain the trade division.

73. In 1929, the Ford Motor Company, attempted to purchase a quantity of tractor bearings from defendant for use in its Cork, Ireland plant, which was in British Timken territory. Defendant, instead of filling the order, made the bearings, and shipped them to British Timken for resale to Ford. In that connection Hess wrote:

> "This is causing us, frankly, a great deal of changing in our plan of operations, as it meant putting all of this type of machinery to making these large bearings, on double shift and operating them seven days per week; but we feel that you need this help very badly at the present time, and our joint efforts must be made to keep competition out of this Ford situation.
>
> "You may be interested to know that the Ford Motor Company, Detroit, upon receiving advices that your deliveries were not satisfactory, from their English and Cork representatives, immediately placed an order with us for approximately 5,000 sets of bearings, and of course they would have to pay our prices for them. We felt this would be a very serious handicap to your

future sales, as they would constantly hold up the fact to you and possibly to us, that you could not handle their production after we had used efforts, as you know sucessfully to have them turn over this entire production to you.

• • • • • • • •

"We are shipping these bearings to Ford, Cork, Ireland, freight prepaid, and are going to bill you your selling prices to Ford. • • •

"As you understand, these prices for the differential bearings in particular, are very materially below the prices that we sell Ford, and these quotations to you must be held in strictest confidence, as we certainly would be asked to explain the difference in prices we bill to Ford and the prices to you; and our explanation of this would be that we are billing you such prices on account of the close relationship between the two corporations, and that the British Timken Company is standing whatever losses may be incurred."

74. On December 5th, 1939 L. M. Klinedinst (vice president of defendant) wrote to all interested employees of defendant as follows:

"Since the turmoil in Europe certain situations are arising that make it necessary for each and every one of our key men to thoroughly understand the setup between British Timken Limited, Birmingham, England, and The Timken Roller Bearing Company, Canton, Ohio.

• • • • • • • •

"The contract provides that we shall not ship or knowingly permit our customers to ship bearings into their territory for use in the manufacture of any equipment whatsoever. Where customers wish us to make [fol. 3001] shipments into their territory for manufacturing purposes, we are to advise them of our arrangement with British Timken Limited and you are to immediately advise us of such conversations, negotiations, etc., so that we can in turn contact the British Timken Company.

"Undoubtedly many of our manufacturing customers buy bearings from us for service purposes and occasionally for manufacturing purposes and in turn re-ship them into British Timken's territory. That, of course, we have no knowldge of and we cannot stop.

* * * * * * *

"There are a number of American manufacturers using Timken bearings who operate plants in British Timken's territory. Some of these plants have used both SKF tapered roller bearings and Timken bearings. Inasmuch as it is becoming more and more difficult to secure anti-friction bearings from the Swedish companies, these American manufacturers who own these foreign plants will probably call on us to make deliveries of bearings from here. Please note that such deliveries are in direct violation of the British Timken contract, and where such requests are made refer them to us as we may want to effect some arrangement with British Timken to fill such requirements rather than have the American company buy one of the competing makes of tapered roller bearings and have them shipped into British Timken's territory. In such an event, both companies would lose."

75. Again on December 6, 1939 in another communication he wrote:

"It is our interpretation of these arrangements that we are not permitted to sell or ship bearings into or known to be destined to British Timken's territory without paying them a 5% commission, and even under such circumstances our prices must be acceptable to them. We have a mutual understanding with British Timken that on unsolicited inquiries for bearings going into each other's territory that we are at liberty at all times to quote prices representing a 50% discount from American list on standard bearings and pay a 5% commission on the net sale thereof. We insist that all of our men respect our agreement with British Timken and on any unusual cases to consult with the Home Office for further instructions."

76. On January 29, 1940 in "Inter-Organization Correspondence", W. R. Timken, (vice president of defendant) referring to Klinedinst's letters, reiterated their contents in this manner:

"In view of the confused conditions of international trade and the increased demands of the British and French governments for bearings for war purposes, it is probable that we will receive more and larger inquires for bearings destined for the territories of our British and French associates. We have also had reports that companies using SKF bearings are having difficulties in getting deliveries, and this, too, may be a factor in our receiving inquiries for delivery in the territories of our associates.

"Our agreement provides that we are not to sell bearings into Europe or possessions of European [fol. 3002] countries, excluding Russia and North and South America, except for service, and, in the case of service, only under certain price conditions. Our agreement does *not* permit us to sell original equipment bearings directly or to domestic manufacturers knowing them to be destined for shipment into British or French Timken territories. However, this does not include bearings assembled into complete articles of manufacture or component parts of completed articles of manufacture subsequently shipped into their territory.

"When inquiries are made for bearings which may be shipped into our associates' territories, please report the matter immediately to Canton giving full information as to number, size, quantity, specification, and the exact use of the bearings. In addition, you should use your best efforts to persuade the customer that our British and French associates are both able and eager to supply their foreign requirements and that they manufacture a product comparable in every way to our own.

"When emergency shipment of small orders is demanded, we have the permission of our associates to fill such orders. We do not, however, wish to take advantage of this permission except where it is unavoidable. These cases must be taken up with Canton

as outlined above for it is necessary that complete information be given to the associate involved. Should the Canton office see fit to fill any such orders that does not mean we will continue to accept them, and the customer should be urged to place all future orders with British or French Timken as the case may be."

77. A report from R. E. Forsythe, (assistant to the president of defendant) to Klinedinst on December 3, 1940 entitled "Sales Into British Timken's Territory" described the temporary arrangement precipitated by the war. He said:

"* * * It had not been our practice in the past when we shipped bearings for British Timken directly to their export customers to give them a discount from our standard established prices such as we gave them when the bearings went to Birmingham, but they asked that we now do so due to prevailing circumstances. In other words, when we made shipments to their customers direct, they would advise us the prices at which the material should be charged and then we were to credit British Timken's account with the difference between the amount received from the customer and the price we would ordinarily have charged British Timken had the bearings gone to Birmingham.

"We agreed to do the above on a temporary basis, reserving the right to rescind the price concession at our discretion, and in this connection British Timken was to guarantee the credit of their agents so long as we followed their instructions regarding terms of shipment.

"Since the time that hostilities broke out in earnest in Europe we have continuously received inquires emanating from British Timken's sales territory requesting catalogs and prices on our bearings. In many cases we were advised that they had formerly been supplied their Timken bearings from Birmingham, but they now desired to establish an American source of supply in case they could no longer secure bearings from Eng- [fol. 3003] land, and in some cases these inquires came from British Timken distributors and French Timken

agents. We have either referred the inquiries to Birmingham, or if it were a specific inquiry covering a definite lot of bearings we quoted our protective discount of 50% off American list. We have received definite orders from their sales territories which upon being referred to British Timken were turned down at their instructions.

* * * * * * *

"Mr. Winspur (of the British Purchasing Commission) advised me more or less confidentially that he had learned that all orders from Bearing Service Company in Australia had to be placed through Birmingham due to contractual relations and stated that he felt it would be necessary for the Australian Government to probably take over these orders and place them through the British Purchasing Commission. In discussing this with Mr. Harrison a few days before he left Canton, he asked if we would cover them in the amount of 5% on such sales inasmuch as they had the defense contract, but we made him absolutely no promises of any kind.

* * * * * * *

"We have picked up from several sources in the United States the story that The Bower Roller Bearing Company is making every effort to take advantage of present conditions in order to establish themselves in world markets, and such conditions as described above only serve to give them an entree into these fields. We have also heard that SKF is buying Bower bearings and are either re-packaging them or having their name stamped on the bearings and selling them to their regular customers in export markets. Naturally, we feel that present conditions do not add to the prestige of the Timken name and also that Bower who is a dangerous competitor is now being given an opportunity to secure a foothold from which it may be very hard to dislodge them after the war is over."

78. The strict adherence to the territorial restrictions applicable to Australia became a matter of grave concern

to British Timken's distributors and eventually to the British Purchasing Commission. There was a serious interference in Australian war production due to British Timken's inability to supply bearings. The threat of sales by competitors to supplant the meager amount of available bearings and the clamor of Australian distributors, eventuated in the relaxation of the theretofore inflexible provisions of the contracts. For the period of the war emergency, defendant was permitted at first to fill only Australian orders and later orders emanating from any place in British Timken's territory, but only through British Timken's distributors and only at prices designated by it.

79. The voluminous correspondence on the subject matter bears out the critical situation which existed and which required the reluctant alteration of established policy.

80. For example, on September 20, 1940, C. S. Gibson (technical representative of British Timken at Melbourne), in a letter advised Forsythe of the proposed visit of an official of Roller Bearing Service Company of Australia to Canton and further said:

"• • • It seems impossible to rely on Birmingham to efficiently handle orders, and of course, neither [fol. 3004] I nor our Distributors are officially allowed to correspond with you direct. Mr. Harrison will, I expect, give you details of lots of other matters which have been held up unduly, but I pointed out to him that possibly you may not be able to help him much, as this territory is controlled by British Timken Ltd.

• • • • • • •

"• • • On the other hand, you will appreciate the rather absurd position existing at the present moment, inasmuch that we are getting practically all our supplies from you, and yet it is almost impossible to get any information from Birmingham. Why not take over Australia and New Zealand for the duration of the war? I hope that you have been asked by Birmingham to quote for the complete equipment of 20 alternatively 35 locomotives and tenders for the New Zealand Railways. This is a case where the customer is extremely anxious to place the order with us, but for some extraordinary reason, we do not seem to be able to produce a price."

81. R. R. Thomas of Bearing Service in writing to Forsythe commented:

"Our cable to Mr. Harrison may have been a little difficult for you to understand but we are engaged at the moment in replying to a cable from Mr. Pascoe and we are very concerned to make sure that Mr. Harrison does not ask you specially to request that our orders go direct to Canton and then for us, in our enclosed letter, to ask Timken to do the opposite. In other words, we do not want you to think for one moment that we would ever let you down in the slightest particular.

• • • • • • •

"I am asking Mr. Harrison to try and meet Mr. Dewar and casually give him a copy as per our enclosure stating to him that he might wish to make some enquiries while he is in America."

82. The cable to which he made reference was sent by Pascoe (chief executive director of British Timken and director of French Timken) to Bearing Service reading:

'Canton report confusion caused by receiving requests for deliveries and prices direct from Australia presumably Bearing Service Company Stop This is directly opposite to our instructions Stop How does it occur? Stop Please take immediate steps to rectify.'

83. Subsequently Thomas wrote to Gibson:

"Not only was that opportunity missed but after more than twelve months of war, after large quantities of ball bearings have become available in this country, we still await our first considerable shipment from Canton and we still, in some unfortunate cases convert Timken users back to ball bearings.

• • • • • • •

[fol. 3005] "In some urgent cases we have been reminded by the Ministry of Munitions that we were retarding the Defence program by not supplying information promptly and we were asked whether we were prepared to do something about it or whether they

would communicate direct with the British Purchasing Commission.

* * * * * * *

"With all respect, we request Mr. Pascoe to accept this following recommendation which we make in the light of many years experience of this market.

(a) That all our orders be forwarded to British Timken, Ltd.

(b) That in all other matters connected with shipments of goods, we be encouraged to communicate freely with Canton, at the same time sending a copy to Birmingham."

84. On December 4, 1940 Klinedinst wrote Dewar, who was then in the United States:

"We were advised by the British Purchasing Commission that they will very likely take over all of the purchases of anti-friction bearings for Australia. This will present a problem, the solving of which we must ask your help.

"Undoubtedly as these inquiries come to the British Purchasing Commission they will ask all tapered roller bearing manufacturers in this country to quote prices, and following the same assumption further, they will give the business to the lowest bidder. That is one phase of it. On the other hand, should your Australian distributors specify on their orders that they must definitely be supplied Timken bearings, then, we presume, they would come to only Timken for quotations, or would they take it upon themselves to buy from the cheapest source?

"Regardless of how this works out, we have the problem of what prices to quote and how to distinguish between bearings that are to be used essentially for service and those to be used in production. There is another angle that may enter into this—the Purchasing Commission may go, for instance, to the General Motors Export Corporation for prices on bearings for General Motors equipment and, naturally, there should be uniformity in prices. Surely we feel it is necessary to have two distinct prices if this is possible—one

covering bearings for service and the other for production.

"We have in mind a number of American manufacturers who have assembly plants in Australia, and if the British Purchasing Commission takes over that phase of the business those bearing purchases would come through them rather than through the International Harvester Company, or General Motors, or whoever may have plants in Australia.

"We have in mind a situation that developed several months ago. When we quoted the British Purchasing Commission on a large quantity of bearings at the established government buying agency price—#30—[fol. 3006] our competitor, The Bower Roller Bearing Company quoted on this same inquiry at about a #17 price and The Bower Company got the business.

"We do not want to see The Bower Company or any other American manufacturer of tapered roller bearings find a foothold in Australia or in any other territories covered by you, but we feel this will happen on a straight competitive bidding proposition because it is not possible to definitely control the price at which other tapered roller bearing people will sell their products for foreign consumption.

"The simplest way out of this, as we see it, is for British Timken to instruct all of their foreign service connections to very definitely and positively specify Timken tapered roller bearings. That will give the British Purchasing Commission no leeway. If that can be done, the problem is virtually solved.

* * * * * * *

"We feel, Mr. Dewar, that the awkward situation now presenting itself might have been avoided had British Timken permitted us to handle their outside orders direct.

"Mr. Harrison of The Bearing Service Company of Melbourne spent quite some time with us recently and was very bitter in his criticism of our deliveries. We found in many cases we had never received an order from British Timken for the sizes so badly needed.

"The policy followed by your Australian people was to send the order to British Timken, they would fill

such parts of it as they could and the balance of it was transferred to us. That meant a very great delay and that was why we suggested sometime ago that you have such parts ordered and shipped direct from Canton."

85. On December 18, 1940, Gibson addressed a personal note to Forsythe, saying among other things:

"On the 11th December, the following cablegram was received by Bearing Service Co. of Aust. Pty. Ltd. Melbourne from Mr. Harrison. This was sent from Los Angeles on the 10th December:

'Canton advise Dewar agreed yesterday their handling Australia direct he cabled Pascoe this effect now awaiting confirmation Birmingham'

"As you can imagine this is some of the best news I have had in years. So far I have not received any advice from Birmingham about it. I feel that Birmingham will do their best to avoid this arrangement, although if Mr. Dewar has agreed to it, half the battle is won. I can think of quite a number of reasons as to why Mr. Dewar would agree, and no doubt I will hear this story from you in due course.

. . . . . .

"I do not know if you will be taking over this part of the business, and am of the opinion that it is quite [fol. 3007] possible that Birmingham will want to retain it. Should you be taking it over, it will of course be necessary for you to compete with prices ex Ford factories in Canada, and you will know what the position is with them. You may prefer to retain the business in this way but as you can imagine, I am naturally anxious to have it direct."

86. The Australian government representatives called on defendant in February 1941 to build a plant in Australia. Wm. E. Umstattd (president of defendant) reported to his associates in a memorandum:

"Mr. Gutteridge, an engineer who has been sent to this country by the Australian Government to negotiate for the establishment of manufacturing plants in

Australia, visited us at 3 P.M. with Mr. Chamberlain who is at present Technical Engineer with the British Minister of Munitions in Washington.

"Gutteridge and Chamberlain called on us to see if we would be interested in establishing a bearing plant in Australia to manufacture all types of anti-friction bearings. They said that the anti-friction bearings business in Australia has amounted to about $1,000,000 per year for the past several years, but within the past twelve months this figure has increased approximately 100%. Mr. Gutteridge said that the Australian Government was insisting that a plant be built in Australia and that adequate tariff protection would be given to such an industry.

"I explained to Gutteridge and Chamberlain that Australia was controlled by British Timken and that under no circumstances would we consider building a plant in Australia. I pointed out to them that it would be almost impossible to get delivery on any machine tools suitable for the manufacture of anti-friction bearings and that no bearing manufacturer in this country had excess machinery which could be shipped to Australia. Mr. Gutteridge wanted to know if we would be interested in establishing a plant in Australia if he could secure priorities for the necessary equipment. I told him that I did not think he could secure such priorities, but if he did we would not be interested as I had previously pointed out that British Timken controlled the sale of Timken bearings in Australia."

87. The inquiry of the British Purchasing Commission was answered in the same vein by Umstattd:

"Your letter of February 26th has been received.

"When Messrs. Chamberlain and Gutteridge visited us about ten days ago we told them that under no circumstances would The Timken Roller Bearing Company establish a plant for the manufacture of bearings in Australia. We have a contract with British Timken Limited which precludes our establishment of a manufacturing plant in Australia. Such a plant would have to be built by British Timken Limited."

88. These communications demonstrate that the parties not only sought the preservation of their respective sales fields, but that they supported the agreements by the maintenance of prices fixing arrangements. The protective discount policy insured the parties against competition from each other in replacement bearings. Defend- [fol. 3008] ant sold at a 70% discount for export in its own territory, but quoted prices representing a 50% discount from the American list on standard bearings in response to unsolicited inquiries from British Timken's territory.

89. Other steps were taken to prevent outsiders from disturbing the agreements as the particular situation required.

90. In January of 1928 D. E. Hobley (sales manager of British Timken), wrote to Hess:

> "In Budapest, Hungary, Timken bearings are serviced by Mr. Michael Pal, and he has been doing remarkably good business for us during the last year. In the same city where is a house called Messrs. Denes & Friedmann, who are the representatives of the Timken-Detroit Axle Company through their British connection. As you know, we have established service prices for bearings identical with your own and operate with the same discounts, but we are much alarmed to find that Messrs. Denes & Friedmann can sell Timken Axle sizes considerably cheaper than our own distributor. . . .
>
> "It seems to us that the Timken Detroit Axle Co. are taking advantage of their position inasmuch as they buy from you at low prices and ship them over to our territory on a small margin of profit and this does interfere with our service prices."

91. In February 1928 Hess replied to Hobley:

> "We have finally concluded arrangements with Timken Detroit Axle Company with reference to the sale of our bearings through their distributors in Europe, and particularly in Budapest, Hungary.
>
> "Mr. Emmett, of the Automotive Products Company, London is in touch with this situation, and I believe it would be wise for you to call upon him. He will receive instructions from Timken Detroit to the

effect that he should not undersell us or you on service bearings."

92. They deviated from adherence to protective prices only in cases where competition of outsiders required that it be done.

93. In June, 1944 E. H. Austin (defendant's manager of Service Sales), wrote:

"Joe Cornell handed me your letter of June 2 which resulted in my discussing this with Mr. Klinedinst. I think before we definitely commit ourselves to quoting 70% on general sizes and 60% on Ford on the orders to which you refer, we better find out just exactly what is involved—bearing sizes, quantities, etc. Perhaps you could tell us a little bit more about Cymot, Ltd. for it is well that we are given what information is available on any of these companies that we give consideration to quoting our export prices in British Timken markets.

"You brought up an age old subject, namely, the policy that we should employ in quoting on inquiries emanating from British Timken territory. I pointed out to Mr. Klinedinst the weakness in our pricing policy in the British Timken market, emphasizing the fact that buyers for the B T market are becoming familiar [fol. 3009] with the fact that we are protecting British Timken and by so doing do not have a price that is anywhere near competitive to Bower. As a result, it now develops that we don't even get inquiries for a lot of requirements. They are automatically referred to our competitors. Naturally it cannot be expected that Bower will establish an export policy comparable to ours in territories that we cover and another pricing policy to be in line with us in British Timken territories."

94. In the joint territory of Russia, the pricing provisions spelled out in written contracts were carried out to the letter.

95. The contractual obligations for the interchange of information relating to the manufacture of bearings and of all inventions and discoveries, whether they were patented or not were construed by defendant, British and French

Timken to be for their mutual benefit only, to the exclusion of all others. Accordingly any information pertaining to their manufacture was denied to outsiders unless consent was obtained from the party affected. In December, 1932 Hess wrote Dewar:

> "Upon my return to this famous country I find a cable from Birmingham with reference to a statement made by Ford Dagenham that we have granted Ford America a license to manufacture Timken bearings according to our patents, and it puzzled me just a little bit because this is the situation I described to you when I explained that we had dropped the Bower suit and had given Ford such a license as they describe. We, however, explained to them that we could give them no such license for England or any European plant as British Timken was our exclusive licensee and that anything in this regard which they desired would have to be discussed with you."

96. The inhibition imposed by the contracts on British and French Timken, not to manufacture or sell tapered roller bearings, except under the name "Timken" was observed and both companies throughout the years before and after 1928, to date, have become identified as producers of "Timken" bearings. The goodwill they built up and the competitive position they acquired in the allocated territories was under the name "Timken". The retention of the goodwill and place of dominance in their business field depended on the continued right to use the name. The severance of contractual relations meant the termination of their ability to profit by the many years of experience in manufacture and successful business dealings with their customers. In turn no competitor of British or French Timken was permitted to use the trade mark "Timken".

97. In addition to dividing the world into restricted manufacturing and marketing areas, maintaining price fixing arrangements, and interchange of discoveries, know how and inventions to the exclusion of others, defendant, British Timken and French Timken co-operated to shut out the competition of other dealers in tapered roller bearings.

98. The rigid territorial divisions were followed at all times except when adherence to such restrictions would result in the possibility of loss of business. They were made

for the dual purpose of protection against each other and to eliminate the competition of other tapered bearing producers.

99. Dewar's testimony in this regard was:

> "We had a common enemy in the Swedish S. K. F. who had begun the manufacture of tapered roller bear- [fol. 3010] ings, and our general policy was that if a tapered roller bearing was sold it had got to be a Timken and not a S. K. F. To us it was really immaterial whether it was made in the United States or whether it was made in Great Britain or France, provided it carried the name 'Timken'. We used to sell at the request of the American Company in the Argentine and the American Company has sold at our request in our territories."

100. Hobley (in charge of British Timken's sales), commented:

> "The whole object of that arrangement was that if clients in our territory insisted on buying bearings from Timken we would let them do so. If there were clients in the Timken Company's territory who wished to buy from Great Britain we would supply them. A commission would be granted in either case. That was in order to combat competition; that was the whole basis of it."

101. Klinedinst wrote to Dewar on December 4, 1940:

> "We are primarily interested, of course, in keeping Timken bearings to the front during this trying period and the further desire to help you in every way possible since we know how difficult it is to eradicate a competitor in foreign fields after he once gets a start."

102. W. R. Timken, during the trial, in answer to the question: "What is the procedure that you follow now on orders from British Timken territory?", replied:

> "Well, I would say it varies, depending upon what territory it is and whether they can make delivery. Where they can make delivery they would naturally get the business. You see, during the war we felt there was a very great opportunity to improve the Timken

position in Australia and the East Indies, due to the fact that we thought at that time the SKF of Sweden was completely cut off from export, and we were willing to try to under mine their position by any means we could, including selling bearings at a loss if necessary."

103. The sales of bearings by defendant, British Timken and French Timken, to each other were on a most favorable basis to supplement the plan of strict compliance with the allocated areas and to protect themselves from competition by outsiders. In December, 1929, Hess, in a letter told Dewar:

"With this situation confronting us we are going to be bothered by rather serious competition from S. K. F., and the thought has occurred to us that it may be possible for you to supply bearings for our industrial requirements in Canada. According to our records there is a 15% duty on English products as compared with our 30% and, if you can sell bearings at low enough base prices, there is no question but that we can hold—or I should rather say get—a big bulk of this industrial bearing business in Canada."

[fol. 3011] Dewar replied:

"I should love to help you compete with S. K. F. in Canada. I heard quite casually the other day from a representative of the American motor industry, (who was in London and whom I met but whose firm I do not know) that for their assembly factory in Canada they have placed an order with S. K. F. for bearings which will be manufactured in Luton, as they were able to buy these *taper roller* bearings made by S. K. F. Luton more cheaply in Canada than they can buy yours.

"I do want to take every possible step we can to keep S. K. F. out of the taper roller bearing business anywhere."

In August, 1939 the matter of SKF (a Swedish bearing manufacturer) competition continued to concern defendant and British Timken. Klinedinst wrote Dewar:

"We are having our troubles with the SKF Company not only in this country but in Canada as well

and in many foreign countries such as Japan, South America, and elsewhere due to their making price reductions very far below those that we have ever extended to anyone in their respective field.

* * * * * * *

"However, the thought that we have in mind is that we should make a study of the Canadian situation with the thought in mind that perhaps some arrangement might be set up whereby we could be appointed exclusive Canadian distributors for British Timken handling tapered rollers, balls, and straight rollers, not only for service requirements but for new installations as well in all of the various industries. There would be some advantages in this and perhaps many disadvantages. We can see, however, that industrial and service bearings shipped by SKF from Sweden into Canada take a duty of 17½% while they are free from England. This would give us that advantage.

"While this arrangement might not be feasible, it is certainly worth while thinking about, and it appears to us a good club to put over the SKF Company's head."

104. Defendant and British Timken made certain that the alloy steel made by defendant, especially adapted for the manufacture of bearings, was not made available for use by their competitors.

105. In a letter in September, 1934, Dewar told Hess:

"The position is one of considerable difficulty because I do not feel inclined to agree to give you carte blanche to sell tubing in our territory; it might conceivable react to our disadvantage if your tubing were sold to our competitors."

Hess in reply, stated defendant's policy:

"* * * please understand that under no circumstances would we sell our tubing to any one in the world who might as a result harm British Timken, French Timken or American Timken. We have not yet reached this necessity in merchandising our Steel and Tube product."

[fol. 3012] 106. The collaboration of Defendant, British Timken and French Timken to eliminate competition with each other and to eliminate the competition of other bearing producers was augmented by agreements of British Timken and French Timken with their competitors abroad, to share customers and sales in certain markets and to stabilize prices. Hess referred to the association resulting from the agreement as a cartel in reporting on its success to H. H. Timken (the founder and at the time president of defendant company).

107. Aside from the cartel arrangement, discussions were had concerning prices between defendant, British Timken and their foreign competitors.

108. In December, 1932, Dewar wrote J. D. Spray (director and vice president of defendant company):

> "I take it that you are trying to improve the price level in the Canadian market. Is it your suggestion that you and ourselves should try to arrive at a general arrangement with SKF regarding quotations to Ford in Canada and at Dagenham, or for other manufacturers in Canada as well as Ford? As I believe you are aware, we have not as yet had to reduce our f.o.r. prices for Canada as low as we have had our prices driven down for Ford Dagenham.
>
> "During Mr. Hess's visit, he told us of certain events on your side of the water. The result of this information has been that we are engaged at present in negotiating an arrangement with SKF to cover orders placed by Ford Dagenham. As the SKF position is at present, their English Company is only interested in Dagenham. Their Swedish Company is interested in the Canadian market and in all the other places where they assemble cars.
>
> "As you probably know, we have at present practically the whole of the Ford European business with the exception of a percentage in England and with the exception entirely of their German orders. Our proposed agreement for Dagenham will be on the basis of us having 70% and SKF having 30% of the work.
>
> "I would add, in addition, that we hope to come to an arrangement on Service work for all Bearings in England as part of the same arrangement."

109. Dewar also reported to Hess about a meeting in Paris at which British Timken R.I.V. (a large Italian bearing manufacturer), and S.K.F. were represented. He said among other things:

> "After that I re-iterated that in my opinion—and it was an opinion only as I had no right in any sense whatever to speak for the T.R.B., Canton, and I had no knowledge of what was in their thoughts—I felt that the key to such very close cooperation, as joint manufacturing, lay between SKF, Gothenburg, and the T.R.B. in Canton.
>
> "Mr. Batt then informed us that he had had some discussions of an informal nature with T.R.B. regarding the possibility of stabilizing prices in the Canadian market."

110. Although the cartels were formed without defendant's execution of the actual agreements, they were the result of the understandings and cooperation of defendant with British and French Timken to bring them about. Defendant's territory was affected. It was the beneficiary of [fol. 3013] their operations. Its officials were in consultation with the officers of British and French Timken concerning them, they prompted and approved the agreements.

111. In November of 1932 Hess wrote H. H. Timken:

> "One thing is very encouraging about the operation of the cartel. Between SKF and ourselves we have raised prices about 5% and come to a definite agreement as to service prices in France.
>
> . . . . . .
>
> "Dewar and I have been discussing what to do in case they try to reduce our volume to the quota figure and after considering various plans, we have come to the conclusion to try and hold our present volume (about $400,000.00 sales annually) and in exchange for this higher quota, offer SKF one half of our steel tonnage in France. This seems like a good move and will possibly be quite acceptable to SKF as their steel production in Sweden must be very low at this time."

112. The report of Hess in September, 1933, on his European trip, sheds considerable light on defendant's part in the cartel operation:

> "During the current year, real progress has been made in cooperation with SKF to not only stabilize sales prices but to raise them generally, and contracts for the last half, do in many cases, call for a 5% increase in prices. The need for this is vital when we consider the fact that automotive and commercial vehicle sales prices have declined about 30% since 1929. This is due almost entirely to SKF competition but our present relations with them in England are quite cordial and we feel that for the next year we face no further price cuts. This relationship with SKF started with our offering to split the Ford business on a 70-30 basis during my visit last fall, but it is interesting to know that we continue to receive 90% of Ford business, due in all probability to the fact that we are considered 100% British, and of even more importance, we give Ford excellent service and have assigned one man to spend practically all of his time at Dagenham.
>
> • • • • • • •
>
> "Both Mr. Dewar and Mr. Pascoe are watching the R.I.V. (Italian) situation very carefully and Mr. Dewar is keeping in constant friendly contact with Angellis, head of R.I.V. Our latest information is that the R.I.V. plant is very slack due to the let-down in Russian orders, and our British associates feel that they will use every means to sell this output at low prices, all over the world. This, of course, might affect us materially in South America and Canada where we have maintained good service prices, but it is the writer's opinion we shall have no great difficulty in the U.S.A. as long as the present tariff is maintained and with the depreciated dollar.
>
> "As is generally known, we are members of the French anti-friction bearing cartel. This cartel was started in July 1932 and expires at the end of this year."

113. The cartel agreement between SKF and French Timken provided for a division of all of the French bearing

business on a percentage basis, French Timken only participating in the tapered roller bearing market; SKF, in both [fol. 3014] ball and tapered markets.

114. As stated in the agreement, "In order to arrive at the allocation of the market as provided in as precise a manner as possible, an intimate commercial collaboration will be established between the two contracting parties, which will have to determine by agreement the tariff prices and discounts for the retail market, the prices and delivery dates quoted for all large orders or important customers." The parties agree to contact each other "at least every month" and to push the standardization of bearing sizes.

115. The cartel agreement between SKF and British Timke was not only an arrangement on prices of bearings and the percentage of the total bearings each was permitted to sell, but the parties agreed not to sell replacements of the other's bearings. The division of business as to specific customers was set up on a quota basis. When one of the parties exceeded its quota on a certain customer that party was required to raise its prices until there was compliance with the agreement.

116. The lengthy recital of letters, reports and memoranda paints such a clear picture of the conduct of the accused companies over the period of years that the Court feels it serves the necessary purpose of pointing out the patent reasons for resolving the factual issues which are involved. It leaves no room for dispute or contradiction on the salient facts.

117. The evidence conclusively establishes to the satisfaction of the Court the assertions of the Government: that defendant, British Timken and French Timken have manufactured and sold during the period from 1928 to date a substantial portion of the world's production of antifriction bearings and that they have imposed restraints on foreign commerce; by (1) allocating trade territories throughout the entire world each agreeing with limited exceptions not to manufacture or sell in the other's territory; by (2) fixing of prices on products sold by any party in the territory of the other party; by (3) mutual cooperation and assistance to protect each other's markets and to eliminate the competition of outsiders and by (4) participation in foreign cartels which restrict exports by United States producers.

118. The contentions that defendant stifled or eliminated

competition and restrained trade, by exclusively exchanging present and future know-how and inventions, patented or unpatented, and by compulsory use of the trade mark "Timken" by British and French Timken, by prohibition against their dealing in products under any other name, and by requiring that they cease using that name upon the termination of the agreements, will be discussed later in this opinion.

119. The analysis of the evidence is susceptible of but one conclusion. It discloses an extensive and far reaching combination to smother all competition between defendant, British and French Timken and to stifle or suppress competition of other manufacturers by joint effort against them or by agreement with them.

120. It is readily seen that the present relationship of the parties is not only the culmination of the successive agreements beginning in 1928. The combination is, as well, the outgrowth of the principal agreements in 1909, when world markets were divided and competition was eliminated. Those contracts were not merely patent licenses for the manufacture of tapered roller bearings in limited areas, but they encompassed fields beyond the ambit of the existing patent rights. U. S. v. U. S. Gypsum Co., 333 U. S. 364, U. S. v. National Lead Co., 63 Fed. Sup. 513, 523, aff'd 332 U. S. 319, Morton Salt Co. v. G. S. Suppiger Co., 314 [fol. 3015] U. S. 488, Ethyl Gasoline Corp. v. U. S., 309 U. S. 456. The territorial restrictions applied to markets where defendant had no patent rights. Interstate Circuit, Inc. v. U. S., 306 U. S. 208, 228. They included future development and inventions in the industry. U. S. v. National Lead Co., supra, Ethyl Gasoline Corp. v. U. S., supra, Pope Manufacturing Co. v. Gormully, 144 U. S. 224.

121. After the expiration of the principal patents, the restrictions imposed continued. Without the benefit of the limited monopoly power of the patents the agreements followed the same pattern. They no longer revolved around the patents, but were without pretense contracts for the avowed purpose of suppressing competition. Duncan (Timken's London counsel) pointedly said in November 1927:

> "As we understand the position, the main advantage derived by the English Company under the Agreement will be the advice and information to be received from

you, the right to use the name 'Timken' and the absence of your competition. Do you not think that it would be better to accentuate these advantages in the Agreement, rather than leave them merely as incidents in a patent license?"

122. When in 1928 the American, British and French companies agreed to continue their activities, British Timken had grown from infancy in the bearing industry to a position of dominance and was a potential competitor with whom defendant had to reckon.

123. The relationship effected and maintained was not that which prevails between a manufacturer and its exclusive foreign agents for the distribution of its product. Each company was a manufacturer and distributor, independent of the others, but joined for the sole and only purpose of mutual benefits. It is not even contended that defendant, British Timken and French Timken ever competed.

124. The inflexible territorial limitations imposed by the parties on each other, which they violated only to prevent others from encroaching on the protected markets, were designed for the purpose of preventing competition and were reinforced by price agreements. The word "Timken" had become synonymous with tapered roller bearings. To lend support to the desire to eliminate the competition of other producers, defendant supplied British and French Timken, and them alone, with know-how in the production of bearings. It insisted that bearings produced and sold by them be identified by the name "Timken".

125. The cartel agreements in France, England and Italy were made by British Timken and French Timken with the knowledge, approval and co-operation of defendant to effectuate the plan of excluding competition of others in the territories of defendant, British and French Timken.

126. The extent to which they were successful in impeding competition is of no moment. It is sufficient that that was the end sought to be accomplished. Associated Press v. U. S., 326 U. S. 1, 12, U. S. v. Socony-Vacuum Oil Co., Inc., 310 U. S. 150. The French Anti-Friction cartel, the English SKF-British Timken cartel and the agreements with Bock and R. I. V. fortified defendant in the overall plan of suppressing competition in the sale of tapered bearings.

127. It is an imperative of the Sherman Act that all

combinations in restraint of international trade and all agreements to restrict competition be condemned. U. S. v. National Lead Co., supra; U. S. v. Addyston Pipe & Steel Co., 85 Fed. 271, 291; U. S. v. Aluminum Co. of America, 148 Fed. (2d) 416.

[fol. 3016] The very aim of all the antitrust laws is to ban conduct and practices which destroy free and unhampered competition. That postulate has been repeatedly announced by the courts even before the legislative enactment. Within the last decades the decisions reiterating it have covered thousands of printed pages. They have been regarded as inimical to economic freedom. The Government refers to the instant combination as an international cartel, which appellation is assailed by defendant. That name applied to the combination has no significance, other than to label it as a pool of "separate firms to maintain prices above a competitive figure". (Webster's New International Dictionary). It is merely descriptive of the combined relationship between defendant, British Timken and French Timken. If the term connotes vice or illegality it is clearly applicable.

128. The strict allocation of markets to the members of a combination of competitors in the various parts of the world and the eradication of competition among them violates the Sherman Act. U. S. v. American Tobacco Co., 221 U. S. 106, U. S. v. National Lead Co., supra.

129. The contracts by which it was agreed that in a particular area anti-friction bearings might be sold by only one of the members of the combination, necessarily were intended to and had the effect of eliminating competition. The Supreme Court repeatedly recognized the inherent danger of such agreements to our system of free enterprise, and held that agreements or arrangements for dividing markets were illegal under the Sherman Act. U. S. v. American Tobacco Co., supra., U. S. v. Addyston Pipe & Steel Co., supra, U. S. v. National Lead Co., supra.

130. The fact that defendant, British and French Timken were manufacturing and selling only tapered bearings does not immunize the combination against the operation of the antitrust laws. It is true that there is competition between tapered and other types of anti-friction bearings to the limited extent pointed out earlier. The prohibitions of the Sherman Act, however, are equally applicable to

combinations in restraint of trade when only part of the commerce is stifled. As was said in Eastman Kodak v. Federal Trade Commission, 158 Fed. (2d) 592, 594, cert. denied 330 U. S. 828:

> "Hence it will not do to say that all film is in the same class. If a purchaser wants a color film he must be able to buy it from more than one manufacturer if there is to be 'free and open competition with commodities of the same general class'; that he can buy a black and white film will not serve to destroy the monopoly of the sole producer of color film."

and in U. S. v. Yellow Cab Co., 332 U. S. 218, 225:

> "Hence it is enough if some appreciable part of interstate commerce is the subject of a monopoly, a restraint or a conspiracy."

and again in U. S. v. Socony-Vacuum Oil Co., 310 U. S. 150, 225 (footnote 59): "And the amount of interstate or foreign trade involved is not material (Montague & Co. v. Lowry, 193 U. S. 38) since § 1 of the Act brands as illegal the character of the restraint not the amount of commerce affected."

131. The benefits of a competitive price system under the Sherman Act would be lost to the vast number of manufacturers whose machinery and equipment are geared to use only tapered bearings, if the operation of the Act were to be construed otherwise.

[fol. 3017] 132. The practice of selling only at prices agreeable to the party into whose territory the sales were made and the provisions of the contracts for agreed prices on replacement parts and the other price fixing arrangements of defendant, British and French Timken must be condemned as violations of the Sherman Act. U. S. v. Masonite Corp., 316 U. S. 265.

In U. S. v. Socony-Vacuum, supra, the Supreme Court said:

> "Thus for over forty years this Court has consistently and without deviation adhered to the principle that price-fixing agreements are unlawful per se under the Sherman Act and that no showing of so-called competitive abuses or evils which those agreements

were designed to eliminate or alleviate may be interposed as a defense.

* * * * * * *

"Whatever economic justification particular price-fixing agreements may be thought to have, the law does not permit an inquiry into their reasonableness. They are all banned because of their actual or potential threat to the central nervous system of the economy." (Footnote 59).

In U. S. v. Line Material Co., 333 U.S. 287, it was said:

"Price fixing in any form is perhaps the most powerful of all inducements for abandonment of competition. It offers security and stability; it eliminates much of the uncertainty of competitive practices; it promises high profits."

and again in U. S. v. Paramount Pictures, Inc., 334 U. S. 131, 143:

"We start, of course, from the premise that so far as the Sherman Act is concerned, a price-fixing combination is illegal per se. United States v. Socony-Vacuum Oil Co., 310 U.S. 150; United States v. Masonite Corporation, supra. We recently held in United States v. Gypsum Co., 333 U.S. 364, 400, that even patentees could not regiment an entire industry by licenses containing price-fixing agreements."

134. No less harmful and injurious to the unrestricted flow of commerce in tapered bearings was and continues to be the association of defendant, British and French Timken for the purpose of protecting each other's markets and the exclusion of outsiders from the tapered bearing market. Such conduct is denounced by the antitrust laws. Associated Press v. U. S., supra, Montague & Co. v. Lowry, supra, Standard Sanitary Mfg. Co. v. U. S., 226 U. S. 20, U. S. v. Trenton Potteries Co., 273 U. S. 392.

135. The participation in the foreign cartels by defendant completed the circle within which the combination operated to forestall competition. The circumstances outlined above under which defendant took part in the operation of the cartels leave no room for escape for defendant

from the prohibitions of the Sherman Act. The ban on restraints of imports and exports has been consistently enforced by the courts. United States v. General Dyestuff Corp., 57 Fed. Sup. 642, United States v. Nord Deutscher Lloyd, 223 U. S. 512. What was so well said in United States v. National Lead Co., supra, 524, is equally pertinent when applied to the facts in this case:

> [fol. 3018] "The several agreements relating to manufacture and trade within the European markets are but some of the links in the chain which was designed to enthral the entire commerce * * *".

136. Nor does the fact that the cartel agreements were made on foreign soil relieve defendant from responsibility. U. S. v. Nord Deutscher Lloyd, supra. They had a direct and influencing effect on trade in tapered bearings between the United States and foreign countries.

137. There is no charge made in the complaint that the parties engaged in the practice of exclusively exchanging present and future know-how and inventions, patented or unpatented. Evidence seeking to establish such claim was offered at the trial. Although it does not convincingly appear that either the exclusive exchange of know-how or the enforcement of the trade mark restrictions alone served as direct instruments to eliminate competition, they have been most helpful in buttressing other illegal conduct to achieve the desired result. They were integral parts of the general scheme to suppress trade.

138. Are the contentions urged by the defendant sufficient to overcome such manifest violations of the Sherman Act?

139. The first contention of defendant is that even if the agreements between the three Timken companies for division of territory, and any incidental arrangements as to price contained therein were made, any restraint resulting therefrom to constitute a violation of the Act, must be found to be unreasonable. Defendant's position is that it undertook to extend its activities by the purchase of British Timken and the formation of French Timken with Dewar. It protests that it was not done for the purpose of eliminating competition and that if did not have that effect, that there has been no intent to unduly restrain trade but that it was done for good business reasons. Defendant says

the division of markets between the companies was reasonably ancillary to the acquisition of British Timken and the formation of French Timken.

140. In advancing the argument that only such contracts or combinations are within the condemnation of the Act as prejudice the public interest by unduly restricting competition or obstructing trade, defendant concedes that:

141. "It would appear, superficially, that contractual provisions like those involved in the case at bar that American Timken will not sell bearings in the territories of British and French Timken, respectively, and vice versa, tend to prevent competition between the parties."

142. The contention made invites a discussion of the rule of reason doctrine applied by the courts to the Sherman Act. A vast body of decisions may be found dealing with the doctrine. For the present purpose, it will suffice to say, that it is now firmly established that the statutory provision, "Every contract, combination * * * in restraint of trade * * *," is hereby declared to be illegal * * * means that all unreasonable restraints of trade offend the Act. Standard Oil Co. v. U. S., 221 U. S. 1, U. S. v. Columbia Steel Co., supra. It is equally well recognized that the determination of what constitutes unreasonable restraint is the province of the courts. Judicial construction of the law has declared certain restraints unreasonable. With but rare exceptions, since the decisions in the Standard Oil case and the American Tobacco case in 1911, activities which theretofore were stricken down as illegal restraints have been regarded since as unreasonable per se.

143. In view of the settled law and the facts, defendant's contention that the restraints were reasonable must be [fol. 3019] rejected as untenable. The restraints on commerce, here proved by abundant evidence, have been denounced as unreasonable per se.

144. Defendant seeks to draw a parallel between the instant facts and those in the Columbia Steel case, supra. By contradistinction from the facts in that case defendant, British Timken and French Timken are separate corporations who in their respective territories, both before and after their agreements, were potential competitors in the tapered bearing market. They were the largest dealers in tapered bearings in their respective territories. They occupied dominant positions in the entire anti-friction bear-

ing industry. Defendant did not acquire British and French Timken.

145. The defense that the combination was formed without intent to restrain trade, for good business reasons, was denied validity in numerous cases. If good business reasons and expressions of good intent would serve as justifications for restraining trade and stifling competition the Sherman Act would render no aid to the free flow of commerce. The Act aims to bulwark the national economy and insists that individual interests give way to the benefit of all. Standard Sanitary Mfg. Co. v. U. S., supra, 49, Addyston Pipe & Steel Co. v. U. S., supra, Eastern States Retail Lumber Dealers' Association v. U. S., 234 U.S. 600.

146. There is nothing in the evidence to indicate a lack of intent to restrain trade. Indeed, all that the evidence discloses is an intent to form a smoothly operating combination to control commerce in the tapered bearing industry throughout the entire world.

147. In the face of the numerous agreements and the clear expressions of defendant's officers in the volumes of letters and memoranda offered in evidence, it is difficult to understand how anyone can disclaim a clear intent to restrict competition.

148. It is likewise difficult to place credence in the assertion that there was no intent to restrain trade when one reads the following comments of defendant's president, pertaining to domestic trade:*

> "Louie Klinedinst and I were in New York last week and had a long talk with Fred Hughes and Lester Sigourney of New Departure and arrived at a mutually satisfactory selling price for flanged type bearings both ball and tapered roller. We held the price on these bearings at a point where a nice profit will be made for both companies, and I feel that we did a pretty good job as New Departure might have been out of line if we had not told them our prices, and in that event we should have had to cut our prices."

and

> "All three of the principals involved agreed that the patent was not valid and that if any license was taken out it would be merely a move for legalizing the

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* Letter dated April 5, 1933, Umstattd to H. H. Timken

fixing of prices so that we would not be threatened by either the Clayton or Sherman laws."

149. It is next urged by defendant that any restraints imposed by the agreements were ancillary to the creation of a close relation between it and Dewar, analogous to a partnership or joint venture. It is suggested that the [fol. 3030] purpose was to expand its bearing business in European markets, and necessarily involved the investment of large sums in the acquisition and development of British and French Timken and hence not in violation of law. In this connection defendant assumes that since the parties could lawfully agree to be excluded from each other's territories, they could lawfully agree also that any incursions into each other's territories should be made only at prices agreeable to the party in whose territory the sale was made. It says that such a provision was reasonably ancillary to prevent competition by defendant with the corporations through which the common undertaking was conducted.

150. Both the assumption made and the conclusion reached are wholly erroneous. The common undertaking was a joint venture only in the sense that they jointly undertook to continue the manufacture and distribution of bearings with all the limitations and restrictions which had theretofore been imposed. The joint venture was not ancillary to the agreement. Regardless of the descriptive term used to denote the affiliation, it did not constitute a legal basis for the avoidance of the consequences of the conduct which eliminated competition.

151. Throughout the trial great emphasis was placed on this phase of the defense. The record abounds with repetition of "joint venture", "partnership", "partnership in the laymen's sense". All of the defendant's officers and employees took great pains to make reference time and again to "our joint venture" and to "our partners".

152. It will be recalled that the relationship of defendant, British Timken and French Timken in respect of the manufacture and sale of bearings did not originate with the agreement between defendant and Dewar. Ever since 1909 defendant had maintained the territorial market restrictions with the predecessors of British Timken, and in France with the predecessor of French Timken.

153. The agreements made in 1928 and the activities

restricting commerce, were antedated by other agreements and activities of similar nature. Licensing of patents first served as the basis for the restrictions, but they were continued despite the expiration of the patents. Although the question, whether the early agreements founded on patent ownership transgressed the law may not be in issue in this case, the fact that in their essence they set the pattern for the restraints, is of great and fundamental importance. The only substantial change in the relationship of the parties resulting from the Dewar-defendant contract was that defendant acquired a stock ownership in British Timken and French Timken. The execution of the 1928 contracts did not mark the beginning of new business contracts. They merely extended the restrictive arrangements which had existed for almost twenty years between potential competitors.

154. The only conclusion which may properly be drawn is, that the restraints were not ancillary to the "joint venture". To the contrary, the arrangements were made to carry on effectively the combination; to eliminate competition between the parties and to frustrate any competition of outsiders.

155. The underlying motive of Dewar for making the agreement which was recognized by defendant was Dewar's desire to escape defendant's competition and to continue the existing contracts.

156. Both British Timken and French Timken were managed and operated by Dewar. Except for such powers possessed by virtue of its stock ownership and the contracts, defendant had no control over the business conduct of either. While it is true that officers and employees of defendant visited the plants of the two foreign companies from time to time to give advice in respect of the improved production and it is also true that technological information [fol. 3021] was supplied by defendant, all such assistance was in support of the combination to eliminate competition among the parties and with others.

157. British Timken and French Timken retained their corporate independence and jealously guarded their interests in dealings with defendant. A few years after the Dewar-defendant contract was made, Dewar asserted the "very separate and distinct entities of the various Com-

panies concerned" and Hess abandoned, even in name, the partnership fiction when he wrote in October of 1934:

> "* * * some of the things we formerly did willingly and freely, without any recompense, as affecting only our partner Michael Dewar, and ourselves, now becomes a matter of these same things being done for another company in which we hold a 25% interest only. Thus, as you will see from my various future letters, we feel it is quite desirable to definitely set up in our new agreements several points beyond question of a doubt that in the past would only be the occasion of a simple letter from either of us to each other, thus settling any divergence of opinion in almost every instance."

158. In 1948 Dewar, when his depositions were taken in London, proclaimed: "'Me' is British Timken."

159. It is quite obvious from these expressions of the officers of the respective companies that even if the stock investment of defendant and the cooperation between them indicated a pre-existent fiction of a "joint venture" or partnership in their own judgment, by 1934 neither believed that such relationship existed.

160. The facts are that defendant did not build plants in Europe or purchase subsidiaries abroad. It simply acquired substantial interests in a dominant manufacturer of bearings in England, participated in the formation of and invested in the stock of a potential competitor in France. The repeated assertion that it was in a joint venture or was a member of a partnership does not make it so.

161. Even if we were to assume, arguendo, that there was a "joint venture" between the parties and that an Ohio corporation could become partner in a business undertaking with a citizen of England or an English corporation (10 Ohio Jurisprudence § 632, § 857, Ohio v. Standard Oil Co., 49 O. S. 137), no immunity is afforded to defendant from the violations of the Sherman Act.

162. The argument is predicated on the oft quoted opinion of Judge Taft, later Chief Justice Taft, in Addyston Pipe and Steel Co., supra, in which restraints of trade resulting from a legal partnership agreement were held not to run afoul of the law. That decision does not uphold the type of conduct which is here attacked.

163. If a joint venture or partnership is formed for the purpose of a lawful business enterprise and restraints result from the right to protect established business interests no violation of law occurs. But if the association is formed for the purpose of continuing a combination to allocate exclusive sales territories in the world, to fix prices and to eliminate competition both within and without the combination, it cannot hide from the effects of the law under the cloak of a joint venture or partnership. Were it otherwise, an easy way could be found to circumvent the law by entering into agreements purportedly to protect a joint venture or partnership.

[fol. 3022] 164. Defendant also asserts that any restraints imposed by the contracts were ancillary to its agreements to furnish know-how to British Timken and other Timken companies. It says that the convenants by which it agreed not to compete in the territory in which British and French Timken were to use this know-how and by which each of them in turn, agreed not to compete in defendant's territory were reasonably ancillary to the sale of the know-how under the contracts. It concludes that the law permits the restriction not to compete in each other's territory as a recompense for its contribution to the foreign companies of advice and instruction in the manufacture of bearings and the quality of steel used and information with respect to inventions, discoveries and practices whether patented or not.

165. In taking this position it principally relies on the Addyston Pipe case, supra. It is pointed out that the agreements "by the seller of property or business not to compete with the buyer in such a way as to derogate from the value of the property or business sold" and "by the buyer of property not to use the same in competition with the business retained by the seller" were held in that case to be ancillary restraints not in violation of the Sherman Act.

166. Defendant goes so far as to argue "that, due to the more restrictive nature of a patentee's monopoly, he is more restricted in the conditions which he may impose, than is the seller of unpatented property such as know-how, which is available to any member of the public who can discover it" and "that the legal principle which supports a patentee's agreement not to sell in the licensed terri-

tory is just as applicable to one who licenses or transfers know-how".

167. The precise legal basis for the argument so advanced is not disclosed. Analogy is drawn between Fowle v. Park, 131 U. S. 88 and Dr. Miles Medical Company v. Park & Sons Company, 220 U.S. 373 and the instant case.

168. It must be noted at the outset of the discussion of the problem, that the know-how furnished by defendant to the other companies was not a secret process for the manufacture of tapered roller bearings. Other manufacturers were admitted to the plants of British and French Timken, where they could observe all the know-how put into operation. In the extensive record of the testimony dealing with the assistance given by the officials and technical staff, there is no trace of any secret process which was imparted by them. No contention was made at any time that such was the case. The know-how consisted of designs, data showing how defendant manufactured its product, the advice of defendant's employees and help of like nature.

169. Reference is made to a patentee's right to impose restrictions in respect of the patented products.

170. The patent monopoly is so circumscribed as not to be an instrument in restraint of trade to a greater extent than is consistent with the privileges granted. The proposition of law has been firmly established that the patent does not empower its owner to restrain trade in processes or devices which are not embraced within the scope of his patent. U.S. v. Line Material Co., supra, Standard Sanitary Co. v. U. S., supra, U. S. v. U. S. Gypsum, supra. The law has too jealously guarded the benefits derived from a free flow of commerce to permit even the reward for the development of the useful arts and sciences to be greater than essential to encourage inventions.

171. The limitations imposed by the judicial opinions in the use of patents to restrain trade are too well-known to justify a lengthy discussion of them. Those opinions only serve as guide posts to resolve the question here presented.

[fol. 3023] 172. In order to sustain the argument of defendant, this Court is asked to find that one who transmits his skill in the manufacture of a product to another is entitled to a greater reward than one who is instrumental in the advancement of science by his inventive genius. Such finding would be obviously wrong.

173. In Ethyl Gasoline Corp. v. U. S. supra, 456, the court said:

> "He may not, by virtue of his patent, condition his license so as to tie to the use of the patented device or process the use of other devices, processes or materials which lie outside of the monopoly of the patent licensed."

174. During the existence of the tapered bearing patents defendant could not legally allocate markets on processes which were not within the ambit of its patent monopoly. Therefore, it defies all sense of logic to say that upon the expiration of the patents defendant could lawfully engage in like conduct and practices upon the theory of supplying know-how on unpatented processes.

175. One who possesses greater knowledge or superior skill in the manufacture of a product is entitled to be fairly and adequately compensated if he furnishes his knowledge or skill to others. He is not entitled, however, to exact as a price for such contribution, complete freedom from competition. The quid pro quo for furnishing of know-how cannot be an absolute license to avoid the provisions of the Sherman Act. The harm caused thereby would be too great a tribute to knowledge and skill when viewed in the light of public policy.

176. It would seem that after the lapse of years since the passage of the Sherman Act, every type of economic venture has been under the scrutiny of judicial eyes to determine whether it clashes with the mandate of the Act. The ingenuity of business enterprise, however, makes it inevitable that new practices be examined as they arise. So in this instance a phase of business conduct must be weighed in the light of the general principles of the antitrust laws without the benefit of specific decisions for guidance.

177. We are, here, confronted with a situation, wherein a patentee upon the expiration of its patent monopoly, seeks to justify the perpetuation of the favored position it enjoyed by virtue of the patent through the ingenious theory of furnishing know-how. If lawful restraints and monopolies could be predicated on the ownership of know-how they could last ad infinitum. This Court cannot subscribe to such unharnessed privilege.

178. The contracts to divide the world into exclusive marketing areas cannot be defended as ancillary to the transfer of know-how by defendant.

179. The next contention advanced by defendant is, that if any restraints were imposed by the Business Agreements, they were ancillary to the licensing of the trade mark "Timken" to British and French Timken and therefore were not contrary to law.

180. Neither factual nor legal justification may be found to give merit to the contention.

181. Defendant maintains that the objectives which it desired in 1928 to achieve in respect of the mark were:

> "(1) The affirmation of its equitable ownership of the mark in England and in various portions of the British Empire.
>
> [fol. 3024] (2) The disposition of the French and German trade-mark problems to the end that it would ultimately become the owner of the trade-mark registrations in those countries.
>
> (3) The removal of any possibility of challenge to it of its registrations in certain European countries wherein, as has been shown, they could be questioned on the basis of prior use.
>
> (4) The establishment of a reversionary right in it in the mark on termination of the contract with the British and French Companies."

182. It is readily discernible from the recital of these objectives that defendant had serious doubt of its ownership of the mark in 1928 in the various territories assigned to British and French Timken. In fact in some markets British Timken's predecessor was the owner of the mark. In France S. M. G. had registered it. In Germany one Prausnitzer was the sole owner of the trade mark "Timken." It is apparent from the testimony that defendant could not use the mark in a great portion of the world.

183. At that time defendant was primarily concerned, therefore, not in safeguarding the trade mark rights which it then possessed, but rather in acquiring the rights obtained by other manufacturers, as a consequence of the early patent license agreements, in areas where defendant had agreed not to manufacture and sell. Its own covenants not to make or sell bearings in territories allotted to others

brought about the situation that the trade mark "Timken" was registered and owned by others.

184. Defendant's assertion that it was the sole equitable owner of the mark is unimpressive. The agreements attempted to remedy its dubious trade mark rights.

185. Its own counsel in England, forcibly brought the matter to defendant's attention in a letter on April 2, 1927 as follows:

> "We are glad to note that you are endeavoring to obtain a controlling interest in British Timken. This is in line with our own suggestions and will put you in control of the trade-mark "Timken" all over the world, whereas, under existing conditions, there is a danger that, if your present license agreement with British Timken should be terminated, you might not be able to prevent others from establishing a right to use the word "Timken" in certain countries from which you are excluded by the agreement from doing business."

186. Despite counsel's optimism concerning world control of the mark, great difficulty was encountered in effecting registration in many countries.

187. It is true that from the inception of the business dealings with foreign producers and distributors, defendant scrupulously guarded its right in the trade name. Every agreement contained a provision that on all bearings sold, the name "Timken" be affixed. It is also true that the officials of defendant impressed company counsel with the importance of the preservation of the trade mark. But the trade mark provisions of the challenged contracts were subsidiary and secondary to the central purpose of allocating trade territories, specifically recited in them as follows:

> "The Companies parties hereto for their mutual advantage and convenience in working have agreed to make arrangements for an interchange between them of information and facilities and in connection therewith to define their respective territories and for other purposes in manner hereinafter appearing."

[fol. 3025] 188. The evidence conclusively proves that defendant entered into the agreements not for the purpose of exercising its right to protect the trade mark "Tim-

ken" from its unlawful use by British and French Timken nor to protect the public from British or French Timken passing off their products as those of defendant, but for the purpose of preventing competition in the sale of bearings. Through the years 1909-1924, defendant enjoyed freedom from competition, because of its patent monopoly. It now attempts to defend the extension of this right on the basis of granting British and French Timken the use of its trade mark.

189. Assuming that the restraints were reasonably ancillary to protect the trade mark and that the law sanctions such ancillary restraints, defendant's contention nevertheless is founded on the tenuous premise that it was the equitable owner of the mark outside of the marketing territory allocated to it.

190. Defendant did not and could not have a right to license a trade mark in markets where it did not own the mark.

191. Defendant maintains that the trade mark is its property; that the ownership of any property is in a limited sense monopolistic; that in the exercise of such a limited monopoly power, defendant has the right to exact as a consideration for the use of its property, an agreement with others not to compete.

192. The conflict between the Sherman Act and the limited patent monopoly has been the subject matter of innumerable litigated cases. The courts have attempted to harmonize the opposing basic policies inherent in their respective economic concepts. They tried to fit the antitrust laws within the frame work of the Constitutional grant of a patent monopoly. Whether within the provisions of the Sherman Act commerce may be restrained to the extent that it is reasonably ancillary to protect a trade mark has not been decided or discussed by the courts.

193. Trade marks in our economic system provide the method by which one seller may be enabled to distinguish his goods from those of another. Fundamentally the basic function of the law pertaining to trade marks is to safeguard the good will of one manufacturer or distributor against the sale of another's merchandise as his. Canal Co. v. Clark, 80 U. S. 311, Hanover Star Milling Co. v. Metcalf, 240 U. S. 403. The right to protect it is bestowed by the law not only to reward business enterprise and pre-

vent piracy on successful and established ventures, but at the same time to prevent deception of the public into believing that they are purchasing one product instead of another.

194. The trade mark right as all other rights is not without bounds. The owners rights are canalized within the exercise of the trade mark's accepted and defined functions. The law is replete with decisions which set out their functions and limitations.*

195. Some of them are lucidly delineated in United Drug Co. v. Theodore Rectanus Co., 248 U. S. 90, 97-98 as follows:

> "The asserted doctrine is based upon the fundamental error of supposing that a trade-mark right is a right [fol. 3026] in gross or at large, like a statutory copyright or a patent for an invention, to either of which, in truth, it has little or no analogy. Canal Co. v. Clark, 13 Wall. 311, 322; McLean v. Fleming, 96 U. S. 245, 254. There is no such thing as property in a trade-mark except as a right appurtenant to an established business or trade in connection with which the mark is employed. The law of trade-marks is but a part of the broader law of unfair competition; the right to a particular mark grows out of its use, not its mere adoption; its function is simply to designate the goods as the product of a particular trader and to protect his good will against the sale of another's product as his; and it is not the subject of property except in connection with an existing business. Hanover Milling Co. v. Metcalf, 240 U. S. 403, 412-414.
>
> "The owner of a trade-mark may not, like the proprietor of a patented invention, make a negative and merely prohibitive use of it as a monopoly. See United States v. Bell Telephone Co., 167 U. S. 224, 250; Be-

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* Whatever extension of trade mark rights is encompassed in the Lanham Act (Title U.S.C.A. sec. 1051 et seq.), its enactment did not open the door to employ a trade mark as an instrument to undermine the antitrust laws. This is borne out with transparent clarity by its legislative history.

ment v. National Harrow Co., 186 U. S. 70, 90; Paper Bag Patent Case, 210 U. S. 405, 424.

"In truth, a trade-mark confers no monopoly whatever in a proper sense, but is merely a convenient means for facilitating the protection of one's goodwill in trade by placing a distinguishing mark or symbol—a commercial signature—upon the merchandise or the package in which it is sold."

196. In order to resolve the instant question all that need be said is that the trade mark right is not comparable to the right the owner has in a chattel or realty; it is not a right in gross or at large; it is not such a right as is awarded to an inventor in the product of his invention. U. S. v. Masonite Corp., 316 U. S. 265.

197. Even the patent monopoly is not broad enough to encompass the power to engage in conduct and practices to eliminate competition such as were employed by defendant, British and French Timken. U. S. v. National Lead, supra; U. S. v. Line Material Co., supra, Hartford-Empire v. U. S., 323 U. S. 386, 433 Mercoid v. Mid-Continent Co., 320 U. S. 661, 665, Standard Sanitary Co. v. U. S., supra, U. S. v. Gypsum, supra, Ethyl Gas v. U. S., supra, U. S. v. Masonite Corp., supra, Federal Trade Commission v. Beech-Nut Co., 257 U. S. 441, Interstate Circuit v. U. S., supra, U. S. v. Paramount Pictures, 334 U. S. 131, 143 (see note 12).

198. A trade mark is not the product of invention. The privileges which are accorded to the owner of a patent are predicated upon invention and are safeguarded to carry out the Constitutional intent to promote the progress of science and the useful arts. If a trade mark were to be given the power of monopoly, it would not be limited in time as in the case of a patent. The public would not benefit from an invention and there would not be the ultimate gain which flows from the disclosure of a patent. That is the foundation for the patent monopoly.

199. A trade mark brands a product as to its origin. The law empowers the owner or the originator of a mark to protect his wares against the imitator who seeks to palm off merchandise as his by the use of the same mark. He is given the right to enjoin such practices. The public in-

terest is served by that protection which in the exercise of all rights is paramount. Deception is prevented.

200. The trade mark may become a detrimental weapon if it is used to serve a harmful or injurious purpose. If it becomes a tool to circumvent free enterprise and unbridled competition, public policy dictates that the rights enjoyed [fol. 3027] by its ownership be kept within their proper bounds. If a trade mark may be the legal basis for allocating world markets, fixing of prices restricting competition, the unfailing device has been found to destroy every vestige of inhibition sat up by the Sherman Act. The rights pertaining to trade marks and trade names were well known long before that legislative enactment was passed by Congress. It is certain that it was never intended that the consequences of violations of the antitrust laws may be escaped by the licensing of trade marks.

201. Defendant vigorously asserts its position, that since exports and imports of anti-friction bearings from and into the United States in foreign commerce over the years have been relatively insignificant, an injunction to prevent the alleged restraints would be a vain and needless gesture on the part of the Court. The basic purpose of the Sherman Act, it says, is to insure trade on a competitive price basis. The argument goes that inasmuch as there is no price competition in bearings imported into or exported from the United States, and since it is impossible for American manufacturers or foreign manufacturers to engage in the exporting or importing of bearings to each other's markets on a successfully commercial basis, the illegality which is essential to the granting of equitable relief does not exist.

202. Several days were devoted, in the trial of the case, to defendant's effort to sustain this contention. Tables of figures were offered in addition to the statements of defendant's officials, to prove that the volume of exports and imports in tapered roller bearings was negligible. Whether the absence of trade was the result of the competitive restrictions charged by the Government or of natural economic forces was not pointed out.

203. Several witnesses testified that the economic dislocation of world markets precipitated by the first world war, and the depression which followed, caused a near chaotic condition in foreign commerce. It was augmented,

they said, by the policies of the various nations to encourage purchase of domestic goods. The "Buy British" slogan was mentioned as illustrative of this program, in which nearly all countries engaged. The tariff regulations, the formation of the sterling bloc, the fluctuation of currency values, the government restrictions against imports and exports also contributed to the net result, they maintained, that producers were unable to compete with foreign manufacturers on a profitable basis. They concluded that this condition has prevailed not only in the roller bearing industry, but it affected all industries.

204. In the consideration of this claim the question immediately arises: If all the impediments to foreign trade existed ever since 1914, which became more and more pronounced to the present day, why were the contracting parties, defendant, British Timken and French Timken so concerned about airtight agreements to keep each one within its own commercial domain? The repeated and persistent provisions of the successive contracts, for territorial restrictions, contradict any claim of lack of ability to compete.

205. Local and national pride in domestic goods and sales resistance to foreign made products have always been obstacles to import and export trade. The ingenuity of the American businessman, fortified by the advantages of free competition in many instances has been able to penetrate the strongest tariff walls.

206. The evidence bears out the fact that there was and there is actual and potential competition in the international roller bearing market. The contracts were consummated for the very purpose of regulating and restricting it.

207. How else could this portion of Dewar's testimony be explained:

[fol. 3028] Q. Is it your intention to say that it was immaterial to you who sold as between American Timken and British Timken at all times, or just when you were in competition with S.K.F.?

A. Our main object in life was to sell Timken tapered roller bearings. Naturally, I did not want the American Timken Company to sell bearings in our territory unless —well, in our territory.

Q. In other words, you did not mean that as between

a bearing made in Canton and one made in Birmingham, you did not care which was sold in your territory—they both have the name "Timken" on them?

A. Yes.

Q. But you are interested in selling bearings made in Birmingham in your territory?

A. Yes, certainly; but if we were unable to sell a bearing made in Birmingham, we preferred to sell in our territory a bearing made in Canton or in France rather than a S.K.F. bearing made in Gothenburg.

Q. So in other words, if you were trying to get the business from S. K. F., it was then that it was immaterial to you which Timken bearing was sold?

A. Well, I should have put it the other way around: it was when S.K.F. was trying to get the business from us. After all, we started.

Q. You used the phrase 'common enemy' referring to Swedish S.K.F. Were they a common enemy at all times, or were they not during some time?

A. They were a common enemy all the time.

Q. And they were a common enemy at the time you entered into the arrangements in France in 1934, and the arrangements in England in 1932?

A. They were largely a common enemy from the time we ever heard of them up to now inclusive.

Q. So that they were a common enemy with whom you had friendly arrangements?

A. We occasionally had a truce—like the Russians and the Germans.

and that of William R. Timken:

Q. Now, you said Mr. Dewar wanted to know where he stood.

A. Yes.

Q. In what respect? Would you be a little more explicit?

A. Well, he wanted to know where his—what he was putting his money into. He didn't want to get into a dog fight with us.

[fol. 3029] Q. About territories in which to sell bearings, you mean?

A. Yes, it would hardly be economical to support two sets

of distributors in the same country, for instance. Therefore, he wanted a clear understanding of what territories his company would serve.

208. It is not purely conjecture to conclude, that had it not been for the rigid restrictions provided in the contracts and their strict enforcement in actual practice, the volume of business with foreign countries would have been considerable in size. The officers of defendant admitted that the need for bearings from the United States was continuously shown by the inquiries made by foreign purchasers. Small competitors of defendant in the United States were able to make shipments abroad on a relatively large scale. The last war accentuated the demand, but defendant adhered to its obligation as a member of the combination and refused to make sales. Forsythe's report to Klinedinst:

"We have received definite orders from their sales territories which upon being referred to British Timken were turned down at their instructions."

is convincing evidence of the potential competition and the destructive effect of the combination.

209. Political and social changes have repeatedly caused fluctuations in international trade. Our own economy has always been affected by the currents of trade regulations abroad. But violent as the variations have been, commerce with foreign nations has remained one of the great influences on our own economic welfare. The provisions of the Sherman Act, pertaining to free competition with other nations, have not become a dead letter as a consequence of the world events of the past thirty-five years.

210. The evidence presented is convincing that defendant, British Timken and French Timken have formed a world cartel in tapered roller bearings. They have divided the world into exclusive sales territories. They have fixed prices. They agreed to and have effectively eliminated competition among themselves. They agreed to and did attempt to eradicate the competition of outsiders. They combined with competitors to fix prices. The defenses offered do not constitute justifications for such patent violations of the antitrust laws.

211. The Government is entitled to a decree. The exact nature of the needed remedy to prevent future violations will be determined at a hearing set for that purpose.

Freed, United States District Judge.

March 3, 1949.

[fol. 3030] IN UNITED STATES DISTRICT COURT

[Title omitted]

CERTIFICATE OF CLERK RE ITEM NO. 9 OF PRAECIPE

Item No. 9 as called for by the praecipe, being the proposed journal entry adopting the District Court's memorandum of opinion as its Findings of Fact and Conclusions of Law submitted by the plaintiff was the order approved by the court as called for by item No. 11 of said praecipe and is the District Court's order adopting its memorandum of opinion as its Findings of Fact and Conclusions of Law.

C. B. Watkins, Clerk, By Josephine Davidson, Deputy Clerk. (Seal.)

[fol. 3031] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION BY DEFENDANT FOR AN ORDER REJECTING AND DISREGARDING THE DOCUMENT LODGED BY THE PLAINTIFF, DENOMINATED "FINDINGS OF FACT AND CONCLUSIONS OF LAW", AND REQUIRING PLAINTIFF TO SUBMIT A DRAFT OF THE FINDINGS OF FACT AND CONCLUSIONS OF LAW REQUIRED BY RULE 52(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE—Filed June 3, 1949

Now comes the defendant and moves this Honorable Court to

(a) reject and disregard the document denominated "Findings of Fact and Conclusions of Law", lodged by the plaintiff with the Clerk of the Court on April 12, 1949, which provides, in substance, that the Court adopts its Memo-

randum in the above-entitled case dated March 3, 1949, as its findings of fact and conclusions of law therein, and

(b) require the plaintiff to prepare and submit to this defendant and the Court a draft of the findings of fact and conclusions of law required by Rule 52(a) of the Federal Rules of Civil Procedure, with an opportunity to this defendant to present a statement of its approval or disapproval thereof, and, in the latter instance, a statement of its objections and its reasons therefor and a draft of the findings and conclusions which it proposes as a substitute for the draft submitted to it.

The reasons and grounds upon which this motion is submitted are as follows:

1. The Court has entered no order which has relieved the plaintiff, the prevailing party in the above-entitled case, of the duty of submitting to the Court and this de- [fol. 3032] fendant a draft of the findings of fact and conclusions of law required by Rule 52(a) of the Federal Rules of Civil Procedure, as required by Rule 4 B of this Court.

2. The document lodged with the Court denominated "Findings of Fact and Conclusions of Law" does not constitute a draft of the findings of fact and conclusions of law required by Rule 4 B of the Court, but instead constitutes in form and effect a proposed order, by the signing of which the Court would adopt its Memorandum as its findings of fact and conclusions of law.

3. The Court's Memorandum dated March 3, 1949, even if adopted by the Court as its findings of fact and conclusions of law, would not constitute or include the findings of fact and conclusions of law required by Rule 52(a) of the Federal Rules of Civil Procedure in that the Memorandum does not include findings of underlying, subsidiary and ultimate facts on all issues involved in the case at bar separately found; includes discussion of portions of the evidence and the Court's reasoning with respect thereto; mingles statements of fact with arguments and inferences drawn by the Court; and does not set forth the Court's conclusions of law separately stated.

(S.) Luther Day, John G. Ketterer, Attorneys for Defendant.

George W. Derr, Esq., Department of Justice, Antitrust Division, 237 Leader Building, Cleveland, Ohio, Attorney for Plaintiff:

Please take notice that the defendant has filed a motion in the above-entitled case for an order rejecting and disregarding the document lodged by the plaintiff, denomi- [fols. 3033-3044] nated "Findings of Fact and Conclusions of Law", and requiring plaintiff to submit a draft of the findings of fact and conclusions of law required by Rule 52(a) of the Federal Rules of Civil Procedure, and that the same will be on for hearing at the District Court of the United States for the Northern District of Ohio, Eastern Division, Federal Building, Cleveland, Ohio, at a time to be set by the Court of which you will be notified

(S.) Luther Day, John G. Ketterer, Attorneys for Defendant.

Copies of the foregoing motion, notice of motion, and brief in support thereof, were served upon counsel for the plaintiff by handing the same to Lester Kauffman, Esq., one of counsel for the plaintiff, this 13 day of June, 1949.

(S.) George H. Rudolph, Attorney for Defendant.

[fol. 3045] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ADOPTING MEMORANDUM OPINION AS FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed June 20, 1949

This cause came on for trial, and the Court, having heard the evidence and considered the stipulations of the parties, and having, by memorandum opinion filed March 3, 1949, found for the plaintiff herein, the judgment for specific relief to be granted following further hearing, the Court hereby adopts the said memorandum opinion as being the findings of fact and conclusions of law.

It is so ordered.

(S.) Freed, United States District Judge.

[fol. 3046] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING DEFENDANT'S MOTION—Filed June 23, 1949

The above entitled cause coming on for hearing on the 20th day of June, 1949, on the motion of the defendant entitled "Motion by defendant for an order rejecting and disregarding the document lodged by the plaintiff denominated 'Findings of Fact and Conclusions of Law', and requiring plaintiff to submit a draft of the findings of fact and conclusions of law required by Rule 52(a) of the Federal Rules of Civil Procedure", and on the arguments of counsel for the plaintiff and for the defendant with respect to such motion, upon consideration thereof by the Court, it is.

Ordered that the defendant's motion be, and the same is hereby, denied, to which action of the Court the defendant excepts.

(S.) Freed, Judge.

Dated: June 23, 1949. Cleveland, Ohio.

Approved as to form.

(S.) Robert B. Hummel, Counsel for Plaintiff.
Luther Day, Counsel for Defendant.

[fol. 3047] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

PLAINTIFF'S PROPOSED FINAL JUDGMENT—Filed August 1, 1949

Filed August 1, 1949, pursuant to the Court's request of June 29, 1949, and copies sent to defendant's counsel on the same day.

(S.) Herbert A. Bergson, Assistant Attorney General; Robert B. Hummel, Special Attorney; Sigmund Timberg, Special Assistant to the Attorney General; W. Perry Epes; Bertram C. Dedman; Stanley D. Rose, Special Attorneys.

Copy received August 1, 1949.

(S.) Luther Day by E. LeFever, Counsel for Defendant.

[fol. 3048] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

Civil Action No. 24214

UNITED STATES OF AMERICA, Plaintiff,

v.

THE TIMKEN ROLLER BEARING COMPANY, Defendant

FINAL JUDGMENT

This cause came on for trial March 22, 1948 before the Honorable Emerich B. Freed, United States District Judge, and the trial was completed on April 27, 1948. The court filed its opinion on March 3, 1949, finding and adjudging the defendant to have violated Sections 1 and 3 of the Sherman Antitrust Act. By order filed June 20, 1949 the court adopted said opinion as the findings of fact and conclusions of law herein, pursuant to Rule 52 of the Rules of Civil Procedure;

Now, Therefore, upon motion of plaintiff, by its at-

torneys, and after hearing defendant by its attorneys, it is hereby

Ordered, Adjudged and Decreed as Follows:

1. As used in this judgment:

A. "Anti-friction bearings" means rotating devices for reducing friction between moving mechanical parts, wherein rollers of various shapes or balls are inserted between containers which are inserted between the [fol. 3049] moving parts; and includes ball bearings and all types of roller bearings, such as, but not limited to, straight and tapered roller bearings, and accessories and parts of such bearings.

B. "Tapered roller bearings" means anti-friction bearings employing conical or truncated conical rollers.

C. "British Timken" means Timken, Limited, a joint stock company organized and existing under the laws of the United Kingdom, with its principal office and place of business at Birmingham, England.

D. "French Timken" means Societe Anonyme Francaise Timken, a corporation organized and existing under the laws of France, with its principal office and place of business at Asnieres, France.

E. "United States" means the United States and its territories and possessions.

F. "Person" means an individual, partnership, firm, association, corporation, or other business or legal entity.

G. "British territory" means those parts of the world allocated in 1938 as exclusive production and sales territories to British Timken by the agreements referred to in Subsection A of Section IV of this judgment, including (1) the United Kingdom, Eire, and all countries other than France and Russia on the continent of Europe; (2) all dominions, colonies, mandates, and dependencies of the United Kingdom, and of all other European countries, in any part of the world, except (a) those of France, (b) those located in or adjacent to North or South America, and (c) by later agreement, Hong Kong.

[fol. 3050] H. "French territory" means those parts of the world allocated in 1938 as exclusive production

and sales territories to French Timken by the agreements referred to in Subsection A of Section IV of this judgment, including France, its dominions, colonies, mandates, and dependencies in any part of the world, other than those located in or adjacent to North or South America.

I. "Defendant's territory" means those parts of the world allocated in 1938 as exclusive production and sales territories to defendant by the agreements referred to in Subsection A of Section IV of this judgment, including (1) the United States, as herein defined, (2) Canada, Mexico, Central America, and the West Indies, (3) South America, (4) the rest of the world not allocated to British Timken or French Timken, and (5) by later agreement, Hong Kong.

II. The provisions of this judgment applicable to defendant shall apply to the defendant, its officers, directors, agents, employees, subsidiaries, successors, assigns, and all other persons acting, or claiming to act under, through or for such defendant.

III. Defendant has violated Sections 1 and 3 of the Act of Congress of July 2, 1890, 26 Stat. 209, 15 U. S. C. Sections 1 and 3, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Antitrust Act, and acts amendatory thereof and supplemental thereto. Said violation has consisted of defendant and its co-conspirators, British Timken and French Timken, engaging in an unlawful combination and conspiracy in restraint of trade and commerce in anti-[fol. 3051] friction bearings among the several states of the United States and with foreign nations, and between territories of the United States and foreign nations, and of defendant and said co-conspirators entering into unlawful contracts, agreements and understandings, and planning and acting together and engaging in illegal practices individually to eliminate competition among themselves and with others in the production, sale and other distribution of anti-friction bearings in all markets of the world, including the United States.

IV.

A. Each of the following agreements is unlawful under Sections 1 and 3 of the Sherman Antitrust Act

and is hereby terminated; and defendant is hereby enjoined and restrained from the further performance or enforcement of any of the provisions, including those involving rights or obligations upon termination of said agreements and of any agreements amendatory thereof or supplemental thereto:

1. Agreement dated November 28, 1938 between defendant, British Timken and French Timken, entitled "Business Agreement"; and

2. Agreement dated November 29, 1938 between defendant, Michael B. U. Dewar, Esq., and British Timken, entitled "Supplemental Business Agreement."

[fol. 3052] B. Each of the following agreements, entered into during the trial of this action, is hereby terminated; and defendant is hereby enjoined and restrained from the further performance or enforcement of any of the provisions of said agreements and of any agreements amendatory thereof or supplemental thereto:

1. Agreement dated March 22, 1948 between defendant and Michael B. U. Dewar, Esq., entitled "Agreement with respect to British Timken Limited";

2. Undated agreement between defendant, Michael B. U. Dewar, Esq., and Timken Holdings Ltd., entitled "Agreement cancelling previous Agreements and Bye-Laws of Timken Holdings Ltd. and for transfer by Mr. Dewar to the Canton Company of his shares in Timken Holdings Ltd."

C. Defendant is hereby enjoined and restrained from entering into, performing, enforcing, adopting, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under any contract, agreement, arrangement, understanding, plan or program for the purpose or with the effect of continuing, reviving or renewing any of the agreements listed in Subsection A or B of this Section IV.

V. Defendant is hereby enjoined and restrained from entering into, performing, adopting, adhering to, maintain-[fol. 3053] ing or furthering, directly or indirectly, or

claiming any rights under, any combination, conspiracy, contract, agreement, arrangement, understanding, or concerted plan of action with British Timken, French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof, or any other person engaged in the production of anti-friction bearings:

A. To allocate or divide territories or markets for the production, sale or other distribution of anti-friction bearings;

B. To limit, restrain or prevent importation into or exportation from the United States of anti-friction bearings;

C. To refrain from, restrain or limit production, sale or other distribution of anti-friction bearings, through quotas or otherwise, or to apportion customers for anti-friction bearings, in any territory or market;

D. To refrain from competing or to leave any person free from competition in the production, sale or other distribution of anti-friction bearings in any territory or market;

E. To exclude any producer or distributor of anti-friction bearings from any territory or market, or to interfere with or restrict any such producer or distributor in competing in any territory or market;

F. To fix, maintain or adhere to prices or price ranges, or other terms and conditions of sale or resale of anti-friction bearings produced by defendant for sale or other distribution in any territory or market, or produced by any other person for sale or other distribution in the United States;

[fol. 3054] G. To receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto, any assignment, license or grant of immunity under a patent or patent application, relating to anti-friction bearings;

H. To receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto, (1) information, advice, assistance or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method, or other technical information, relating to the production of anti-friction bearings, or (2) any ma-

terial or machinery used in the production of anti-friction bearings, or any information, advice, assistance or rights with respect to any such material or machinery.

VI. Defendant is hereby enjoined and restrained from:

A. Referring any order or inquiry for anti-friction bearings to British Timken or French Timken, or any subsidiary, agent, sales representative or distributor thereof, or to any other producer of anti-friction bearings, or any subsidiary, agent, sales representative or distributor for such producer;

B. Refusing to sell anti-friction bearings to any person for resale or other distribution in British territory or French territory, as herein defined, at prices and on terms and conditions of sale corresponding to those regularly offered to purchasers of the same classification for resale or other distribution in defendant's territory, as herein defined;

[fol. 3055] C. Selling or offering for sale to, or purchasing or offering to purchase from British Timken or French Timken, anti-friction bearings, at preferential prices, discounts or terms and conditions of sale;

D. Offering or paying to, or receiving or accepting from British Timken or French Timken any commission, rebate, penalty, or other payment in connection with the sale or other distribution of anti-friction bearings to any other person in any territory or market;

E. Appointing, designating, or employing, or continuing the appointment, designation or employment of British Timken, French Timken or any other producer of anti-friction bearings or subsidiaries thereof, as an agent, sales representative or distributor of defendant in connection with anti-friction bearings, or in any way selling or otherwise distributing anti-friction bearings through British Timken, French Timken or any other producer of anti-friction bearings or subsidiaries thereof;

F. Appointing, designating, or employing, or continuing the appointment, designation or employment of any person, as an agent, sales representative or distributor of defendant in connection with anti-friction bearings, who also acts as agent, sales representative or distributor for, or is connected with British

Timken, French Timken or any other producer of anti-friction bearings or subsidiaries thereof;

[fol. 3056] G. Acting for or representing as agent, sales representative or distributor, in connection with anti-friction bearings, British Timken, French Timken, or any other producer of anti-friction bearings or subsidiaries thereof;

H. Reserving or protecting for British Timken, French Timken or any other producer of anti-friction bearings, or subsidiaries thereof, any market or territory for the production, sale or other distribution of anti-friction bearings.

VII. Defendant is hereby enjoined and restrained from entering into, performing, enforcing, adhering to, maintaining, furthering, or renewing, directly or indirectly any contract, agreement, combination, understanding or arrangement with any other person which provides for:

A. An assignment, license or grant of immunity under any patent or patent application;

B. The receipt, grant, disclosure, rendering available or exchange of information, advice, assistance or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method or other technical information relating to the production of anti-friction bearings, or of any material [fol. 3057] or machinery used in the production of anti-friction bearings, or of any information, advice, assistance or rights with respect to any such material or machinery; or

C. The transfer of any right or immunity under a trade mark or name, relating to the production of anti-friction bearings,

upon the condition or requirement that such other person shall:

1. allocate or divide territories or markets for the production, sale or other distribution of anti-friction bearings;

2. limit, restrain or prevent importation into or exportation from the United States of anti-friction bearings;

3. refrain from, restrain or limit production, sale or other distribution of anti-friction bearings,

through quotas or otherwise, or apportion customers for anti-friction bearings, in any territory or market;

4. refrain from competing or leave any person free from competition in the production, sale or other distribution of anti-friction bearings in any territory or market;

5. exclude any producer or distributor from any market for anti-friction bearings, or interfere with or restrict any producer or distributor in competing in any such market;

[fol. 3058] 6. maintain or adhere to fixed prices or price ranges, or other terms and conditions of sale or resale of anti-friction bearings;

7. receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto, any assignment, license or grant of immunity under a patent or patent application, relating to anti-friction bearings;

8. receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto, (a) information, advice, assistance, or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method, or other technical information, relating to the production of anti-friction bearings, or (b) any material or machinery used in the production of anti-friction bearings, or any information, advice, assistance or rights with respect to any such material or machinery;

9. restrict the use or disposition of any anti-friction bearings bought from defendant.

VIII. A. Within two years from the date of this judgment, defendant shall divest itself of all stock holdings and other financial interest, direct or indirect, in British Timken and French Timken. Within one year from the date of this judgment, defendant shall present to the court for its approval a plan for such divestiture.

[fol. 3059] B. Defendant is hereby enjoined and restrained, from the date of this judgment, from:

1. Acquiring, directly or indirectly, any ownership interest in (by purchase or acquisition of assets or securities, or through the exercise of any option, or otherwise), or any control over, British Timken

or French Timken, or any subsidiary, successor, or assign thereof;

2. Exercising any influence or control over the production, sales or other business policies of British Timken or French Timken, or any subsidiary, successor, assign, agent, sales representative, or distributor thereof;

3. Causing, authorizing or knowingly permitting any officer, director, or employee of defendant or its subsidiaries to serve as an officer, director, or employee of British Timken or French Timken or of any subsidiary, successor, assign, agent, sales representative, or distributor thereof.

IX. Defendant is hereby ordered and directed, as long as it shall produce tapered roller bearings, to offer to sell and to sell such bearings upon request, in such quantities as may be reasonably required, and without discrimination as to their availability or as to the prices, terms and conditions of their sale, to any person for export either in its original form or incorporated in another product, whether such person is located in the United States or in some other [fol. 3060] country or area, and regardless of any intermediate processes or transactions which may take place prior to such export. If at any time the supply of tapered roller bearings produced by defendant shall become or be insufficient to meet demand for such bearings, the defendant may allocate its sales of such bearings among its customers for export on the same basis which it uses in allocating sales of such bearings to its domestic customers.

X. A. As used in Sections X and XI of this judgment:

1. "Confusing mark" means any trade mark, trade name, corporate name, symbol, or other designation, or part thereof, or combination including any of the foregoing, likely to be identified or confused with defendant's corporate name.

2. "British or French trademark territory" means any country or area where British Timken, French Timken, or their subsidiaries, successors, or assigns, own, control, or in any way claim, or have owned, controlled, or in any way claimed a confusing mark.

B. Defendant is hereby ordered and directed, within one year from the date of this judgment, to take all steps and measures needed in fact and in law to permit and enable defendant to fill orders and inquiries for export sales of any anti-friction bearings produced by it and to comply with the provisions of Section IX in British or French trademark territory, including but not limited to:

[fol. 3061] 1. Taking all actions necessary to comply with all laws and regulations of the United States or any foreign country, non-compliance with which would prevent or impede imports and exports, as, for example, applying for import and export licenses;

2. Taking all actions necessary to eliminate any interference with the importation into or sale or other distribution of anti-friction bearings produced by defendant in British or French trade mark territory, by defendant or by any person acquiring such bearings from defendant, or by any person dealing in such bearings of defendant, arising from the use by defendant on any such bearings, or on any container, package, wrapper, tag, label, display, or advertising associated therewith, of any confusing mark, where such confusing mark is or has been owned, controlled, or in any way claimed in British or French trade mark territory. Such actions shall include, but are not limited to, changes in its packages and methods of marking anti-friction bearings produced by defendant so as to make available for such importation, sale or other distribution said bearings, and containers, packages, wrappers, tags, labels, displays or advertising associated therewith, which do not bear confusing marks.

3. Advertising anti-friction bearings produced by [fol. 3062] defendant for sale in British or French trade mark territory, by inserting advertisements of appropriate size and prominence in foreign trade and other journals similar to those journals in which defendant advertises in the United States, and making available and disseminating appropriate trade literature regarding such bearings, comparable to

similar literature used by the defendant in defendant's territory.

4. Giving notice in writing to all persons who have made written inquiries to defendant regarding the purchase or distribution of anti-friction bearings for export since July 1, 1945, advising such persons of defendant's ability to supply tapered roller bearings and stating the terms on which they may be purchased, or, if the nature of the inquiry so indicates, stating the regularly offered terms and conditions upon which such person making inquiry may now become a distributor of defendant; and circularizing such persons with appropriate trade literature.

5. For a period of five years from the date of this judgment, making available upon request, to any prospective purchaser for export, or foreign user, of anti-friction bearings produced by defendant, services and assistance relating to the distribution or use of such bearings comparable to the services [fol. 3063] and assistance made available to distributors and users of such bearings in defendant's territory, as herein defined. Defendant's charges, or absence of charges, for such services and assistance shall be consistent with defendant's prevailing practice in defendant's territory, but shall in no case exceed the actual cost to defendant of making such services and assistance available, without allocating any overhead or general administrative expense.

XI. A. Defendant is hereby enjoined and restrained from instituting, maintaining or furthering, or threatening to institute, maintain or further any claim, suit or proceeding, judicial or administrative, in the United States based upon a confusing mark which is owned, controlled, or in any way claimed by British Timken or French Timken.

B. Defendant is hereby ordered and directed, within thirty days from the date of this judgment, to take all requisite steps, including the withdrawal of any notices, to prevent any further action by Treasury or Customs officials of the United States based upon the use of a confusing mark, to prevent the importation into or distribution in the United States by British Timken or

French Timken or persons who have acquired such bearings from either of them, or persons dealing in British or French Timken bearings, of anti-friction bearings produced in British or French trade mark territory.

C. Defendant is hereby ordered and directed to sub-
[fol. 3064] mit, within ninety days from the date of this judgment, upon notice to the Attorney General, a plan, not inconsistent with the provisions of this judgment, for avoiding confusion among present and prospective purchasers, within the United States, as to the source of origin of anti-friction bearings produced by defendant, British Timken or French Timken respectively; and upon approval by this Court of the plan as submitted or modified, shall forthwith take all steps necessary to put such plan into operation.

XII. Defendant is hereby enjoined and restrained from:

A. Requiring any person to restrict its use within any territory or market of trade marks or names or other designations in connection with anti-friction bearings produced by such person or by any person other than defendant, to trade marks or names or other designations owned, controlled, or in any way claimed by defendant or any other person for any territory or market;

B. Granting to or reserving for any person, or permitting any person to obtain any right or power to control, any trade mark or name or designation owned, controlled, or in any way claimed by defendant so as to give such person any right or power to prevent or restrict the importation into any country or area of anti-friction bearings produced or owned by defendant;

C. Establishing, by use, application to the United States Patent Office, or in any other way, new trade marks or names, or rights in words or designations likely to be confused with, or containing, marks, names, [fol. 3065] words, or designations known by defendant to be owned, controlled, or in any way claimed by British Timken or French Timken.

XIII. Defendant is hereby ordered and directed, within ninety days from the date of this judgment, to provide copies thereof to British Timken and French Timken; and to all directors, officers, subsidiaries, agents, sales representatives and distributors or defendant, British Timken and French Timken.

XIV. For the purpose of securing compliance with this Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or an Assistant Attorney General, and on reasonable notice to the defendant, made to its principal office, be permitted, subject to any legally recognized privilege, (1) access during the office hours of said defendant to all books, ledgers, accounts correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters. No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Judgment or as otherwise required by law.

[fol. 3066] XV. Jurisdiction is retained for the purpose of enabling any of the parties to this Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Judgment, for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

XVI. Judgment is entered against the defendant for all costs to be taxed in this proceeding.

—— ——, United States District Judge.

Dated: —— ——.

[fol. 3067] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANT'S OBJECTIONS TO DRAFT OF JUDGMENT PROPOSED BY PLAINTIFF—Filed September 13, 1949

The defendant, The Timken Roller Bearing Company, acting solely in obedience to Rule 4a of this Court, and not intending to waive but expressly preserving its right to object and except to any final judgment that may be entered against it in this action, and its right of appeal therefrom, disapproves and submits its objections to, the draft of judgment proposed by the plaintiff in the respects, and for the reasons, hereinafter set forth.

In stating its objections, the defendant will treat, for this purpose only, the finding and decision of the Court as correct.

Preliminary Statement

In considering the provisions of the decree to be entered in the case at bar the following basic principles, among others, should be given effect:

(1) The scope of the decree is dependent upon the facts involved in this particular case, and should be limited to the type of practices found to have been engaged in by the defendant.

(2) The scope of the decree is to be determined by general principles governing the granting of equitable [fol. 3068] relief and, therefore, must be limited to the issues in the case as established by the pleadings.

(3) The purpose of the decree should be to enforce the law fairly, and it should not be punitive in form.

(4) The decree should work out a compliance with the law without unnecessary injury to the public.

(5) The decree should be framed in such a way as to suppress the unlawful practices found to have occurred, and to take such reasonable measures as will preclude their revival.

(6) The provisions of the decree must be remedial and not legislative in character. The Court may not create, as to the defendant, new duties, prescription of which is the function of Congress, or place the de-

fendant for the future, in a class different from that occupied by other people. It may not cause the defendant to be outside of the protection of the law of the land.

(7) The decree must be specific and not so vague as to put the whole conduct of the defendant's business at the peril of a summons for contempt.

(8) The decree may not prohibit the conduct of normal and usual business transactions not related to the specific violations of law found to have occurred.

(9) The decree may not destroy private property rights such as patent and trademark rights.

The drastic decree proposed by the plaintiff is largely violative of these fundamental principles.

Specific Objections and Reasons

Plaintiff's Proposed Decree, Section I

1. Defendant objects to the following portions of Section 1:

The word "exclusive" should be deleted from the second lines of Paragraphs G, H and I, respectively, for the reason that the territories allocated by the agreements referred to in Paragraph A of Section IV were not "exclusive" because, under the agreements, the Timken companies were permitted to sell bearings for replacement in each other's territories upon payment of a commission.

Plaintiff's Proposed Decree, Section II

2. Defendant objects to the following portions of Section II:

[fol. 3069] The words "directors" and "subsidiaries, successors, assigns and all other persons acting, or claiming to act under, through or for such defendant," in lines 2 to 4, inclusive, should be deleted for the reason that Rule 65(d) of the Federal Rules of Civil Procedure prescribes the persons against whom the Court's decree can be effective, and this suggested section seeks to add classes of persons and entities not set forth in such rule.

Moreover, the word "subsidiaries" is too vague and indefinite. Does it apply to corporations controlled by

working stock control or majority stock control, or to corporations otherwise affiliated with defendant? Likewise, the word "successors" is too vague and indefinite.

Plaintiff's Proposed Decree, Section III

3. Defendant objects to the following portions of Section III:

(a) The words "and acts amendatory and supplemental thereto." in the 5th and 6th lines should be deleted, for the reason that the Court found only that the defendant had violated Sections 1 and 3 of the Sherman Act.

(b) The words "among the several States of the United States and", appearing in the 9th and 10th lines, should be deleted for the reason that there is no evidence in the record to support a finding that defendant engaged in a combination in restraint of United States domestic commerce, and the Court did not so find or decide.

(c) The words "and engaging in illegal practices individually," appearing in the 14th and 15th lines should be deleted, for the reason that there is no evidence in the record to support such a finding, and the Court did not so find or decide.

(d) The words "in all markets of the world, including the United States" in the 17th and 18th line should be deleted for the reason that there is no evidence or finding by the Court that defendant combined to restrain other than foreign commerce.

[fol. 3070] (e) The word "production" in the 16th line should be deleted because there is no evidence nor finding nor decision relating to production.

Plaintiff's Proposed Decree, Section IV

4. Defendant objects to the following portions of Paragraph A of Section IV:

(a) The words "and is hereby terminated" in the 2nd and 3rd lines should be deleted, for the reason that the Court has no jurisdiction of the other parties to the contracts which the plaintiff proposes to terminate and, therefore, has no jurisdiction to terminate them effectively as against the parties thereto other than defendant.

(b) The words "or enforcement of any of the provisions, including those involving rights and obligations upon

termination", appearing in lines 5 to 7, inclusive, should be deleted, for the reason that the words do not add anything to the general provision enjoining performance of any of the provisions of the agreements, and the inclusion of these words might result in confusion in determining the rights of defendant not covered by the provisions of these contracts. If defendant is enjoined from the further performance of the agreements and from taking any further action pursuant to the combination and conspiracy which the Court found to exist, this is certainly all that should be required to prevent any future law violation by it, and it is all that is sought by the plaintiff in its amended complaint. Defendant should not be enjoined from enforcing any rights or obligations under the agreements in so far as British Timken and French Timken are concerned. This action was not brought to protect them. These companies were found by the Court to have been independent units and parties to illegal agreements, and to a combination and conspiracy, with the defendant and with each other, in such a manner to make them just as much law violators and wrongdoers as the defendant. The rights and obligations of these two companies, as between them and the defendant, separate and distinct from the question of whether there is here presented a violation of law, are not before the Court, and there is no valid reason why in its [fol. 3071] decree in this action the Court should attempt to adjudicate such rights. Nor is the Court, for the reasons already stated, called upon to settle or establish the rights as between British Timken and French Timken and defendant upon termination of the contracts.

5. Defendant objects to Paragraph B of Section IV in its entirety, for the following reasons:

First, in so far as this section would terminate, or restrain performance by defendant of its March 22, 1948 agreement with Dewar, it would deprive defendant of valuable property rights. They are (1) defendant's right to acquire, at its option, Dewar's presently owned 25 per cent of the total voting stock of British Timken, in the event of his death, incapacity for six months as managing director of British Timken, or desire to sell the stock, and (2) its right to control the voting of that stock combined with its own in the event that the average annual profits of

British Timken for 3 consecutive years are reduced below £50,000. The destruction of these rights is not reasonably necessary to suppress the practices found by the Court to have been unlawful, or to preclude their revival. These provisions and similar provisions in previous contracts between the defendant and Dewar, which are in evidence, were first made, as the record discloses, for the purpose of protecting the defendant's investment in British Timken. The defendant should be permitted to continue such protection if it is permitted to retain that investment. The very nature of these provisions, which are operative only in the future, has prevented, and at present prevents, them from being utilized to further any practices found illegal. There can be no inference from past practices that they would be utilized for illegal purposes in the future. The disposition of these valuable contract rights should be reserved until the Court, which is to have continuing jurisdiction under Section XV, first determines whether other measures provided by the decree will preclude effectively revival of the alleged unlawful practices in which the defendant has been found by the Court to have participated.

[fol. 3072] Second, the continuation of the undated agreement between the defendant, Dewar and Timken Holdings, Ltd. could not in any way assist in reviving the practices found by the Court to have been contrary to the Sherman Act. This agreement merely freed Dewar's shares of British Timken from their control by Timken Holdings, Ltd.; transferred Timken Holdings, Ltd., thus holding only defendant's British Timken stock, to defendant exclusively, as its wholly-owned subsidiary; and cancelled certain pre-existing agreements between defendant and Dewar respecting Timken Holdings, Ltd. Moreover, the agreement has been completely executed, and does not call for further performance and, therefore, there is no point in terminating it or restraining further performance or enforcement of any of its provisions.

Third, the words "each of the following agreements entered into during the trial of this action, is hereby terminated; and" should be deleted for the reason that, since Dewar is not before the Court, the Court has no jurisdiction to terminate the agreements effectively for reasons previously stated.

6. Defendant objects to the following portions of Paragraph C of Section IV:

(a) The words "adhering to" in the 2nd line should be deleted for the reason that they are too vague and, therefore, place the conduct of the defendant's business at the peril of a summons for contempt.

(b) The words "or furthering" in the 3rd line should be deleted for the reason that they are too vague and are redundant.

(c) The words "directly or indirectly" in the 3rd line should be deleted for the reason that they are too vague. Such a provision would cause endless confusion in the conduct of defendant's business because of the necessity of its determining from time to time what constituted an "indirect" continuance, revival or renewal of the pre-existing agreements.

[fol. 3073] (d) The words, "or claiming any rights under" in the 3rd and 4th lines should be deleted for the reason that the Court should not undertake to adjudicate, in advance, rights under future agreements, etc. The injunction against performance of agreements in restraint of trade, etc., is sufficient for reasons stated in support of Objection 4(b).

(e) The words "or B" in the 8th line should be deleted for reasons stated under Objection 5.

Plaintiff's Proposed Decree, Section V

7. Defendant objects to the following portions of the introductory part of Section V:

(a) The words "adhering to" in the 2nd line should be deleted for the reason that they are too vague.

(b) The words "or furthering" in the 3rd line should be deleted for the reasons that they are too vague and are redundant.

(c) The words "directly or indirectly" in the 3rd line should be deleted for the reason that they are too vague.

(d) The words, "or claiming any rights under" in the 3rd line should be deleted for reasons stated in support of Objections 4(b) and 6(d).

(e) The words "any subsidiary, successor, assign, agent, sales representative or distributor thereof" in the 6th and

7th lines should be deleted for the reason that they are too indefinite and vague.

(f) The words "or any other person engaged in the production of anti-friction bearings" in the 7th and 8th lines should be deleted for several reasons.

First, the inclusion of these words will, in effect, enjoin defendant from combining, etc., with any "individual, partnership, firm, association, corporation or other business or legal entity" (for "person" is so defined in Paragraph F of Section I) in the world. Such a broad injunction is entirely outside of the issues in the case and, therefore, is beyond the authority of the Court.

[fol. 3074] Second, it would place defendant in the future, in a class different from that occupied by other companies and would place it outside the protection of the law of the land, in that defendant would be subject to contempt proceedings for violation of the Court's decree in the case at bar for any alleged infraction of the antitrust laws of the nature specified in the balance of Section V, in combination with business or legal entities entirely different from those involved in the case at bar, instead of being subject to trial in the ordinary manner.

Third, this provision is not necessary to preclude revival of the combination in restraint of trade found by the Court to have taken place and is not necessary in the public interest. If Section V is limited to an injunction against combination with British Timken and French Timken, this will be sufficient to prevent revival of the practices found to have been illegal.

8. Defendant objects to Paragraph A of Section V in its entirety, for the reason that it is too broad and indefinite, and undertakes to declare unlawful the performance of agreements, such as patent licenses, which under appropriate circumstances, are lawful and within the legal rights of defendant. It thus places defendant for the future in a class different from that occupied by other people, and prohibits it from conducting normal and usual business transactions not related to the violation of law here found to have occurred.

The word "production" in the 1st and 2nd lines should be deleted for the reason stated in support of Objection 3(e).

9. Defendant objects to Paragraph B of Section V in its entirety for the following reasons:

It is too general in form and is indefinite. Moreover, it is of such a character as would prevent defendant from asserting its legal rights to prevent the importation into the United States and other countries where defendant owns the trademark of anti-friction bearings stamped with the mark "Timken".

10. Defendant objects to the following portions of Paragraph C of Section V:

[fol. 3075] (a) The words "production" in the 1st line and "through quotas or otherwise, or to apportion customers for anti-friction bearings" in lines 2 to 4, inclusive, should be deleted, for the reason that they are not necessary to prevent the resumption by defendant of any practices found by the Court to have been illegal. These words can only relate to the agreements found to have been entered into by British Timken and French Timken with the subsidiaries of SKF in England and France. There is no evidence that defendant itself ever engaged in such practices and, while the Court has found that defendant knew about them and approved them, the record discloses that such arrangements were terminated prior to the commencement of World War II in 1939 and have not been renewed.

(b) The words "or otherwise" in the 3rd line should be deleted, in any event, as being too indefinite to apprise defendant of the acts and conduct which might be considered a violation of this paragraph.

(c) The words "in any territory or market" in the 5th line should be deleted for several reasons, because they apparently extend the scope of the Court's decree to domestic intrastate and interstate commerce of the United States, as well as to foreign commerce.

First, the Court has no authority to make such an order under the issues involved in the case at bar. The Court has not found or decided that defendant entered into any combination in restraint of domestic commerce.

Second, the Court has no jurisdiction to make such an order in so far as it relates to intrastate commerce, because the Sherman Act cannot, constitutionally, and does not

purport to, confer jurisdiction upon the Court to deal with intrastate commerce.

Third, this provision would place defendant, in the future, in a class different from that occupied by other companies, and would place it outside the protection of the law of the land, for the same reasons as those specified in support of Objection 7(f).

Fourth, this provision would not be limited to the type [fol. 3076] of unlawful practices found to have been committed, in that the Court's decision was limited to practices in foreign commerce, whereas the provision would relate to domestic intrastate and interstate commerce as well. Moreover, the provision would not be reasonably necessary to preclude revival of such practices. Indeed, as was pointed out at the trial of the case, the Court has judicial notice from its own records that defendant, with other domestic and anti-friction bearing manufacturers, was investigated in a grand jury proceeding in connection with alleged violations of the Sherman Act in domestic commerce, and no action was taken against it, although others were indicted.

11. Defendant objects to the following portions of Paragraph D of Section V:

(a) The words "or to leave any person free from competition", in the 1st and 2nd lines, should be deleted for the reason that there is no evidence nor decision nor finding by the Court that defendant combined with others to leave any person free from competition other than British Timken and French Timken. The provision in Paragraph D which prohibits defendant from agreeing with those two companies "To refrain from competing" is sufficient to prevent resumption of the type of practices found to have occurred in this respect.

(b) The word "production" in the 2nd line should be deleted for the reason stated in support of Objection 3(e).

(c) The words "in any territory or market" in the 3rd line should be deleted for the reason that they would apparently extend the scope of the Court's decree to domestic intrastate and interstate commerce, as well as to foreign commerce, and are objectionable for the reasons stated in support of Objection 10(c).

12. Defendant objects to the following portions of Paragraph E of Section V:

The words "from any territory or market" appearing twice, in the 2nd and 4th lines, respectively, should be deleted for the reason that they apparently extend the scope of the Court's decree to domestic intrastate and interstate commerce of the United States as well as its for-
[fol. 3077] eign commerce, and are objectionable for the reasons stated in support of Objection 10(c).

13. Defendant objects to Paragraph F of Section V in its entirety for the following reasons:

It would deprive defendant of its right under the Miller-Tydings Act, 15 U. S. C. A., Section 1, and legislation enacted in many States of the United States dealing with the maintenance of resale prices, to fix minimum prices for the resale of bearings under its trademark. Literally, it would even prevent defendant from agreeing on a price for bearings produced by it and to be sold to another producer thereof, such as British Timken, which has purchased them in the past, as the record shows. Therefore, this provision would prohibit defendant from conducting normal and usual business transactions not related to the violation of law which the Court has found to have been committed, and would place it, for all time, in a class different from that occupied by others, including its competitors.

14. Defendant objects, subject to its general Objection 13 thereto, to the following portions of Paragraph F of Section V:

(a) The words, "other terms and conditions of sale or resale", in the 1st and 2nd lines, should be deleted, for the reason that there is no evidence, and no finding by the Court, that defendant engaged in practices of this nature.

(b) The words "in any territory or market", in the 4th line, should be deleted, because they would apparently extend the scope of the Court's decree to domestic intrastate and interstate commerce of the United States, as well as to its foreign commerce, and are objectionable for reasons stated in support of Objection 10(c).

(c) The words "by any other person", in the 4th and 5th lines, should be deleted, for reasons stated under Objection 7(f).

15. Defendant objects to Paragraph G of Section V in its entirety for the following reasons:

[fol. 3078] First, this provision would be beyond the scope of this action, and the authority of the Court, for the reason that, as the Court stated in its opinion, "there is no charge made in the complaint that the parties engaged in the practice of exclusively exchanging present and future know-how and inventions, patented or unpatented."

Second, such a drastic provision, which would deprive defendant, in the future, of valuable property rights, is not reasonably necessary to suppress the unlawful practices found to have taken place or to preclude their revival, but instead would result in unnecessary injury to defendant's rights of private property. This provision would prevent defendant from either receiving or granting an absolute assignment of a patent, or an exclusive license thereof, in such a way as to prevent any third person (as broadly defined in Paragraph F of Section I) from having access thereto. It would, in effect, destroy defendant's property rights in any existing patents or patent applications which it may now have or may obtain in the indefinite future. If it could not assign a patent in such a way as to deny the rest of the world access thereto, its right to sell any patent would be practically destroyed. If it could not license a patent exclusively, its valuable property right to grant such a license providing for higher royalties than can be obtained for a non-exclusive license, would be destroyed. Under this proposed provision, if the defendant, at any time in the future, should obtain a patent relating in any respect to anti-friction bearings, it could not, no matter how valuable, important or revolutionary the subject matter of the patent might be, ever grant an exclusive patent license relating thereto. The same is true conversely as to assignments or licenses of patents to defendant. No distinction is made between existing patents, or classes of patents and patents which may be obtained on anti-friction bearings, or processes or machines relating thereto, in the future. This practical dedication of defendant's patents, and right to obtain patents, to the public, is to endure forever. No provision is made for

the reciprocal licensing of patents owned by third persons [fol. 3079] as a condition precedent to access to defendant's patents.

Third, this provision prohibits defendant from engaging in normal business transactions with respect to the assignment and licensing of patents not related to any violation of law found to have been committed by it.

Fourth, it places defendant in a class different from that occupied by others, including its competitors, for all time. The latter will be able to obtain assignments of patents and exclusive licenses thereof relating to anti-friction bearings without the necessity of disclosing the inventions to defendant. This may well put it at a serious competitive disadvantage.

There is no possible connection between this very drastic suggested provision and the violation of law which the Court has found to have been committed; on the contrary, it is solely punitive and destructive in its nature and should be rejected.

16. Defendant objects, subject to its preceding general Objection 15 thereto, to the following portions of Paragraph G of Section V:

(a) The phrase "in such a way as to deny any third person access thereto" is too indefinite and vague. If, however, it means that defendant cannot receive, grant or exchange a patent or patent license without providing for what amounts to a free license to any business or legal entity in the world desiring to obtain the same, then the provision is beyond the authority of the Court to make. If the intention is to provide against grant or receipt by defendant of an exclusive license, appropriate words should be used.

(b) The words "any third person" in the 2nd line should be deleted as being too broad. Under such a provision defendant would have no discretion. If it desired to receive or grant a patent license, it would be required to make it available to anyone, including representatives of foreign powers unfriendly to the United States.

[fol. 3080] (c) The words "relating to" in the 4th line are too vague and indefinite.

17. Defendant objects to Paragraph H of Section V in its entirety for the following reasons:

First, this provision as to "know-how" is beyond the scope of this action and the pleadings herein. There is no claim that the exclusive exchange of know-how was one of the illegal practices adopted by defendant and its alleged co-conspirators. See Objection 15.

Second, this provision, which destroys for all time valuable property rights of defendant, is not reasonably necessary to suppress the unlawful practices found to have been committed, nor to preclude their revival. Defendant would be denied the right to sell, buy or exchange information, advice, assistance or rights with respect to every phase of know-how relating to the production of anti-friction bearings in such a way as to deny any business or legal entity in the world access thereto. The same would be true of any material or machinery used in the production of bearings or any information, assistance, advice or rights with respect thereto. This amounts, in practical effect, to a destruction of defendant's right to buy or sell know-how. For example, if defendant desired to purchase secret information it could not do so except upon terms which would make the information available to all others. Obviously, the prospective vendor would not sell any such information to defendant on such conditions, and would prefer to make a sale to a competitor of defendant not handicapped by a court decree of this nature. Thus, this provision might effect, in and of itself, unjustifiable restraints upon competition by defendant. Conversely, if defendant attempted to sell such information, a prospective purchaser might well refuse to buy it if the information sold were not given to it exclusively. In any event, the price to be paid for non-exclusive information would be much less than that to be paid for exclusive information.

Literally, this provision would prevent defendant from selling its special steel used in the manufacture of bearings, [fol. 3081] or a machine owned by it, except upon terms which would give any business or legal entity in the world *physical* access thereto. This would destroy entirely, as a practical matter, defendant's right to sell material or machinery used in the production of anti-friction bearings since obviously no one would want to buy them under such conditions. No distinction is made between the type of

know-how, material and machines transferred in the past, and that to be transferred in the future, and reciprocal transfer of know-how, material and machines by third persons, as a condition precedent to access to defendant's, is not to be required.

There is no evidence and no finding or decision by the Court in this action that the exclusive exchange of know-how served as a direct instrument to eliminate competition. On the contrary, the Court found that: "The know-how furnished by defendant to the other companies was not a secret process for the manufacture of tapered roller bearings. Other manufactureres were admitted to the plants of British and French Timken, where they could observe all the know-how put into operation. In the extensive record of the testimony dealing with the assistance given by the officials and technical staff, there is no trace of any secret process which was imported by them. No contention was made at any time that such was the case. The know-how consisted of designs, data showing how defendant manufactured its product, the advice of defendant's employes and help of like nature." There is no evidence nor finding that material or machines were sold exclusively for illegal purposes. Therefore, irrespective of any provisions in the contracts between defendant and the other Timken companies, there is, in fact, no history of practices which requires such a drastic provision to prevent their recurrence.

Third, this provision prohibits defendant from engaging in normal business transactions with respect to the transfer of know-how, machinery and materials not related to the violation of law found to have been committed.

[fol. 3082] Fourth, the effect of this paragraph would be to prevent defendant from becoming a registered user of the trademark abroad and of preventing any manufacturer from becoming a registered user of defendant's mark either in this country or abroad, because the transfer of know-how by the licensor to the licensee of a trademark is necessary in order to insure that the licensee's product is of a quality similar to that of the product of the licensor. But, since the goodwill represented by the licensor's trademark depends largely upon the licensor's know-how, persons might not desire to be licensed to use a trademark if the know-how to be transferred in connection with the license

must be made available to all third parties who desire to have access to it.

Fifth, it places defendant in a class different from that occupied by others, including its competitors, for all time.

18. Defendant objects, subject to its general Objection 17 thereto, to the following portions of Paragraph H of Section V:

(a) The phrase "in such a way as to deny any third person access thereto" as applied to know-how, material and machinery, is objected to, for the same reasons as are set forth in support of Objection 16(a). It is completely analogous to the similar provision with respect to patents.

(b) The words "any third person" in the 2nd line should be deleted as being too broad for reasons identical with those stated in support of Objection 16(b).

Plaintiff's Proposed Decree, Section VI

19. Defendant objects to Section VI in its entirety. Defendant will be sufficiently enjoined and restrained from performing any act in furtherance of the conduct which the Court has found to have been unlawful, first by Section IV which enjoins it from the further performance of the existing agreements between it and British Timken and French Timken; and second, by Section V by which defendant is [fol. 3083] enjoined specifically and in great detail from taking any action in furtherance of any agreement, combination or conspiracy of a nature which the Court has found to have been in violation of law. In this situation, there is no necessity for encumbering the decree in this case with the provisions of Section VI.

20. Defendant objects to Paragraph A of Section VI in its entirety, for the following reasons:

First, this provision places defendant in a class different from that occupied by other people, and prohibits it from engaging in normal and usual business transactions not related to the acts found to have been illegal. Many conclusive objections to this suggested provision are too obvious to require much discussion concerning its detailed terms. If British Timken and French Timken are to be regarded as units wholly independent of defendant, there is no good reason why in the future defendant, in the absence

of any agreement or arrangement in violation of law, should not refer an order for bearings to them or, in any event, refer an inquiry to them which might relate to bearings which it does not make, or have on hand presently. It is difficult to imagine any possible basis for including this provision in the proposed decree, or any justification for attempting to induce the Court to so circumscribe and restrict the operations of defendant in the transaction of its business as to make it unlawful for it, at any time, to refer to any other producer any order or inquiry concerning anti-friction bearings.

Second, while the record discloses that defendant, acting pursuant to its contracts with British Timken and French Timken, referred orders and inquiries for anti-friction bearings from customers in their respective territories to them, the imposition of such a drastic prohibition is not reasonably necessary to insure that that practice will not be revived if further compliance with the contracts is prohibited. Further performance of the contracts having been prohibited, if it is to the financial advantage of defendant to fill orders or inquiries instead of [fol. 3084] referring them, it is natural to suppose that it will do so. Under the power of access to defendant's correspondence established by Section XIV, it will be simple for the Department of Justice to determine whether defendant is continuing the prior practice in this respect. Such a provision should not be imposed unless in the future the Court determines that such drastic action is necessary to secure compliance with its decree.

21. Defendant objects, subject to its general Objection 20 thereto, to the following portions of Paragraph A of Section VI:

(a) The word "subsidiary" in the 2nd line is too vague and indefinite.

(b) The words "or any subsidiary, agent, sales representative or distributor thereof" in the 3rd line, should be deleted, for the reasons that they are too indefinite and vague, and there is no evidence of any past practice in relation to them. Moreover, defendant might well have agents, sales representatives or distributors who also serve British Timken, French Timken or other manufacturers of anti-friction bearings, for reasons to be discussed hereinafter under Objection 28, and should be free to refer orders

or inquiries to them even if it should be prohibited from referring orders directly to either British Timken, French Timken or any subsidiary thereof.

(c) The words "or to any other producer of any anti-friction bearings", in the 3rd and 4th lines, should be deleted for the reason that there is no claim asserted in the pleadings, no evidence, and no finding or decision by the Court that defendant referred orders or inquiries to, or otherwise combined with, others than British Timken and French Timken. This Court's own records demonstrate the contrary, as previously demonstrated in the fourth reason in support of Objection 10(c). These words should not be included for the same general reasons as those set forth in support of Objection 7(f).

(d) The words "or any subsidiary, agent, sales representative or distributor for such producer" in lines 4 to 6, in-[fol. 3085] clusive, should be deleted for the same reasons as those given in support of Objection 21(b).

(e) The word "subsidiary" in lines 4 and 5 is too vague and indefinite.

22. Defendant objects to Paragraph B of Seciton VI in its entirety, for the following reasons:

First, this Section, by enjoining defendant from "refusing to sell" bearings "to any person" for resale in territory of British Timken or French Timken constitutes, in effect, a mandatory injunction requiring defendant to sell bearings, irrespective of its own desires, to any business or legal entity which desires to purchase them for resale in these territories. Such a provision is beyond the authority of the Court, conferred by 15 U. S. C. A., Section 4, to "prevent and restrain violations" of the Sherman Act. The power to remove restraints of trade does not include the power to compel defendant to engage in trade or to prevent it from selecting its customers. If the Sherman Act, including 15 U. S. C. A., Section 4, should be interpreted and applied by the Court as authorizing the granting of such a decree, it would be unconstitutional and void as contravening the Fifth Amendment to the Constitution of the United States in that it would deprive defendant of its property without due process of law.

Second, this provision would require defendant to engage in business transactions, not normal and usual, be-

cause performed under duress imposed by the Court's decree, and which are not related to the violations of law found to have been committed, in that it would prohibit defendant from refusing to sell for any purpose even if such refusal is not the result of an illegal combination in restraint of trade.

Third, this provision would enjoin defendant from refusing to sell bearings, not only in the United States, but also anywhere else in the world, to persons purchasing them for resale in certain foreign countries, at prices, terms and conditions of sale the same as those offered to purchasers of the same classification for resale in American [fol. 3086] domestic commerce. This would constitute an unwarranted regulation of defendant's business of a legislative character amounting to a private, individual Robinson-Patman Act. The provision would deprive defendant of its liberty and property without due process of law in contravention of the Fifth Amendment of the Constitution of the United States, in that it would prevent it from obtaining higher prices for bearings sold for resale in foreign markets if it were able to do so in competition with others. It must be obvious, and the record discloses, that conditions surrounding the sale of bearings for distribution in the United States are in many respects different from those incident to their sale for foreign distribution. This provision is not even so limited as to permit defendant to allocate its sales among customers for resale in its own territory and in British Timken and French Timken territory, so that if, at any time, its supply should be insufficient to meet the demands of all purchasers for resale, it would be required to fill orders from purchasers for resale in foreign territory before filling orders for resale in domestic territory. This provision would be impractical and impossible of enforcement, because, as the record demonstrates, in the overwhelming majority of instances, defendant does not know, and cannot determine, whether bearings purchased by its customers are to be used for original equipment or resale in domestic or foreign commerce. Moreover, the provision is not limited in time and would handicap defendant forever.

Finally, this provision would require defendant, without any discretion in the matter, to prefer, at the expense of domestic customers, exporters to nationals of unfriendly

foreign nations, even at times when such nations might be preparing for war against the United States, contrary, not only to defendant's policy, but also to the national public interest.

23. Defendant objects to Paragraph C of Section VI in its entirety for the following reasons:

First, this provision is legislative in character and creates [fol. 3087] new duties, the prescribing of which is the function of Congress, in that it prohibits defendant from selling at "preferential" prices to British Timken and French Timken.

Second, the word "preferential" is too indefinite and vague. For example, it might be interpreted as preventing defendant from selling to these two companies at prices which are lower than those offered to certain other customers because of the saving in cost resulting from their volume buying, a legal practice unrelated to any violation of the Sherman Act.

Third, the provision prevents defendant from engaging in normal business transactions with these two companies not related to the violation of law found to have occurred, in that it prevents sales at preferential prices, which would not be illegal otherwise, even though they are not made preferential for the purpose of carrying out an illegal combination in restraint of trade.

24. Defendant objects to Paragraph D of Section VI in its entirety for the following reasons:

First, the provision, in so far as it prohibits defendant from "paying any commission * * * or other payment" to either British Timken or French Timken in connection with the sale or distribution of anti-friction bearings, prohibits ordinary and usual transactions in instances where British Timken or French Timken might act as agent for defendant in making sales or in performing engineering services in connection with such sales.

Second, this provision is not reasonably necessary to prevent the recurrence of past allegedly illegal practices in this respect because such payments were made only by virtue of the contracts, further performance of which the Court will have enjoined. There is no reason to suppose that defendant will pay commissions which it is not required

to pay, merely to benefit British Timken and French Timken.

25. Defendant objects, subject to its general Objection 24 thereto; to the following portion of Paragraph D of Section VI:

[fol. 3088] The words "in any territory or market" in the 5th line should be deleted, and the words "in foreign commerce" substituted, for the reason that the provision would be applicable to domestic intrastate and interstate commerce of the United States and, therefore, beyond the issues in the case.

26. Defendant objects to Paragraph E of Section VI in its entirety for the following reasons:

First, there is no evidence nor finding by the Court that defendant used either British Timken or French Timken, or any other purchaser of anti-friction bearings, as an agent, sales representative or distributor, either as a means of carrying out the alleged combination in restraint of trade, or otherwise. Therefore, the prohibition of such a practice is not reasonably necessary to prevent its adoption in the future.

Second, the provision would prohibit for all time normal and usual business transactions not related to violations of the antitrust laws found to have been committed. It might be to defendant's advantage to adopt such a practice at some time in the future, and it should not be prohibited from doing so unless it should be determined at that time that the practice is illegal. There is no reason why, if British Timken and French Timken become independent and competing units, defendant should be enjoined forever, and under all circumstances and conditions, from having them, or one of them, act as its agent, sales representative or distributor. And, certainly, there is nothing in the record, or in the relief required to put an end to any law violation which the Court may have found to have been committed, to make it necessary for the Court to say by judicial decree that defendant shall at no time and under no circumstances designate another producer of bearings as its agent, sales representative or distributor for any purpose or in any territory.

Third, it is not within the scope of the Court's authority, in a case involving the defendant and specific, named per-

sons, to make an order applicable to the possible future conduct of the defendant with unnamed and unknown third [fol. 3089] persons.

Fourth, this paragraph is not limited to transactions in foreign commerce and, therefore, is beyond the scope of the issues involved in the case and is beyond the authority of the Court in so far as it may relate to domestic intrastate commerce of the United States.

27. Defendant objects, subject to its general Objection 26 thereto, to the following portions of Paragraph E of Section VI:

(a) The words "or any other producer of anti-friction bearings" in the 3rd and 4th lines and in the 9th and 10th lines should be deleted, for the reasons, in addition to those stated in Objection 26, that the provision would be entirely outside the issues of the case; would place defendant, in the future, in a class different from that occupied by other persons; and would place it outside the protection of the law of the land for the second reason stated in support of Objection 7(f).

(b) The word "subsidiaries" in the 4th and 10th lines, respectively, is too indefinite and vague.

28. Defendant objects to Paragraph F of Section VI in its entirety for the following reasons:

First, defendant adopts and re-asserts in support of this objection all of the reasons set forth in support of Objection 26 to Paragraph E of Section VI.

Second, this provision would impose great hardship upon defendant, in that substantially all of its replacement business is conducted by authorized distributors. This method of transacting business is recognized as the most effective in getting the anti-friction bearings of the producer into the hands of their ultimate purchaser. The authorized distributors in this connection transact a distinctive business of great importance and value to the trade generally and of a nature wholly free from any taint or suggestion of restraint on trade or competition. It is a matter of common and accepted practice for authorized distributors to act for and represent more than one producer of bearings. They must do this in order to be able to offer a complete line [fol. 3090] of bearings, as well as to conduct a profitable

business. If the proposed provision under discussion is adopted as a part of the Court's decree, not only will great damage be done to defendant and to the other producers, but even greater injury will be suffered by the authorized distributors. If it be illegal for defendant, as a producer, to designate as its agent, sales representative or distributor any person who also acts for another producer in a similar capacity it would seem to be equally illegal for an authorized distributor to act as the agent, sales representative or distributor for more than one producer at the same time. This provision would practically require defendant to revise its method of making replacement sales by setting up its own system of exclusive distributors, involving tremendous expense. Even then, since defendant manufactures only tapered roller bearings, this method of distribution would be inefficient and would put defendant at a disadvantage in competition with distributors handling complete lines of anti-friction bearings. The tremendous injury which this provision would deal to defendant's replacement business, not only would not be justified as a means of preventing the resumption of non-existent prior practices, but also would be definitely against the public interest, in that it would tend to place defendant's competitors in a commanding position, and create a restraint of competition—by defendant. Moreover, if defendant obtained independent exclusive distributors, the Court's decree would accomplish the system of exclusive distribution condemned in *U. S. v. Standard Oil Company of California*, — U. S. —, 69 S. Ct., 1051 (June 13, 1949), while, if defendant itself undertook replacement sales this would deprive authorized distributors of the business, a result deplored by the minority of the court in that case.

29. Defendant objects, subject to its general Objection 28 thereto, to the following portions of Paragraph F of Section VI:

(a) The words "or is connected with" in the 6th and 7th lines should be deleted for the reason that they are too indefinite and vague. The type of connection is not set forth in reasonable detail.

[fol. 3091] (b) The words "subsidiaries" in the 9th line should be deleted as too indefinite and vague.

30. Defendant objects to Paragraph G of Section VI in its entirety, for the following reasons:

Defendant adopts in support of this objection all of the reasons set forth in its Objection 26 to Paragraph E of Section VI, because they apply to this situation, which is merely the reverse of that set forth in that paragraph, in that Paragraph E would prevent defendant from appointing British Timken, French Timken, or any other producer as its sales representative, etc., while Paragraph G would prevent defendant from accepting employment by those parties in a similar capacity.

31. Defendant objects, subject to its general Objection 30 thereto, to the following portions of Paragraph G of Section VI:

(a) The words "or any other producer of anti-friction bearings or subsidiaries thereof" should be deleted, for reasons set forth in support of Objections 26 and 27(a) to Paragraph E of Section VI.

(b) The words "or subsidiaries thereof" in line 5 should be deleted as too indefinite and vague.

32. Defendant objects to Paragraph H of Section VI in its entirety for the following reasons:

First, it is unnecessary. Other parts of the decree provide sufficient remedy against the practice therein described.

Second, the words "Reserving or protecting" are too indefinite to apprise defendant as to its duty. If they mean that it must compete in order not to "reserve", the provision is beyond the authority of the Court.

Third, it relates to "any other producer of anti-friction bearings", and is thus beyond the issues in this action, not supported by evidence, and is unnecessary to prevent resumption of past practices found to have been illegal.

Fourth, it relates to "any market or territory" including intrastate domestic commerce, and is beyond the issues [fol. 3092] in this respect, and the authority of the Court.

The words "or subsidiaries thereof" are too indefinite and vague.

The word "production" should be deleted for the reason given in support of Objection 3(e).

Plaintiff's Proposed Decree, Section VII

33. Defendant objects to Section VII in its entirety, for the following reasons:

First, the apparent object of its provisions is sufficiently attained by Sections IV and V, as amended to meet defendant's objections thereto. Section IV prevents defendant from further performance of the existing contracts which provide for allocation of territory, etc., while Section V prohibits defendant from entering into any agreements, etc., to do any of the things which are listed in subparagraphs 1 through 8 of Section VII. The language used in defining the specific practices prohibited is identical, and Section V, which relates to agreements generally, includes the specific types of agreements covered by Section VII.

Second, it is not limited to foreign commerce in its scope, but relates to domestic intrastate and interstate commerce as well.

34. Defendant objects, subject to its general Objection 33 to Section VII, to the following portions of the introductory paragraph thereof:

(a) The words "adhering to" in the 2nd line, should be deleted as being too indefinite and vague.

(b) The words "directly or indirectly" in the 3rd line, should be deleted as being too indefinite and vague.

(c) The words "with any other person" should be deleted for the reason that they are beyond the scope of the issues in the case, and put defendant in a class by itself outside the protection of the law of the land, for reasons stated under Objection 7 (f), second reason; and are not reasonably necessary to prevent the revival of practices found to have been illegal. Moreover, the inclusion of persons, other than those referred to in the amended com- [fol. 3093] plaint makes it impossible to determine from the language employed throughout the entire section whether express or implied conditions, or both, are referred to.

35. Defendant objects to Paragraph A of Section VII and to subparagraphs 1, 6, 7, 8 and 9, in their entirety, for the following reasons:

First, Paragraph A and subparagraph 1, together, might be interpreted as preventing defendant from requiring a licensee of a patent to operate in a restricted territory. This denies to defendant rights conferred by the patent laws; is unnecessary to prevent recurrence of non-existent past practices; and would prohibit defendant from engaging in normal and usual transactions in business not in violation of law. Moreover, it would give extra-territorial effect to American law.

Second, Paragraph A and subparagraph 6, together, would prevent defendant, as a patent licensor, from fixing prices to be charged by its licensee, which it has the legal right to do under certain circumstances. Defendant should not be deprived of this right for the reasons asserted in support of the objection to Paragraph A and subsection 1, next preceding.

Third, Paragraph A and subparagraph 7, together, would prevent cross-licensing of patents by defendant with any person, except on a basis which would not deny to any third party access thereto. This is objectionable for all of the reasons stated in support of Objection 15 to Paragraph G of Section V, which is identical with subparagraph 7 of Section VII, and to which reference is made.

Fourth, Paragraph A and subparagraph 8, together, would deny to defendant the right to exchange know-how, material or machinery for the assignment or licensing of a patent, in such a way as to deny any third person access thereto. This provision is objectionable for the same reasons as those given in support of Objection 17 to Paragraph H of Section V, which is identical with Paragraph 8 of Section VII, and to which reference is made.

Fifth, Paragraph A and subparagraph 9, together, would [fol. 3094] prevent defendant from assigning or licensing patents in such a way as would restrict the use or disposition of any bearings bought from defendant. There is no evidence nor finding by the Court that defendant ever engaged in such a practice, and there is, therefore, no necessity for any such provision.

36. Defendant objects to Paragraph B of Section VII and subparagraphs 7, 8 and 9 thereof, in their entirety for the same reasons as those specified in Objection 35 above. The only difference between the application of Paragraphs A and B, and these subparagraphs, is that the former prevents defendant from imposing certain conditions in the transfer or licensing of patents, while the latter restricts defendant similarly in the transfer of know-how, material or machinery.

37. Defendant objects to Paragraph C of Section VII and subparagraphs 1, 2, 5, 7, 8 and 9, in their entirety, for the following reasons:

First, Paragraph C and subparagraph 1, together, might be interpreted to provide that defendant could not agree to license its trademark in an exclusive territory under any circumstances whatsoever, even though it is not done for the purpose of furthering a combination in restraint of trade. This language violates the fundamental conception of the ownership of a trademark, which is territorial in extent, and goes far beyond the issues of the case as disclosed in the amended complaint and by the evidence.

Second, Paragraph C and subparagraph 2, together, because of the generality of subparagraph 2 and because no limitation is contained therein, would have the effect of making unlawful the use by defendant of its property right in its trademark; would prevent defendant from asserting rights which it has under its trademark in the United States to prevent the importation into this country of bearings having a similar trademark; and would prevent defendant from exercising its legal rights in the United States and elsewhere to grant an exclusive license of its trademark.

[fol. 3095] Third, Paragraph C and subparagraph 5, together, cover matters not in issue in the case, matters too indefinite for enforcement, and would preclude defendant from asserting its property right in its trademark.

Fourth, Paragraph C and subparagraph 7, together, would prevent defendant from granting or receiving in exchange for transfer, etc., of the trademark or trade name a patent or patent license in such a way as to deny third parties access thereto, and are objectionable for reasons stated in support of Objection 15.

Fifth, Paragraph C and subparagraph 8, together, would prevent defendant from granting, receiving or exchanging

know-how, material or machinery in exchange for a trademark or trade name in such a way as to deny access to third parties thereto, and are objectionable for reasons stated in support of Objection 17.

Moreover, their provisions would preclude defendant from becoming or creating a registered user of trademarks and would thereby restrain competition and preclude defendant from exercising its rights under the law, for the fourth reason stated in support of Objection 17.

Sixth, Paragraph C and subparagraph 9, together, would prevent defendant from agreeing with a third party to restrict the use or disposition of bearings bought from defendant as a condition to grant or receipt of a trademark or trade name, and thus would prevent defendant from engaging in normal business transactions not related to the violations of the law here found to have been committed.

38. Defendant objects subject to its general Objections 35-37, inclusive, thereto, to the portions of subparagraphs 1 and 3 through 8, inclusive, of Section VII, which correspond to the portions of Paragraphs A and C through H, inclusive, of Section V, which were objected to for reasons set forth in Objections 8, 10, 11, 12, 14, 16 and 18, and which are adopted in support of this objection as though rewritten herein.

Subparagraphs 1 and 3 through 8, inclusive, are identical in form, respectively, with Paragraphs A and C through H of Section V, and certain portions thereof should be [fol. 3096] deleted as set forth in the objections to Paragraphs A and C through H of Section V. The following table shows where these objections, and the reasons in support thereof, may be found:

Section VII	Section V	Objection
1	A	8
3	C	10
4	D	11
5	E	12
6	F	14
7	G	16
8	H	18

Plaintiff's Proposed Decree, Section VIII

39. Defendant objects to Paragraph A of Section VIII, in its entirety, for the following reasons:

This provision would require defendant to divest itself of its 30.25 per cent common stock interest in British Timken, and its 50 per cent common stock interest in French Timken. Moreover, it might require defendant to dispose of its interest in the considerable indebtedness to it from French Timken represented by promissory notes which, as the record shows, are held in trust for defendant in England, and in the indebtedness to it from Dewar for French Timken stock purchased by him from the defendant and to be paid only out of his one-half of French Timken's profits.

First, divestiture would impose undue hardship upon defendant, which is not justified by any necessity for such a provision in order to insure effective and fair enforcement of the law—not punishment.

As to hardship, (1) it would be extremely difficult, if not impossible, to find a purchaser at any price for stock of a bearing company located in England, due to the program for nationalization of industry in that country; and (2) it would be extremely difficult, if not impossible, to withdraw part or all of any purchase price received for such stock from England to this country, due to English foreign exchange regulations. In addition, due to defendant's low cost basis of its stock in British Timken, even if it were able to realize a fair price therefor based upon the actual present value of British Timken, defendant would be taxed heavily [fol. 3097] on its capital gain, even though it would be unable to bring to this country all of the money obtained from the sale of the property with which to pay the tax. Moreover, it might be subjected to substantial tax under Section 102 of the Internal Revenue Code for improperly accumulating surplus as a result of being unable to get the purchase price of its stock out of England, and pay it out in dividends to stockholders of the defendant.

Aside from the imminent possibility of nationalization of industry, similar difficulties would be involved if defendant were obliged to sell its half interest in the stock of French Timken.

As to the amount now owned by French Timken to defendant, namely, approximately $241,000 with interest,

there is deposited approximately $29,000 in the Westminster Bank to be applied against this indebtedness, but it cannot be applied until the notes become due. This Court, having no jurisdiction over any of the other parties to the Westminster trust, cannot accelerate the indebtedness as to them. If the Court requires defendant to divest itself of the notes, it cannot sell them to anyone for dollars because the $29,000 cannot be withdrawn to this country as a result of British foreign exchange regulations. The same result would obtain if they were sold in England or France. No more than the amount deposited to secure their payment could be realized because the indebtedness of French Timken, a small company employing approximately 500 people, and supported by defendant and Dewar since its organization, is not an attractive investment.

It would be costly, if not impossible, to dispose of Dewar's indebtedness to the defendant for his French Timken stock, now reduced to approximately $120,000, for the same reasons.

Divestiture is not a proper or permissible remedy. There is no issue in this case involving the legality of defendant's acquisition of stock of British Timken or French Timken. The record shows that British Timken was purchased jointly by defendant and Dewar in 1927, and that French [fol. 3098] Timken was organized jointly by them in 1928. The amended complaint contains no allegations that the acquisition of stock in British Timken or French Timken constituted a violation of the antitrust laws in any respect, although it does refer to defendant's ownership of stock in those companies as part of the "Background." It is alleged that defendant combined with British Timken and French Timken, principally by means of the business agreements of 1928 and thereafter, to eliminate competition between them, etc. Therefore, divestiture is not reasonably necessary to suppress the unlawful practices alleged and found to have taken place, and would be beyond the scope of the issues involved in the case if it were granted for any such purpose.

The only other reason for which divestiture might be granted within the power conferred upon the Court by 15 U. S. C. A., Section 4, to "prevent or restrain" violations, would be to remove the effects of unlawful practices, in this respect found to have taken place. In cases in which divestiture of stock as a remedial measure has been sus-

tained, there have been findings that stock control was the means of carrying out the combination found to have been illegal. It is not alleged in the amended complaint in the present case that this was the fact, nor is there any evidence nor finding to that effect. Evidence, introduced by defendant for an entirely unrelated purpose, shows that defendant and Dewar agreed that Dewar was to have control of the ordinary affairs of British Timken, as long as it was profitable, in 1927 prior to the time of, and as a condition to, the joint acquisition by them of British Timken's stock. British Timken's corporate structure was altered to carry these agreements into effect, and, as the record discloses, it has always been profitable, so defendant has never been in a position to exercise control over British Timken through its ownership of stock even if it had desired to do so. Nor has the defendant ever exercised stock control with respect to French Timken since the time defendant and Dewar first agreed jointly to organize it.

[fol. 3099] Thus, there has been no history of stock control of British Timken and French Timken by defendant for the purpose of carrying out the combination. The combination has been, by agreement between defendant and Dewar, carried out by British Timken and French Timken. The portions of the decree which enjoin further carrying out such agreements should be sufficient to accomplish the plaintiff's purpose. If not, then the Plaintiff, is at liberty to seek a more drastic remedy upon application to the Court.

If it be suggested that the virtual destruction of defendant's large investments in British Timken and French Timken is desirable to remove any incentive which it might have not to compete with these companies, the answer is twofold. First, no court has ever gone so far as to attempt to justify divestiture of stock upon any such basis. The Court should confine itself to remedying and preventing future resumption of the types of practices found to have been illegal. Second, it would seem logical that, if defendant could compete with British Timken or French Timken at any time on a basis by which it could make a reasonable profit, either on original equipment or service sales, the opportunity to take 100 per cent of the profit, as distinguished from the 30 per cent (which represents defendant's share as a stockholder) in the case of British Timken, or 50 per cent in the case of French Timken, should cause it to seek to obtain such business in competition with them.

40. Defendant objects, subject to its general Objection 39 thereto, to the following portion of Paragraph A of Section VIII:

The words "other financial interest, direct or indirect" are too uncertain and vague to enable defendant to determine of what interests it must divest itself.

41. Defendant objects to subparagraph 1 of Paragraph B of Section VIII in its entirety, for the following reasons:

There is no history of any past practice of control of British Timken or French Timken by defendant by means of stock, or otherwise, which makes this provision neces- [fol. 3100] sary to prevent the resumption of past illegal practices. For no good reason it places defendant in a position different from that occupied by others. It prohibits defendant from engaging in normal business transactions not in the course of law violation, in that it would be unable to purchase assets or stock of British Timken or French Timken for legal purposes. In so far as this provision prevents defendant from purchasing stock of British Timken or French Timken through the exercise of any option, or otherwise, it is objectionable for the same reasons as those given in support of Objections 4 and 39.

42. Defendant objects, subject to its general Objection 41 thereto, to the following portions of subparagraph 1 of Paragraph B of Section VIII:

(a) The words "directly or indirectly" in the 1st line should be deleted as being too vague and indefinite.

(b) The word "securities" in the 3rd line is too indefinite and vague. If it is intended to include bonded indebtedness, it would prevent defendant from taking mortgage bonds to secure the indebtedness of French Timken to it, and this would penalize defendant instead of providing effective law enforcement.

(c) The words "or any subsidiary, successor or assign thereof" in the 5th and 6th lines, should be deleted for the reason that there is no history of past practices in this respect, the provision would be beyond the scope of the issues in this action, and the application of these words to particular entities is too indefinite and vague to enable defendant to be properly guided in carrying out the decree.

43. Defendant objects to subparagraph 2 of Paragraph B of Section VIII in its entirety, for the following reasons:

First, there is no evidence nor finding by the Court that defendant ever exercised any influence or control over the production, sales or other business policies of British Timken or French Timken, or their subsidiaries, etc., so that this provision is not necessary to suppress illegal practices [fol. 3101] or to prevent their resumption. The Court's decree should be limited to the type of practices found to have been engaged in by the defendant, and, if it goes farther, it constitutes, not effective and fair enforcement of the law, but punishment.

Second, the provision is so vague and indefinite that it would hamper defendant seriously in the future conduct of its business and put it at the peril of a summons for contempt. For example, assume that defendant should bring an action to enjoin British Timken from engaging in unfair trade practices in this country, or should even attempt to compete with British Timken for bearing business in this country or abroad—literally, such conduct by defendant would constitute exercising "influence or control" over the sales of British Timken.

Third, the word "production" in the 2nd line should be deleted for the reason stated in support of Objection 3(e).

Fourth, the words "subsidiary, successor, assign, sales representative or distributor thereof" in lines 3-5, inclusive, are too vague and indefinite and should be deleted for reasons previously stated.

44. Defendant objects to subparagraph 3 of Paragraph B of Section VIII, in its entirety, for the following reasons:

First, there is no evidence nor finding or decision by the Court that any officer, director or employee of defendant ever served as an officer, director or employee of British Timken or French Timken, so that this provision is not necessary to suppress or prevent the resumption of illegal practices. The record discloses merely that Duncan, an English solicitor, has represented defendant on the board of directors of British Timken. There is no reason why defendant should not be permitted to follow the usual and normal practice of a large stockholder in being represented on the board of directors of a company in which it owns stock. If the Court permits defendant to retain its stock,

it should be permitted to have such representation; if it decrees divestiture then, no doubt, defendant will have no representative on the board in the natural course of events.

45. Defendant objects, subject to its general Objection 44 [fol. 3102] thereto, to the following portion of subparagraph 3 of Paragraph B of Section VIII:

The words "or of any subsidiary, successor, assign, agent, sales representative, or distributor thereof" in the 5th and 6th lines, should be deleted as being too indefinite and vague.

Plaintiff's Proposed Decree, Section IX

46. Defendant objects to Section IX in its entirety, for the following reasons:

This section, which compels defendant to sell bearings to any person for export, without discrimination as to availability, price, etc., is punitive and destructive and serves no purpose except to inflict serious injury upon defendant's business operations. It is objectionable for all of the reasons set forth in support of Objection 22 to Paragraph B of Section VI, which would impose a similar provision in favor of purchasers for resale in British Timken and French Timken territory. It has no relation to the issues in this action or to the relief necessary to carry into effect the Court's decision. The Court does not have constitutional authority to compel defendant to engage in business or to deprive it of its right to choose its customers, as is here sought to be done. This provision would require defendant to engage in business transactions not normal and usual, because it would be required to do so by the Court's decree. The provision would constitute an unwarranted regulation of defendant's business of a legislative character amounting to a private, individual Robinson-Patman Act in so far as it prohibits discrimination between prospective purchasers. It would be impractical and impossible of enforcement, because, in the overwhelming majority of instances, defendant does not know whether bearings are purchased by its customers for export or domestic consumption. Moreover, even if the defendant should decide to conduct its business in British or French territory by establishing a wholly-owned plant there, it would still be required to sell bearings manufactured in

[fol. 3103] this country for export, and this would result in duplication of investment in production facilities and inefficiency and confusion in the conduct of the defendant's business.

Like Paragraph B of Section VI, this provision might put defendant in a situation in which it would be required to sell bearings for export to nationals of unfriendly foreign powers at the expense of its domestic customers, even in the course of preparation for war with such foreign powers.

47. Defendant objects, subject to its general Objection 46 thereto, to the following portions of Section IX:

(a) The words "in such quantities as may be reasonably required" in the 3rd and 4th lines are too indefinite and vague.

(b) The words "and regardless of any intermediate prices or transactions which may take place prior to such export" in lines 8 through 10, inclusive, are not only too vague and indefinite, but are also unintelligible.

(c) The last sentence in the section is vague and indefinite in that it is not clear whether defendant would be permitted to allocate bearings between its domestic customers and purchasers for export, or must fill orders for export in preference to orders of domestic customers.

Plaintiff's Proposed Decree, Section X

48. Defendant objects to Section X in its entirety, for the following reasons:

Generally speaking, Sections X, XI, XII and XIII relate to the question of trademarks and, in practical effect, would destroy any rights which defendant has in the name of its founders, and its trademark "Timken", in the United States and the rest of the world, with the obvious effect of benefiting two foreign corporations, namely, British Timken and French Timken.

[fol. 3104] These sections and each of their paragraphs should be rejected whether considered in their entirety or one at a time.

They relate generally, first, to the use of the trademark "Timken" by defendant, British Timken and French Timken, and second, to certain specific acts which the Court is asked to compel defendant to perform under the guise of enabling it the more readily to sell and distribute its bear-

ings in territory heretofore, under the contracts between the parties, granted to British Timken and French Timken; and, ostensibly, to expedite the sale and distribution by British Timken and French Timken of their bearings in the United States and the rest of the world.

A conclusive objection to the provisions relating to the trademark "Timken", is that, by the express provisions of Paragraph B of Section IV, defendant is already sufficiently enjoined from performing any act in furtherance of the agreements, combination and conspiracy found to have been illegal, so that it is wholly unnecessary for the Court to enjoin defendant from doing any act in violation of the Antitrust laws by means of the trademark. And, if this is not deemed sufficient and further assurance is needed, resort might be had to Section V, by which defendant is enjoined, in great detail, from committing any of the illegal acts therein enumerated, by means or in furtherance of an agreement, etc., which would include an agreement as to trademarks.

If the Court does not conclude that the provisions of the earlier sections of the proposed decree are sufficient to cover this phase thereof, an examination and analysis of the sections now under consideration will disclose many compelling reasons why they should be rejected.

The adoption of these sections, with their use of such terms as "confusing mark" and "British and French trademark territory", and their great multitude of detail and complex technical limitations and restrictions upon the conduct of defendant would eventually result, without any justification in law or fact, and, although wholly unneces- [fol. 3105] sarily in so far as the enforcement of the Court's decree is concerned, in great damage to the business of defendant, not only with relation to foreign commerce, but to a very considerable extent to domestic commerce of the United States as well.

These sections recognize in British Timken and French Timken a dominant right, as against defendant, in the trademark "Timken", not only in Great Britain and France and their dependencies, but in any foreign territory in which either British Timken or French Timken has owned or controlled the mark, or in territory in which it has claimed or now claims an interest therein. And a superior right in the mark in the United States, in the first instance, is likewise conferred upon British Timken and

French Timken, by imposing upon defendant the burden of taking such action as may be necessary to avoid, in its use of a trademark, confusion with the mark "Timken" in the hands of British Timken or French Timken. And, more than this, defendant must use its own corporate name in such a way as to prevent its being confused with the use of the trademark "Timken" by British Timken and French Timken. In short, defendant may not use its trademark "Timken" or its corporate name "The Timken Roller Bearing Company", or its family name, which has been associated with its business ever since its creation many years ago—unless defendant can take such action as will make it certain that any trademark or name it does use will not be confused with the names used by British Timken or French Timken, or the trademark "Timken". These provisions cannot be reconciled with any constructive or even justifiable purpose.

The Court's decree in this case should be limited to a lifting of the restraints upon foreign commerce which it has found to have been imposed illegally in the transactions between defendant and British and French Timken, and to free from restraint the export of defendant's bearings to foreign countries and the import into the United States of their bearings by British Timken and French Timken. The Court is not, in this case, to be concerned with adjudicating rights to the trademark, or otherwise, as between the [fol. 3106] defendant and British Timken and French Timken. The provisions of the sections under consideration, imposing, as they do, so many restrictions and limitations upon the use by defendant of the trademark "Timken" in the sale and distribution by it of its bearings in foreign countries, and their export from the United States, should all be rejected for the conclusive reason that, if adopted, they would tend to reduce and obstruct such action by the defendant. The most efficient method, with relation to the trademark, to stimulate the export by the defendant of its bearings from the United States to foreign lands, is to leave the defendant free to use the trademark for that purpose in so far as the decree of the Court in this action is concerned.

And there is no reason why defendant should assume the burden of taking action to prevent confusion as between it and British Timken and French Timken in the use of the trademark in connection with the sale and distribution by

them of their bearings in the United States. Defendant, over many years, has built up in the United States a valuable business and goodwill by the use of the trade name and trademark "Timken". British Timken and French Timken have never done business in this country and have never used a trademark of trade name in connection therewith, nor established any goodwill by so doing. In this situation, it seems too clear for contradiction that, if any action is needed to avoid confusion in the use of the trademark in the United States by the three Timken companies, it should be taken by British Timken and French Timken and not the defendant. The proposed decree would take from defendant, and give to them, something they never had before, merely because defendant is found to have combined with them to violate the law. This is punishment, not law enforcement.

Altogether aside from the unnecessary injury to the property rights of the defendant in its name and trademark, these sections of the proposed decree might result in unjustified injury to the public, including other manufacturers of anti-friction bearings. First, the American [fol. 3107] buying public would be injured, if anyone other than the defendant were given the right to sell anti-friction bearings under the trade name "Timken". To American purchasers this name and mark denote the product of the defendant, to which they are entitled when that name is used. If the Court's decree should enable and invite British Timken and French Timken to use defendant's name in the domestic market, the public might be misled to buy one product when it sought another. Moreover, since the decree will put an end to the agreements under which the defendant has been enabled to control the quality of anti-friction bearings manufactured by the foreign Timken companies, their product may become substantially different from that of the defendant in the future. Thus, the decree might foster that unfair competition which the law, in part for the protection of the consumer, condemns. Second, the decree, to the extent that it would give to British Timken and French Timken the valuable goodwill developed by the defendant under the trademark and name "Timken", would injure the American anti-friction bearing industry as a whole by conferring on those two companies a distinct advantage, over the defendant's com-

petitors in domestic commerce, which those competitors do not now enjoy. This would go far beyond enabling British Timken and French Timken to compete in this country on the same basis as any other competitor of the defendant—which is the most the plaintiff can seek properly to obtain. Third, the decree would put all American manufacturers of anti-friction bearings at a disadvantage in competing in those foreign markets in which the defendant has developed goodwill under its name for the same reasons which would place them at such a disadvantage in the American market. Thus would be frustrated the purpose of the antitrust laws as to foreign commerce, namely, the fostering of American commerce in foreign markets, not the business of foreign manufacturers therein. So, to the extent that the proposed decree would require the defendant to take such steps as would enable British Timken and French Timken to use the name "Timken" either to the exclusion of, or jointly [fol. 3108] with, the defendant in areas, such as the United States, in which the defendant has acquired the exclusive right to use the trademark and name, it would frustrate the law of unfair competition and hinder the development of American commerce—results to be deplored rather than sought.

49. Defendant objects to subparagraph 1 of Paragraph A of Section X, in its entirety, for the following reasons:

First, it injects a new term, "confusing mark", into the case, which is neither necessary nor proper under the pleadings and evidence in the case, and is designed to deprive defendant unlawfully of the use as its trademark of the name of its founders.

Second, the definition of the term "confusing mark" is not limited to a name or mark used in the sale of anti-friction bearings, but it is unlimited. In the application of this term made in certain of the subsequent portions of the proposed decree, defendant might have to give way to British Timken or French Timken, if they should decide to manufacture and sell rock bits or special steel now manufactured by defendant but not by them, or any other products which defendant might develop in the future throughout its existence.

Third, the definition is not limited to marks, etc., which might be identified or confused with defendant's present corporate name. The only claim made by the plaintiff is

that the contracts which have required British Timken and French Timken to use the trademark "Timken" have limited them to developing goodwill under that name. Presumably, it will assert that the provisions as to the trademark and name are necessary to enable those companies to compete by using such goodwill. But this necessity could not justify this provision, which would require defendant to give up marks and names entirely unrelated to the goodwill which British Timken and French Timken may have developed up to the present time.

50. Defendant objects to subparagraph 2 of Paragraph A of Section X in its entirety, for the following reasons: [fol. 3109] It is too indefinite and does not accurately describe or define countries or areas in which British Timken, French Timken or otheir subsidiaries, successors or assigns, own control or in any way claim or have owned, controlled or in any way claimed a confusing mark.

51. Defendant objects, subject to its general Objection 50 thereto, to the following portions of subparagraph 2 of Paragraph A of Section X:

(a) The words "or their subsidiaries" in the 3rd line should be deleted for the reason that they are too indefinite and vague for reasons previously stated.

(b) The words "successors, or assigns" in the 3rd and 4th lines should be deleted for the reason that their inclusion makes this section impracticable and its operation might be against the public interest. Assuming, for the sake of argument, that the Court decides that drastic action should be taken in favor of British Timken or French Timken, as presently constituted, with respect to the trademark and trade name, why should it make the provisions of the decree run in favor of their successors or assigns in the indefinite future? Assume that Dewar, cut off from the support which defendant has furnished to French Timken over the years, should decide to dispose of French Timken and should sell it to SKF. Should SKF, the largest bearing manufacturer in the world, be given, as successor or assign of French Timken, all of the benefits of the decree relating to the trade name and trademark which the Court might be willing to confer upon French Timken for the purpose of enabling it to compete with defendant?

(c) The words "control" in the 4th line and "have

controlled" in the 5th line, should be deleted for the reason that they are too indefinite and vague. How is defendant to determine what marks British Timken or French Timken control? How is the control to be evidenced,—by ownership, registration, license, contract or mere friendship with the person who owns the mark?

[fol. 3110] (d) The words "or in any way claim" in the 4th line and "have in any way claimed" in the 5th line, should be deleted. The application of this definition of "British or French trademark territory" in certain of the subsequent portions of the decree relating to the trademark would be particularly drastic and unwarranted if this phrase were included, since it would turn over the defendant's name and trademark to British Timken and French Timken, wherever they might claim, whether in good or bad faith, a particular mark which defendant might own. It might be interpreted as relating to new marks developed by defendant in the future which might be entirely unrelated to the name "Timken"; if so, defendant would have to give up such marks if British Timken or French Timken in any way claimed them. What possible justification could there be for such a provision in the decree?

(e) The words "have owned" in the 5th line should be deleted. If British Timken or French Timken no longer own or use a particular mark, it will not assist them in competing with defendant to prevent it from using such a mark.

52. Defendant objects to Paragraph B of Section X in its entirety, for the following reasons:

It is a mandatory injunction requiring defendant to take steps to permit and enable it to fill orders and inquiries for export sales of bearings by various means specified therein, and is beyond the authority of the Court as defined in Title 15 U.S.C.A., Section 4; it would be unconstitutional as contravening the Fifth Amendment to the Constitution of the United States; it is not within the scope of the issues in this action; and it would constitute an unwarranted regulation of defendant's business of a legislative character, in that it specifies in detail a course of action to be followed by defendant in the conduct of its business.

53. Defendant objects, subject to its general Objection

52 thereto, to the following portions of the introductory paragraph of Paragraph B of Section X:

[fol. 3111] (a) The words "all steps and measures needed in fact and in law" should be deleted as being so vague and indefinite as to require defendant to conduct its business at the peril of a summons for contempt.

(b) The words "including but not limited to" in the 7th line should be deleted as being too indefinite and vague for the same reasons, because they implement the words sought to be deleted under (a) above.

54. Defendant objects to subparagraph 1, of Paragraph B of Section X in its entirety for the following reasons:

First, it has the purpose and effect of requiring the defendant to make sales without reference to its ability so to do, and, as a result, goes far beyond the pleadings and evidence in this action and constitutes a type of relief not sanctioned by the law.

Second, this section is too indefinite and vague to enable intelligent compliance therewith. The words "taking all actions necessary" are too indefinite and vague. The words "non-compliance with which would prevent or impede" exports and imports are too indefinite and vague, and would make defendant determine at its own peril with what laws it must comply, or what would constitute an impediment to imports and exports.

55. Defendant objects to subparagraph 2 of Paragraph B of Section X in its entirety for the following reasons:

First, this provision is tantamount to requiring defendant to abandon the use of its trademark, trade name or corporate name, or in the alternative, to make agreements with third parties who are not bound by the decree of the Court.

Second, the words "taking all actions necessary" in the 1st line should be deleted, because they are too indefinite and vague.

Third, the words "where such confusing mark is or has been owned, controlled or in any way claimed in British or French trademark territory" in lines 11-13, inclusive, are objectionable for reasons stated in support of Objections 50 and 51 to subparagraph 2 of Paragraph A of Section X.

[fol. 3112] Fourth, the words "such actions shall include, but are not limited to," in the 13th and 14th lines, are too indefinite and vague.

56. Defendant objects to subparagraph 3 of Paragraph B of Section X in its entirety, for the following reasons:

First, it requires defendant to violate the laws of foreign countries governing trademarks and unfair competition, or in the alternative, to abandon use of its trademark, trade name or corporate name therein.

Second, it deprives defendant of its constitutional right under the Fifth Amendment to the Constitution to determine what costs it is able to incur in connection with the making of sales, to select its customers, or not to deal with any customers if it so desires. It requires defendant to advertise everywhere, forever, on the same basis as it does in the United States, regardless of the volume of trade anticipated or the results obtained. For example, defendant advertises in the Saturday Evening Post at a cost of thousands of dollars a year. Under this provision it would be required to advertise in a similar journal in England, perhaps costing as much, when, as the record discloses, it would be unable to sell any substantial volume of bearings in England at the present time and perhaps for years, due to the restrictions on trade imposed by the English government which prevent the export of bearings to that country unless they cannot be obtained from local manufacturers, including British Timken. This monumental folly is to be repeated in other foreign countries, for all time, in the face of uncontroverted evidence in the record that there is no substantial export trade to be obtained therein upon a competitive basis, and without any discretion on defendant's part to avoid the expense, if that seems to be the prudent thing to do.

Third, the words "appropriate size and prominence" in the 4th line should be deleted as too indefinite and vague, for obvious reasons.

[fol. 3113] 57. Defendant objects to subparagraph 4 of Paragraph B of Section X in its entirety for the following reasons:

First, the purpose of this provision is to require defendant to make sales in violation of its constitutional right to refrain therefrom, without reference to whether the making of such sales would constitute unfair competition, and without reference to whether such sales would be in violation of the policy of the United States Government, or of the policy of defendant properly arrived at.

Second, this provision would require defendant, not only to offer to sell bearings to all persons who have made written inquiries of it since July 1, 1945, but also to state the terms and conditions upon which they "may now become a distributor of defendant" altogether without reference to whether defendant needs or desires such distributors. Aside from the obvious objections to the authority of the Court and the constitutionality of such action, its impracticability is, indeed, staggering. Assume that it should develop that five persons from one marketing area had written defendant desiring to become distributors of its bearings. Defendant is then obliged to offer to permit all of them to become its distributors, regardless of their credit, financial stability, ability to render the type of service which defendant requires in order to preserve its goodwill, and of the all important fact that, if all five accept, there will not be enough business for any of them and all will be forced eventually to forego the representation. Such a provision is, indeed, regulation of a legislative nature which goes far beyond anything the Congress of the United States has ever enacted.

58. Defendant objects to subparagraph 5 of Paragraph B of Section X in its entirety for the following reasons:

This mandatory injunction, requiring defendant to render services to prospective purchasers for export, or foreign [fol. 3114] users, at what amounts to less than cost properly determined, is beyond the authority of the Court and would deprive defendant of its constitutional rights under the Fifth Amendment. This clearly penal provision that defendant's charges for services shall not exceed its cost "without allocating any overhead or general administrative expense", depriving defendant of its right to determine the proper elements of its cost of operation, is perhaps the most outstanding illustration of the punitive nature of the entire proposed decree. It is beyond the scope of the issues, unnecessary, and would impose undue hardship on defendant.

59. Defendant objects, subject to its general Objection 58, to the following portions of subparagraph 5 of Paragraph B of Section X:

(a) The word "prospective" in the 3rd line should be deleted. It would require defendant to furnish services to a person before any purchase of bearings has been made from defendant.

(b) The words "foreign user" in the 3rd line should be deleted. They would require defendant to provide services to a foreign user of bearings produced by it, who had not purchased them from defendant. Moreover, foreign users are not limited to those in British and French Timken territory, so this provision is not within the scope of the issues in this action.

(c) The words "shall be consistent with defendant's prevailing practice", in the 12th and 13th lines, are too vague and indefinite to enable defendant to know when and whether it has committed what might be considered a violation of the decree.

Plaintiff's Proposed Decree, Section XI

60. Defendant objects to Paragraph A of Section XI in its entirety, for the following reasons:

If Paragraph A of Section XI were adopted, defendant would be restrained from at any time for any cause, instituting any legal action in any court of the United States against any person based upon a "confusing mark" owned, [fol. 3115] controlled or "in any way" claimed by British Timken or French Timken, and from making any claim hereafter in any suit in this regard. In short, defendant is to be denied, for all time, access to the courts of the United States, and cannot even make a claim against British Timken or French Timken, or any third person no matter how flagrantly it may consider, in good faith, its rights to have been violated, without incurring contempt of court!

First, this provision would deprive defendant of its constitutional right to resort to the courts for the protection of its property rights in the trademark "Timken" and in its trade name and corporate name, and any other trademarks, trade names or corporate names which it might adopt and develop in the future. Any order in such form is beyond the authority of this Court. If the Sherman Act,

including Title 15 U. S. C. A., Section 4, should be so interpreted and applied by the Court in approving such a provision in its decree, it is unconstitutional and void as contravening the Fifth Amendment to the Constitution of the United States in that it would deprive defendant of its property without due process of law.

Second, this provision is unnecessary, is beyond the scope of the issues involved in the case, and would place defendant forever in a position different from that occupied by others, outside of the protection of the law of the land.

Third, due to the definition of "confusing mark", this provision would deny defendant access to the courts to protect any mark which it might have irrespective of whether it be used in the sale of products other than anti-friction bearings. Moreover, the use of the words "or in any way claimed" in the 5th and 6th lines would prevent defendant from obtaining any relief, even if it should change its trademark or name entirely, and British Timken or French Timken should "claim" the new trademark or name. If British Timken or French Timken should do business in the United States and sue defendant on the ground

[fol. 3116] Plaintiff's Proposed Decree, Section XII

63. Defendant objects to Paragraph A of Section XII in its entirety, for the following reasons:

First, this provision would prevent defendant from engaging in a usual and normal business transaction in the absence of any violation of the Antitrust laws, namely, granting a license for the use of its trademark limited to a specified territory.

Second, in so far as this provision would prevent defendant from restricting "any person," it is beyond the scope of the issues of this action, and would put defendant in the future in a class different from that occupied by other companies, and would cause it to be outside of the protection of the law of the land for reasons stated in support of Objection 7(f).

Third, the words "controlled, or in any way claimed" in the 5th and 6th lines, are too indefinite and objectionable for the reasons stated in support of objections 51(c) and (d), respectively.

Fourth, the words "or any other person" in the 6th and 7th lines, are objectionable for the reason that they would cause the provision to be beyond the scope of the issues involved in this action and beyond its proper scope, namely, to prevent resumption of past illegal practices, in that there is no evidence nor finding nor decision by the Court that defendant has ever made any agreement which would require British Timken, French Timken, or any one else to restrict its use of trademark or names to any name or mark other than "Timken."

64. Defendant objects to Paragraph C of Section XII in its entirety, for the following reasons:

First, this section undertakes to deprive defendant of its statutory right to apply to the United States Patent Office for registration of its trademark and therefore is beyond the authority of the Court.

[fol. 3117] Second, this provision seeks to give to the Court's decree extra-territorial effect in respect to jurisdictions, countries and areas over which it has no authority, since it is not limited to the United States, and undertakes to deprive defendant of its right to establish trademarks in the United States and elsewhere.

Third, the words "likely to be confused with," in the 3rd line, make this provision so indefinite and uncertain as to impose an impossible standard of compliance by defendant.

Fourth, it would prevent defendant from establishing new trademarks or names, etc., likely to be confused with those known by defendant to be owned, controlled or in any way claimed by British Timken or French Timken. In this respect it is, not only not limited to marks or names used in connection with the sale of anti-friction bearings, but also unlimited in the time of its application, and relates specifically to types of marks and names which have no relation whatsoever to the issues involved in this action. Even if it be assumed, for the sake of the argument, that there could be justification for a provision which gives to British Timken and French Timken, in the United States, goodwill in the existing trademark and name "Timken," which they never had before, and at the expense of defendant, upon the theory that they were required to build up their foreign goodwill based upon such existing trademarks and trade names by virtue of the business agreements with defendant, how could donation to them of new trademarks and trade

names, either in the United States or in their own territories, be justified upon any such basis? This provision would not prevent the resumption, nor cure the effect, of past illegal practices, and would obviously result in injury to defendant.

Fifth, the word "controlled" in the 5th line should be deleted for reasons stated in support of Objection 51(c).

Sixth, the words "or in any way claimed" in the 5th and [fol. 3118] 6th lines should be deleted for reasons stated in support of Objection 51(d). The use of these words in this provision would be particularly drastic, since it would prevent effectively defendant's building up any goodwill under new trademarks or trade names anywhere at any time. It would be necessary only for British Timken or French Timken to claim such marks or names, irrespective of their good faith in so doing, and defendant would be helpless. This would be contrary to the public interest, because it would hamper or destroy competition by defendant with British Timken and French Timken.

Plaintiff's Proposed Decree, Section XIII

65. Defendant objects to the following portion of Section XIII:

(a) The words "British Timken and French Timken" in the 5th line should be deleted, for the very practical reason that defendant has no way of knowing who the directors, officers, subsidiaries, agents, sales representatives and distributors of British Timken and French Timken are, unless those companies desire to give it this information and, therefore, defendant should not be charged with the duty of providing copies of the decree to them. It should be sufficient if defendant provides copies to its own directors, officers, etc., and to British Timken and French Timken.

(b) The words "subsidiaries" in the 4th line should be deleted as too indefinite and vague, and as being unnecessary.

Plaintiff's Proposed Decree, Generally

66. Defendant objects generally to the plaintiff's proposed decree because, if adopted, it would be impractical in

[fols. 3119-3120] its operation and impose too many duties and burdens upon the Court.

Respectfully submitted, (S.) Luther Day, 1759 Union Commerce Building, Cleveland, Ohio; (S.) John G. Ketterer, First National Bank Building, Canton, Ohio, Attorneys for Defendant.

A copy of the foregoing defendant's objections to the draft of judgment proposed by the plaintiff was served upon the plaintiff on the 13th day of September, 1949.

(S.) George H. Rudolph, Attorney for Defendant.

[fol. 3121] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

Civil Action No. 24214

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE TIMKEN ROLLER BEARING CO., Defendant

Reporter's Transcript of Hearing on Exceptions to Proposed Judgment

APPEARANCES:

For the Plaintiff:

Sigmund Timberg, Esq., Special Assistant to the Attorney General; W. Perry Epes, Esq.; Burt C. Dedman, Esq.; Robert B. Hummel, Esq.; and Stanley D. Rose, Esq., Attorneys, Anti-trust Division.

For the Defendant:

Luther Day, Esq.; John Ketterer, Esq.; George Rudolph, Esq.; and Robert Rybolt, Esq.

[fol. 3122] The Clerk: If your Honor please, we have for your consideration the hearing on exceptions to the proposed decree in the Timken Roller Bearing Company case.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Timberg: If your Honor please, we served the defendant with a subpoena on the 28th calling for the

production of certain documents, and I would like to request the Court to call on the defendant for response to that subpoena so that we may examine the documents and determine what use we want to make of them, if that is agreeable to your Honor.

The Court: Do you have those documents?

Mr. Ketterer: Yes, we have them.

The Court: Would you turn them over to Government's counsel?

Mr. Ketterer: (Handing documents to counsel) Some of these are original contracts. We have the originals here and also photostatic copies of them and I would like to have the originals returned, with the Court's permission, for the company's file, and substitute photostatic copies.

The Court: I think we used that method in the course [fol. 3123] of the trial and I see no reason why it should not be done.

Mr. Timberg: If the Court please, I have another suggestion which may expedite the conduct of this hearing. We have for the convenience of the Court and our own convenience, and that of defense counsel numbered the paragraphs in your Honor's opinion, on a mimeographed copy thereof, and I should like to hand a copy of the opinion as numbered to your Honor and to the defense counsel with the suggestion the Clerk be requested to put the numbers on the original copy on file in court. Reference will doubtless [fols. 3124-3126] be made to the opinion and to the findings, which are findings of fact and conclusions of law here, and I think it would expedite the references if we were all referring to the same numbers on the same pages.

Mr. Day: We are very glad to agree to that, very glad to receive a copy with the numbered paragraphs.

[fol. 3127] The Court: You may now proceed.

Thereupon the defendant called as a witness Whitley Benjamin Moore, who, being first duly sworn, testified as follows:

Direct examination of Whitley Benjamin Moore.

By Mr. Ketterer:

Q. Will you state your name, please?

A. Whitley Benjamin Moore.

Q. I believe you testified, Mr. Moore, at the time of the trial of this case in 1948?

A. I did.

Q. You are still in the employ of the Timken Roller Bearing Company?

A. I am.

Q. And your present position with the company is what?

A. Vice-president in charge of sales.

Q. Have you for a number of years been acquainted with the method by which antifriction bearing companies in the American market have handled the distribution of bearings?

A. I am.

Q. And I would like to ask you what the practice has been in the antifriction bearing industry in this country as to [fols. 3128-3129] whether distributors of antifriction bearings handle the product of more than one manufacturer?

A. The distributors do handle more than one product.

Q. And as a matter of practice do they handle more than two or do they confine their representation to two companies?

A. It varies with the interests that they may have in antifriction bearings, but I can safely say that all distributors handle two or three makes of antifriction bearings and many of them a dozen or more.

[fol. 3130] Q. Now, I have here two books, Mr. Moore, that have been marked for identification as Defendant's Exhibit A (decree) and B (decree) and I will ask you if you can identify those?

A. Exhibit A is a catalog published by the Detroit Ball Bearing Company of Detroit, Michigan.

Q. And Exhibit B is what?

A. Exhibit B is a similar catalog of antifriction bearings distributed by the Minnesota Bearing Company of St. Paul, Minnesota.

Q. Will you tell the Court the general nature of these two companies to which you referred, the Detroit Ball Bearing Company and the Minnesota Bearing Company?

A. Both of these companies are in business for the distribution of antifriction bearings and to an extent also the distribution of so-called friction or plain bearings.

Q. Now I will direct your attention to the first divider in the book marked Defendant's Exhibit A, which has the heading of "Ball Bearings" and has a list of names there. Can you identify the names that appear on that page?

A. I can identify the names of Fafnir, Kilian, McGill, [fol. 3131] M-R-C, New Departure, Nice, Norma-Hofffan, Schatz, SKF.

Q. What business are those companies in?

A. They are manufacturers of antifriction bearings.

Q. And looking at the next divider under the heading of "Roller Bearings" in Section 2 in the same exhibit can you identify the companies whose names appear on there as to whether or not they are manufacturers of roller bearings?

A. I can identify the names of these manufacturers, American, DBB, Hyatt, McGill, Norma-Hoffman, Orange, Rollway, SKF, Timken and Torrington, who are manufacturers of roller bearings.

Q. To your knowledge does Detroit Ball Bearing Company represent all these various companies that are listed in their catalog?

A. To the best of my knowledge that is the current representation.

Q. On an unnumbered page in the forepart of Defendant's Exhibit B there is a list of companies under the heading "We are the authorized distributors for the following manufacturers of ball and roller bearings", and would you identify the companies whose names appear there as manufacturers of ball and roller bearings in this country? [fol 3132] A. I can identify as manufacturers of ball and roller bearings Aetna, Bantam Bearings Company of America, Fafnir, Hyatt, Kaydon, M-R-C, McGill, Nice, The Roller Bearing Company of America, Rollway Bearing Company, Schatz, SKF, Timken Roller Bearing Company and Torrington Company.

Mr. Ketterer: We offer at this time Defendant's Exhibits A and B.

The Court: They may be received.

[fol. 3133] Q. Now, is the practice of authorizing distributors in the antifriction bearing industry in the United States, of which these catalogs are illustrative, general among other authorized distributors?

A. Quite general. There are many distributors I might mention handle not only antifriction bearings of one type or another but handle also other automotive and industrial parts.

Q. Along with the——

A. Along with the bearings.

Q. Now, to your knowledge has there been at any time in the matter of the representation of the antifriction bearing industry in the United States any representation by manufacturers of other manufacturers of antifriction bearings?

A. I can't recall of any such instance.

Q. Well, do you know of any instance in which the Timken Roller Bearing Company has had as its representative for the sale of bearings any manufacturer of tapered roller bearings?

A. No, sir.

Q. You don't recall any instance of that kind. Do you remember as to whether Ahlberg at any time represented the Timken Roller Bearing Company?

[fol. 3134] A. Oh, a number of years ago the Ahlberg Bearing Company did represent Timken Roller Bearing Company on the replacement of Timken bearings. I think that arrangement was concluded, oh, perhaps in 1937 or 1938.

Q. And is the Ahlberg Company a manufacturer of antifriction bearings?

A. They were, and I believe are, currently.

Q. Do they currently represent the Timken Roller Bearing Company in the distribution of bearings?

A. They do not.

Q. Do they represent any other manufacturer of antifriction bearings in this country to your knowledge for distribution of bearings?

A. Yes, they represent the Bower Roller Bearing Company, and I believe certain other ball bearing companies.

The Court: What is that—the Bower?

The Witness: The Bower, B-o-w-e-r.

Q. And that Bower Company is located where?

A. In Detroit, Michigan.

Q. Are there any other instances you know of in which manufacturers of bearings have acted as distributors of bearings for the Timken Company in the past?

A. Well, there are some instances. For example, I can mention the National Supply Company at Torrance, Cali-

[fol. 3135] fornia, who have a division for the manufacture of antifriction bearings, but which also operate as distributors of Timken bearings.

Q. What type bearings do they manufacture?

A. They make tapered roller thrust bearings.

Q. Are there any other instances you know of in which that practice has been followed?

A. There is a company in Los Angeles, I think the name is Bearings Service Company, who manufacture certain ball bearings and at the same time are distributors of Timken bearings. There is a similar organization, I believe the name is Bearings Supply Company in Pittsburgh, who manufacture ball bearings and who also have distributed Timken bearings.

Q. Do any of the automobile manufacturers to whom Timken sells bearings manufacture bearings of their own?

A. Yes, sir.

Q. And who are they?

A. Currently—by automobile, I presume you wish to include trucks—currently there is a truck producer, the International Harvester Company, Chicago, Illinois, who have their division of their company manufacturing ball and tapered roller bearings. A few years ago International had a department for the manufacture of tapered roller bearings and at the same time were purchasing and dis-
[fol. 3136] tributing Timken bearings. I think Ford Motor Company at one time had a division for the manufacture of roller bearings and at the same time were buying roller bearings from Timken and other producers.

Q. What is the fact as to whether the International Harvester Company also buy bearings from other producers besides Timken?

A. Yes, sir, they do.

Q. At the same time that they manufacture bearings?

A. That is right.

Q. Do those other people to whom you referred, the Bearings Service Company and the Los Angeles Company and the Pittsburgh company also buy bearings from other sources than Timken?

A. They do.

Q. And act as distributors of other companies as well as Timken?

A. That is right.

Q. In the foreign field, Mr. Moore, what has been the general practice in the antifriction bearing industry as to having distributors who represent more than one company?

A. I would say the foreign practice is very similar to that domestically. These foreign distributors handle more than

one make of bearing and generally handle in addition other automotive or industrial parts.

[fol. 3137] Q. And your knowledge of that practice goes back for how many years?

A. Well, as long as I remember, I would say at least 25 years.

Q. In selecting foreign distributors to represent the Timken Company has the Timken Company made any effort to select distributors that act for one company rather than another or any one company rather than another or any other companies?

A. I am not sure I understand your question.

Q. I will withdraw that question. Do you, in selecting foreign distributors make any effort to line up the distributor that represents Timken with their representation of any other particular bearing manufacturer?

A. No, we choose distributors who we think are best qualified to represent us.

Q. And that has been the practice to your knowledge for 25 years?

A. That is right.

Mr. Ketterer: I think that is all.

Cross-examination of Whitley Benjamin Moore.

By Mr. Timberg:

Q. Mr. Moore, I would like to ask you, as to the names of companies that you read from Defendant's Exhibits A and B as being manufacturers of products that were [fol. 3138] handled by two distributors, were any of those manufacturing companies engaged in the manufacture of tapered roller bearings?

A. Some may be. Bantam, for example; Torrington Company of Minnesota, they also manufacture tapered roller bearings. There may be others that I don't recall that also manufacture tapered roller bearings.

Q. You have no distributors in the territories that have been serviced largely by British Timken or French Timken, do you, Mr. Moore?

A. No distributors in the territories represented by these companies?

Q. I am speaking of your testimony about the foreign distribution system.

A. No, that is right.

Q. You have no distributors in those territories?

A. Not to my knowledge.

Q. If you found equally qualified distributors in Latin America, one of them was going to just plug your own product and another was going, say he wanted to handle a full line of products and competing products as well, which one would you choose?

A. Well, we naturally would not choose a distributor handling a competing line.

[fol. 3139] Q. You wouldn't choose a distributor handling a competing line?

A. That's right.

Q. Are you concerned, Mr. Moore, with the sales on the original installation basis as well as with sales on the replacement basis?

A. I am.

Q. And that is within your province. Do you have any company policy with respect to doing business through your own manufacturing subsidiaries as opposed to doing business through distributors?

A. Well, I am not sure that I know to whom you refer when you say "manufacturing subsidiaries".

Q. Well, I understand that the record in this case shows you have a subsidiary in Brazil.

A. Subsidiary?

Q. It is not a manufacturing subsidiary but a subsidiary to whom you——

A. They do not manufacture.

Q. —to whom you lend technical engineers and who were concerned with the original installation business as well as replacement sales.

A. That's right.

Q. Now, would you favor in the allocation of your foreign business such a subsidiary over an independent distributor?

[fol. 3140] A. Well, in Brazil, for example, our South American company would in turn appoint certain other distributors for handling our bearings in Brazil and in fact any other companies in South America. In other words they act as our sales department down there.

Q. Well, you would prefer a sales department that was being supplied with your sales engineers and was under

your control to one that was an independent sales distributor?

A. Well, that is certainly true with reference to the sale of bearings for original equipment, not necessarily for replacement bearings.

Q. That is right. I understand you, Mr. Moore. My question was limited to original installation sales. Now, what are the reasons you prefer to do business through this non-independent distributor subject to your control and a distributor to whom you had given technical assistance, as over and above an independent distributor?

A. Well, the application of Timken bearings to original equipment is quite a technical matter and insofar as possible we want to have fully qualified sales engineers to handle the sales so that we can be sure the bearings used by the customers are going to perform satisfactorily and be a credit to them and to us.

Q. And you are more certain of that service being rendered to the foreign users when you have had an opportunity [fol. 3141] to give to those distributors the benefit of your technical assistance?

A. Such organizations are quite carefully trained by us and the men in them.

Q. With respect to original sales in a country where you have been investing your own technical manpower and supplying these services, would you be willing in quite the same way to supply those services to a distributor who was also getting technical services form another company and who was representing another company on original installation business?

A. We would not.

Q. You would not?

A. That is right.

Mr. Timberg: I think that is all.

Redirect-examination of Whitley Benjamin Moore.

By Mr. Ketterer:

Q. Mr. Moore, as a matter of practice in this country, isn't it a fact so far as the original installations of bearings, or in other words, dealing with manufacturing customers, that is a type of trade that is not handled by these authorized distributors; isn't that right?

A. That is right. Authorized distributors such as we know them, do not sell to original equipment manufacturers [fol. 3142] but handle bearings for replacement purposes.

Q. In other words, they service the retail trade, if you use that term?

A. Yes.

Q. On the matter of making sales to manufacturing customers, is it a fact that is something handled directly by the company rather than through any intermediary?

A. Yes, that is right.

Q. How long has that been the practice of the Timken Company?

A. Well, as far as I know, continuously.

Q. And is that the practice that is followed by all other antifriction bearing manufacturers to your knowledge?

A. Why, it is very generally the practice by the major producers, at least.

Q. In the respect of foreign sales, to what extent do they in fact contact original manufacturing customers?

A. The authorized distributors have very little contact with manufacturers. I would say if they have any contact at all it is a lia-son matter; in other words, they may put us in direct touch with manufacturers but have no financial interest in the further negotiation of the sale, so far as the engineering work is concerned in laying out the bearings and the design, and that sort of thing.

Q. What is the fact as to whether foreign distributors [fol. 3143] are trained to have that know-how, or is that something handled out of the company's main sales department?

A. To the best of my knowledge the foreign distributors do not have men technically trained on the application of bearings. There may be exceptions to that, but as far as I know they do not.

Mr. Ketterer: That is all.

Recross-examination of Whitley Benjamin Moore.

By Mr. Timberg:

Q. Mr. Moore, just to clarify the economic significance of your testimony, I would like to ask you what the percentage of business is that is done through authorized

distributors who do replacement sales, are engaged in replacement sales transactions?

A. Are you talking domestically or foreign sales?

Q. Well, I would like the foreign sales.

A. Well, by far the greater percentage of our foreign sales are replacement sales. I think it is quite obvious that the United States and the European countries are the world's principal producers of automotive and industrial equipment, and consequently our sales have been largely for replacement purposes.

Q. That has been equally true in the Latin American countries?

A. That is rght.

[fol. 3144] Q. When you say largely, could you express that in terms of the dollar volume of your business in Latin America?

A. Express it in terms of what?

Q. Of the dollar volume of your business in Latin America.

A. I can't give you those figures offhand, I am sorry. I could get them for you; I couldn't give them offhand.

Q. There was some testimony in the trial that domestically 95% of your business was on original installation.

A. Percentage-wise?

Q. And 5% on replacement sales.

A. Percentage-wise about 5% are for replacement and 95 for original equipment.

Q. Wasn't there some testimony that the figure would be actually higher than that in the original hearing, or would you venture a statement as to that, speaking of the Latin American or South American concerns?

A. I don't recall.

Q. You are not aware of the figures on that. Now, would you in trying to make a foreign sale utilize the services of a foreign manufacturer who manufactured a line competing with yours?

A. No, we would not use the services of a foreign manufacturer.

Q. Would you utilize the services of a foreign manufacturer's agent?

A. Well, it might possibly be.

[fol. 3145] Q. But not so likely?

A. That is right.

Q. Would you utilize the services of anybody who was a full-time employee or sales representative of a foreign manufacturer?

A. No.

Q. You probably would not. Would you utilize the services of any technical engineers that were supplied, that were on the payroll of foreign manufacturers? You are probably staggered by the question because as I gather from the testimony you feel your own engineering is better.

A. I am trying to turn over in my mind the circumstances where that might be the case. I don't recall.

Q. There would not be any situation where you would do that. It is a fact, is it not, that you have made such technical assistance available to British Timken?

A. Yes.

Q. You have also made your advertising literature available to British Timken?

A. Yes.

Q. And on a few occasions when British Timken was trying to promote original sales, I believe, original sales within its own territory, they took along your American Timken technical representative?

[fol. 3146] A. Yes.

Mr. Timberg: I think that is all.

Mr. Ketterer: That is all.

[fol. 3147] Thereupon the defendant called as a witness William Robert Timken, who, being first duly sworn, testified as follows:

Direct examination of William Robert Timken.

By Mr. Ketterer:

Q. Your name is Robert Timken?

A. William Robert Timken.

Q. I believe you testified, Mr. Timken, at the trial of this case in 1948?

A. I did.

Q. Have you made any investigation of the figures as to the value of the Timken Roller Bearing Company's investment in the British Timken Company as of the present time?

A. Yes, I have.

Q. What is that, please?

A. The current market value, as judged by the British Stock Market quotations, is about $1,350,000.

Q. And that is held in what form?

A. Chiefly in common stock of British Timken, but there is some preference stock included in that figure.

Q. How many shares of common stock are there?

A. We own or control 121,040 shares of common stock.

Q. How many shares of preferred stock?

[fol. 3148] A. 10,000 shares.

Q. Now, when were the shares of preferred stock acquired?

A. They were acquired when the stock was sold to the public in late '48.

Q. That is when the preferred stock was sold to the public in '48?

A. Yes.

The Court: Your reference there is only to the preferred. The common was not bought at that time?

The Witness: No, sir.

Q. The common stock represents what as to time of acquisition, and so forth?

A. Well, we have held part of it since we acquired the interest in British Timken. That has been increased and decreased. First we sold some with Dewar on the market in England. At that time we bought a portion of what was offered to the general public, and since that time there have been stock dividends paid, so it has increased that way.

Q. The total you gave represents the present total of common shares held by Timken Roller Bearing Company in British Timken?

A. No, that is the total held by us and by Timken Holdings, which holds some.

[fol. 3149] Q. Who is the owner of Timken Holdings as of the present time?

A. We are.

Q. That is, the Timken Roller Bearing Company owns all of Timken Holdings?

A. Yes.

Q. Originally did Mr. Dewar have any interest in Timken Holdings?

A. Yes, originally he had an interest in it.

Q. And his interest was dissolved out of the Timken Holdings Company when?

A. In 1948.

Q. And the purpose of his withdrawal from Timken Holdings was what?

A. I believe it effected a saving in his taxes.

Q. As to the physical location of the shares of stock in British Timken, where are they located as of the present time?

A. Most of them are in England but we have in this country the 10,000 preference shares and 16,000 common shares, those being the 10,000 common shares we bought when the stock was offered to the public, plus the stock dividends that have been paid on those since.

Q. And the balance of the stock is in England?

A. The balance is in England.

[fol. 3150] Q. As to the French Timken holdings, will you tell the Court the present market value of the investment of the Timken Roller Bearing Company in French Timken?

A. Well, there is really no market value because the stock is not quoted on any exchange, but based on the book figures of French Timken our half interest is worth approximately $650,000.

Q. And you have against that what cost basis?

A. We have a cost of $300,000.

Q. As to the British Timken investment, did I ask you what your cost base against that was?

A. No, you didn't. It was about $330,000.

Q. As to the present time?

A. Yes.

Q. Now, in what form does the investment of French Timken stand at the present time?

A. Well, it is in a number of forms; there are notes, preferred stock and common stock.

Q. By notes you refer to what?

A. Promissory notes of French Timken.

Q. And they are payable to whom?

A. The Dewar and ourselves.

Q. And where are those notes located?

A. In England.

Q. And can you tell the Court the breakdown in the in-
[fol. 3151] vestment as between common stock, preferred stock and notes?

A. I haven't got those figures exactly.

Q. But the total investment is the figure that you gave here a while ago?

A. Yes.

Q. Now, in addition to that did you have any notes of Mr. Dewar in respect of the establishment of the French company?

A. We do. We hold a note which he originally gave us when he purchased enough of the French company to make his holding a full 50%.

Q. And that was given as of what time?

A. About 1935.

Q. Has that note been repaid?

A. Not entirely; there have been payments on it.

Q. The face amount of that originally was how much?

A. $150,000.

Q. There is currently due how much on it?

A. About $120,000.

Q. Is there a copy of the note in this country to your knowledge?

A. No, that is in England.

Q. Is that note payable absolutely by Dewar or is the payment restricted to a specific source?

A. The payment is to be made out of, first, the profits
[fol. 3152] of French Timken, as distributed, but the stock of Dewar in French Timken is held as collateral to the collateral agreement.

Q. How many shareholders does the Timken Roller Bearing Company have?

A. Just under 20,000.

Mr. Ketterer: I think that is all.

Cross-examination of William Robert Timken.

By Mr. Timberg:

Q. Mr. Timken, would you tell me something of the security arrangement that you have underlying the indebtedness of the French company? That is, you referred to promissory notes, and to common stock indebtedness. I should

like to know from you what security is there underlying that?

A. What the security is that underlies the notes? Well, the company, the plant.

Q. There was a pledge of the business, pledge of the shares of stock?

Mr. Day: He said the plant.

The Witness: What I meant is for the promissory notes.

Q. This is an unsecured promissory note or a secured promissory note?

A. Unsecured, I believe. There are several notes; it is [fol. 3153] not one.

Q. What is the date of those notes?

A. I can't give you that exactly. It was in the early '30's, I believe, between '30 and '34 or '35, along in those years.

Q. Has the indebtedness of those notes been reduced from time to time?

A. They did make, I believe, one payment on the notes.

Q. In what form was that payment made?

A. I think it was made in gold.

Q. Shipped to this country?

A. No, shipped to England.

Q. Did I understand you to say, Mr. Timken, that there were no copies of these notes available in the United States?

A. We have none.

Q. You have no copy. I understood you to say you have the preferred shares of the British Timken in the United States?

A. Yes.

Q. Did I understand you to say you did not have the originals of your shares of common stock in this country?

A. No, we have a part of the common stock,—16,000 shares of common.

Q. As with respect to the part of the common stock you don't have in this country, do you have any stock certifi- [fol. 3154] cates, anything you can point to as evidence of ownership of the stock?

A. No, that stock is held by Timken Holdings. We own the stock of Timken Holdings.

Q. And therefore, by virtue of the stock ownership of the stock of Timken Holdings—is that 100%?

A. Yes.

Q. Therefore you are in position to dictate the policies of Timken Holdings, Limited, pretty completely?

A. Yes.

Q. You mentioned the fact that the Timken Roller Bearing Company had how many stockholders?

A. Exactly about 19,500.

Q. In view of the fact that you have the indebtedness from British Timken and claims to the profits of British and French Timken, and an interest in the equity of French Timken, do you have any explanation as to why you don't have available in this country the evidences, the physical evidences of the indebtedness and the physical evidences of the shares of stock that are in England?

Mr. Ketterer: We object to that.

The Court: What is the objection?

Mr. Ketterer: That is immaterial and irrelevant why they [fol. 3155] haven't the shares of stock in this country.

The Court: I think the Court would be interested in what if any evidences there are, or what the reason for it is that those shares are held in England. Maybe there is some reason.

A. Well, Timken Holdings——

Q. I was merely inquiring as a matter of ordinary corporate practice. It is usual for a corporation to have in its possession the evidences of indetedness and the evidences of the equity interest that it has in foreign corporations or in domestic corporations for that matter.

Mr. Ketterer: I object to that. I don't know whether that is an inquiry or an observation or advice. I ask it be stricken from the record.

The Court: It may be stricken.

A. (Continued) Shall I answer the first one? In the first place British Timken stock in England is owned or held for us by Timken Holdings, which is an English corporation. It is natural they would handle the stock. In the second place, Mr. Duncan is our attorney over there and he has handled our interest in those matters for a number of years.

Q. Who are on the Board of Directors of Timken Holdings, Limited?

[fol. 3156] A. I don't know who is on except I believe Dewar has gotten off; Duncan, certainly.

Q. Duncan is on, and is the choice of the other directors up to Mr. Duncan or how many directors are there in Timken Holdings?

A. I think there are three.

Q. I would judge he would have his men as the other two?

A. His representatives.

Q. Do you issue any instructions to Mr. Duncan or to the other directors as to how you want the stock voted?

A. The stock of British Timken?

Q. The stock of British Timken.

A. Yes, we have told them. I don't know that we issue specific instructions but he understands we go along with Dewar as long as the company is successful.

Q. What is the other nature of the instructions which you issue to the directors of Timken Holdings, Limited?

A. I don't believe there is any others.

Q. Would you say that the arrangement that you had was in economic effect similar to that of a voting trust, in which by and large, Mr. Duncan exercises discretion as long as Mr. Dewar didn't rock the boat?

A. No, I wouldn't say Mr. Duncan did exercise discretion.

Q. He did not exercise discretion?

[fol. 3157] A. He followed our wishes. He knew we were to go along with Mr. Dewar as long as the company was successfully managed.

Q. Could you tell us what the due dates are of the promissory notes which you referred to?

A. They are serial notes. No, I couldn't tell you what they were.

Q. You couldn't tell us what the due dates of the notes are?

A. That is information I can get.

Mr. Timberg: In connection with this transaction, from our standpoint, we have the necessity of examining considerable material that counsel have been good enough to furnish us, and we have subpoenaed Mr. Timken on our own account. I do wish to return to Mr. Timken later on, if there are details that haven't been cleared up in the interim; and this examination of mine is only confined to clarify the matter.

The Court: You want to reserve the right to cross-examine Mr. Timken further?

Mr. Timberg: I want to reserve the right to cross-examine him further.

The Court: That may be done.

Redirect examination of William Robert Timken.

By Mr. Ketterer:

Q. Mr. Timken, Timken Holdings was organized when? [fol. 3158] A. I think it was in 1934.

Q. And that was at the time that the stock or part of the stock that had previously been owned by the Timken Roller Bearing Company and Mr. Dewar was offered for public sale?

A. That's right.

Q. And the purpose of the organization of the company was to place the stock under common control in connection with the management agreement that had been worked out with Mr. Dewar?

A. Yes, sir.

Q. That was merely a matter of continuing the management agreement with Dewar that had been worked out at the time of the acquisiton by Dewar and the Timken Company of the British Timken Roller Bearing Company?

A. Yes.

Q. At the present time does the Timken Holdings have any business aside from the holding of the stock of the Timken Roller Bearing Company?

A. That is all it ever did have.

Q. In respect of the handling of the Timken stock as of the present time what is the fact as to whether it is subject to the management agreement as currently in effect?

A. Yes, we have an agreement with Mr. Dewar.

Q. And in the voting of that stock anybody who acts for [fol. 3159] or on behalf of Timken Holdings is bound by that management agreement, is that not the fact?

A. Yes.

Mr. Ketterer: That is all.

If I said the Timken Holdings is holding the stock of the Timken Roller Bearing Company, that was an inadvertance; it is the stock of Britsh Timken.

The Court: I understood that was what you meant.

Recross-examination of William Robert Timken.

By Mr. Timberg:

Q. Is this management agreement you have referred to in evidence in this proceeding?

A. I think it is.

The Court: That is the agreement to which reference was made in the course of the trial?

Mr. Ketterer: Yes, there is a copy in evidence.

Mr. Timberg: I just wanted to be sure we were talking about the same agreement.

Q. Does Mr. Duncan have physical possession of the notes that are held in your name?

A. No, they are held by the Westminster Bank.

[fol. 3160] Q. By the Westminster Bank and the account is in your name?

A. That account is in joint names.

Q. That account is in joint names. Are the dividends of the French Timken stock being paid currently?

A. They were paid up to the war and at that time it was agreed mutually to suspend the French Company. The fact is we didn't even have a plant. I don't believe there have been any payments since the war as dividends.

Q. Has that been because of the financial operating condition?

A. Yes, they have been under very difficult conditions.

Q. They have been under difficult conditions. What is the general understanding with respect to French Timken stock as to what happens if dividends are not paid?

A. It is not so much the dividends. The agreement we have with Dewar is that $24,000 a year be paid, and as long as that is done he is in control of the company—similar to the management agreement for the British Timken.

Q. But your testimony is to the effect no payments have been made since the war?

A. We have gone along on that because of current conditions.

Q. But you do have the option to assume control of French Timken provided he would not make up the back payments?

A. Provided he would not make up the back payments.

Q. Do you have any notion how long the notes and the [fol. 3161] stock that we have been talking about as located

in England have been there? Has that been from the date of their issuance?

A. I think the big majority has been there. There have been qualifying shares held in France.

Q. Qualifying shares were held in France, and the stock owned by American Timken in French Timken has been held in England since the original shares were issued?

A. The biggest majority of them.

Q. Is the only exception to that the qualifying shares?

A. I believe it is.

Q. With respect to the notes, when they were originally entered into, where they deposited in England?

A. Yes, I think they have been there since that.

Q. Since issuance, and in this same Westminster Bank account?

A. Yes.

Q. Now, did I understand you to say that Mr. Dewar no longer has any holdings in Timken Holdings, Limited?

A. He has no ownership in Timken Holdings.

Q. Does he have any other interest in Timken Holdings?

A. In Timken Holdings?

Q. Timken Holdings, Limited?

A. No, he has no interest.

Q. Neither as a director?

A. I believe he has resigned as a director.

[fol. 3162] Q. You believe he has resigned as a director. What is the extent of Dewar's present interest in British Timken?

A. I have that here. (Refers to paper) To the best of our knowledge he owns 94,960 common shares. He may hold a few shares of preferred but it is purely a nominal interest. Of this 94,960, it is possible Pascoe owns some. In other words we consider Pascoe and Dewar as one.

Q. What is the current market value of that holding, Mr. Timken?

A. I believe the latest quotation on British Timken common stock is 77 shillings. I would have to work that out.

Q. In other words he has 94,960 shares worth 77 shillings, and you would have to work it out on the new currency system?

A. That is right. It dropped quite a bit on account of the devaluation.

Q. What is the extent of his holdings; does he hold common or preferred shares?

A. A very nominal amount of preferred, a hundred shares, probably.

Q. What is the market value of the preference shares held by your company?

A. The last quotation on that was a British paper issued [fol. 3163] before the devaluation in pounds, and at that time it was quoted at 19 shillings and 9 pence.

Q. So that your 10,000 shares would be——

A. Oh, roughly 25 to 30,000 dollars, depending on what happens to quotations after the devaluation.

Q. Do these preference shares have voting rights?

A. Only in the case of the dividends not being paid.

Q. What is that dividend?

A. 4½%.

Q. Do you have any indication of the worth of the stock in Timken Holdings, Limited? You have indicated that is so closely held it is hard to get quotations on it, but the stock of British Timken is of different nature, it is traded?

A. It is traded in.

Q. Listed on the Exchange. Do you have any knowledge how actively it is traded in on the Exchange?

A. I couldn't tell you how active; it is quoted occasionally as being sold.

Q. Transactions do take place?

A. I wouldn't say it is an active stock, it is traded in.

Q. Your estimate of the value of the shares was based on the stock market quotation?

A. Yes.

Mr. Timberg: That is all.

[fols. 3164-3168] The Court: What is the total amount of common stock outstanding at the present time?

The Witness: Of British Timken?

The Court: Yes.

The Witness: 400,000.

Mr. Ketterer: I think, if your Honor please, the facts as to the percentage of stock that is owned by Mr. Dewar and American Timken in British Timken is already in the record. I didn't want to encumber it further.

The Court: That is the reason I accepted it. I understood the interest of Timken Roller Bearing Company was approximately 30%.

Mr. Ketterer: That is correct.

The Court: I didn't know whether it had changed.

Mr. Ketterer: No, it remained the same. The holdings as between Dewar and Timken is approximately 50% in British Timken.

[fol. 3169] Thereupon the defendant called as a witness Imrie De Vegh, who, being first duly sworn, testified as follows:

Direct Examination of Imrie De Vegh.

By Mr. Ketterer:

Q. Will you state your name?

A. Imrie De Vegh.

Q. You testified, Mr. De Vegh, I believe at the trial of this case previously?

A. Yes, sir.

Q. I believe at the time you testified before you made a distinction between what you referred to as competitive trade as distinguished from administered trade?

A. That is so, sir.

Q. As a preliminary, will you explain just briefly to the Court what you meant when you referred to those two terms?

A. I meant competitive trade in the conventional sense as freely competitive on a price or quality basis among competitors having more or less equal access to the market. In the case of administered trade this competition on a price basis with equal access to market is removed by administrative action by government. This is a phenomenon that has become prevalent. That first appeared after the [fol. 3170] First World War and has become very prevalent after the Second World War, until at the present time the bulk of the foreign countries of the world trade on a strictly administered basis. In other words, on a basis in which, for instance, a market is allocated among suppliers not on the basis of who the most efficient or lowest cost supplier is but on the basis of what currency the payments are to be made in which the supplier would require.

Q. And I believe you testified before that that condition was very general throughout the world outside of the United States of America?

A. Since the Second World War very general, yes, sir.

Q. Now, since you have testified in the spring of 1948 has there been any change in respect of the manner in which trade is conducted, as to whether there is more or less administered trade or more or less competitive trade?

A. Very disappointingly since April, 1948, the situation has become worse, in the sense that the administered restrictions especially in Great Britain have become worse.

Q. By worse you mean what?

A. I mean that today there are more limitations on imports from the United States into the United Kingdom, and [fol. 3171] quantitatively the trade is more restricted than it was in April, 1948.

Q. Have you made a check on the Government statistics on the subject of exports of antifriction bearings from the United States into the United Kingdom and other countries of the world?

A. At the time of the trial I believe that was introduced in evidence.

Q. Have you checked since that time to bring the figures down to date as taken from the Government figures on exports?

A. I have checked the total exports of bearings from the United States to all countries for '47—well, '47 was already in the record—for '48 and the first part of '49.

Q. I hand you here a paper marked for identification as Defendant's Exhibit C (decree) and I will ask you if you can identify that?

A. This is the tabulation that I have prepared.

Q. And shows the exports of antifriction bearings from the United States to the United Kingdom and other countries of the world?

A. That is right.

Mr. Ketterer: We offer Defendant's Exhibit C in the record.

[fol. 3172] The Court: It may be received.

Q. Now, looking at Defendant's Exhibit C will you explain to the Court what that shows in respect to exports from the United States to the United Kingdom of antifriction bearings, as to whether there has been a decline or as to whether there has been an increase in such exports?

A. The peak was reached in 1948 when 5 million dollars worth were exported. In the first half of 1949 the quantity

was down to slightly over 1 million, to be precise $1,175,000, in round figures, which is at an annual rate considerably less than half the rate of '48. However, during these six months there were no additional restrictions imposed on imports into the United Kingdom. Additional restrictions were imposed in July, 1949.

Q. When you say there were no additional restrictions——

A. Additional as compared to what the nature of the administration of trade was in the years 1946, '47 or '48.

Q. Now, have there been additional restrictions imposed on trade to the United Kingdom since July 1st, 1949, or immediately prior to that date?

A. On July 5, 1949, the Chancellor of the Exchequer announced a standstill on imports from the United States. [fol. 3173] This was further specified—this was a statement made in the House of Commons. On July 14th, there was a further statement elaborating this standstill which said that for the three months no new commitments to import from the United States will be allowed either on Government or on private accounts, excepting that the British Government may allow the honoring of existing commitments and that in special cases where it is apparent a loss or stoppage would result from not importing or where the importing is necessarily of a seasonal nature there will be exceptions made to this absolute rule of three months standstill. Further, he announced that for the following year there will be a 25% over-all reduction in total purchases from the United States. And, finally, he announced that there will be a re-programming of machinery and related imports from the United States after the British Government has seen what the result of these dollar-saving measures will have been.

Q. Now, after July 14, 1949, have there been any other steps taken by the government of the United Kingdom in respect of controlling or restricting imports from the United States of America?

A. A bi-lateral trade agreement was concluded with Argentine, which was so discriminatory against American products that the State Department I believe entered a [fol. 3174] protest against it but finally, I believe, approved it or accepted it as clearly inevitable under the present conditions. The most important feature of this is that it happened in spite of the ERP.

Q. When you say a bi-lateral trade agreement, you mean what: will you describe that briefly to the Court?

A. What I mean, sir, is when two countries agree to transactions among themselves, to concessions between themselves not available to other countries, only available to the two contracting parties, and that are not available on a multi-lateral basis to other countries.

As you know, the United States' policy is to promote multi-lateral trade and multi-lateral agreements wherever possible. That is clearly to the interests of the most efficient producer, if it can be put into operation. The reason why it has such difficulties in being put into operation is because the less efficient producing countries are all terrified of being swamped with merchandise on a multi-lateral basis and therefore they try to exclude and protect themselves and limit their trade to countries more their own size in economic competition.

Q. Now, has there been any recent conference in Washington in respect of the trade policy of the United Kingdom in respect of imports from the United States?

[fol. 3175] A. There has been the Three Power Washington conference which ended on September 12th, at the end of which a communique was issued, point 12 of which admits for further consideration the practice that the United Kingdom will be allowed to loosen its import restrictions discriminatorily in favor of other weak currency countries.

Q. In other words, does that mean the American Government has given recognition of this bi-lateral policy that was announced of the Argentine-United Kingdom bi-lateral agreement?

A. That is my opinion.

Q. Have you an opinion as to whether or not the restrictions as they currently exist on trade between the United States and the United Kingdom and the Sterling countries, generally are likely in the future to be relaxed or whether they may be intensified?

A. I believe that the policy of restriction is very unlikely to be relaxed except possibly under exceptionally favorable conditions for very short periods of time, which I do not specifically foresee at the present time. Consequently, I believe that the quantity of total trading is likely to diminish somewhat.

If I might give you my reason, it is this: that in recent

years the quantity of total trade and the value of total trade was at the record level. American exports in total [fol. 3176] quantity and value have never been as high as they have been in recent years, as my own exhibits show, but that was trade financed by the highest gift and loan appropriations that this country has ever made to foreign countries. Now, these foreign countries all suffered from this dollar drainage, which is the reflection of our immense productivity. The dislocation caused by the Second World War made them handle on an administered allocated basis whatever dollars they have. The quantity of dollars is determined to a limited extent by the amount they can sell to the United States, and in recent years, controllingly by the amounts that were made available as loans and gifts, which have been running in the amount of six or seven billion dollars a year. Now, I understand it is the policy of Congress and the Government to reduce the ERP appropriations yearly. I believe this year's proposed appropriation is somewhat lower than last year. I don't believe Congress has passed the final vote yet. I believe it is in the program, and it has been reiterated by the Administration all the time that by 1952 the ERP will terminate, and this can only mean that the supply of dollars to foreign countries is going to be reduced very substantially, because the amount involved is so large. Where else are there five or six billion dollars [fol. 3177] annually available to foreign countries additional to their present sources other than the ERP to fill the gap? I do not see these additional dollars forthcoming and therefore at the present time you have to conclude that the total amount of U. S. foreign trade has passed its peak.

Q. Has the recent action of the British Government in devaluing the pound any effect on the value of exports to the United Kingdom?

A. The purpose of the policy is to make American products more expensive for Britishers than they were before, and to make British products cheaper for Americans as well as Canadians and other foreigners that did not follow the devaluation of the Sterling, which of course wasn't very many.

Q. And if the effect of the policy is as you have indicated, namely, to make American products more expensive for Britishers, have you an opinion as to whether that will tend to increase or decrease exports from the United States?

A. I think, frankly my opinion is that it will not make much difference because the British are buying from the United States today everything for which dollars are available. If dollars were available in unlimited supplies they would probably buy two or three times as much. I should have said this in the past tense. When the pound [fol. 3178] was at $4 the demand in England for American products was notoriously very much greater than the dollars that the British Government could make available. Now, the fact is that the total number of dollars that the British Government is going to make available for the purpose of importing from the United States is going to be less next year than last year. Whether the devaluation of the pound and the resultant increase in the cost of American products is enough to cut out all this backlog of unsatisfied demand seems to me doubtful. I believe the controlling factor with respect to the value of trade will be what the British Government allocates, and there will be demand for every dollar the British Government can allocate.

Q. From the standpoint of imports into the United States of antifriction bearings have you an opinion as to whether or not the devaluation of the pound will have any effect on that?

A. You are referring specifically to antifriction bearings rather than generally?

Q. That is right.

A. I do not believe it will have a perceptible effect because I do not see where significant quantities of antifriction bearings would come from. The fact that antifriction bearings [fol. 3179] were so badly needed in Europe throughout recent years that they were a major item in—that bearings from the United States were a major item in their total supply of bearings, indicates, at least, some doubt as to how they could now suddenly produce a surplus of bearings that they could export to the United States when their own industrial activity not only has not declined but on the most recent figures was still on the increase. In other words whatever bearings they needed in '46, '47 and '48 they will continue to need this year and possibly some more.

Q. Now, are you familiar, Mr. De Vegh, with the policy of the British Government in respect of the transfer of capital from England into any other areas of the world?

A. Yes, sir.

Q. And specifically as to the policy of the Government of the United Kingdom as to transfers of capital from that country to the United States?

A. Yes, sir.

Q. Will you outline briefly for the Court what procedure or technique must be followed in respect of the transfers of ownership, for example, of stock of a British corporation, the shares of which are held in London?

A. Yes, sir. The British Government has an absolute [fol. 3180] rule that it will not allow, will not make available dollars for the transfer of capital. They are so short of dollars and they have been so short of dollars since September 1939, that it would have been really a criminal waste of dollars to give any of this short supply of dollars away for the purpose of capital transfers. Therefore——

Q. In other words, to interrupt you, Mr. De Vegh, if the owner of stock in a British company wanted to dispose of that stock and transfer the proceeds of the sale into dollars, as I understand from what you have said, the British Government would not permit that sort of transfer?

A. The British Government would not make dollars available for the purpose, and since nobody else is allowed legally to deal in dollars within the United Kingdom, that would be the end of it.

Q. Now, is there any step that can be taken or any procedure that might be followed by the owner of stock in a British company to on any basis transfer his ownership from Sterling or pounds into American currency or dollars?

A. Yes.

Q. Will you outline the way in which that may be done?

A. The British Government will allow, under license, the transfer of British assets owned by foreigners among [fol. 3181] foreigners. In other words, if I own a hundred shares of, let's say Imperial Chemical Industries in London, and you are willing to buy it from me, I can sell it by applying to the Bank of England for permission to transfer that stock from my name to your name. And as long as I can show that this transaction took place between foreigners, the British Government will license the listing of the stock, the switch in the Registry from my name to your name, but it has to be among foreigners, and specifically in the case

of dollars it has to be among either United States residents or foreigners who legally hold dollars. I assume a Venezuelan could do the same thing.

Q. In that case it would be up to the individual purchaser to make the switch of the investment from a Sterling basis to a dollar basis and make the currency available for that purchase, is that correct?

A. When I sold you my Imperial Chemical stock you would pay me in dollars, so where I used to have Sterling asset I will now have a dollar asset, and you who had a dollar asset will have a Sterling asset. We just change places, but that is the way in which individuals can export capital from the United Kingdom, although collectively no change took place.

[fol. 3182] Q. Is there any recognized market for that sort of transaction?

A. There exists a market, although an extremely small one, and very irregular and not a dependable one.

Q. And how small is it?

A. Well, like all these things it is very hard to make a dependable quantitative estimate but in British Government securities in New York you are usually able to buy and sell ten or twenty thousand dollars worth in a day without changing the quotation. That of course compares with transactions of hundreds of times that size on the New York Stock Exchange, or generally in American security markets.

Q. On what basis could a transaction of that sort be handled, only on the basis of the quoted Exchange value of the pound or on some other basis?

A. No, sir, it is on the basis of what is known as the "switch" pound.

Q. Switch pound?

A. Right. In other words the Sterling rate which governs securities.

Q. And what is that rate on the small transactions you have described as having taken place from time to time on the New York Market today?

A. Well, as of yesterday the switch pound rate for [fol. 3183] British Government securities was around 1.90, 1.95 per pound. Excuse me, I believe it was 1.85 bid and 1.90 offered approximately.

Q. As compared with the 2.80?

A. As compared with the 2.80 official rate. For West African pounds the rate is but a nickel higher. For industrial securities the rate is about 10 cents higher and for South African gold shares it is about 40 cents higher than the Government rate, because these constitute separate classes of securities. The British Government has carefully classified foreign balances in London. In other words pounds Sterling owned by foreigners, the English securities owned by foreigners, into a number of classes to which different regulations apply in order to prevent even indirect leakages of capital out of the United Kingdom, and that is the reason why there are so many rates.

The Court: I think we will stop at this point and resume at 2:00 o'clock.

(Noon recess taken.)

[fol. 3184] Wednesday, September 28, 1949, 2:00 O'clock P. M.

Direct Examination of Imrie De Vegh (Continued).

By Mr. Ketterer:

Q. I believe, Mr. DeVegh, before the noon adjournment you testified that the number of transactions in the switch pound market in New York, so far as volume is concerned, was negligible, is that correct?

A. It's very small, yes, sir.

Q. And have you any idea, or can you tell the Court in dollars, for example, for the year 1948, what the total or approximate total of those operations in New York would have amounted to?

A. I don't think I can give a reliable figure, because there are mostly small transactions involved. The total amount of trading in the leading English stocks on the New York Curb Exchange is, oh, it varies between 10 and 50,000 dollars in a year. But I am not absolutely certain that every one of those transactions goes through the Curb Exchange or that some of the transactions aren't among American owners in American cities not involving switches on the other side. I think in Imperial Chemical it was something like $40,000 all through the year 1948, 40, $45,000, something like that, or around 11,000 shares at about $4 a share.

[fol. 3185] Q. That was the total sales reported in that year?

A. On the New York Curb Exchange.

Q. Yes.

A. Now, as I said, there are two limitations there. Some of that trading may have been between Americans without involving switches in London, others may have involved switches in London and weren't put through the New York Exchange but handled over the counter. That's very hard to say. It is really a pretty disorganized thing, I mean individual transactions occur and then there is no transaction for a long time. It's not a regular market like in an active listed stock.

Q. What would be the effect of an effort to market the stock ownership the value of which was approximately $1,300,000 in this switch pound market?

A. Well, within any given short interval of time it couldn't be done. I mean there aren't bids of that kind or amounts. The bids run, oh, $3,000, $5,000, that kind of thing.

Q. In point of time you say it couldn't be done in a short time?

A. I don't believe so, no, sir.

Q. From the standpoint of realization, on the basis of your experience and observation of the switch pound market, on what basis could it be concluded even over a longer [fol. 3186] period of time, from the standpoint of realization?

A. Well, I believe that it would have a very depressing effect on the switch pound rate. How depressing would depend on the amounts in which it would be doled out, I mean to liquidate at the rate of $1,000 a day or $5,000 a day or $10,000 a day. I mean that kind of consideration would determine to what extent it pushed the rate down. But it is a thin market and nobody supports it. The British Government certainly won't support it. In fact—this isn't exactly to the question you asked me, but it has an indirect bearing on it—if the transaction threatened to be concluded in a way that would temporarily destroy the switch market quotation, the British Government might say it doesn't want to license it, because it isn't agreeable to it that that switch pound transaction should take place at a dollar a pound. After all at a dollar a pound you could sell it, presumably, to a speculator somewhere.

Q. As compared to the $2.80?

A. Yes, sir, or the $1.95 switch pound rate for small transactions.

Q. You have talked about the liquidating of a foreign investment and getting out of Sterling currency into dollar currency where the transaction would be handled between two Americans?

A. Yes.

[fol. 3187] Q. Suppose the stock of a British company was offered in London in the British Market, would the technique of getting out of Sterling and into dollars be any different from that you have described?

A. The difference consists in the additional permission required because one party to the transaction is a British resident.

Q. You mean by that it would be necessary, if a British resident were to purchase the stock, that he would have to get permission from the British Government?

A. Well, that goes without saying. I mean you couldn't transfer the stock as an American to anybody without a license, but there is this extra step, that the British resident couldn't possibly hold legally dollars that he could dispose of in the switch pound market. Therefore the disposal to an Englishman requires the additional step of disposing of the Sterling proceeds. In other words, to an Englishman you could only sell for Sterling, and the Sterling that you receive the Bank of England won't allow you to hold, of course, for more than a month, one or two months, I believe is the time limit within which you have to reinvest into equivalent securities.

Q. And by "equivalent securities" you mean what?

A. If it is a British industrial stock, another British [fol. 3188] industrial stock.

Q. By that I assume you mean that if an attempt was made to dispose of stock that the Timken Roller Bearing Company has in British Timken, and the sale was made to a British subject——

A. And the British Treasury licenses the sale.

Q. Assuming the procurement of licenses, it would be necessary, first of all, for the seller, the Timken Roller Bearing Company, to reinvest in some British security, is that correct?

A. In an equivalent security, a British security of the

same kind. In other words, if industrial stock, another industrial stock or a British Government bond. If it were a gold share, then you could reinvest in a gold share or an industrial stock or a Government bond. But you can't go backwards. In other words, you can't go out of a Government bond into an industrial, or out of an industrial into a gold share. That's the principle of these classifications. Consequently, you would have to reinvest in another British industrial stock, and then if you still wanted to get dollars in their place, dispose of those through the switch pound market.

Q. By the process that you have described?

A. Yes.

[fol. 3189] Q. Now, is the ownership—or the location, I should say, of the certificates themselves in England of any significance in connection with a transaction of that sort?

A. It is of some significance in that when a transaction takes place in New York entirely the British Government allows, as a matter of course, the licensed shipping in and out of the pieces of paper, whereas if the security is already in London then you have to arrange for the in-switch.

Q. And is that done by Government license?

A. Well, everything is done by Government license.

Q. And that, specifically, would have to have Government approval?

A. Yes, of course. As I said, these are transactions that occur in very small amounts all the time, and once in a blue moon somebody, dependent on market conditions, can arrange a slightly larger transaction. But usually it takes many months to work out, and it is really—I should almost compare it to the selling of great paintings. If Mr. Andrew Mellon is buying a painting it is worth $1,000,000. If he isn't buying it's worth $200,000. You can't tell whether Mr. Andrew Mellon will be buying when you want to sell your old master.

Q. Now, Mr. DeVegh, is the market in the switch pound market for British Government bonds any better sup-

[fol. 3190] ported or any stronger than it is for British industrials, if you wanted to get out of sterling into dollars through the means of the switch pound?

A. The market is just as unsupported. I mean nobody is going to buy for the British Government in order to

support the sterling bonds in New York. But, I have mentioned once before the approximate size of the market.

Q. And you also gave, I believe, a while ago, or perhaps it was before lunch, the present switch pound rate on British Government bonds at $1.80 per pound?

A. I said yesterday, I think it was, $1.85 to $1.90, approximately.

Q. I see. All right.

A. I can make a detailed calculation. I don't know whether it makes any sense.

Q. We are not interested in that especially, but suppose you had to liquidate a British Government bond holding of $1,300,000 and transfer that out of sterling into dollars. Would you think that the price of $1.80 would hold, or $1.85 would hold in connection with a transaction of that magnitude?

A. That would be quite inconceivable. In fact, in British Government bonds it would be even more inconceivable than in British industrial equities, because a speculative [fol. 3191] element may be lacking in the bond. I mean in the case of an industrial security they are always finding, especially if there is a bull market or strong market, that at one place a buyer will be found who at a price will take a gamble. On British Government bonds this gambling element of capital appreciation is present to a much lower degree and, therefore, I think that there it would be a question of peddling it out over a very long period of time and pushing the rate down.

Q. And the figure you gave a while ago on your estimate of perhaps a dollar a pound in respect of a transaction of that size, do you think you would be able to realize that much and to transfer out of British Government bonds through the switch pound market into dollars?

A. That's awfully hard to say, sir. I said that as a figure really representing a drastic price cut. With a transaction of such magnitude, from the present reports exactly as to what the rate would be nobody can tell.

Q. Now, if it were necessary to get out of a French investment in France, is the technique or the operation any different, or the market any different, than what you have described in respect of an investment in a British equity?

A. The technique is the same. The attitude of the

French Government is exactly the same as the attitude of the British Government. Recently—to be precise, a [fol. 3192] week ago Tuesday—the French Government revised its foreign exchange regulations and established a commercial rate of 350 francs to the dollar. I don't know what the present French switch franc rate is, how much below 350 it is, because there are practically no transactions in New York. I mean the French switch franc is something that is traded in Switzerland.

Q. Would the loss associated with such a transfer be generally of the same character that you have described in respect of the loss associated with the transfer out of pounds into dollars in connection with liquidation?

A. Yes, without doubt, but I don't know how much. That would depend on several things, and specifically it would depend on whether the French themselves are repatriating into francs or not.

Q. By that you mean what?

A. By that I mean that it is absolutely notorious and a matter of common knowledge that in France there has been a large clandestine export of capital during the last ten years, just as there had been a very large clandestine export of capital during and after the First World War; that French capital after 1926 went back into France, and with possibly increased proportions came out of France again before, during and after the Second World War. If [fol. 3193] the French start to repatriate their capital once more, of which there is no indication at present, the sale of French assets at a discount will be a very convenient way for them to come back into France. Then there might be a market for them in the future.

Q. When you talk about the French repatriating, you don't refer to the French Government?

A. No, no, French individuals.

Q. French individuals who have withdrawn capital from France during the period you referred to?

A. Yes, sir.

Q. Has there been any evidence of that repatriation up to the present time, to your knowledge?

A. Not to my knowledge.

Q. Now, is there any other consequence that would be associated with the liquidation of a British pound invest-

ment into dollars aside from the ones you have outlined here, assuming the obtaining of all the necessary permits?

A. I would say a substantial loss of income.

Q. Will you explain how that comes about to the Court?

A. Dividends and interests are transferred out of England at the official rate. In other words, on coupons you get $2.80. You used to get $4. Now, in England these [fol. 3194] securities are selling on a yield basis roughly comparable to American yields. If you take the loss of principal inherent in a switch pound rate of whatever it may be, whether it is a dollar or $1.50 or $1.75, you cannot possibly replace the yield in an equivalent domestic risk. Secondly, I don't know whether the realization on this particular block of securities involves a large capital gain and a capital gains tax. To the extent that the capital gains tax farther reduces the realization, the income will be proportionately more irreplaceable. There is less of an opportunity to replace that income in an investment of equivalent risk.

Mr. Ketterer: I think that's all.

Cross-examination of Imrie De Vegh.

By Mr. Timberg:

Q. Mr. DeVegh, before lunch today you testified concerning the import of the defendant's exhibit tabulation figures as to exports of antifriction bearings from the United States to the United Kingdom. That is a document compiled from official sources, is that correct?

A. That's right, sir.

Q. To-wit, the Department of Commerce, Bureau of Census Reports?

A. Yes, sir.

[fol. 3195] Q. Now, you testified as to the extent of the comparative drop in exports from the United States to the United Kingdom.

A. Yes, sir.

Q. I would like to hand you this exhibit and ask you what it shows wtih respect to the tabulation entitled "Roller Bearing Parts Except Rollers" if you were to subtract the United Kingdom total from the total for all countries? I'm just interested in your computation.

A. Don't tell me my arithmetic is wrong.

Q. No, no, your arithmetic is impeccable, but I am interested simply in your testimony as to what the figure would be here if you were to subtract the United Kingdom total from the total you have for all countries for the year 1948 and the first six months of 1949.

A. In other words, subtract 2.9 million from 11.6 million?

Q. That's right.

A. All right, sir. (Witness does as requested.) It shows that to other countries the exports—and I hope my arithmetic is correct—were 8.6 million in 1948 and 5.8 million dollars in the first six months of 1949. In other words, that there has been an increase in the rate of exports to other countries than the United Kingdom.

[fol. 3196] Q. There has been an increase in the rate of exports to other countries?

A. Yes.

Q. My computation came out slightly different, but only by a hundred thousand dollars, so I won't burden you, Mr. DeVegh.

A. All right, thank you, sir.

Q. You referred in your testimony this morning to the fact that—to a statement of July 6th by Sir Stafford Cripps.

A. Yes.

Q. Explaining the nature of import restrictions?

A. Yes, sir.

Q. That he was putting into effect.

A. Yes, sir.

Q. To your knowledge, did not that statement of Sir Stafford Cripps also emphasize the fact that this was a temporary adjustment, and that they hoped to be able to reach an accord that would be of a different nature than the one indicated on July 6th?

A. Well, of course, sir, after all a standstill on imports, if it means what it says, would mean that industry would begin to stop, so obviously a standstill, which was the July 6th statement, was a temporary measure, and the July 14th statement followed that up with the 25% cut and the announcement of re-programming.

[fol. 3197] Q. But it would have——

A. That was for the year 1950.

Q. Now, do you have any notion what the attitude of the British Government would be with respect to their re-programming?

A. I believe that Sir Stafford Cripps explicitly said that they will try to be reasonable about the re-programming, but the total program has to be lower. I have the text here, sir, if you would like to have me read it into the record. That's easily done.

Q. Well, I wondered whether you had the text, Mr. DeVegh, of Sir Stafford Cripps' message justifying the recent devaluation of the pound to the British public?

A. Yes, sir.

Q. I don't want to burden the record here, but could you check as to whether or not this is in the text:

> "With a low rate of exchange we can sell more of goods abroad and so ought to be able to earn more dollars in total"?

That was stated by Sir Stafford Cripps?

A. I don't remember the wording, but such a statement would be made. That is, of course, natural, except that I, however, immediately point out as a matter of arithmetic that this bigger return in dollars means more than 45% increase in sterling, because the 30% devaluation of ster- [fol. 3198] ling means a 44½%, or roughly 44% appreciation of the dollar. So that unless all British export prices are immediately raised to the level where they nullify the effect of the devaluation, the same quantity of exports will produce fewer dollars. So that the expansion in the volume of exports has to be more than proportionate to the decline in export prices in terms of dollars.

Q. Well, it is a fair statement, Mr. DeVegh, that the hope of the British Government in acceding to the devaluation, which has occasioned considerable internal stress and strain in England, was that they could increase their exports and thereby improve their dollar position?

A. That was their hope, that's right.

Q. That was their hope, therefore they are at least interested in the freedom of trade as far as their export trade is concerned?

A. Well, sir, of course they are. As a matter of fact, that's exactly the reason why they take such pains to expand their transferrable area within the sterling area, where they can trade more freely, because that is their most important market. As a strong industrial exporter.

Q. I understand.

A. Their interests, the interest of the weaker currency [fol. 3199] countries, is the same as the United States, to trade multi-laterally, because that's how they maximize their trade.

Q. Their interest is in multi-lateral trade and their interest is in trade with the United States, as well?

A. But those two interests are separate. They are interested in multi-lateral trade with weak currency areas, and they are interested in maximizing their segment of exports to the dollar area as a national policy but not as an individual business policy, insofar as it allows them additional dollar exchange.

Q. Well, regardless of the currency situation, they are interested in maximizing export trade in all areas, and there are two different techniques of doing it, is that it?

A. Not quite, sir, because I believe that the currency aspect is essential to their problem there because the British Government always in these negotiations has insisted that the balance of payment problem is their central problem, and the balance of payment problem is the new problem, the one that they did not have before the First World War—in fact, very few if any countries had.

Q. But the balance of payment problem with respect to the United States is a matter of maximizing exports?

A. Maximizing exports and minimizing their imports.

Q. And minimizing their imports?

[fol. 3200] A. Yes, sir.

Q. And they would be interested in maximizing exports to South American countries, or to any market they could get into?

A. Indeed, that's what the Anglo-Argentine Bi-lateral Agreement tries to do in Argentine.

Q. Would you also subscribe to the description of the devaluation of the pound that Mr. Paul Hoffman, the European Cooperation Administrator, gave? Are you aware of the statement he has made?

A. No, I don't remember his statement.

Q. Well, it is reported as describing the devaluation—and I can check the quote later on—as a dramatic evidence of earnestness of purpose, and recognition that Great Britain has decided to compete in a free world to capture dollars which are essential to her recovery, and to work

administratively towards conditions permitting a higher level of competitive trade.

A. Yes.

Q. You would not challenge that statement?

A. Oh, yes, I would.

Q. You would?

A. Yes, sir. I mean that's interpreting it in a way that is—on which difference of opinion exist within England.

[fol. 3201] Q. I am interested in establishing the official attitudes with respect to this question, because I think that is as important as your own opinion with respect to it, and I would like to have your opinion with respect to the official attitudes.

A. Well, sir, with respect to the official position, you see, in the spring of 1948 the ERP was voted on the basis of promoting multi-lateral trade and payments, and by August of this year the British were broke again without having made any effort to restore multi-lateral payments. In 1946 the British loan was voted on the basis of restoring multi-lateral trade and payments, and by August, 1947, the loan was gone, although then for 36 days they did have multi-lateral trade and payments. Now, therefore, while it is perfectly true that it is and has been the policy of the United States to drive for multi-lateral trade from the viewpoint of trying to persuade foreign countries to accept our principles of multi-lateral trade, for instance, in the Havana Charter dispute, as you know, these foreign governments are either not biting at all, or only for brief periods, or under very major exceptions. Now, Mr. Paul Hoffman, I believe, made that statement in order to express what he hoped this and the ERP might achieve, but insofar as the policies are concerned, the United States Government [fol. 3202] policy is to reduce ERP aid in the amount of $5,000,000,000 in aggregate over the next two and a half years. Now, it seems to me that in order to replace that by additional exports into the United States is not within the realm of the realistic future, and I feel sure if Mr. Hoffman were addressed on that specific point he would not make an identically hopeful statement with respect to those specific figures, the figures being $6,000,000,000 approximately, of imports into the United States last year and $13,000,000,000 of exports——

Q. Mr. DeVegh, may I interrupt you simply to make the point that I was asking you only with respect to the general level of competitive trade. I am perfectly willing to concede that Mr. Hoffman's statement was with respect to international trade generally and that, likewise, Sir Stafford Cripps' statement was with respect to international trade generally. Isn't it fair to say that the American attitude is that the international community will be a gainer by having world-wide system of international free trade, and that more recently the British are beginning to see that the same way? That's the question I would like to put to you. I'm no longer at the level of United States-U.K. balance of payment.

A. All right, sir. It is the attitude of the United States [fol. 3203] Government to seek agreements with foreign governments with respect to multi-laterality of trade. I do not believe it is the attitude of the British Government per se to go along with this policy, at least insofar as the dollar-sterling relationship is concerned. It is their policy to do exactly the same thing with respect to the sterling area on a dollar exclusive basis. In other words, there is a fundamental policy difference between the two governments which has not been reconciled except by verbal concessions that have to date not been substantiated, sir.

Q. Well, you referred to the charter of the International Trade Organization.

A. Yes.

Q. And that charter concerns not only the question of currency restriction but it also concerns the question of restrictive trade practices, does it not?

A. It concerns primarily restrictive trade practices.

Q. Primarily restrictive trade practices?

A. Yes, sir.

Q. And at least the diplomatic representatives of the United Kingdom, together with those of almost all of the United Nations, have signified their adherence to the charter of the International Trade Organization?

A. Two points in that connection. First of all, it was [fol. 3204] Great Britain and other weak currency countries whose delegations insisted on very extensive escape clauses which in many quarters have created the belief that the escape clauses nullify the practical value of the charter, because the charter——

Q. Where are those escape clauses?

Mr. Ketterer: Just a moment.

Let him answer the question.

A. I do not have the text of the charter with me, but at the time of the Havana conference there was extensive insistence on the part of weak currency countries on not being forced to establish non-discrimination until the balance of payments problem were resolved. This policy certainly holds with respect to all weak currency countries. Now, if balance of payment difficulties constitute a reason for suspension of operations of an international trade charter after its ratification, which has not yet taken place, then obviously in the relevant respect the charter is inoperative, the relevant respect being this specific problem of dollar shortage, the specific problem of diminution of total dollar trade market until new sources of dollars are opened up to foreign nations in sufficient quantities.

Q. With all due deference to Mr. Ketterer, I was going to try to save some time by interrupting you, because what [fol. 3205] I had wanted to inquire about specifically was Chapter 5 of this charter which deals with restrictive business practices and, as you are probably aware from this discussion, the confusing things that we have found to be antitrust violations in this country. Now, where are the escape clauses with respect to the chapter of the International Trade Organization Charter that deals with restrictive business practices?

A. I do not recall but, as a matter of fact, I was not testifying with respect to restrictive business practices I was testifying with respect to the general character of trade.

Q. Well, you were testifying with respect to currency—with respect to the general character of trade, and I am merely trying to inform the Court and myself on this——

A. Yes.

Q. —and it certainly is relevant, the question of currency, but there is also relevant the question of the type of commitments that foreign nations are making with respect to such things as international cartel agreements.

A. Yes.

Q. And, therefore, I have asked you that question, not with any desire of embarrassment, but simply because,

as I understood the escape clauses you talked about, they were limited to the currency transactions.

[fol. 3206] A. That is my recollection. Of course, I don't know to what extent the foreign countries have or are planning to implement any anti-cartel policies, but specifically on the question of the United Kingdom, I have no present knowledge of steps designed to implement any kind of anti-cartel policy, domestic or foreign. But that cartels, whether in domestic or international trade, are undesirable, that goes without saying. I'm sure we completely agree on that.

Q. Are you acquainted with the British Monopoly and Control and Inquiry Act? I have a copy here. The actual title of this legislation is "Monopoly and Restrictive Practices (Inquiry and Control) Act of 1948." I should like to hand it up for examination, then I would like at this point to ask you whether you are acquainted with this?

A. Now that you have refreshed my memory, I remember having read that there was such an Act. I am not familiar with its terms.

Q. Are you aware of the fact that the Act was passed in partial fulfillment of the obligations that the British Government had undertaken by virtue of its representatives signing the International Trade Organization's Charter?

A. No, sir.

Q. Would the President of the Board of Trade of the [fols. 3207-3216] United Kingdom be an authoritative source of opinion with respect to the policy of the British Government with respect to international trade?

A. With respect to international trade policy of the British Government? I should say yes.

Q. He, Mr. DeVegh, was the Minister in charge of presenting this legislation to the House of Commons——

The Court: Who was that?

Mr. Timberg: Mr. Harold Wilson, the President of the British Board of Trade.

Q. —presenting this to the House of Commons, and the hearings that were held in April of this year are also illuminating with respect to a possible shift in British attitude with respect to restrictive practices, and I would like to read you a few of those statements simply to ask you whether you think that those are legitimate expressions of

the British attitude toward international trade and cartels.

A. I would have no other knowledge or opinion than that which would follow from your comments, sir, since, as I indicated to you before, I was not familiar with the hearings and, therefore, I am not prepared to testify about them.

[fol. 3217] Q. I do want to ask you, Mr. DeVegh, as to what your definition is of administered trade.

A. I was referring specifically to trade administered by [fol. 3218] government regulation and government license and not administered by any private groups such as a cartel, whether existent or nonexistent, in any particular industry. I was referring to trade administered by government units for the purpose of regulating the distribution of foreign exchange and the distribution of imports as between foreign countries and the specific country in question, as in the case of the United Kingdom, and that is all that I was referring to, and that is why I was completely unprepared to say anything beyond that.

Q. What is your definition of competitive trade?

A. I believe, sir, that I made the definition when I began testifying, and I believe I said that it was a trade competitive as to price or quality in a market equally accessible to all suppliers. The distinction, I believe, that I made at that point was that administered trade is a trade that discriminates between the suppliers so that certain suppliers do have access to a market and other suppliers do not have access to the same market, even though these other suppliers might have a better price or a better quality.

Q. One last question on this score. Do you feel that any system whereby restrictive practices and cartels are tolerated falls within your definition of competitive trade [fol. 3219] or administered trade, as a question of definition?

A. Do I feel that any——

Q. System of private controls or so-called restrictive trade practices, does that system fall within your definition of competitive trade or administered trade?

A. I have not considered private restrictions as any kind of trade, since the restrictions means that there is no trade. A zero cannot be any part of any sum.

Q. If the restriction is with respect to trade in certain territories, would that be an administered restriction and

a nullification of trade, would you consider that to be administered?

The Court: The question is administered as distinguished from monopolies?

Mr. Timberg: Yes.

A. I was referring to administered trade as trade administered by government units. If private units restrict trade, they are obviously not competing, and, therefore, it couldn't be competitive trade. But they certainly aren't administered, either, because they are not administered by government, and I was addressing myself solely to government administration.

Q. In your last testimony before the Court several months ago you referred, did you not, to the pendency of a [fol. 3220] certain trade negotiation that might have the effect of reducing the tariffs with respect to roller bearings or antifriction bearings in this country?

A. I don't remember that, sir, now. What was it I said?

Q. Didn't you refer to certain Geneva trade negotiations that were going on, and that there was a possibility that as a result of those negotiations there might be a reduction in tariffs with respect to that?

A. I believe we put in a record of the whole tariff history of the United States, and I don't remember now what other matters were mentioned, whether we brought up the Geneva point. But, of course, those negotiations did exist whether they were brought up or not.

[fol. 3221] Q. I understand your testimony, Mr. DeVegh, to be that the disposal of an American interest on the [fol. 3222] British Exchange would be possible but that it would have a restrictive effect on the value of shares if it were accomplished through the London Exchange?

A. That point was not covered, I believe, in my direct examination.

Q. It was not covered?

A. Insofar as what would happen to the pound, shilling and pence quotation of a stock when offered in London in large blocks. That is a separate question, with respect to which I do not see a fundamental difference between an offer in London of sterling securities and an offer in New York of dollar securities. When the stock market in London is strong you can sell securities at a good price. When

it is weak, you cannot sell new issues at all, or only at price concessions. That is just as true on the London Stock Exchange as the New York Stock Exchange.

Q. But that is no legal restriction?

A. There is a legal restriction, namely, the New Issue Committee of the Treasury has to pass on all new issues above a certain minimum amount, which I think is on the order of 10 or 15,000 pounds—I don't remember the figure, but it is a low figure—and that New Issue Committee would govern all public issues of stock offered to the public, whether it covers private sales or not I do not know, but [fol. 3223] in any case even for a private sale a Treasury license would be necessary, so it amounts to the same thing.

Q. But that restriction would apply only to new issues, would not apply to the sale of existing stock?

A. To the distribution of blocks, yes, sir.

Q. To the distribution of blocks of stock?

A. Yes, sir.

Q. I understood you also to say that the question of the depreciation or appreciation that might take place in this case on a sale of stock was dependent to a certain extent whether there was a strong market or a thin market.

A. Now, the two expressions refer to different things.

Q. Yes.

A. A thin market or a wide market means a large volume of transactions or a small volume of transactions. A strong market and a weak market means a market that is going up or going down. The implication in both cases, I believe, is obvious.

Q. And the market would depend upon the rate at which the stock was to be disposed of?

A. At the price—well, really, the price would depend on the market.

[fol. 3224] Q. But by "rate" I meant the market, even a thin market, can be sustained if not too many shares of stock are unloaded at any one time?

A. On the contrary, the thin market is the one that can not be sustained. The thin market is the one that breaks down if you put a lot of——

Q. If you put a lot, but if you put a little even a thin market can absorb it?

A. As long as there is a market you can always sell some.

Q. As long as there is a market?

A. Yes.

Q. Now, I won't bother you with the converse of that situation. I think the same conclusions would apply with respect to sales on the New York Exchange.

A. As London sales.

Q. As a generalization they would apply, would they not?

A. That's right.

Q. You made reference, I believe to the New York Curb Exchange. Did you mean the curb exchange or stock exchange?

A. I meant the curb exchange.

Q. Do you have trading on the curb exchange?

A. Oh, no, sir. You mean British Timken?

Q. British Timken.

[fol. 3225] A. Oh, no. There is no market in British Timken in this country. What I was referring to was that on the New York Curb Exchange several leading English companies are quoted, and there is a market in them. But the volume of the transactions in these individual stocks is very, very small. There is a general statement that there is no market in New York in the British stocks. They are left-overs of a happier age in the 1920's and for a brief period in the 1930's when there was active trading between New York and London and at most, oh, I think about half a dozen British issues were introduced on the curb Exchange and there is this little bit of residual trading in them there. This residual trading is also one of the easiest sources of verifying switch pound quotations.

Q. When you spoke, were you generally cognizant of the fact that the British Timken stock had a fairly high value and had a good dividend earning ratio?

A. The British Timken stock, as far as I know, is selling in London for about 4 pounds a share, roughly speaking.

Q. And its par value is what?

A. I don't know.

Q. About a pound, I believe?

A. That's possible.

Q. And there has been no default with respect to the [fol. 3226] payment of dividends with respect to British Timken?

A. So far as I know, it's a profitable enterprise, but I haven't studied its figures.

Q. Then I believe you made a reference to the fact that

from the time of the devaluation all the dividends and interest payments on British securities, if transferred to foreign holders, would be transferred at the new rate?

A. At $2.80.

Q. At $2.80.

A. That is correct.

Q. Does that mean to that extent the investment of British Timken has already in a sense—rather, of American Timken in British Timken has already depreciated?

A. Well, I think the paradox is that the income has been reduced, but to what extent the reduction of income affects the value of the principal is a separate question.

Q. That's right.

A. I mean, for instance, the other day I noticed that Union Oil of California cut out its dividend and the stock went down, I think, 1 point or 1½ points. I forget exactly which, but it was a negligible reduction because people were anticipating, apparently, the dividend cut. There were several such dividend cuts in New York that have been anticipated at the present and, therefore, when the [fol. 3227] cut in dividends materialized the price went down half a point or 1 point, I mean a negligible percentage as compared to the quotation of the stock.

Q. You are distinguishing, then, between earnings ratio and the profit on stock and its basic equitable value as a capital proposition?

A. What I'm distinguishing between is the impact on the value of the equity on a change that the owners have discounted in advance. The switch pound did not decline when sterling was devaluated from $4 to $2.80 because every owner of switch pounds, apparently, felt that a depreciation sooner or later was inevitable.

Q. If American Timken sold—had an equity in England and were——

A. You mean common stock?

Q. Common stock.

A. Yes, sir.

Q. Well, assuming that it owned the plant directly in England——

A. Yes, sir.

Q. And it sold its capital interest therein, would it be permitted to take the proceeds out of the country under

the current interpretation of the British Exchange Control Act and its regulations?

A. If the British Government licensed the sale. The [fol. 3228] British Goverment has a right to license or not to license the sale, and the British Government has the right to license what should be done with the sterling proceeds. It is the policy of the British Government to allow switches only, switches among foreigners only. In other words, then the situation still would be the same, that you have to find a foreigner that will want to invest in an equivalent amount of sterling, in an equivalent British security. Now, what would constitute an equivalent in the case of a wholly-owned plant, I do not know. In other words, whether the British licensors would say that the wholly-owned plant proceeds would have to be reinvested in British Government bonds or not, I don't know.

Q. But the restriction would apply equally if American Timken voluntarily sold its holdings, either of the plant or of stock interest, in England and tried to withdraw the proceeds of the capital sale, as if it were a sale that they were compelled to make? The British Treasury's attitude wouldn't differ with respect to that, would it, Mr. DeVegh?

A. I don't know whether it would or wouldn't. I mean I can't interpret the policy of the British Treasury. I don't see that a forced sale or a voluntary sale would make any logical difference.

[fol. 3229] Q. You don't think it would make any logical difference?

A. It might make a difference as to the price, of course.

Q. What are the British regulations with respect to the actual transfer of securities, Mr. DeVegh? I am not speaking now of the proceeds from sales of securities, but what are the British regulations with respect to the transfer of stock interests, ordinary shares?

A. Well, as far as I know, there is a form that has to be filled out which the Treasury licenses, approves or doesn't approve. As I indicated in the case of the transaction between foreigners outside the country, the approval is pretty much routine, as far as I know.

Q. Then, if the transfer of securities is purely a routine question which doesn't involve a change in ownership of securities but merely a change in the location, in other words, if you had certain shares of stock in London——

A. Yes.

Q. —and they were in the foreigner's name——

A. Yes.

Q. —and he wished to repossess himself of those shares of stock in the United States——

A. And have them physically in his possession?

Q. And have them physically in his possession, that would not raise a problem with the British Treasury, would it, Mr. DeVegh?

[fol. 3230] A. I have no idea. Such a case has not occurred in my experience. I have no idea. I don't know, sir, whether they would license the physical export of certificates.

Q. If there were no change in title and no currency passing?

A. On purely deductive reasoning, it would seem to me that in the light of their general policy, they would want assurances as to the disposal or non-disposal, because otherwise anybody could ship out certificates and realize dollars and just laugh at the British Government from outside their borders. So on the basis of this deductive reasoning, I believe that the attitude of the British Government in the case of such a license would be that they would allow it as a switch only.

Q. Were you in the courtroom earlier when Mr. Timken, I believe, said that certain preferred shares that had been issued in about 1948 were in this country?

A. I was in the courtroom. I wasn't listening to every word. I don't remember exactly what was said, but it's possible.

Mr. Timberg: That's all, I have nothing further.

Mr. Ketterer: That is all.

(Recess taken.)

[fol. 3231] Thereupon Stephen Ladas, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination of Stephen Ladas.

By Mr. Ketterer:

Q. Dr Ladas, I believe you testified in the prior hearing of this case?

A. I did, sir.

Q. At that time you testified about the trademark law in various foreign jurisdictions. I would like to ask you whether or not there would be any effect under English law on a declaration by this Court that the contract between American Timken and British Timken made in 1938 was illegal under American law, insofar as that contract affected the ownership of American Timken in the mark "Timken"?

A. Well, the declaration by a United States court of the illegality of that contract would not necessarily be conclusive in England. However, if the American party, American defendant party to the contract fails to perform under the contract and proceeds to act in contravention of the contract, as directed by the decree of the United States Court, then we have the situation which British law describes as frustration of contract. There is an Act which [fol. 3232] is entitled "Law Reform (Frustration of Contract) Act, 1943". That Act was passed particularly with respect to contracts between British and enemy nations, and where performance thereunder became illegal or unlawful. But the Act is general and covers all situations where one party to the contract is unable to perform because the contract has become illegal as to that party.

Q. And so far as the ownership of the trademark is concerned, that would have what effect?

A. If the contract is frustrated, then any covenant by the British company under such contract to do certain acts or to omit certain acts in recognition of the ownership of the trademark by the American Timken Company, that covenant then becomes unenforceable and, therefore, any right that the American Company may have under such contract to claim rights in the trademark vanishes.

Q. But if there was the mere declaration of illegality of the contract, under American law, that result would not obtain?

A. No.

The Court: I didn't get the answer.

The Witness: No, your Honor.

Q. I believe you also testified about the matter of licensing under the law of the United Kingdom and various other [fol. 3233] jurisdictions, that is, licensing of trademarks, did you not?

A. Yes, I did.

Q. And I think at the time of the trial you gave the

opinion that it was proper to license a trademark under English law, as the result of the 1938 Trademark Act in England, is that not right?

A. Yes, I did.

Q. Now, is there such a phrase as "Registered User" under the English law?

[fol. 3234] A. The British Act of 1938 does not really use the term "licensing of trademarks", it uses the term "permitted user of trademark." With respect to a permitted user of a trademark granted by the owner of the trade-

[fol.3235] mark, it qualifies such permitted user as a registered user of the trademark.

The Court: I see. There is no mention of licensing the trademarks, insofar as that term is applied in England?

Mr. Ketterer: That's right.

A. The procedure under the Act is as follows. Whenever the owner of a registered trademark wishes to license another person to use the same trademark, both the registered owner and the licensee apply to the Patent Office in England for the entry of the licensee as a registered user of the trademark. If both parties are affiliated, in other words, if the registered proprietor of the trademark has a controlling interest in the licensee, in the sense that it can appoint the majority of the Board of Management, Board of Directors of the company, then the Registrar does not require anything else but a statement of the case that that is the relation between the parties. Whenever, however, the licensee is not so controlled by the registered proprietor, then the Registrar of the Patent Office in England requires a statement between the two parties setting forth the conditions under which the licensee shall use the trademark, and those conditions must prescribe two things: first, that the specifications for making the product by the licensee [fol. 3236] shall be approved by the registered proprietor of the trademark and, second, that the registered proprietor of the trademark shall have the right of inspection of the finished product. Therefore, the question of licensing of trademarks in England is very definitely regulated in that way, so that only when the Registrar approves the conditions of the use of the trademark by the licensee, then and then only the license is granted and entered in the Register.

Q. If a person establishes himself as a registered user of the mark, what is the fact as to whether or not he could sell readily in the English market in competition with the owner of the mark, or the licensor?

A. Under the law a registered user can be exclusive or non-exclusive. In other words, the right to use the trademark may be granted to the licensee alone, or several licensees, and the owner may reserve the right to use the trademark himself, or may not.

Q. So that, applying the matter specifically to a case of this kind, if American Timken were to qualify as a registered used of the mark "Timken" in the United Kingdom, it would be possible for American Timken to sell in England without infringing the mark, the registration of which the record shows is in the name of the British Timken Company?

[fol. 3237] A. Without any question.

Q. Without any question?

A. That's what the law provides.

Q. So that would not disturb the situation in respect of the ownership of the mark, is that correct?

A. No, the British Company shall remain the registered owner of the trademark and the American Company would be the registered user of the trademark, so they both use the same trademark.

Q. In other countries that are part of the British Empire, does that same registered user or licensee relationship exist?

A. Yes, the law of most of the important British Dominions has been changed in accordance with the British law. Today, New Zealand, South Africa, Australia, Indja, Pakistan and Singapore have exactly the same provisions as the British law. Moreover, a party who has been entered as registered used under British registration may also be entered as a registered user in fourteen other British colonies.

Q. Automatically?

A. Automatically, by application—by just application alone.

Q. That is, by just setting forth the fact?

A. To present the fact to the fourteen colonies, one could —let us say the British Honduras, for example, you would [fol. 3238] get a certificate from the British Registrar showing that American Timken is the registered user of the

trademark "Timken" in England. You present that certificate to the British Honduras Registrar and he enters the same fact in his record, so that the American Company becomes automatically a registered user or licensee of the trademark in the British Honduras as well.

Q. Would the same situation prevail in respect of the mark in France?

A. In France the law was always that you can license the user of a trademark without any restrictions or conditions whatsoever.

Q. How about Germany?

A. And the same is true there.

Q. And on the Continent of Europe generally?

A. Generally in all of the Continent there are two countries, Italy and Switzerland, where a requirement is made that the licensor, the owner of the trademark, must exercise control of the products made by the licensee.

The Court: I did't get that.

The Witness: In Switzerland and Italy, those two countries are the only exceptions, where the license for the use of the trademark is permitted provided the proprietor of the trademark exercises some control over the quality of [fol. 3239] the goods made by the licensee, whereas in the other European countries no such effort to control is made.

Mr. Ketterer: That is all.

Cross-examination of Stephen Ladas.

By Mr. Timberg:

Q. Dr. Ladas, I understood you to be testifying to what a licensee could do who was registering the mark concurrently with the registered owner in England.

A. If I may correct you, the licensee does not register his trademark concurrently with the owner. He is merely permitted by the Registrar to be entered on the records as a person who is allowed to use the trademark of the proprietor.

Q. Are you referring to any situation that relates to what American Timken did in the past, or what it may do in the future?

A. So far as I am aware, American Timken is not registered as the registered user.

Q. American Timken is not registered as the registered user, and the Court in this case has found that it is not the equitable owner of the mark.

Mr. Ketterer: I object to that. That is not what the Court found.

Mr. Timberg: Sole equitable owner.

Mr. Ketterer: I beg your pardon. That is not what the [fol. 3240] Court said in the memorandum opinion. If you will read it, Mr. Timberg, you will find it isn't.

The Court: Well, I think the Court certainly ought to know.

Mr. Timberg: Supposing we leave that to the Court.

Mr. Ketterer: Well, I object to phrasing a question directed to a witness that the Court found so and so, and then ask the witness to proceed from that point.

The Court: I think that ended the question.

Mr. Timberg: That ended the question, yes.

The Court: I don't believe you are going to be harmed in the slightest by what counsel's remark may have been. The Court ought to understand what he found.

Q. I was simply referring to whether you were referring to anything that related to the position of American Timken in the past or as to its legal rights in the future, and your answer is as to its legal rights in the future. Such a writing-in of the name of American Timken as licensee would require the consent of the British owners?

[fol. 3241] A. Definitely.

Q. Definitely. It could only be done by consent?

A. Yes.

Q. Is it your understanding that the British Company is in any respect at present the licensee of the American Company in England?

A. I testified to that effect.

Q. That it is a licensee of the American Company?

A. Equitably.

Q. Equitably?

A. Only.

Q. So that what you are contemplating for the future is a reversal of the roles, that is, the British Company to become the licensor and the American Company to become the licensee?

A. That would not necessarily conclude the matter. In other words, under the existent contract the American Company could always instruct the British Company to transfer the trademark to the American Company, so that conceivably you could have the American Company the owner of the British registration and then the British Company becomes the registered user or licensee.

Q. Yes, but that right is exercisable upon termination of the contract?

A. Yes.

[fol. 3242] Q. It wouldn't be exercisable in this case unless the parties decided to terminate the contract, otherwise until 1965, as far as the present contractual obligations of the parties stand?

A. That's right.

Q. If the British Company should refuse its consent it could sue the American Company for infringment?

A. Correct.

Q. If the American Company wished to use the trademark as part of its corporate name, and the British Company did not consent, could the British Company sue in infringement or in unfair competition?

A. Yes, sir.

Q. Could it sue in both?

A. Well, depending on the manner of the use, it could sue in both.

Q. It could sue in both?

A. Because, as you know, under British law the registration of a trademark makes a statutory monopoly, which is entirely different from——

Q. From the American?

A. Yes.

[fol. 3243] Q. What would such a cause of action be if brought by the British Company against the American Company, what facts would the British Company have to prove in order to maintain an action for unfair competition?

A. It would prove that it is the proprietor of the trademark registration of "Timken", which is seven years old and, therefore, incontestable, and that the use by the American Timken of the word "Timken" alone or of "Timken" as a prominent part of its corporate name, should be an infringement of its trademark, and it would be wise, prob-

ably, for the company to also sue for passing off on that evidence.

Q. What would the passing off action be based on?

A. Confusion as to origin.

Q. Confusion as to origin?

A. And deception of the public.

Q. Would it be relevant in a British court to also bring in the fact that the British Company had had a pre-existing goodwill in the territory in the United Kingdom?

A. Naturally, but with respect to registration, as you know, the company doesn't have to prove it. It stands on its statutory right.

Q. If the registration is acknowledged, it may not have to prove it?

A. That's right.

[fol. 3244] Q. But if it were an ordinary action in unfair competition, it would establish that its goodwill was being impaired?

A. That's right.

Q. And would seek both injunctive relief and damages, accordingly?

A. That's right.

Q. And that is, roughly speaking, the law that prevails in the Continental countries, or would you make any qualification on that, Dr. Ladas?

A. I will say in Continental countries the law is stricter, in other words, you would have technically a trademark infringement because the laws of those countries have no similar restriction as the British law has against registration of surnames, and the law, wherever the surname may be protected—put it this way, wherever the scope of protection of the surname may be smaller than the scope of protection on passing off a trademark, that would apply in this case because Timken is so foreign to the surnames in those countries, so that the average Frenchman, for instance, or German, doesn't understand that "Timken" is a surname.

Q. The thing that would have to be established would be confusion as to product or property in Germany, for example, just to follow it out, if they establish there was confusion in the matter of property as to origin——

[fols. 3245-3246] A. If it is on trademark infringement,

perhaps you could prove the ownership of the trademark, and you stop right there.

Q. But if it is on unfair competition, you would say it would be possible to establish that there was confusion of origin?

A. That's right.

Q. And intent would be immaterial in that type of situation?

A. Definitely, yes.

Mr. Timberg: That is all.

Mr. Ketterer: That is all.

Mr. Ketterer: That concludes our testimony, your Honor.

[fol. 3247] The Court: You may proceed.

Mr. Timberg: If it please your Honor, I'm ready to proceed with the examination of Mr. Robert Timken.

The Court: Mr. Timken, will you take the stand, please?

Mr. Timberg: I should like first to introduce into evidence, your Honor, a letter of March 23, 1949, from W. Robert Timken to Mr. A. J. M. Duncan in London, and a letter of April 7, 1949, from Mr. Duncan to Mr. Timken, together with attachments containing a directors' report of Timken Holdings, Limited, and a revenue account of that company. These have been marked for identification as Plaintiff's Exhibit 1 (decree).

[fol. 3248] Cross-examination of William Robert Timken.

By Mr. Timberg:

Q. Mr. Timken, I should like to hand you this correspondence and ask you whether it refreshes your recollection as to who the directors of Timken Holdings, Limited, were in April, 1949, of this year?

A. Yes, from this it appears the directors were Dewar, Duncan and Pascoe.

Mr. Timberg: I should like to offer this in evidence.

The Witness: They were at the date of that.

Mr. Timberg: At the date of the letter.

The Court: Who were those, again?

The Witness: Michael Dewar, Pascoe and Duncan.

Q. Have there been any changes in those directorships since April of this year, Mr. Timken?

A. I couldn't say.

Q. You did testify, did you not, that Timken Holdings was a hundred per cent wholly owned subsidiary of American Timken?

A. I believe that is true.

Q. And that it held no stock on behalf of British Timken [fol. 3249] or on behalf of Mr. Dewar?

A. I said I didn't believe that it had, because the purpose of Dewar selling his stock in Timken Holdings was to break out of the company, out of Timken Holdings.

Q. Did this sale of stock take place at the same time as the March, 1948 agreement?

A. I believe one of those agreements had provisions for disposition of his Timken Holdings stock to us. Whether the sale actually took place at that time I don't know, but we agreed that it would.

Q. And, despite that fact, Mr. Dewar and Mr. Pascoe still remained as directors of Timken Holdings, Limited, after Mr. Dewar's interest in Timken Holdings, Limited, had been disposed of?

A. Apparently they did.

Q. And to your knowledge they may still be directors?

A. For all I know.

Q. Now, was not the original purpose of Timken Holdings, Limited, to furnish a method of maintaining the control arrangement that you had with Michael Dewar?

A. I would say that was one of the main purposes.

Q. What other purpose did it have?

A. I think it did provide some tax saving to Mr. Dewar.

Q. And you had no other purpose for American Timken, for your company?

[fol. 3250] A. No, I don't believe so.

Q. Now, if Mr. Dewar has no further interest in Timken Holdings, Limited, how does this wholly owned subsidiary of yours, Timken Holdings, Limited, serve as a method of maintaing the control arrangement with Mr. Dewar?

A. It doesn't any longer.

Q. What purpose or function does it now serve to your company?

A. Well, it holds some of our stock outright and some as nominee, actually it is just to maintain the status quo.

Q. In other words, it is simply a holder of your stock in England?

A. It would be our intention to dissolve it.

Q. And when you dissolve it you would have complete control over the stock that it held?

A. Well, complete control no more than we have now; it is a wholly owned subsidiary.

Q. What is the nature of the control you have over the wholly owned subsidiary?

A. Well, its assets are really our assets; it is a wholly owned subsidiary.

Q. You have a hundred per cent of its stock so you can do anything with it you wish?

A. Subject to Government regulation.

[fol. 3251] Q. Subject to Government regulation.

Mr. Timberg: I should also like to offer in evidence executed copies of two agreements dated March 2, 1948, both of them have been marked for identification as Plaintiff's Exhibits 2 and 3 (decree).

The Court: They will be received.

[fol. 3252] Q. Now, I would like to read to you Paragraph 1c of the March 22, 1948, agreement, that is marked Plaintiff's Exhibit 3 (decree), and I would like to ask you to tell me what its legal effect is:

> "In the event of the Canton Company or its successors or its or their assigns (hereinafter referred to as the 'Canton shareholders') desiring to sell all or any of the ordinary shares in British Timken now belonging to the Canton Company and numbered 1 to 4 and 205 to 52700"—I won't bother reading the serial numbers—"all inclusive (hereinafter referred to as the Canton shares) Mr. Dewar shall have an option to purchase all or any of such shares".

Is the effect of this provision to give Mr. Dewar an option on your stock in British Timken if you should desire to sell that stock?

Mr. Ketterer: We object to that.

The Court: Well, doesn't the agreement speak for itself?

Mr. Timberg: I thought so.

The Court: Objection sustained.

Mr. Ketterer: Well, then, there is not any point in asking the witness about it.

[fol. 3253] The Court: I sustained the objection.

Mr. Ketterer: I beg pardon, I didn't hear that.

The Court: I asked Mr. Timberg a question and he said he thought so and I said objection sustained.

Mr. Ketterer: I beg pardon I didn't hear what the Court said.

Q. Now, I should like to read Paragraph 2 of this agreement:

> "Notwithstanding anything hereinbefore contained Mr. Dewar or any of the other Dewar shareholders shall be at liberty to sell all or any of the Dewar shares and the Canton Company or any of the other Canton shareholders shall be at liberty to sell all or any of the Canton shares to a transferee on purchase or otherwise who has been previously approved in the former case by the Canton Company and in the latter case by Mr. Dewar or his legal representatives provided that the transferee delivers in the former case to the Canton Company and in the latter case to Mr. Dewar or his legal representative an undertaking addressed in the former case to the Canton Company [fol. 3254] and in the latter case to Mr. Dewar or his legal representative declaring that the shares transferred and the transferee shall be subject to the conditions to which such shares and the transferor in respect of the same were subject previous to the transfer, and binding the transferee to perform and observe said conditions accordingly."

That is a long provision and I should like you to examine it.

A. (Witness examines same).

Q. Is the effect of that provision, Mr. Timken, to give Mr. Deware the power to block a sale of your stock in British Timken should you desire to sell the stock?

Mr. Ketterer: We object to that.

The Court: That is the same objection as applied to the previous question. Does not the instrument itself or the contract determine that and make that a matter for the Court to construe regardless of what Mr. Timken might say about it?

Q. What was your purpose in entering into this provision in this agreement?

Mr. Ketterer: We object to that.

The Court: What is your objection to that?

[fol. 3255] Mr. Ketterer: Well, the purpose is immaterial, is it not? The contract speaks for itself.

The Court: A great deal was said in the course of the trial about the purposes and the underlying reasons for making these contracts. I think you repeatedly contended in the course of the trial that all of these agreements in respect of the division of territories, fixing of prices, was to carry out the Heads of Agreement that you had referred to, and constantly in the entire course of the trial that proposition was uppermost in the discussion and in the argument of counsel, and I think it is perfectly proper to ask the purpose of the execution of this agreement, what was to be accomplished by it.

Q. What did you intend to accomplish, what was the background of his provision?

A. Why, to continue the arrangements of our control agreement, as in any normal partnership, in other words, if one partner wants to sell he would offer it to the other.

Q. You say this continues the control that you had in your prior agreement, or does it expand the control that [fol. 3256] you had in your prior agreements?

A. (No response).

Q. Let me help a little bit by saying this is intended to replace your existing agreement on the subject, is it not?

A. That is right.

Q. And the question I am asking you is whether in replacing those agreements you have expanded your control or you have expanded Mr. Dewar's control with respect to the disposal of stock that you hold?

A. I don't believe it was our intention to do so.

Q. It was not your intention to do so, but it was your intent to give Mr. Dewar an option to purchase?

A The way that option to Dewar came about, he suggest [illegible] that he had the same right we had and we therefore conceded.

Q. But that was a novel suggestion of Mr. Dewar as of his 1948 agreements; that was not in any of the agreements you were replacing?

A. No, I don't suppose it was.

Mr. Timberg: Now, I should like to introduce, to offer in evidence an exhibit which has been marked as Plaintiff's Exhibit 4(decree) which is an agreement dated September

7, 1935, between the Timken Roller Bearing Company and [fol. 3257] Michael Bruce Dewar.

Q. May I read you Paragraph 1 of that agreement and then hand it to you:

> "Each of them" (to-wit the two contracting parties) "the American Company and Mr. Dewar hereby declares by way of honorable understanding and not as a legally binding agreement that if the other of them or any of his nominees or any company controlled by him shall give a transfer notice under Article No. 28 of the Articles of Association of the Holdings Company in respect of any or all of the shares in the Holdings Company owned by the other party or his nominees or any company controlled by him with or without participating rights connected therewith and the shares comprised in such transfer notice or any of them with the connected rights (if any) are not purchased by the other members of the Holdings Company to whom the same are offered pursuant to the said Article, then, a, the declaring party will not unreasonably stand in the way of the other party or his nominees or the controlled company aforesaid selling such unpurchased shares or any of them with the connected rights (if any) to any person (not being a per- [fol. 3258] son to whom the declaring party shall object on reasonable grounds) at any price not being less than that at which such shares and rights (if any) shall have been offered to the members pursuant to the said transfer notice".

Now, do you recall what the purpose of that provision was?

A. May I read it? (Witness refers to provision). I would say it was obviously to make way for a possible sale of the stock of Timken Holdings.

Q. What are the "honorable understandings" that are referred to in the second sentence here? You recall this agreement says this is a declaration by way of "honorable understanding" and not as a legally binding agreement".

A. I would say it was an understanding that honorable men would use with their partners.

Q. You intended to underscore the fact it was not a legally binding commitment. You weren't referring to any prior understanding between you and Mr. Dewar?

A. I wasn't with the company at the time this was written.

Q. This is one of the agreements that was replaced by the 1948 agreement, is that right?

A. Yes.

Q. Why wasn't this provision carried forward into the [fol. 3259] 1948 agreement?

A. Well, there was no holding company involved in the 1948 agreement. Timken Holdings had by then become a wholly owned subsidiary of our own.

Q. But the entire purpose of Timken Holdings was merely to be a holding company for your stock interests in British Timken, is that right?

A. Yes.

Q. So in the 1935 agreement you were to be subject to this honorable understanding and option to sell your stock?

A. Which stock?

Q. In Timken Holdings.

A. Yes.

Q. And in 1948 the only purpose of the stock, of having any stock in Timken Holdings was to hold the stock in British Timken?

A. Yes, sir.

Q. For you. And in the course of the 1948 agreement you in effect decided it was in your own best interests to convert an honorable understanding into a legally binding commitment to allow Mr. Dewar to object to the purchase of the stock?

A. I don't see that there is much difference in binding your own partner between an honorable agreement and [fols. 3260-3261] a legally binding one.

Q. I am appealing for background on this question and apparently the draftsmen of the agreement did think there was a distinction between an honorable understanding and a legally binding commitment.

A. But this provision is providing for the sale of shares of Timken Holdings. There would be no point in providing for that in the 1948 agreement.

Q. Yes, but you have just stated that as a result of the 1948 agreement Timken Holdings in effect became a subsidiary that you intended to dissolve, and you were going to repossess your shares.

A. Yes.

Q. Now, there was nothing in 1935 that permitted Mr. Dewar to object to the sale of your shares in British Timken, was there?

A. Why, it says he can reasonably object to it.

[fol. 3262] Q. You are in charge of the financial affairs of Timken Roller Bearing Company, are you not?

A. Yes.

Q. And those affairs are subject to your complete control?

A. Subject to the Board of Directors.

The Court: I might say it is my recollection from the testimony Mr. Timken was not with the company in '35.

[fol. 3263] The Witness: A very few days afterward.

The Court: Not holding an official position with the company at the time. For that reason I don't know how he could testify to any matters that transpired prior to the execution of the '35 agreement.

Mr. Timberg: I thought that perhaps he might be able to tell me in view of the fact this was the agreement that governed the relationship between the American and British Company, how he would have gone about performing his obligations under this agreement. I don't intend to go to the fact of what the legal effect is.

Q. If at any time between the time you joined the company and 1948 the question had arisen, you would have been the proper official to have asked about the interpretation of it?

A. Yes.

Q. And the company's policies with respect to the contract?

A. Subject to Mr. Umstattd and the Board of Directors.

Q. In the light of your discretion as the top financial executive of Timken Roller Bearing Company, what would you have thought the effect of this provision would be if you decided to sell your stock, that is the stock of the Ameri-

[fol. 3264] can company, and let me reread "a":

> "The declaring party will not unreasonably stand in the way of the other party or his nominees or the controlled company aforesaid selling such unpurchased shares", and so on.

Mr. Ketterer: I want to object to that question. It is perfectly unfair to ask this witness a question of that sort

and read that part of the agreement because that doesn't carry the part of the language which obviously explains the point which the plaintiff is trying to make that is, the preceding paragraph which starts out by saying,—"Each of them, the American company and Mr. Dewar, hereby declares by way of honorable understanding not as a legally binding agreement that if the other of them or any of his nominees or any company controlled by him shall give a transfer notice under Article No. 28 of the Articles of Association of the Holdings Company in respect of any or all of the shares in the Holdings Company owned by the other party or his nominees or any company controlled by him". Unless you have Article 28 of the Articles of Association of the Holdings Company you don't know what the rights are.

[fol. 3265] The Court: Read the question that was asked of the witness.

(Previous question read.)

Mr. Timberg: May I ask your Honor's permission,—I am not concerned whether Mr. Timken answers the question with respect to "a" or in the light of the total context of "1" and "a" underneath it. In other words I would like him to give the answer in any way he sees fit.

The Court: He may answer.

A. You better let me read that. (Witness refers to contract.) Well, it seems to me, taking "1" into it, under "1" they would first be offered to the other partner. If the other partner did not want to buy them then under "a" we would not reasonably stand in the way of Dewar's selling them.

Q. Not unreasonably.

A. Not unreasonably stand in the way of Dewar's selling them to a party not being a party to whom we could object on reasonable grounds.

Mr. Timberg: In explanation of why we have asked Mr. Timken some of these questions, I do wish the record to reflect that in Article 6 of our subpoena we asked for the [fol. 3266] Articles of Association and By-laws of British Timken, Limited, in effect as of September 7, 1935, and all amendments, modifications and supplements thereto, also in this subpoena we asked for the minutes of the meetings

of the Board of Directors with reference to the 1948 transaction.

Mr. Day: Not of British Timken?

Mr. Timberg: Timken Holdings, Limited.

Mr. Day: That is, you asked for documents of both those British companies?

Mr. Timberg: That is right. But we did ask for minutes of meetings in which Mr. Timken might have explained some of these transactions, and the documents were not forthcoming on the return so necessarily we have asked Mr. Timken a lot of questions in order to clear it up.

The Witness: As I recall this transfer in this Article 28, it was a simple provision providing an offer to the other party, which was in the 1948 agreement.

Q. But as Mr. Ketterer has directed attention to, the controlling provision being Paragraph 1, that recites it is a matter of honorable understanding and not a legally binding [fol. 3267] commitment, is that right?

A. Yes.

Q. Now, 1b of this agreement says:

> "In the event of the other party or his nominees or the controlled company aforesaid effecting a sale the declaring party will do all acts and things in his power in order to procure the registration of the transfer of the said shares and rights (if any) to the purchaser thereof and in particular will exercise the voting rights conferred by any shares in the Holdings Company controlled by the declaring party in such manner and give all consents and sanctions as may be reasonably required and secure any directors of the Holding Company to pass all resolutions necessary for procuring the registration of said shares."

A. What is the question?

Q. Now, if in your capacity as chief financial executive of Timken Roller Bearing Company you decided to sell the stock that your company held in Timken Holdings, Limited, what would you conceive the right, the obligation of the other party to be with respect to that?

A. As of the present date?

[fols. 3268-3270] Q. As of that date.

A. Well, in other words, this would follow along, "b"

would make possible what "a" had provided for. For instance, if we had offered our shares to Dewar and he had refused them, and we had found a party to whom he could not reasonably object, he or his nominees would have to do their best to carry out the agreement.

Q. In other words, it was a facilitating device should either of the parties desire to sell their interests?

A. And the other not desire to buy.

Q. And the other not desire to buy.

Mr. Timberg: May this be received as Exhibit 4?

The Court: Yes.

[fol. 3271] Q. Mr. Timken, if your company decided to sell its stock under the present 1948 agreement what would Mr. Dewar's rights be with respect to this agreement?

Mr. Day: I object to that, what his rights would be.

Q. Well, what would be the nature of the negotiations you would have to undertake with Mr. Dewar?

A. We would have to offer them to Mr. Dewar, just as we would have had to offer them to Dewar beforehand.

Q. And if Dewar had turned down the offer would that have put an end to your ability to dispose of the stock?

A. No, he has an option to purchase. If he turns down that stock when we offer it it would not put an end to our ability to sell, any more than it would have under the previous arrangement.

I would like to say that I testified earlier that under the previous arrangement we did not have to offer our stock to Dewar, but I now recall that we did under this '35 agreement.

[fol. 3272] Q. May I read you Paragraph 2 of the '48 agreement:

> "Not withstanding anything hereinbefore contained Mr. Dewar or any of the other Dewar shareholders shall be at liberty to sell all or any of the Dewar shares and the Canton Company or any of the other Canton shareholders shall be at liberty to sell any or all of the Canton shares to a transferee or purchaser of shares who has been previously approved in the former case by the Canton Company and in the latter case by Mr. Dewar or his legal representatives."

A. What was the question?

Mr. Timberg: I would like the reporter to read your last answer just to see whether this refreshes your recollection on that point.

(Previous questions and answers read by reporter.)

A. This clause is mainly for the purpose if Dewar wanted to sell stock to a man who came into the company, like Pascoe, that was the main reason. In other words, a man entering the management and Dewar wanted him to have a stock interest in the company, he could then with our consent transfer some of his stock to Pascoe, which I believe [fol. 3273] he had done in the past. We considered it all Dewar stock whether Pascoe's or Dewar's.

Q. Dewar could do that. What was your interest in having the reciprocal right? I mean what was your purpose in agreeing to this provision?

A. There, again, it was chiefly a matter of quid pro quo, you could do it.

Q. So you feel the effect of this provision is it is just a method of allowing employees to get shares, and the like?

A. That was the prime purpose.

Q. Can you point to any of the language here which expresses that purpose? That is, unfortunately, not having any of the background, this doesn't seem to be so limited; it applies to all shares.

A. The reason I said that is because I was there when we negotiated the contract.

Q. That is the interpretation which you would place on that?

A. That is right.

Mr. Timberg: I would like to offer for the record two exhibits that have been marked Plaintiff's Exhibits 5 and 6 (decree) containing agreements entered into on June 5, 1943, between the Timken Roller Bearing Company and Mr. Dewar.

[fol. 3274] Q. These agreements were two of the agreements that were replaced by the 1948 agreement; or, would you rather examine these to see whether they are, Mr. Timken?

A. (Examines same.)

Q. Would it refresh your recollection further if I show you the text of the 1948 agreement?

A. Yes, that would. In other words this states it.

Q. Is there any provision in either of these two agreements that gives Mr. Dewar an option on American Timken's holdings of British Timken stock should your company decide to sell it?

A. I don't think you understand my statement. That option was contained in the Articles of Timken Holdings. Article 28 provides if either party was to sell, the method of offering to the other party.

Q. That is contained in Article 28?

A. To the best of my recollection.

Q. We haven't had Article 28, we only had the agreement to go on.

What is the basis of your information that that option is in the Articles of Association? You have read those Articles of Association or do you have copies of them anywhere available?

A. I either read them or read the report indicating that was the purpose.

[fol. 3275] The Court: I didn't get that.

The Witness: I have either read that or read the reports that was the purpose of the Holdings Company.

Q. You are not certain whether you read the provision itself or read the reports?

A. I couldn't say I had read the Article itself.

Q. What was the nature of the reports you have read about the provision? From whom did they come?

A. I assume they were reports made at the time it was drawn up.

Q. '43?

A. No, in '35, when the Holdings Company was formed. You see, I was not with Timken, Limited at that time.

Q. Are these reports still available in the files of the company?

A. I couldn't say as to that. They should be if I read them there. I couldn't say as to that but they should be if I read them there. Of course it may have been in a conversation with Dewar and Pascoe.

Q. What do the Articles of the Association briefly provide?

A. Well, they provide a holding company which will hold Dewar's stock and our stock and the method of voting.

Q. What is that method of voting?

A. Practically that the majority of the A stock which [fol. 3276] Dewar owned had more votes as long as profits were maintained. Then the B stock, which we had the majority took over. That was the control arrangement, but I should say the other arrangement provided if one wanted to sell it should be offered to the other party, and the method of offering.

Q. What provision was made for the selection of directors in those Articles of Association?

A. The holders of the majority of the A stock had the right to elect two directors and the B stock one; so long as the A stock had the most votes, in other words.

Q. Then when the positions were reversed the voting right changed and the B stock took control?

A. It was purely a control device.

Q. Was there any provision in those Articles of Association—I take it for granted it is not in these contracts—giving Mr. Dewar the right to approve any persons to whom you wanted to sell the stock?

A. You mean outside of Pascoe or employees?

Q. Well, outside of—well, what were the rights of the parties with respect to that? I don't know the first thing about these Articles of Association.

A. I believe that the Articles of Association provided in effect exactly what this 1948 agreement provides.

Q. Exactly?

[fol. 3277] A. For all major purposes. In other words the '48 agreement was simply the old agreement without Timken Holdings Limited.

Q. Did it also include a special arrangement for transferring stock to employees, for example, that you have referred to under Section 2?

A. I don't recall about that. Of course Dewar was a much younger man in '35 than he was in '48 and he was more active, he was running the business himself and didn't have the younger men coming along as he does now.

Q. Does that mean you have given him or more or less discretion?

A. He would have had less concern to provide for that.

Q. He would have had less concern to provide for that?

A. But I don't know whether it was in the Articles or not; I can't recall that.

Q. Well, we don't have the Articles of Association, I think they are probably the determinative part of this question, but you have already answered part of it. You don't really believe you had given Dewar in 1935 the right to block any arrangement you may have made for the sale of the stock?

A. To whom?

Q. To Mr. Dewar. Would you have required his approval?

A. If he wanted to dispose of the British Timken stock or Timken Holdings?

[fol. 3278] Q. Yes. Would you have entered into an agreement?

A. Yes, he had the right, he could have had them offered to him.

Q. I understand he had the right to an option to have them offered to him, but did he have the right to approve the purchaser who would get the stock in the event he decided not to take it on his own option?

A. As I said, I believe it provided exactly what the '48 agreement provided. You can see there he has not got the right absolutely to block the sale of the stock.

Q. Well, under the '35 agreement I understood he didn't but under the '48 agreement he at least has the right to block the sale of the stock, and then, by your statement, if you decided to sell to one of your employees, as far as the language of this is concerned, I don't see where it is so limited, it seems as though on the basis of the '48 agreement he has the right to approve of any transferee of the stock, which is a sort of right under any partnership arrangement. I wish you would examine this language again, because that is all we have to go on.

A. Under 1a.

Q. I understand what 1a says. I would like you to reexamine 2.

[fol. 3279] Mr. Day: Have you the '35 agreement?

Mr. Timberg: No, the '48 agreement.

A. Well, I can only repeat what I said; that was put in there primarily by Dewar for his purposes if he wanted to transfer some of his stock to an employee or potential employee of the company.

Q. So you would not construe this provision, you would not think that this stood in the way of your disposing of shares of stock abroad in British Timken?

A. Not that one.

Q. That this one would not stand in your way?

A. Not that clause.

Q. Now, what would stand in your way?

A. Well, the earlier one where he could reasonably object.

Q. Supposing you thought his objection was unreasonable, then that would be the end of it?

A. I don't know. I am no lawyer. I don't know how I would interpret that.

Q. At the same time you are the financial executive, and it is hardly a legal question, and I think in the context here is a business question as well. How do you interpret that?

A. If he objected and we didn't think his objections were reasonable I should think we would have a court suit to determine whether it was or not.

[fol. 3280] Q. A court suit?

A. Or a case.

Q. To decide the fact this was an honorable understanding and not a legally binding commitment?

A. (No response).

Q. Well, might I ask you by whom these '48 agreements were negotiated? Were they negotiated by you?

A. Yes; primarily. Mr. Umstattd was at the earliest meeting.

Q. But primarily by you?

A. Yes.

Q. Did Mr. Dewar negotiate them himself or by representative?

A. Mr. Dewar was there, yes.

Q. Did he have any representative?

A. Mr. Pascoe was there.

Q. And did you have any other representative?

A. Mr. Duncan and Mr. Ketterer were there.

Q. Were negotiations conducted orally or by correspondence with these others?

A. Well, they were held in England.

Q. And there was no correspondence in connection with these agreements between England and Canton?

A. Well, there may have been correspondence but the

main negotiations were conducted orally among the people I have mentioned in England.

[fol. 3281] Q. Did you make any memorandum of these conferences?

A. Yes, I think I did. I think I made a memorandum after my return indicating the nature of the negotiations.

Q. Were these negotiations discussed at a Board of Directors meeting?

Mr. Day: What Board of Directors—American Timken?

Mr. Timberg: American Timken. About Mr. Timken's participation.

A. I don't know whether they were actually discussed at a formal Directors meeting but the Board of Directors were familiar with it.

Q. You kept the Directors informed?

A. Yes.

Q. But apparently in an informal way, not at a Board of Directors meeting?

A. I said I couldn't say.

Q. Did the Board of Directors ever pass a resolution approving the agreement?

A. I don't recall that. You see our Board of Directors eat lunch together practically every day.

Q. Over what period of time did your correspondence about these negotiations extend, how long were the negotiations carried on?

A. I couldn't say exactly. I would say a year or so.

[fol. 3282] Q. About a year or so. Then in the course of that year there was correspondence?

A. Well, but the main negotiations were—Mr. Umstattd made one trip with me to England; I made a second trip. I was afforded the opportunity of negotiating the agreement.

Mr. Timberg: Once again, I would like the record to reflect we asked for all minutes, reports, resolutions, instructions, memoranda, notes and internal correspondence in Paragraph 12 of our subpoena.

Q. Now, if there were these memoranda and these correspondence, why weren't they returned under this subpoena, Paragraph 12?

A. I didn't say I knew there was any except I said I thought I had written a memorandum.

Q. You said you had written a memorandum.

A. I said whether it had been done by a Board of Directors resolution or whether I had informed them informally.

Q. I just have a few more questions and then I will be through. How would one go about reconstructing the background of the transaction if, for example, you weren't around?

A. Well, I informed the directors.

[fol. 3283] Q. You informed the directors and they carried it under their hats as you carried it under yours?

A. I don't like the phrase "under their hat". They knew about it. It is just a continuation of our years' old relation with Dewar; there is no change.

Q. You testified yesterday you didn't know the due dates of the promissory notes of French Timken to American Timken?

A. No, I don't know those.

Q. You don't know those. Do you know within any range of approximation?

A. I think they fall due in the amount of about $500,000, annually.

Q. When? Just the due date I am interested in. Do you remember that?

A. No.

Q. You testified you didn't have the information with respect to the due dates of various notes to American Timken?

A. I don't believe there is any due date on that.

Q. That is payable out of profits?

A. That is my recollection.

Q. You don't know if anybody else would have this information?

A. No. I can give you an estimate on the due dates of those French Timken Company's notes because I believe there was about 4½ or 5 million francs falling due, so they [fol. 3284] would extend over normally a period of nine years. As to when the first notes fell due I would say they might have five to six years to run till the last note was due at the present time.

Mr. Timberg: If your Honor please, my colleague, Mr. Dedman would like to ask Mr. Timken some questions.

Further Cross-examination of William Robert Timken

By Mr. Dedman:

Q. Mr. Timken, was the Timken Roller Bearing Company served with a subpoena requiring the production of documents in this case?

Mr. Day: I believe it was, yes.

Q. Was that subpoena served upon you or the Secretary?

A. I am not the Secretary.

Q. Do you know whether or not of your own knowledge there was a search made in compliance with this subpoena to produce these documents?

A. I understood some documents were required and we were trying to locate them, but it wasn't arranged under my direction.

Q. Under whose direction?

A. I assume it would be under Mr. Brower's, the Secretary and Treasurer.

Q. Is Mr. Brower in the courtroom?

[fol. 3285] Mr. Day: No, he is not.

Mr. Dedman: The reason I am asking the witness the questions is because of the fact the subpoena very definitely called for all minutes, reports, resolutions, instructions, memoranda, notes and internal correspondence, and so forth relating to the negotiation of the 1948 agreement. I find it rather hard to believe there is not something in the files of the Timken Roller Bearing Company with reference to those matters.

If Mr. Timken is unable to testify as to whether or not a search was made, I suppose the Government will have to call Mr. Brower or who ever was responsible for complying with the subpoena.

The Court: It is —— proper, I believe, if a subpoena was issued and no reply is made to the subpoena some explanation should be made by someone in authority that proper search was made, and whether a document was not found, as Mr. Timken is in no position to make the statement.

Mr. Ketterer: This subpoena was served on Mr. Day [fol. 3286] in Cleveland as counsel. It was not served on any officer of the Timken Company. When copy was sent to me I undertook to have an examination of the files made

to find out whether the documents were available. I told counsel yesterday the ones we did not produce pursuant to the subpoena were not in the company's files. In view of his disbelief about whether or not they were or were not there I don't know whether he is willing to accept my professional statement in open court or not but that is the fact and that is what I told them yesterday.

The Court: You yourself have given instructions to make the search?

Mr. Ketterer: That is correct.

The Court: Mr. Ketterer, do you know who made the search?

Mr. Ketterer: Yes, I do.

The Court: And was it some responsible party?

Mr. Ketterer: It was the assistant secretary of the company.

The Court: And the report was made to you they are not in his possession?

Mr. Ketterer: Not only reported it to me but I went [fol. 3287] over the documents he found and checked with him against the ones that were requested and I was assured those documents were not in the company's files and that is what I told Mr. Dedman yesterday.

The Court: Well, I think your statement to the effect you have made that is satisfactory.

Mr. Dedman: I am satisfied with that.

The Court: Anything further?

Mr. Ketterer: I don't believe so.

The Court: We will take a fifteen minute recess.

(Recess taken.)

Mr. Ketterer: If your Honor please, we, and when I say "we" I mean the Timken Company, defendant in this case, and none of counsel want this Court to think that there has been any withholding of documents or records in connection with Timken Holdings Limited, or any other facts of this lawsuit, and Mr. Timken has suggested, and I want to make the suggestion to the Court and to the Government, we will arrange to have Mr. Dewar send over here the Arti- [fol. 3288] cles of Association of Timken Holdings, Limited. If they want to have a copy of that introduced in the record, there is nothing mysterious about it and we are perfectly willing to have that introduced if they want that done.

The Court: Is there any desire on the part of the Government that that be done?

Mr. Timberg: I should think we would like to have that. There is so much of Mr. Dewar's testimony resting on the Articles.

Mr. Ketterer: There is no part of Mr. Dewar's testimony resting on the Articles of Association.

Mr. Timberg: We would like to see a copy and have the privilege of inserting it in the record.

The Court: I would imagine it would require some time.

Mr. Timken: We could have it by Air Mail.

The Court: Is it your thought that those papers should be made available and then that this hearing be postponed?

Mr. Timberg: I think that these articles of Association [fol. 3289] were executed about ten days before the '35 agreement. We are simply at a loss to understand why ten days after the Articles of Association were entered into agreements were entered into which carried specific provisions such as we have already pointed out, if the subject matter had been covered in the Articles of Association.

Mr. Ketterer: As far as the agreement is concerned there is nothing mysterious about that because the record already discloses that the '35 agreement was merely a reproduction of the earlier agreement between the parties.

Mr. Timberg: We simply request the privilege of leaving the record open to insert the Articles of Association as of 1935, if we feel it would be at all helpful in clarifying Mr. Timken's testimony, because I am frankly confused by it.

The Court: It seems to me that this hearing could be concluded and then if those documents are made available and if anything should be put into the record it may be done.

Mr. Ketterer: We are not suggesting the hearing be adjourned or anything of that kind.

[fol. 3290] The Court: I think that may be done, and that will be sufficient.

Redirect examination of William Robert Timken.

By Mr. Ketterer:

Q. Mr. Timken, you were asked a while ago about this "unreasonable provision" that appeared in the 1935 agreement between the Timken Roller Bearing Company and Mr. Dewar in respect of approval of sales of stock. Now, you have said you weren't with the company before 1935. I

want to hand you a document which has been marked Defendant's Exhibit 200, and which is already in the record, and I want you to look at the first paragraph of that instrument and observe the date of that.

A. By that you mean No. 1?

Q. That is correct.

A. Well, that language in the 1928 agreement is practically identical with the language of this later agreement.

Q. And the language to which you refer in here is this:

"It is hereby agreed as follows:

1. Each of them, the American Company and Mr. Dewar, hereby declares by way of honorable understanding but not as a legally binding agreement that if the other of them or any of his nominees shall give a trans- [fol. 3291] fer notice under Article 26 of the British Company new Articles of Association adopted by one of the said special resolutions in respect of all or any of the shares of the British Company owned by that party and the shares comprised in such transfer notice or any of them are not purchased by the other members of the British Company to whom the same are offered pursuant to said Article, then a, the declaring party will not unreasonably stand in the way of the other party selling such unpurchased shares or any of them to any person not being a person to whom the declaring party shall object on reasonable grounds at any price not being less than that at which such shares shall have been offered to the members pursuant to said transfer notice; and, b, in the event of the other party effecting a sale the declaring party will do all acts and things in his power in order to procure the registration of the transfer of said shares to the purchaser thereof, and in particular will exercise the voting rights conferred by any shares in the British Company held or controlled by the declaring company in such manner and give all consents and sanctions [fol. 3292] as may be reasonably required and procure any directors of the British Company controlled by the declaring party to pass all resolutions necessary for procuring the registration of such shares."

That is the resolution to which you referred?

A. Yes.

Q. And that language is the same in form as the language which appears in the 1935 agreement, under date of September 7, 1935, on the question of approval of or withholding of approval by either Dewar or the American Timken Company in respect to the sale of shares to any outside parties?

A. Yes, sir.

Q. Prior to 1935 was British Timken a public company or private company?

A. No stock was sold to the public.

Q. That is, in 1935 and prior to that British Timken was what, a public or private company?

A. Private company; Dewar and ourselves owned the stock.

Q. There were only two shareholders from 1928 to '35, unless there were qualifying shares?

A. Qualifying directors shares.

Q. Now, I want to direct your attention to Defendant's Exhibit 199, that was offered in evidence, reference to Paragraph 26 of which appeared in this language of the [fol. 3293] contract marked Defendant's Exhibit 200 that I just read to you. I would like for you to look at that.

A. What was the question on this?

Q. I just asked you to look at that. Did you also examine Paragraph 25 of the Articles of Association?

A. Yes.

Q. Now, was the provision made in Articles 25 and 26 for the option to the respective parties and the proced e set out for the transfer of the shares?

A. Yes.

Q. In the Articles of Association of British Timken?

A. Yes.

Q. Now, when the company was changed from a private company to a public company in 1935, when the sale of stock was made to the public, what is the fact as to whether that option had to be removed from the Articles of Association of British Timken?

A. Yes, it was removed and replaced by the establishment of Timken Holdings Limited.

Q. And it was there that the option provisions that had been in the original Articles of Association were transferred to the Articles of Timken Holdings, the agreement between Dewar and American Timken with respect to the stock they still jointly retained in the company?

[fol. 3294] A. Yes.

Q. Now, when the agreement was negotiated in 1948, the one that has been offered here in evidence I believe as Exhibits 2 and 3, when the provision was made for the sale of stock and the offering of it, was it your intention to change the procedure that had been provided for from the inception of British Timken and the relationship between Dewar and that company?

A. No, it was our intention to carry it on, as I have said, as it had been before.

Q. I am not sure I understood what you said on the examination of counsel for the Government about Pascoe acquiring qualifying shares. Was he acquiring qualifying shares or interest in the company?

A. No, an interest in the company.

Mr. Ketterer: That is all.

Recross-examination of William Robert Timken.

By Mr. Timberg:

Q. Mr. Timken, did I understand you to tell Mr. Ketterer that it was the intention in executing the 1935 agreement to preserve the pre-existing relationships between the parties that had been prevalent?

A. Yes, sir.

Q. On what basis did you form that impression, acquire that understanding?

[fols. 3295-3373] A. Well, through discussions that we had carried it along but once it became a public company it was not longer possible to use the exact form we used in the past, it had to be changed through the use of Timken Holdings and their Articles of Association rather than what has now become a public company.

Q. Well, you have told me you were not aware of the background of the '35 agreement.

A. No, I said I wasn't employed by the company at that date.

Q. Wasn't employed by the company. Now, your explanation for the disappearance of the language that had been in the earlier agreement is what? What is your explanation for it?

A. My understanding is when British Timken became a public company it was no longer possible to have that

language remain in their Articles of Association, therefore in the formation of Timken Holdings the language was transferred to that and to the agreements having to do with Timken Holdings.

Q. But the language with respect to Timken Holdings, Limited, is different from that in the 1928 and 1935 agreements.

A. Essentially, but it has the same purpose.

[fols. 3374-3384] EXCERPT FROM ARGUMENT FOR DEFENDANT

. . . . . .

We also found out by transatlantic phone, and I don't think we had this in the record, that British Timken has four to five thousand common stockholders and 1100 preferred stockholders.

[fol. 3385] EXCERPT FROM ARGUMENT FOR PLAINTIFF

. . . . . .

We do not conceive it to be the function of the relief in this case to compel competition or to stimulate competition. We conceive it to be the function of this decree, [fols. 3386-3390] as in the National Lead case, to restore the manufacture and sale of tapered roller bearings on international markets to a system of free competition; and we think that, in order to make that restoration possible, once again to paraphrase the language of the National Lead case, the means of preventing such a development must be destroyed, and the power to prevent it must be shorn from those who by combination have acquired it.

[fol. 3391] The Court: I don't want to interrupt you in the course of your discussion, but I have a question that I wish to put to you and I do hope you will discuss it. The hardships that were mentioned by the defendant aside, the difficulty of sale of the securities aside, the tax question aside, the loss aside, in order to eliminate the restraint found to have existed in this case by the court, is it necessary to decree divestiture, to terminate those restraints and to see to it that no such restraints will occur in the future, and to stimulate competition?

Mr. Timberg: I will be very glad to answer that and, as a matter of fact, your Honor, it was my thought that

[fol. 3392] that discussion should precede any discussion of the hardships which were urged by defense counsel, and I should like, with due deference, to submit this as the reason why we think that such divestiture is necessary.

First, as to the evidentiary basis which I don't intend to go into in other connections, but I think in this connection it is probably desirable, the original acquisition by the defendant of its stock in British Timken was part and parcel of the 1927-28 agreements which provided for the continuation of the pre-existing territorial agreements between the defendant and British Timken. These agreements the court found were—and conclusively found—were entered into for the purpose of preventing competition in the sale of bearings. The acquisition of the stock in French Timken likewise was simultaneous with the division of territory agreement entered into with French Timken, and was also, I believe, in the language of your Honor's finding, on the model of the one between defendant and British Timken.

Now, Michael Dewar frankly acknowledged his motivation in entering into the agreement. As the court found, he did not think that an investment on his part would be wise without obtaining extensions of the prior business agreement that he had with the defendant. In fact, when [fol. 3393] defendant's London counsel discussed this transaction with respect to the drafting of the formal agreement, he said, "The main advantage derived by the English company under the agreement will be the advice and information received from you," that is the know-how, "the right to use the name Timken," which is their trade mark, "and the absence of your competition."

Defense counsel has also stated that not only was this a proper motivation for Dewar but it was a proper motivation for the defendant. As Mr. Day said in his summation, there wasn't anything that could be expected in common sense that Michael Dewar would compete if he had a company of his own with British Timken, or for defendant to compete with British Timken.

The same thought is expressed in the defendant's brief on page 207, where counsel says: "American Timken would have been unwise not to have secured itself against an increase of competition of its own creating by investing

its money and efforts in British Timken"—and I'm reading this to be sure I don't misquote counsel. And a page or so earlier there is the statement: "American Timken would have been using not only the money with which it [fols. 3394-3396] purchased stock in British Timken, but also the know-how which it was obligating itself to impart to it, such patents as it might have, and the trade-mark 'Timken' to create competition for itself."

[fol. 3397] I wish to say just one thing more about the Paramount case, that in decreeing the divestiture in the [fol. 3398] Paramount case the Court specifically found that it was not material whether the acquisitions were lawful, provided they were used in furtherance of an unlawful conspiracy.

The Court: There is just one other phase of that request for decree by the Court and that is in respect of the divestiture.

The thesis of my decision was that these companies were separate and distinct entities; that, contrary to what was urged by the defendant, it was a joint venture. I found that British was a separate company, that France was a separate company, that this was a conspiracy and an agree-[fol. 3399] ment between three separate entities to restrain foreign trade.

I want to get your reaction and your discussion on the proposition of whether or not a decree of divestiture would be in conflict with such finding.

Mr. Timberg: Your Honor, I sincerely believe that there would be no such conflict. The finding that your Honor made with respect to joint venture was a finding that related to the control that the American company had over the British and the French companies. I have been very careful——

The Court: I very much dislike to interrupt you. By "control" I meant not only stock control but in discussing the joint venture defense—and, of course, there was great objection made as to the joint venture defense—that there not only was no control in so far as stockholdings were concerned but that there was no control by American Timken of British Timken or French Timken. And, as a matter of fact, Mr. Day in argument cited Dewar's rather striking comment regarding British Timken.

[fol. 3400] I do want to get your comments and your dis-

cussion of that proposition, because in resolving that question of joint venture I made it very definite that there was no joint venture, that it did not constitute a joint venture, that it was solely and entirely an investment in a British company and an investment in a French company. I pointed out the fact that whereas originally there was a holding of 6 percent in British Timken it eventually became a public company and became 30 percent. I don't know whether it was at that time or eventually it became a 30 percent holding.

I do want you to give me your views on the Government's position on that proposition, whether or not, in view of that very thesis which underlies my finding, an order of divestiture would be directly in conflict with such a finding.

Mr. Timberg: Well, your Honor, it is the Government's view that it could not and would not be in conflict with the detailed and extensive and thorough going analysis that your Honor made of the joint venture arguments in the broadest sense of the term, not merely fiscal but managerial and otherwise.

[fol. 3401] I think the record will reflect at this point that in discussing the evidence here and the law I have not used the word "control" once. What I have said is that the investment was an inducement and an incentive not to compete. I believe that is what the Crescent and the Paramount cases were devoted to as well.

The Court: Is that the heart and core of the Government's contention, then, that the investment is an inducement not to compete?

Mr. Timberg: Well, that is the heart and—that's the core of it. I would like to put a little body around it.

The Court: But you don't like to say the heart and core, then?

Mr. Timberg: I'd like to allow——

The Court: Possibly the use of those two words may not be quite apt, but it would seem that to me at the moment.

Mr. Timberg: I think it is, your Honor. Forgive me for confusing the distinction between geometry and physiology.

Roughly, that is the core of our contention.

And in terms of the international scene it is a very important contention and probably more significant than [fols. 3402-3403] it is on the domestic scene, because, as I think was pointed out to your Honor in the trial in chief,

these contractual commitments not to compete, these contractual commitments to reserve territories, in a great number of international cartel cases are fortified by additional financial and fiscal sanctions. And those cases are not cases of 51 percent or 90 percent, those cases are cases of 10 percent or 20 percent or, as in this case, 30 percent, let us say.

Once again, the parallel with the National Lead case is in point. National Lead was a minority interest, and there those stock investments were described as part and parcel of the agreements not to compete.

[fol. 3404] Your Honor found in paragraph 15 on page 31, after having exhaustively analyzed the respective contentions of both parties, that "The only conclusion which may properly be drawn is, that the restraints were not ancillary to the 'joint venture'. To the contrary, the arrangements were made to carry on effectively the combination: to eliminate competition between the parties and to frustrate any competition of outsiders."

The significance of that, I think, is this: that both your Honor and the defendants concede that there is a linkage between investment and competition, and the question is, "What is the nature of that linkage?" And your Honor held that the "joint venture" was ancillary to the restraint of trade, whereas the defendants contended that the restraint of trade was ancillary to the joint venture.

With respect to your Honor's more specific question as to what account we take of the fact that the restraints had [fols. 3405-3559] been in existence since 1909 and the stock investment was acquired in connection with the 1928 agreements, I likewise would like to go back to earlier findings of your Honor, to wit, Finding No. 38 on page 6, which, I think fairly bears the construction that the older arrangements were expiring and that the question was up to the parties as to what new arrangement should replace the pre-existing arrangements.

We are not contending that patents or trademarks or the investment were the only factors that entered into the renewal of the pre-existing conspiracy, but we are contending that the stock investment was a factor, and I believe that the later findings of your Honor and the statements that have been made earlier in the trial confirm the fact that they were definitely a potent consideration.

[fol. 3560] REPORTERS' CERTIFICATE

We hereby certify that the above and foregoing is a true and accurate transcript, embodying the changes and corrections pursuant to stipulation of counsel filed herein.

Henry L. Gabriel, A. V. Jarvela, Official Court Reporters.

[fol. 3561] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION BY DEFENDANT FOR AN ORDER ADMITTING IN EVIDENCE AN EXHIBIT IN CONNECTION WITH THE HEARING ON FORM OF FINAL JUDGMENT—Filed November 16, 1949

Now comes the defendant in the above-entitled case and moves this honorable court to admit in evidence, and incorporate as part of the record in the above-entitled case, as defendant's Exhibit D (Decree) the memorandum of a conference held in London on October 12, 1949, a true copy of which is attached hereto, and to permit the substitution of the attached true copy thereof for the original copy as such Exhibit.

(S.) Luther Day, 1759 Union Commerce Bldg., Cleveland, Ohio; (S.) John G. Ketterer, First National Bank Bldg., Canton, Ohio, Attorneys for the Defendant.

Copy received November 10, 1949.

(S.) Robert B. Hummel, Attorney for Plaintiff.

[fols. 3562-3566] (Attached memorandum is printed at side folios 5917-5923 as defendant's exhibit "D".)

[fol. 3567] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING DEFENDANT'S APPLICATION—Filed November 17, 1949

The above-entitled cause coming on for hearing on the — day of November, 1949 on the application of the defendant for an order admitting in evidence and incorporating

in the record, as defendant's Exhibit D (Decree), a memorandum of a conference held in London on October 12, 1949, upon consideration thereof by the Court, it is

Ordered that the defendant's application be, and the same is hereby granted; that the original memorandum, a true copy of which is attached to the application, be, and hereby is, admitted in evidence in, and incorporated in the record of, the above-entitled cause as defendant's Exhibit D (Decree); and that said true copy of said memorandum may be substituted therefor as such exhibit, to which action of the Court the plaintiff excepts.

(S.) Freed, Judge.

Dated: November 17, 1949, Cleveland, Ohio.

Approved as to form.

——— ———, Counsel for Plaintiff. (S.) Luther Day, Counsel for Defendant.

Copy received November 10, 1949.

(S.) Robert B. Hummel, Attorney for Plaintiff.

[fol. 3568] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION BY PLAINTIFF FOR AN ORDER ADMITTING IN EVIDENCE EXHIBITS IN CONNECTION WITH THE HEARING ON FORM OF FINAL JUDGMENT—Filed November 28, 1949

Now comes the plaintiff in the above-entitled cause and moves this honorable Court to admit into evidence, and incorporate as part of the record in the above-entitled cause, plaintiff's Exhibit 8 (Decree), consisting of the following:

Section 28 of The Trade Marks Act, 1938 (1 & 2 Geo. 6, ch. 22);

31 *Halsbury's Statutes of England* 776, footnote to the said Section 28 of the Trade Marks Act, 1938;

Sections 107 through 113 of The Trade Marks Rules, 1938, Statutory Rules and Orders, 1938, No. 661;

Irene G. R. Moses, *Trade Marks Practice at the Patent Office*, London, 1946, pp. 80-84, 274;

and to permit the substitution of the attached true copies thereof for the originals from which such Exhibit was copied.

(S.) Bertram C. Dedman, Stanley D. Rose, Attorneys for the Plaintiff.

Copy received November 28, 1949.

(S.) Luther Day, Attorney for Defendant.

[fols. 3569-3585] (Attached material is printed at side folios 5898-5915 as plaintiff's exhibit No. 8.)

[fol. 3586] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING PLAINTIFF'S APPLICATION—Filed November 28, 1949

The above-entitled cause coming on for hearing on the 28th day of November, 1949 on the application of the plaintiff for an order admitting into evidence and incorporating in the record plaintiff's Exhibit 8 (Decree) consisting of the following:

Section 28 of The Trade Marks Act, 1938 (1 & 2 Geo. 6, ch. 22);

31 *Halsbury's Statutes of England* 776, footnote to the said section 28 of The Trade Marks Act, 1938;

Sections 107 through 113 of The Trade Marks Rules, 1938, Statutory Rules and Orders, 1938, No. 661;

Irene G. R. Moses, *Trade Marks Practice at the Patent Office*, London, 1946, pp. 80-84, 274;

and upon consideration thereof by the Court, it is

Ordered that the plaintiff's application be, and the same is hereby granted; that Section 28 of The Trade Marks Act, 1938 (1 & 2 Geo. 6, ch. 22); 31 *Halsbury's Statutes of England* 776, footnote to the said Section 28 of The Trade Marks Act, 1938; Sections 107 through 113 of The Trade Marks Rules, 1938, Statutory Rules and Orders, 1938, No. 661; and Irene G. R. Moses, *Trade Marks Practice at the*

Patent Office, London, 1946, pp. 80-84, 274, be, and hereby are, admitted into evidence in, and incorporated in the record of the above-entitled cause as plaintiff's Exhibit 8 (Decree); and that the true copies thereof may be substituted in each instance for the originals from which such Exhibit was copied.

(S.) Freed, Judge.

Dated: November 28, 1949, Washington, D. C.

——— ———, Counsel for Defendant.

Approved as to form.

(S.) Bertram C. Dedman, Counsel for Plaintiff.

[fol. 3587] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

Civil Action No. 24214

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE TIMKEN ROLLER BEARING COMPANY, Defendant

FINAL JUDGMENT—Filed February 15, 1950

This cause came on for trial March 22, 1948 and the trial was completed on April 27, 1948. The Court filed its opinion on March 3, 1949, finding and adjudging the defendant to have violated Sections 1 and 3 of the Sherman Antitrust Act. By order filed June 20, 1949 the Court adopted said opinion as the findings of fact and conclusions of law herein, pursuant to Rule 52 of the Rules of Civil Procedure;

Now, therefore, after hearing plaintiff and defendant by their attorneys, it is hereby

Ordered, adjudged and decreed as follows:

1. As used in this judgment:

A. "Anti-friction bearings" means rotating devices for reducing friction between moving mechanical parts,

wherein rollers of various shapes or balls are inserted between containers which are inserted between the moving parts; and includes ball bearings and all types of roller bearings, such as, but not limited to, straight and tapered roller bearings, and accessories and parts of such bearings.

B. "Tapered roller bearings" means anti-friction bearings employing conical or truncated conical rollers.

C. "British Timken" means British Timken, Limited, a joint stock company organized and existing under the laws of the United Kingdom, with its principal office and place of business at Birmingham, England.

D. "French Timken" means Societe Anonyme Francaise Timken, a corporation organized and existing under the laws of France, with its principal office and place of business at Asnieres, France.

[fol. 3588] E. "United States" means the United States and its territories and possessions.

F. "Person" means an individual, partnership, firm, association, corporation, or other business or legal entity.

G. "British territory" means those parts of the world allocated in 1938 as production and sales territories to British Timken by the agreements referred to in Subsection A of Section IV of this judgment, including (1) the United Kingdom, Eire, and all countries other than France and Russia on the continent of Europe; (2) all dominions, colonies, mandates, and dependencies of the United Kingdom, and of all other European countries, in any part of the world, except (a) those of France, (b) those located in or adjacent to North or South America, and (c) by later agreement, Hong Kong.

H. "French territory" means those parts of the world allocated in 1938 as production and sales territories to French Timken by the agreements referred to in Subsection A of Section IV of this judgment, including France, its dominions, colonies, mandates, and dependencies in any part of the world, other than those located in or adjacent to North or South America.

I. "Defendant's territory" means those parts of the world allocated in 1938 as production and sales

territories to defendant by the agreements referred to in Subsection A of Section IV of this judgment, including (1) the United States, as herein defined, (2) Canada, Mexico, Central America, and the West Indies, (3) South America (4) the rest of the world not allocated to British Timken or French Timken, and (5) by later agreement, Hong Kong.

II. The provisions of this judgment applicable to defendant shall apply to the defendant, its officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this judgment by personal service or otherwise.

III. Defendant has violated Sections 1 and 3 of the Act of Congress of July 2, 1890, 26 Stat. 209, 15 U.S.C. Sections 1 and 3, entitled "An Act to protect trade and com- [fol. 3589] merce against unlawful restraints and monopolies," commonly known as the Sherman Antitrust Act. Said violation has consisted of defendant and its co-conspirators, British Timken and French Timken, engaging in an unlawful combination and conspiracy in restraint of trade and commerce in anti-friction bearings between the United States and foreign nations, and of defendant and said co-conspirators entering into unlawful contracts, agreements and understandings, and planning and acting together to eliminate competition among themselves and with others in the production, sale and other distribution of anti-friction bearings in all markets of the world.

IV.

A. Each of the following agreements is unlawful under Sections 1 and 3 of the Sherman Antitrust Act and is hereby terminated; and defendant is hereby enjoined and restrained from the further performance or enforcement of any of the provisions, including those involving rights or obligations upon termination, of said agreements and of any agreements amendatory thereof or supplemental thereto:

1. Agreement dated November 28, 1938 between defendant, British Timken and French Timken, entitled "Business Agreement"; and

2. Agreement dated November 29, 1938 between defendant, Michael B. U. Dewar, Esq., and British

Timken, entitled "Supplemental Business Agreement."

B. Each of the following agreements, entered into during the trial of this action, is hereby terminated; and defendant is hereby enjoined and restrained from the further performance or enforcement of any of the provisions of said agreements and of any agreements amendatory thereof or supplemental thereto;

1. Agreement dated March 22, 1948 between defendant and Michael B. U. Dewar, Esq., entitled "Agreement with respect to British Timken Limited";

[fol. 3590] 2. Undated agreement between defendant, Michael B. U. Dewar, Esq., and Timken Holdings Ltd., entitled "Agreement cancelling previous Agreements and Bye-Laws of Timken Holdings Ltd. and for transfer by Mr. Dewar to the Canton Company of his shares in Timken Holdings Ltd."

C. Defendant is hereby enjoined and restrained from entering into, performing, enforcing, adopting, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under any contract, agreement, arrangement, understanding, plan or program for the purpose of or with the effect of continuing, reviving or renewing any of the agreements listed in Subsection A or B of this Section IV.

V. Defendant is hereby enjoined and restrained from entering into, performing, adopting, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under, any combination, conspiracy, contract, agreement, arrangement, understanding, or concerted plan of action with British Timken, French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof:

A. To allocate or divide territories or markets for the production, sale or other distribution of anti-friction bearings;

B. To limit, restrain or prevent importation into or exportation from the United States of anti-friction bearings;

C. To refrain from, restrain or limit production, sale or other distribution of anti-friction bearings, through quotas or otherwise, or to apportion customers for anti-friction bearings, in any territory or market;

D. To refrain from competing or to leave any person free from competition in the production, sale or other distribution of anti-friction bearings in any territory or market;

E. To exclude any producer or distributor of anti-friction bearings from any territory or market, or to interfere with or restrict any such producer or distributor in competing in any territory or market;

[fol. 3591] F. To fix, maintain or adhere to prices or price ranges, or other terms and conditions of sale or resale of anti-friction bearings produced by defendant for sale or other distribution in any territory or market, or produced by any other person for sale or other distribution in the United States.

G. To receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto, any assignment, license or grant of immunity under a patent or patent application, relating to anti-friction bearings;

H. To receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto, (1) information, advice, assistance or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method or other technical information, relating to the production of anti-friction bearings, or (2) any material or machinery used in the production of anti-friction bearings, or any information, advice, assistance or rights with respect to any such material or machinery.

VI. Defendant is hereby enjoined and restrained from:

A. Referring any order or inquiry for anti-friction bearings to British Timken or French Timken, or any subsidiary, agent, sales representative or distributor thereof;

B. Refusing to sell anti-friction bearings to any person at prices and on terms and conditions of sale corresponding to those regularly offered to purchasers of the same classification for resale or other distribution

in defendant's territory, as herein defined, where the reason for such refusal is that such bearings are for resale or other distribution in British territory or French territory, as herein defined;

C. Selling or offering for sale to, or purchasing or offering to purchase from British Timken or French Timken, anti-friction bearings, at preferential prices, discounts or terms and conditions of sale;

[fol. 3592] D. Offering or paying to, or receiving or accepting from British Timken or French Timken any Commission, rebate, penalty, or other payment in connection with the sale or other distribution of anti-friction bearings to any other person in any territory or market;

E. Appointing, designating, or employing, or continuing the appointment, designation or employment of British Timken, French Timken or subsidiaries thereof, as an agent, sales representative or distributor of defendant in connection with anti-friction bearings, or in any way selling or otherwise distributing anti-friction bearings through British Timken, French Timken or subsidiaries thereof;

F. Acting for or representing as agent, sales representative or distributor, in connection with anti-friction bearings, British Timken, French Timken, or subsidiaries thereof;

G. Reserving or protecting for British Timken, French Timken, or subsidiaries thereof, any market or territory for the production, sale or other distribution of anti-friction bearings.

VII. Defendant is hereby enjoined and restrained from entering into, performing, enforcing, adhering to, maintaining, furthering, or renewing, directly or indirectly, any contract, agreement, combination, understanding or arrangement with British Timken and/or French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof which provides for:

A. An assignment, license or grant of immunity under any patent or patent application;

B. The receipt, grant, disclosure, rendering available or exchange of information, advice, assistance or rights with respect to any invention, discovery, im-

provement, practice, formula, pattern, device, process, method or other technical information relating to the production of anti-friction bearings, or of any material or machinery used in the production of anti-friction [fol. 3593] bearings, or of any information, advice, assistance or rights with respect to any such material or machinery; or

C. The transfer of any right or immunity under a trade mark or name, relating to the production of anti-friction bearings,

upon the condition or requirement that British Timken and/or French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof shall:

1. allocate or divide territories or markets for the production, sale or other distribution of anti-friction bearings;

2. limit, restrain or prevent importation into or exportation from the United States of anti-friction bearings;

3. refrain from, restrain or limit production, sale or other distribution of anti-friction bearings, through quotas or otherwise, or apportion customers for anti-friction bearings, in any territory or market;

4. refrain from competing or leave any person free from competition in the production, sale or other distribution of anti-friction bearings in any territory or market;

5. exclude any producer or distributor from any market for anti-friction bearings, or interfere with or restrict any producer or distributor in competing in any such market;

6. maintain or adhere to fixed prices or price ranges, or other terms and conditions of sale or resale of anti-friction bearings;

7. receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto, any assignment, license or grant of immunity under a patent or patent application, relating to anti-friction bearings;

8. receive, grant, disclose, render available or exchange, in such a way as to deny any third person ac-

[fol. 3594] cess thereto, (a) information, advice, assistance, or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method, or other technical information relating to the production of anti-friction bearings, or (b) any material or machinery used in the production of anti-friction bearings, or any information, advice, assistance or rights with respect to such material or machinery;

9. restrict the use or disposition of any anti-friction bearings bought from defendant.

VIII. A. Within two years from the date of this judgment, defendant shall divest itself of all stock holdings and other financial interests, direct or indirect, in British Timken and French Timken. Within one year from the date of this judgment, defendant shall present to the Court for its approval a plan for such divestiture.

B. Defendant is hereby enjoined and restrained, from the date of this judgment, from:

1. Acquiring, directly or indirectly, any ownership interest in (by purchase or acquisition of assets or securities, or through the exercise of any option, or otherwise), or any control over, British Timken or French Timken, or any subsidiary, successor or assign thereof;

2. Exercising any influence or control over the production, sales or other business policies of British Timken or French Timken, or any subsidiary, successor, assign, agent, sales representative, or distributor thereof;

3. Causing, authorizing or knowingly permitting any officer, director, or employee of defendant or its subsidiaries to serve as an officer, director, or employee of British Timken or French Timken or of any subsidiary, successor, assign, agent, sales representative, or distributor thereof.

[fol. 3595] IX. Defendant is hereby enjoined from refusing to sell anti-friction bearings to any person or discriminating as to availability and prices, terms, and conditions of sale of such bearings or failing to provide services and assistance relating to the distribution or use of such bear-

ings comparable to the services and assistance made available to distributors and users of such bearings in defendant's territory, where the reason for such refusal, discrimination, or failure is that such bearings are for use, resale, or other distribution, either in their original form or incorporated in another product, in some country or area other than defendant's territory as herein defined.

X. Defendant is hereby ordered and directed:

A. Beginning three months from the date of this judgment and for a period of six months thereafter to insert at reasonable intervals in trade journals of appropriate circulation in British territory and French territory advertisements advising the bearing purchasing public of the nature of this judgment insofar as it concerns the removal of the restrictions which had previously prevented the sale of bearings by the defendant in British and French territory.

B. To give similar notice in writing to all persons who have made written inquiry to defendant regarding the purchase or distribution of anti-friction bearings for export since July 1, 1945.

XI. Defendant is hereby ordered and directed within ninety days from the date of this judgment, to provide copies thereof to British Timken and French Timken; and to all directors, officers, subsidiaries, agents, sales representatives and distributors of defendant, British Timken and French Timken.

XII. For the purpose of securing compliance with this judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or an Assistant Attorney General and on reasonable notice to the defendant, made to its principal office, be permitted, subject to any legally recognized privilege, (1) access during the office [fol. 3596] hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters. No

information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

XIII. Jurisdiction is retained for the purpose of enabling any of the parties to this judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this judgment, for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

XIV. Judgment is entered against the defendant for all costs to be taxed in this proceeding.

(S.) Freed, United States District Judge.

[fol. 3397] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

Defendant's Motion for a New Trial; and Objections and Exceptions to, and Motion to Amend and to Make New and Additional, Findings of Fact and Conclusions of Law—Filed February 24, 1950

MOTION FOR A NEW TRIAL.

The defendant, The Timken Roller Bearing Company, moves the Court to set aside its final judgment entered in this action, and to grant to the defendant a new trial herein, upon the grounds and for the following reasons, to-wit:

1. The judgment of the Court is contrary to law.

2. The judgment of the Court is contrary to the weight of the evidence, not sustained by any evidence, and clearly erroneous.

3. The Court erred in the admission of evidence offered by the plaintiff and in the exclusion of evidence offered by the defendant.

4. The Court erred in not granting defendant's motion at the conclusion of the plaintiff's evidence to dismiss this action and to enter judgment for the defendant; and in not granting a similar motion at the conclusion of all of the evidence.

5. The Court erred in adopting, over the objection of the defendant, the Court's opinion as its findings of fact and conclusions of law in this action.

6. The Court erred in not making, as requested by the defendant, findings of fact and conclusions of law as required by law and by the Rules of Federal Civil Procedure and of this Court.

7. The Court erred in overruling the motion of the de- [fol. 3598] fendant to reject and disregard a document lodged by the plaintiff with the Court denominated "Findings of Fact and Conclusions of Law."

8. The statements, arguments, discussions and observations of the Court in its opinion are not lawful or sufficient findings of fact and conclusions of law as required by law and by the Rules of Federal Civil Procedure and of this Court.

9. If the statements, arguments, discussions and observations of the Court in its opinion are determined to be sufficient and lawful in form as findings of fact and conclusions of law, then, as such findings and conclusions, they are manifestly against the weight of the evidence, not sustained by any evidence and clearly erroneous in the respects and particulars appearing in the objections and exceptions of the defendant thereto, hereinafter set forth, to which reference is hereby made.

10. The finding and judgment of the Court that the defendant has violated Sections 1 and 3 of the Sherman Antitrust Act as set forth in section III of the Court's final judgment are contrary to law, against the weight of the evidence, not sustained by any evidence, and clearly erroneous.

11. The finding and judgment of the Court as set forth in section IV, subsections A and B, of the Court's final judgment that the certain agreements therein described are unlawful under sections 1 and 3 of the Sherman Anti-

trust Act and should be terminated are contrary to law, against the weight of the evidence, not sustained by any evidence, and clearly erroneous.

12. The finding and judgment of the Court enjoining and restraining the defendant from doing or performing any of the acts or things set forth and enumerated in sections IV, V, VI, VII, VIII and IX of the Court's final judgment are contrary to law, against the weight of the evidence, not sustained by any evidence, and clearly erroneous.

13. The judgment of the Court that within two years from the date of the Court's final judgment, the defendant shall divest itself of all stockholdings and other financial inter-[fol. 3599] ests, direct or indirect, in British or French Timken as set forth in section VIII of the Court's final judgment is contrary to law, against the weight of the evidence, not sustained by any evidence, and clearly erroneous.

14. The judgment of the Court by which the defendant is ordered and directed to do and perform the acts and things set forth and enumerated in sections X and XI of the Court's final judgment is contrary to law, against the weight of the evidence, not sustained by any evidence, and clearly erroneous.

15. The judgment of the Court is contrary to law, against the weight of the evidence, not sustained by any evidence, and clearly erroneous in that the Court should have found and concluded as follows:

(a) The defendant and British Timken and French Timken have not been and are not now engaged in an unlawful combination and conspiracy in restraint of trade and commerce in anti-friction bearings among the several states of the United States and with foreign nations and between territories of the United States and foreign nations in violation of Sections 1 and 3 of the Sherman Antitrust Act.

(b) The defendant and British Timken and French Timken have not entered into and are not now parties to contracts, agreements and understandings, and have not planned and acted together, to eliminate competition, between them unreasonably, and with others, in the manufacture and sale of anti-friction bearings in all markets of the world, including the United States.

(c) The defendant and British Timken and French Timken have not formed and effectuated by the means, methods,

agreements and understandings set forth in the plaintiff's amended petition a combination and conspiracy in restraint of trade and commerce in anti-friction bearings among the several states of the United States and between the United States and foreign nations in violation of Sections 1 and 3 of the Sherman Antitrust Act.

(d) The restraints of trade, if any, resulting from the [fol. 3600] business agreements, contracts and understandings between the defendant and British Timken and French Timken have been at all times, and are, reasonably ancillary to the creation and maintenance of a lawful joint venture and enterprise by the defendant and Dewar; to the transfer by the defendant to British Timken, French Timken, and German Timken, of know-how with respect to the manufacture of bearings, the quality of steel used in connection therewith, and the various manufacturing processes specified; and to the licensing of the trademark "Timken" by the defendant to British Timken, French Timken, and German Timken (including the supplying of exclusive information as to the production of anti-friction bearings in connection with such trademark licenses). The provisions of the business agreements, contracts and understandings between the parties imposing such restraints of trade, if any, were for the purpose of, and lawful as, protecting the parties thereto to an extent reasonably necessary as incident to the joint venture and enterprise, the transfer of know-how, and the licensing of the name and trademark "Timken".

(e) The restraints of trade, if any, resulting from the business agreements, contracts and understandings between the defendant, British Timken and French Timken, were not imposed for the purpose or with the intention, and did not have the legal effect, of prejudicing the public interest by unduly restricting competition or obstructing the course of trade in violation of the Sherman Antitrust Act, there being at all times during the existence of such agreements, contracts and understandings substantial and vigorous competition between the defendant, British Timken and French Timken, on the one hand, and other manufacturers of all types of bearings, on the other, in all markets of the world.

(f) The defendant and British Timken and French Timken did not enter into or effectuate the joint enterprise and

venture to which they were parties, provide or exchange know-how, grant, or agree to grant, exclusive patent licenses, or assign, or agree to assign patents or patent rights, to each other, or use the trademark "Timken" or the [fol. 3601] licensing thereof; in furtherance of a combination and conspiracy in restraint of trade and commerce in anti-friction bearings in violation of the Sherman Antitrust Act.

(g) Since there is now no appreciable or substantial import or export trade of the United States in anti-friction bearings on a competitive price basis with the territories served by British Timken and French Timken under the business agreements, contracts and understandings between the parties, there does not exist that present illegality which is essential to equitable relief such as is prayed for by the plaintiff in this case.

(h) The defendant and British Timken and French Timken are not now engaged in an unlawful combination and conspiracy with others in restraint of trade and commerce in the manufacture and sale of anti-friction bearings in violation of the Sherman Antitrust Act.

16. The judgment of the Court as set forth in paragraphs XII, XIII and XIV of the Court's final judgment, is contrary to law and clearly erroneous.

17. The judgment of the Court should have been in favor of the defendant and against the plaintiff herein and the Court erred in not dismissing the amended complaint of the plaintiff and rendering judgment for the defendant.

OBJECTIONS AND EXCEPTIONS TO, AND MOTION TO AMEND AND TO MAKE NEW AND ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The defendant objects to the action of the Court in adopting, over the objection of the defendant, the Court's opinion as its findings of fact and conclusions of law in this action, and to the action of the Court in overruling the motion of the defendant for an order rejecting and disregarding a document lodged by the plaintiff with the Court denominated "Findings of Fact and Conclusions of Law" and requiring the plaintiff to submit a draft of findings of fact and conclusions of law in this action as required by

the Federal Rules of Civil Procedure and the rules of this Court.

[fol. 3602] 2. The opinion of the Court does not set forth nor contain findings of fact and conclusions of law as required by the Rules of Civil Procedure and the rules of this Court in that any statements of fact set forth in the Court's opinion are so intermingled with discussion of the evidence, inferences by the Court, arguments and observations of the Court, as to make it impossible to determine which statements, if any, in the Court's opinion are to be regarded as its findings of fact.

3. The opinion of the Court, adopted by it as its findings of fact, does not contain complete findings of all of the ultimate and subsidiary facts essential to a determination of all of the issues of fact necessarily involved in the final decision of this action.

4. The opinion of the Court, adopted by it as its findings of fact does not contain findings of fact found specially and separately from any conclusions of law made by the Court.

5. The opinion of the Court adopted by it as its conclusions of law in this action does not contain nor set forth conclusions of law as required by the Federal Rules of Civil Procedure and rules of this Court.

6. The opinion of the Court adopted by it as its conclusions of law does not contain conclusions of law found specially and separately from any findings of fact made by the Court.

7. The opinion of the Court adopted by it in its conclusions of law does not contain conclusions of law essential to a determination of all of the issues necessarily involved in the decision of this action.

8. If the numbered paragraphs, or any of them, set forth in the Court's opinion, adopted by it as its findings of fact, are determined to be sufficient in form to constitute findings of fact under the law as required by the Federal Rules of Civil Procedure and the rules of this Court, then the defendant objects and excepts to the following numbered paragraphs, and parts of paragraphs, of the Court's opinion for the reason that, regarded as findings of fact, they are against the weight of the evidence, not sustained by any evidence, and clearly erroneous: 15; 19; 20—1st sentence; 22—2nd sentence; 23; 33; 34; 35—3rd sentence;

[fol. 3603] 36—except 5th sentence; 45; 48—1st sentence; 53; 65; 67; 69; 70; 71—3rd sentence; 72; 78; 79; 88; 89; 92; 94; 95; 96; 97; 98; 99—1st line (not entire testimony); 103—1st sentence; 104; 106; 107; 110; 112—1st two lines; 116; 117; 119; 120; 121; 122; 123; 124; 125; 126; 127; 129; 131; 132; 133; 134; 135; 136—2nd sentence; 137—2nd and 3rd sentences; 143; 144—except 1st sentence; 145—insofar as it suggests defendant made a *defense* on the basis of good intentions; 146; 147; 148; 149; 150; 151—3rd sentence; 152; 153; 154; 155; 156; 157; 158; 159; 160; 177—2nd sentence; 180; 182; 183; 185; 186; 187—4th sentence, including quotation; 188; 190; 202—last sentence; 204; 205; 206; 207; 208; 210—except last sentence.

9. If the numbered paragraphs, or any of them, set forth in the Court's opinion, adopted by it as its conclusions of law, are determined to be sufficient in form to constitute conclusions of law under the law as required by the Federal Rules of Civil Procedure and the rules of this Court, then the defendant objects and excepts to the following numbered paragraphs, and parts of paragraphs, of the Court's opinion for the reason that they are not sound propositions of law as applied to this action, are not sustained by any evidence, and are clearly erroneous: 67—2nd sentence; 120; 126; 127; 128; 129; 130; 131; 132; 134; 135; 136—1st sentence; 143; 145—insofar as it suggests defendant made a *defense* on the basis of good intentions; 150; 153; 154; 161; 162; 172; 174; 175; 176; 177; 178; 180; 182; 183; 184; 190; 193; 194; 195; 196; 197; 198; 199; 200; 210—last sentence; 211—1st sentence.

10. And the defendant moves the Court to amend its findings of fact, if any, as set forth in the Court's opinion and to make new and additional findings of fact and conclusions of law, by adopting as its findings of fact and conclusions of law the document attached hereto and made a part hereof, marked "Exhibit A", entitled "Defendant's Proposed Findings of Fact and Conclusions of Law."

Wherefore, the defendant, The Timken Roller Bearing Company, prays the Court to set aside its final judgment in this action; to grant to the defendant a new trial herein, to adopt as the Court's findings of fact and conclusions of [fol. 3604] law in this action the findings of fact and conclusions of law set forth in the document attached hereto

marked "Exhibit A" and made a part hereof; and to enter judgment for the defendant in this action.

(S.) Luther Day and John G. Ketterer, Attorneys for Defendant, The Timken Roller Bearing Company.

NOTICE OF MOTION

To:
Robert B. Hummel, Esq.,
Attorneys for Plaintiff,
237 Leader Building,
Cleveland Ohio:

Please take notice that the defendant has filed in the above entitled case a motion for a new trial; objections and exceptions to, and motion to amend, the Court's findings of fact and conclusions of law; and motion to make new findings of fact and conclusions of law; that the same will be heard by the District Court for the Northern District of Ohio, Eastern Division, at the Federal Courts Building, Corner of Public Square and Superior Avenue, Cleveland, Ohio; and that, if oral argument thereof is desired by the Court, you will be notified of the time thereof.

(S.) Luther Day and John G. Ketterer, Attorneys for Defendant.

ACKNOWLEDGMENT

Receipt of copy of the foregoing motion, and memorandum in support thereof, is hereby acknowledged this 24th day of February, 1950.

(S.) Robert B. Hummel, Attorney for Plaintiff.

MEMORANDUM

The reasons supporting motion for a new trial, aside from grounds 5, through 8, appear from the oral arguments and briefs of the defendant with respect to the merits of the case, and from the defendant's "Objections to Draft of Judgment Proposed by Plaintiff", filed September 13, 1949, and brief and evidence and oral argument in support thereof.

[fol. 3605] The reasons in support of grounds 5 through 8 of the motion for a new trial, and the objections and exceptions of the defendant to the Court's findings of fact and conclusions of law appear in the oral arguments and brief

in support of the defendant's motion, filed June 13, 1949, for an order "Rejecting and Disregarding the Document Lodged By the Plaintiff Denominated 'Findings of Fact and Conclusions of Law' and Requiring Plaintiff to Submit a Draft of the Findings of Fact and Conclusions of Law Required by Rule 52(a) of the Federal Rules of Civil Procedure."

To avoid duplication we respectfully refer the Court to the foregoing evidence, briefs, and arguments and adopt them in support of this motion and objections.

The reasons for the motion to amend Court's findings of fact and conclusions of law and to make new findings of fact and conclusions of law (by adopting the proposed findings of fact and conclusions of law submitted with the motion as "Exhibit A" thereto) are obvious, in view of the defendant's position with respect to the Court's action in adopting the Court's Memorandum Opinion as its findings of fact and conclusions of law, as set forth in the foregoing argument and brief in support of its motion filed June 13, 1949, above referred to.

The reason for Finding No. 162 is that, for reasons disclosed in the record (pp. 2580-2582, Incl.) the Court proposed to include such a statement in the Memorandum Opinion. Since only this Court takes judicial notice of proceedings before it, we respectfully request that such a finding be made.

The Court has full authority under Rule 52 (b) to "amend its findings or make additional findings" and "amend the judgment accordingly", and under Rule 59 (a), "On a motion for a new trial in an action tried without a jury", to open the judgment if one has been entered, and "amend findings of facts and conclusions of law or make new findings and conclusions, and directly the entry of a new judgment."

Respectfully submitted, (S.) Luther Day and John G. Ketterer, Attorneys for Defendant.

[fol. 3606] EXHIBIT "A" TO MOTION

IN UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

The defendant,
British Timken
and French Timken

1. The defendant, The Timken Roller Bearing Company, is an Ohio corporation with its principal offices located at Canton, Ohio. It was organized by, and took its name from, H. H. Timken and W. R. Timken and their father, Henry Timken, Senior, about 1898 or 1899. It employs upwards of 16,500 employees at its various plants located in Ohio and in Colorado in the United States, and in St. Thomas, Ontario, in Canada. Defendant manufactures tapered roller bearings, alloy steel, seamless tubing and removable rock-bits. It owns all of the stock of The Timken Roller Bearing Service and Sales, Ltd., a Canadian corporation which handles sales of tapered roller bearings for service purposes in Canada, and of The Timken Roller Bearing Company of South America, an Ohio corporation authorized to do business in Brazil. It ships tapered roller bearings manufactured by it from its plants in Ohio to customers located in other states and territories of the United States, and to many foreign countries.

2. British Timken, Limited, named a co-conspirator (hereinafter referred to as British Timken), is a British joint stock Company organized June 4, 1920 and maintains its principal office at Birmingham, England. In 1947 it employed a weekly average of 1963 production employees and a weekly average staff of 527. It manufacturers tapered roller bearings and axle boxes for rail-[fol. 3607] road cars. It also manufactured ball and straight roller bearings from 1933 or 1934 to 1940, but thereafter discontinued its own production of these types of bearings in 1940 when it acquired its wholly owned subsidiary, Fischer Bearings Company, Limited, which presently manufactures straight roller bearings and ball bear-

ings: Michael B. U. Dewar is Chairman and chief Executive Director of British Timken.

3. The defendant owns 30.25% of the ordinary shares of British Timken. Under an agreement (Defendant's Exhibit 240) between the defendant and Dewar made in March, 1948, which superseded previous similar arrangements between them, it has an option to purchase all ordinary shares now owned by Dewar (constituting 25% of the ordinary shares of British Timken outstanding) in the event of his death or his being incapacitated for six months as director of British Timken, or in the event he desires to sell the shares, and also has the right to control the vote of a majority of the combined shares presently owned by defendant and Dewar if at any time the profits of British Timken available for payment of dividends upon an average of three consecutive years are reduced below £50,000 for one year, and Dewar has the option to purchase defendant's stock in British Timken if it desires to sell.

4. Societe Anonyme Francaise, named a co-conspirator (hereinafter referred to as French Timken) is a French corporation organized July 11, 1928, with its plant and offices at Asnieres, France. In 1947 it employed approximately 510 production employees and staff members. It manufactures tapered roller bearings.

5. The defendant and Dewar each own 50% of the capital stock of French Timken and of certain promissory notes issued by it. Under an agreement (Defendant's Exhibit 228, 15th document) between the defendant and Dewar made in 1935 which superseded previous similar arrangements between them, Dewar is given the right, during his lifetime and active management of French Timken, to elect a majority of its board of directors until it shall [fol. 3608] fail to pay annually $24,000 in dividends or other distributions from accumulated earnings; in the event of Dewar's death or retirement from active management of French Timken, or in the event of its failure to make such annual payments, voting control of French Timken passes to the defendant; and the defendant and Dewar are each given options to acquire the stock of French Timken held by the other in the event of proposed sale thereof.

The Position of the Timken Companies in the Bearing Industry.

6. The defendant inaugurated the manufacture of tap-

ered roller bearings, which were invented by the joint efforts of Henry Timken, Senior, and one Heinzelman, and patented by them.

7. Bearings consist, generally, of friction bearings and anti-friction bearings. Friction bearings, or plain bearings as they are sometimes called, slide over the shaft and depend entirely on oil or other similar substances to reduce friction. Anti-friction bearings consist of a circular group of steel rollers or balls revolving between two circular raceways which reduce friction between moving mechanical parts.

8. Among the types of anti-friction bearings are roller bearings and ball bearings. Tapered bearings are a style of roller bearings. Other styles of roller bearings consist generally of straight roller, spherical, spherangular, barrel shape, and hourglass bearings.

9. Bearings are subjected to one or both of two kinds of pressure, radial and end thrust. The radial load on a bearing consists of pressure from the top while the end thrust load consists of pressure from the side, such as the pressure which tends to push the occupants out of an automobile as it rounds a corner. In many instances, such as that of a bearing on the front axle of an automobile, there is a resultant load which is both radial and end thrust. The design of bearings differs in accordance with the function to be performed by them, depending upon the type of load or loads to which they will be subjected.

10. All types of anti-friction bearings compete with each [fol. 3609] other and can be used in almost any kind of position in which anti-friction bearings can be used. While straight roller bearings are designed primarily to take radial load, some are designed particularly to take end thrust as well as radial load. Tapered roller bearings are designed to take both radial and end thrust load. Ball bearings are designed to take both radial and end thrust load.

11. All types of roller bearings, including tapered roller bearings, can be used in almost any type of work where an anti-friction bearing can be used, and compete with each other in almost every place where there is any mechanical movement.

12. Aside from a field in which small ball bearings, such as the miniature types which can be seen only with a

magnifying glass are used almost to the exclusion of roller bearings, and a field in which large roller bearings are more practical due to the bulky housing required for ball bearings, roller bearings (including tapered roller bearings) and ball bearings compete, and in at least 90% of the places where anti-friction bearings are used either ball bearings or roller bearings can be applied, and the success of the anti-friction bearing manufacturer in competition depends upon salesmanship or economy of the bearing.

13. Price of the bearing and cost of the mounting for the bearing are the considerations which determine the economy of the bearing.

14. Ball bearings were brought to the United States from Europe and were used in the United States a number of years before tapered roller bearings were developed and for many years the major problem of the defendant in competition was to persuade prospective customers to replace ball bearings with tapered roller bearings on automobile applications.

15. In the United Kingdom and Europe the tapered roller bearing competes with the ball bearing in 90% of the applications in which anti-friction bearings are used. British Timken and French Timken have been engaged at all times in pioneering the sale of tapered roller bearings in the markets in which they have sold, because far more ball bearings than tapered bearings were used. The ball bearing companies were very well known and the sale of [fol. 3610] tapered bearings has been developed largely by displacing ball bearings.

16. Anti-friction bearings compete with friction bearings on many applications. Roller bearings, including tapered roller bearings, compete with friction bearings on heavy applications such as steel mill rolls, while ball bearings compete with friction bearings on lighter applications such as vacuum cleaners. Many more friction type bearings are manufactured than anti-friction bearings by well over 1,000 companies in the United States. Since 1935 an increasing part of the business of all anti-friction bearing manufacturers has been to induce users of friction bearings to substitute anti-friction bearings.

17. The defendant is the largest manufacturer of tapered roller bearings in the world. Net sales of bearings

by the defendant and its subsidiaries in 1947 were $77,097,756.

18. In 1927 defendant's output of tapered roller bearings constituted approximately 27.7% of the total production of anti-friction bearings in the United States.

19. Most manufacturers of ball and roller bearings belong to the Anti-Friction Bearing Manufacturers Association, which was organized to enable compliance with the National Industrial Recovery Act. According to figures compiled by that association, defendant's percentage of tapered roller bearings manufactured in the United States was as follows:

Year	
1941	71.0%
1942	77.9%
1943	82.2%
1944	80.3%
(7 months) 1945	78.9%

At present, the defendant's output of tapered roller bearings constitutes 25% of the total production of anti-friction bearings, and 50% of the production of roller bearings, in the United States.

20. In 1927 the defendant was competing with eight manufacturers of tapered roller bearings as well as manufacturers of other types of bearings. At the present time the defendant competes in the United States with 14 manu- [fol. 3611] facturers of tapered roller bearings, 18 manufacturers of straight roller bearings, 25 manufacturers of ball bearings and 6 manufacturers of special type bearings such as the SKF barrel type bearing and spherangular bearing. The number of manufacturers of tapered roller bearings in the United States is greater than it ever was before and certain of them, such as Bower and New Departure, have grown more than the defendant since 1927. These competitors include Hyatt, a manufacturer of tapered and straight roller bearings which is a division of General Motors Corporation, American SKF, a subsidiary of Swedish SKF, and Bower, which sold $20,000,000 (worth) of bearings as compared with the defendant's $70,000,000 (worth) in 1947.

21. British Timken, during the period from 1927 to

date, produced a large portion of all the tapered roller bearings in England. It manufactured more than 90% in 1927, the percentage decreased to 70%, and later returned to more than 90%. It produces approximately 20% of all British anti-friction bearings. British Timken's sales, including those made by its subsidiary, Fischer Bearings Co., Ltd., were estimated at $14,700,000 for 1947. British Timken's sole competitor in England in the manufacture of tapered roller bearings has been Skefko, the subsidiary of SKF which operates in England. Its other competitors in England in the sale of anti-friction bearings have been such companies as Hoffman and Ransome & Marles.

22. French Timken manufactures about 80% of the tapered roller bearings in France, which constitutes 10% of all the anti-friction bearings. Its sales in 1947 totaled $2,274,723. Other manufacturers of tapered roller bearings in France which compete with French Timken are Rossi, the French subsidiary of SKF, and Renault, companies which also manufacture ball bearings and other types of anti-friction bearings.

23. Estimating the present volume of production of anti-friction bearings in the United States, England and France from the percentages thereof produced by the defendant, British Timken and French Timken, in the amount [fol. 3612] of 25%, 20%, and 10%, respectively, the combined volume of sales of the above three companies represents approximately 23.2% of the combined anti-friction bearing industry in those three countries, as shown by the following table:

TABLE NO. 1

	Volume of Bearing Sales	Industry % of National	Estimated Volume of National Industry
American Timken	$70,000,000	25	280,000,000
British Timken	11,000,000	20	55,000,000
French Timken	2,274,723	10	22,747,230
Total	83,274,723		357,747,230
Total % of Combined Industry			23.2%

24. SKF's pre-World War II production of anti-friction bearings was about one-third of the world's supply; as of 1945 SKF's subsidiaries in France and Germany were the

largest producers of anti-friction bearings in those countries; and, of 20 to 30 manufacturers of anti-friction bearings in the United States; the largest was a subsidiary of an automobile manufacturer (Defendant's Exhibits 173 and 184).

The Method of Marketing Bearings

25. Bearings are sold for original installation in equipment and for the replacement of bearings therein. Original installation sales constitute approximately 95% of the output of bearings, and replacement sales the balance of 5%.

26. The customer is most likely to order a replacement bearing from the company which manufactured the bearing originally installed in certain equipment, so that the manufacturer making the sale of the bearing originally installed is most likely to make the sale of the bearing which replaces it. Therefore, the sale of bearings for original installation provides the basis for replacement business.

27. Sales of bearings for original installation are made as follows. The bearing manufacturer's sales engineers contact the prospective customer to ascertain whether any new designs of machinery are being considered, and ob- [fol. 3613] tain from the customer's design engineers who are designing the machinery prints which show the points at which bearings are to be located. The bearing manufacturer's engineers then prepare layouts which show how its bearings can best be used in the customer's machinery, which are submitted to the customer accompanied by a proposition. Layouts and propositions are submitted by the various bearing companies manufacturing ball, straight roller, tapered roller, and other types of bearings, respectively, who are competing for the original installation business on a particular machine. The defendant maintains a staff of sales engineers, who are all graduates in the different branches of engineering trained in its factories, in sales offices located in the principal cities of the United States for the purpose of securing original installation business in this manner, and British Timken and French Timken do the same.

28. Competition between the different types of anti-friction bearings for original installation business ends at the point of the adoption in a design of a specific type of bearing. Once that particular type of bearing is in-

corporated other types cannot be substituted for replacement. The replacement bearings must be of the same size and character as the original bearing.

29. Tapered roller bearings manufactured by competitors of the defendant are interchangeable with the defendant's bearings. Almost all tapered bearing manufacturers copy the defendant's bearings dimensionally, and also, as a convenience to customers, use the same system of part numbers on their bearings as that used by the defendant. Bearing assemblies, manufactured by the defendant and its competitors, consisting of cup and cone, fit the same opening and are interchangeable and cups manufactured by the defendant's competitors are sometimes combined by its customers with cones made by defendant, or vice versa.

30. Replacement business is conducted by the defendant, British Timken and French Timken, through authorized distributors and stocking jobbers who purchase and stock [fol. 3614] various sizes of bearings and parts for the purpose of servicing customers pursuant to a system of discounts from list price which are changed from time to time in order to meet competition. In addition to that which comes to dealers or jobbers, replacement business consists of unsolicited inquiries to the manufacturer which originate with persons who had had no previous contact with its sales organization. Such unsolicited inquiries made to the defendant ordinarily run between $15,000 and $25,000 in value per year.

Foreign Commerce in Anti-Friction Bearings

31. The foreign countries in which the world's machinery, aside from that built in the United States, is chiefly manufactured, are located in western Europe. Bearings are invariably components of such machinery, and the demand for anti-friction bearings outside the machinery producing countries consists of replacement business.

32. The principal foreign countries in which anti-friction bearings have been produced during the period covered by the complaint in this case, namely 1928 to date, are Sweden, Germany, Italy, the United Kingdom, France and Switzerland (Defendant's Exhibit 173), all of which are located in western Europe.

33. Exports of anti-friction bearings by United States

anti-friction bearing manufacturers have been made principally to Canada with lesser amounts going to European countries, Latin-American countries, Japan, Australia, and the Philippine Islands, and occasional large shipments to Soviet Russia. They consist principally of bearings used in the manufacture of automobiles in Canada in plants affiliated with American automobile producers. The balance of the exports are largely repair and replacement parts for American made machines and devices, and types of bearings not produced in Europe (Defendant's Exhibits 173 and 184). Exports of anti-friction bearings to the United Kingdom and western European countries have constituted a relatively small part of total exports. Exports by all United States anti-friction bearing manufacturers to the United Kingdom averaged 3.6% of exports from 1927 through 1938, while exports to Europe, aside from [fol. 3615] the years 1929 through 1931 in which the Russian Government purchased abnormally large amounts, averaged 13.9% of total exports. Total exports from the United States for the years 1925, 1927, 1929, 1931, 1933, 1937, and 1939 averaged only 2.3% of anti-friction bearings produced therein as shown by the following table:

Table No. 2.

Year	Total U. S. Exports (DX 176)	Total U. S. Production (DX 178)	Export % of U. S. Production
1925	1,270,125	99,418,000	1.3%
1927	1,804,701	99,849,000	1.8
1929	3,236,217	120,034,000	2.7
1931	1,750,845	50,528,000	3.4
1933	777,492	40,530,000	1.9
1937	3,028,515	124,014,000	2.4
1939	3,061,466	104,874,000	2.9
Average U. S. Export percentage of total U. S. Production			2.3%

34. Imports into the United States from Europe (where the principal foreign producers of anti-friction bearings are located) are principally from the SKF plants and from Hoffman of England. These imports go largely to the American affiliates of these companies and are largely sizes and types which they do not produce advantageously in the United States (Defendant's Exhibits 173 and 184). Imports of anti-friction bearings into the United States averaged less than 1% of the total United States production of anti-friction bearings for the years 1925, 1927,

1929, 1931, 1933, 1937, and 1939 as shown by the following table:

Table No. 3.

Year	Total U. S. Imports (DX 177)	Total U. S. Production (DX 178)	Import % of U. S. Production
1925	846,000	99,418,000	.85%
1927	913,000	99,849,000	.91
1929	1,416,000	120,034,000	1.20
1931	392,000	50,528,000	.77
1933	295,000	40,530,000	.73
1937	1,216,000	124,014,000	.98
1939	493,000	104,874,000	.47
Average U. S. Import percentage of total U. S. Production			.84

[fol. 3616] 35. From the commencement in 1914 of World War I to date there has evolved a complete change in foreign trade from free competition on the basis of price regulated only by tariff restrictions to a trade administered and controlled by governments under rigid licensing systems in which price competition has no place because these systems are administered according to the political and economic theories of the particular countries which impose them. As a result of this change, there is no substantial free competition on the basis of price in foreign trade today, and there is no likelihood of a return thereto in the future.

36. During World War I systems for trade control by administrative action were established by the belligerent and neutral countries which related both to the importation and exportation of goods and also to the control of foreign exchange.

37. After World War I, termination in 1919 or 1920 of an inter-allied agreement, by which the United States supported the pound sterling at the official rate of $4.86 per pound, caused the collapse thereof. This resulted in continuation by the United Kingdom of measures to protect British industry, passage of the Safeguarding of Industries Act in 1921, and emphasis on the "Buy British" movement the purpose of which is to procure insistence upon British components in industrial production and to cause people in England and the rest of the British Empire to buy British goods in preference to goods manufactured in other countries wherever possible.

38. Termination of the inter-allied agreement caused the French franc to collapse, resulting in reinstatement of

the French system of controls of imports from 1922 to 1925, when French currency was stabilized, a high protective tariff was put into effect, and trade on a free competitive basis was resumed during a period of four years. The French Government, maintaining the largest army in Europe and therefore a large customer for France's metallurgical production, was insistent upon production of everything necessary for defense in France, and even controlled the location of bearing plants in France. This resulted in a highly nationalistic attitude in France that bearings incorporated [fol. 3617] in French equipment should be manufactured in France.

39. In Germany imports and foreign exchange transactions were subject to direct controls during the early 1920's to 1925, at which time an attempt was made to return to normal free price competition until 1930. During the period from 1925 to 1930 Germany's high protective tariff was continued and there were great German nationalistic pressures to require German purchasers to buy only goods manufactured in Germany.

40. During the period from the end of World War I to 1930, other European countries underwent violent inflation, international trade did not commence immediately, and from 1925 to 1930 an attempt was made to get back to normal trade, but each country had an essentially defensive point of view with respect thereto.

41. In the summer and fall of 1931, a financial collapse caused by runs on Austrian and German banks occurred in both countries which caused the institution of foreign exchange controls prohibiting foreign exchange transactions except under license in both countries, and put an end to the effort to get back to normal free trade on a competitive basis.

42. Germany organized an elaborate system of payments and clearing agreements with other countries which made international exchange transactions unnecessary, and resulted in increasing the volume of trade between those countries, who were such parties to agreements, and excluding trade between them and countries not parties thereto. The coming into power of the Nazis in Germany in January, 1933, completely removed its international trade from free price competition. Thereafter, it was influenced by considerations of foreign policy, economic penetration and aggression, and preparation for war.

43. In the British Empire, and certain other countries within its sphere of influence, similar restrictive practices took place between the banking collapse of 1931 and World War II. Collapse of the German banking system in 1931 started a run on the English banks, which were forced to [fol. 3618] suspend gold payments, resulting in collapse of the pound sterling. Most of the British Empire, the Scandinavian and the Baltic countries also suspended gold payments and pegged their currency to the pound sterling, thus creating a sterling area, consisting of the United Kingdom, all of the rest of the British Empire except Canada and Newfoundland, the Irish Free State, Sweden, Norway, Denmark, the Baltic countries, Portugal and Iraq, whose members transferred credit balances in dollars into sterling rather than gold, and kept these reserves on deposit in London, thus keeping available for themselves pounds sterling at a fixed rate of exchange. Creation of the sterling area impeded exports by American manufacturers, because fluctuation in the rate of exchange between the dollar and the pound sterling, which was not pegged to the dollar, made it more desirable for business men in the sterling area group to trade with those in other countries who were members of that group. Also, depreciation of the pound sterling in terms of the dollar resulting from suspension of payment in gold was equal in effect to a 50 to 70 per cent tariff on American goods sold in the sterling area countries. In 1932, England imposed a blanket tariff of 10 per cent and an additional tariff of approximately 33-1/3 per cent overall on a large variety of manufactured products, and the Government was given power to modify rates to impose quantitative restrictions on imports, and in the same year the principle of Imperial Preference, which gave preferential tariff rates to nations members of the British Empire with the effect of diverting trade from non-empire to Empire countries, was established at the Ottawa Conference of British Empire Nations. During the period from the 1931 banking collapse to World War II, the United Kingdom also made clearing and payments agreements, similar to those made by Germany, with nine countries.

44. In France, during the period from the 1931 banking collapse to World War II, two-thirds of imports were subject to quantitative controls in addition to tariff pro-

tection, the franc collapsed to 4 cents in 1933 and 2 cents at the time World War II started, and in the serious [fol. 3619] depression which took place during this period in France the French metallurgical industry was almost completely dependent upon French Government orders for railroad and military purposes.

45. During the period from the 1931 banking collapse to World War II, Spain, Portugal, and Italy had controls, and the countries of eastern Europe were linked economically with Germany pursuant to its system of clearing agreements. As of March, 1939, 38 countries, not including the United States, were parties to clearing and payments agreements. Germany was party to 35, Italy to 28, France to 12, and the United Kingdom to 9. The result of such agreements was to increase the difficulty of trade between the United States and countries party thereto.

46. During World War II, such foreign trade as took place was subject to export licenses at both ends, and in European countries usually to import licenses, and was government controlled and completely subordinated to war requirements in each country.

47. Since the end of World War II the war time control system in England has been maintained virtually intact, including internal production controls and the entire exchange control system, with the result that imports into England are controlled, and foreign exchange is not made available to pay therefor unless their purpose is approved by Government authorities, which regulate imports in a way considered best to implement Government policy. Licenses for foreign exchange to pay for imports will not be given for goods which are produced in sufficient quantity in the United Kingdom.

48. Since 1945, the United Kingdom has made a series of agreements with other countries which divide the countries of the world into five groups to which different treatment is given by the United Kingdom. Generally speaking, these groups are as follows:

(a) The sterling area group consists of the United Kingdom and all of its colonies, protectorates and mandates, the British Empire Dominions except Canada and Newfoundland, India, Pakistan, Iceland, the Farroe Islands, Iraq, [fol. 3620] and Trans-Jordan. Among these countries sterling is interchangeable. Transfers of funds out of the ster-

ling area countries to those in the other four groups are prohibited except under license.

(b) American area accounts are sterling accounts derived from current transactions, belonging to residents of the United States and its possessions, the Philippine Republic and sixteen of the twenty Latin-American Republics. Sterling in American area accounts is transferable into dollars, and dollars and other currency in such accounts are transferable into sterling and other currencies of countries in the next group, which is called the transferable account area.

(c) The transferable account area consists of agreements with certain countries by which they are included within a British sterling area. Transfers from the American area accounts into currency of a country in the transferable account area do not work in reverse, i.e., a transfer of sterling in the account of a country located in the transferable account area could not be made into the currency of a country located in the American account area, the purpose being to give the United Kingdom an increasing area of transferable accounts, included in a British sterling area, in which multilateral payments and trade can take place along organized patterns to the exclusion of American area accounts and to the benefit of the transferable account area.

(d) Bilateral account countries are those with which strictly bilateral arrangements exist so that transfers from their currency into sterling, and from sterling into their currency, are permitted either unconditionally or under very liberal licensing agreements, but no transfers into or out of other currencies, including the transferable accounts currencies, are permitted.

(e) Residual accounts countries constitute the balance and the Soviet Union is the only country of any importance included in this category.

The effect of these agreements, and the foreign exchange regulations thereunder, is to change trade of a country like the United States, which is listed as an American area [fol. 3621] account, from normally competitive to strictly "administered" trade in the sense that the British Government, considering only the public interest and disregarding comparative cost and competitive prices, will administer it according to the amount of dollars available. In deciding whether to permit importation from the United States, it

will first determine whether the product can be obtained in England, the sterling area, or the transferable account area in that order of preference, and as a last resort will go to an American account area country for it.

49. The situation in France and other European countries since World War II has varied in detail, but at the present time all countries of the world have provisions for import or exchange licensing, or both (summarized in Defendant's Exhibit 181), except the United States, Cuba, the Dominican Republic, El Salvador, Haiti, Liberia, the Philippine Republic, and Tangier.

50. At the present time the United States licenses exports from this country in accordance with regulations (Defendant's Exhibit 248).

51. At the present time each foreign country has a full employment policy which results in establishment of classifications of imports by which domestic production is first assured in order to obtain full employment and essential imports are then obtained from countries with which the particular country has mutual payments and clearing agreements. Only after the exhaustion of these sources are additional imports allowed, to the extent necessary, from other areas, such as the American accounts area.

52. So far as can be seen at the present time, the presently existing restrictions on the foreign export trade of the United States in anti-friction bearings, as well as other products, will continue in spite of efforts of the United States to bring about a return to free trade on a competitive price basis because, upon termination of the European [fol. 3622] Recovery Program, the subsidies which give the beneficiaries of that plan American dollars with which to buy goods will end, the domestic manufacturing capacity of countries which benefit by the plan will have substantially increased, and so long as the western European countries consider themselves menaced by Russian power, it is likely that the nationalistic shells in which those nations live will continue.

53. At the present time many foreign countries impose substantial tariffs upon imports of anti-friction bearings. Latest tariffs of the principal foreign countries which manufacture machinery, and also anti-friction bearings, are as follows. The tariff of the United Kingdom imposes 33-1/3 per cent *ad valorem* on roller bearings; that of

France, suspended January 1, 1948, ordinarily imposes 28 per cent, plus additional levies on imports of approximately 12.36 per cent which have not been suspended; that of Germany (1938) imposes a progressive rate depending upon weight, ranging from 150 Reichsmarks per 100 kilograms for bearings weighing 100 grams or less to 50 Reichsmarks for those weighing over 1 kilogram each; that of Italy imposes a progressive rate depending upon weight ranging from 52.80 lire per 100 kilograms for roller bearings weighing up to 50 grams to 4.60 lire for those weighing more than 4 kilograms plus 10 per cent import license fee and 4 per cent sales tax; that of Sweden imposes 10 per cent *ad valorem;* and that of Switzerland imposes a progressive rate ranging from 80 francs in import duty, plus 85 francs sales tax per 100 kilograms for bearings weighing less than 250 grams, to 50 francs import duty, plus 44 francs sales tax for those weighing 1 kilogram or more, with 15 per cent additional Tare percentage (Defendant's Exhibit 180).

Results of Restrictions on Export Trade in Anti-Friction Bearings

54. As a result of the various restrictions imposed by foreign countries over the period since the commencement of World War I in 1914, consisting of the nationalistic policies of the various nations to enforce local purchase of domestic goods, tariff regulations, formation of the sterling [fol. 3623] bloc, fluctuation of currency values, and government regulation and licensing of exports, imports, and foreign exchange, American manufacturers of anti-friction bearings, including the defendant, from 1927 to date, could not have exported bearings manufactured in the United States to the United Kingdom, France, Germany, or the other European machinery manufacturing countries in successful price competition with anti-friction bearings manufactured in those countries.

55. At all times from 1927 to date, it has been necessary for an American manufacturer of anti-friction bearings, including the defendant, in order to do a successful foreign business therein, to establish plants to produce bearings in the foreign countries in which original installation sales are to be made. Since practically all of the manufacturing of machinery outside of the United States has taken place

in the western European nations from 1927 to date, it was necessary to establish plants in those countries to obtain original installation bearing business therein, and the only foreign countries in which it was profitable to establish such plants were England, France, Germany, and possibly Italy.

56. Replacement sales of anti-friction bearings, constituting 5 per cent of its anti-friction bearing business, have a natural tendency to follow original installation business and to go to the manufacturers located in those countries in which bearings to be replaced were originally manufactured and installed.

57. In order to obtain original installation bearing business in England, France, and Germany, it has been advisable from 1927 to date, not only to operate plants in those countries, but also to operate them under local management and with local personnel, accompanied by investment of local capital, for the following reasons.

(a) The method of selling bearings for original installation requires the services of engineers who are familiar with the engineering practices of the particular country in which sales are to be made and with the temperament of the customers of that nationality.

[fol. 3624] (b) Manufacturers of machinery are reluctant to purchase bearings from bearing manufacturers who are not located nearby because they desire to have available speedy technical advice and service.

(c) There is a strong national interest in each country in having an economy which is as nearly integrated as possible, and is not dependent upon an outside source of supply for such an important item in its economy, from an industrial and military standpoint, as anti-friction bearings.

(d) There is a national hostility toward the product of foreigners in those countries and a pronounced national interest in supporting the product of local manufacturers therein which has always been of special importance to the defendant, because of the fact that the tapered roller bearing was first developed by it and has been essentially an American product competing largely with the ball bearing, essentially an older product developed locally in those countries before tapered roller bearings were sought to be produced therein.

(e) Bearings in European countries are manufactured largely to metric rather than to inch measurements, which makes it much more practical to have plants in those countries if sales are to be made there.

(f) High tariffs in the United Kingdom, France, and Germany have made it advisable to establish plants therein. A high French tariff constituted one reason for a recommendation by an officer of the defendant in 1927 that it establish a plant in France.

(g) The various restrictions on imports, exports, and foreign exchange have made it necessary to manufacture bearings in the countries in which they are to be sold for original installation.

Results of Restrictions on Import Trade in Anti-Friction Bearings

58. Neither British Timken nor French Timken could have sold anti-friction bearings on a competitive price basis for original installation or replacement business in the United States from 1927 to date because of the United [fol. 3625] States tariff, and because of their higher costs of production.

59. The United States tariff on anti-friction bearings and parts from 1927 to date has been as follows (Defendant's Exhibit 183):

	Balls and Rollers		Ball Bearings and Parts		Roller Bearings and Parts	
	Per lb.	Ad valorem	Per lb.	Ad valorem	Per lb.	Ad valorem
1927–1936	10¢	35%	10¢	45%	10¢	45%
1927–1939	8	35	8	35	8	35
1939	8	25	8	35	8	35

The tariff on balls and rollers has varied, from 66.6 per cent of the declared value thereof averaging 46.3 cents per pound in 1932, to 26.1 per cent on balls and rollers averaging $5.119 per pound in 1943; on ball bearings and parts, from 61.4 per cent on bearings averaging 60.8 cents per pound in 1932, to 39.1 per cent on bearings averaging $1.887 per pound in 1943; and on roller bearings, from 61.8 per cent on bearings averaging 59.6 cents per pound, to 39.9 per cent on bearings averaging $1.618 per pound (Defendant's Exhibit 183).

60. The cost of manufacture of anti-friction bearings by foreign manufacturers, including British Timken and

French Timken, has always been much higher than that of American manufacturers, including the defendant, due to higher actual labor costs resulting from the fact that orders for bearings in foreign countries are much smaller than those in the United States, which prevents "long runs" on bearings on particular orders and thus necessitates much more frequent interruptions in setting up of different tooling on machines to take care of different orders for different sizes, with resultant loss of time by machine operators.

Relations Between the Defendant, Subsidiaries of Vickers, Ltd., and La Societe Mechanique de Gennvilliers (1909-1927).

61. On June 16, 1909, the first of a series of written agreements (Plaintiff's Exhibit 6) licensing the production [fol. 3626] and distribution of tapered roller bearings, was concluded between the defendant and Electric & Ordnance Accessories Company, Ltd. (hereinafter called E. & O. A.), a predecessor of British Timken and a wholly-owned subsidiary of Vickers, Ltd., a British enterprise comprised of many companies and described as manufacturing everything from battleships to baby carriages. Under its provisions defendant granted to E. & O. A. the exclusive license to "make, use, exercise and vend" in the United Kingdom and the Isle of Man roller bearings of all kinds made pursuant to the specifications of three British patents which defendant then owned or under patents later to be granted to or acquired by defendant. This agreement contained definite territorial restrictions. Defendant was prohibited from making or selling to others, or from licensing others to sell, or from selling its own manufactured bearings for shipment into the territory of E. & O. A. It was, however, permitted to make and sell, or license others to make and sell, bearings for vehicles manufactured outside and shipped into the territory of E. & O. A. E. & O. A. was prohibited from selling bearings outside of its territory, and from selling bearings in its territory knowing them to be for shipment outside. E. & O. A. was allowed to sell bearings in its own territory for vehicles manufactured there for export elsewhere. The license was so conditioned that E. & O. A. was prevented from manufacturing or selling any anti-friction bearings, except those

made under the licensed patents and except those assembled in other articles produced or sold by E. & O. A. E. & O. A. was obliged to use the designation "Timken" exclusively on all the bearings made or sold by it. It was incumbent on E. & O. A. to use the instructions for manufacture given to it by defendant, which defendant agreed to supply.. Defendant in turn was privileged to utilize any improvements made by E. & O. A. in its manufacturing process. E. & O. A. had the right to determine the sale price for its bearings, provided that the deficiency between its lowest price and the lowest sale price of defendant would not be in excess of the United States tariff chargeable on the bearings from [fol. 3627] any part of E. & O. A.'s territory. The licensee agreed to pay to the defendant a royalty of 15 per cent of the net invoice price of all sales.

62. In another agreement (Plaintiff's Exhibit 7) executed on the same day, defendant granted to E. & O. A. the full and exclusive "license and authority to make, use, exercise and vend" roller bearings of all kinds under certain French and Russian patents, and under a German patent application as soon as the patent or other equivalent grant should have been obtained, in the territories covered by the patents. It provided that so long as the agreement was in force, E. & O. A. should have "full and exclusive right license and authority until all the said Patents shall have been granted or after all or any of the said Patents shall have ceased to exist (but only so far as the Licensor can then lawfully do so) to make use exercise and vend articles embodying the subject matter of such patents or patent and roller bearings of every kind whatsoever in that part of the said territory where the Patents or Patent shall not have been granted or shall have ceased to exist." Defendant also granted to E. & O. A. until such patents should be obtained, "so far as the licensor lawfully can do so in the absence of such patents or grants", an exclusive license to manufacture and sell articles embodying the subject matter of the British patents referred to in the first agreement and roller bearings of every kind whatsoever (whether covered by patents or not) throughout Europe (except the United Kingdom, France and Russia and except Germany after the patent or grant shall be issued or made there) and throughout the whole of the British Colonies, Protectorates and Dependencies except

Canada. It contained the identical restrictions set forth in the first agreement in respect of sales in the other party's territory. The provisions of the first agreement pertaining to royalty, price regulations, the compulsory use of the mark "Timken" by E. & O. A., to the requirement that E. & O. A. use instructions as to method of manufacture, to the furnishing of data by defendant, and to the privilege [fol. 3628] of defendant to utilize improvements made by E. & O. A. were embodied in the second agreement in identical language.

63. E. & O. A. at the time the 1909 contracts between it and the defendant were executed was not, and it never was at any time, an actual or potential competitor of the defendant in the manufacture and sale of anti-friction bearings. At the time it entered into the contracts with the defendant, it was not, and it never theretofore had been, a manufacturer of anti-friction bearings. It was engaged in the manufacture of electrical motors and equipment, and fuses for the British Government. In 1909 its plant was located in Aston, Birmingham, and it carried on its bearing manufacturing operations in a shop about 20 feet x 40 feet. When it started on bearing work, it employed not more than a couple of dozen people thereon. By 1919 or 1920, when Wolseley Motors came into the picture, the number of employees of E. & O. A. employed in the manufacture of bearings had increased to from 350 to 400 people, and it was making 60 or 70 different types thereof.

64. Some time prior to 1920 a French company named La Societe de Mechanique de Gennvilliers (hereinafter called SMG) commenced to act as licensee of either E. & O. A. or Wolseley Motors in the sale of tapered roller bearings in France and its colonies. SMG was not at any time an actual or potential competitor of the defendant in the manufacture and sale of anti-friction bearings.

65. In 1920, Vickers, Ltd., sought to assign the rights of E. & O. A. to Wolseley Motors, Ltd., another wholly-owned Vickers' subsidiary. The defendant objected to the assignment because it did not view with favor having bearings being made by a motor car manufacturer and did not feel that the Timken business would be prosecuted by the new business rganization any better than it had been in the past, even though the directors of Wolseley Motors had de-

cided that bearings manufactured under the 1909 license agreements should be made under an entirely separate organization with separate officers, plants, officials and their staff and the organization to trade under an entirely different name.

[fol. 3629] 66. On March 29, 1920, a satisfactory agreement was reached between the defendant and Wolseley Motors, and the agreements of June 16, 1909 were modified on April 6, 1920, by two separate instruments (Plaintiff's Exhibits 8 and 9) between defendant and Wolseley Motors. The rights of E. & O. A. were assigned to Wolseley. The territorial divisions remained as they had been designated. The respective areas were redefined as licensor's area (defendant), and licensee's area (Wolseley). Defendant was permitted, however, to sell to manufacturers in defendant's territory who, in turn, were allowed to export bearings to Wolseley's territory for use in their products. Wolseley was granted the same privilege in its territory. The price for replacement sets for use in Ford cars in Wolseley's territory was fixed. Defendant and Wolseley placed on record their desire and intention that bearings made in their respective territories "shall not be sold at prices which shall be unreasonable and unfair to the party in whose territory the Roller Bearings are sold" without accepting any legal obligation for it. The modifying agreements further provided, that the defendant might rescind the 1909 license agreements if Wolseley should become bankrupt or fail to carry out its agreements in certain respects, and that, if they should be rescinded, Wolseley should abandon the use of the name "Timken" as part of its name (if so used) and in all other respects, and secure to defendant the exclusive use of the name "Timken".

Wolseley Motors, after succeeding E. & O. A. as a party to the contracts with the defendant, was not and never was thereafter an actual or potential competitor of the defendant in the manufacture and sale of anti-friction bearings.

67. On April 20, 1920, British Timken was incorporated as a wholly-owned subsidiary of Wolseley Motors, took over the production of bearings under the 1909 license agreements, and thereafter the rights of Wolseley Motors

under those agreements, as modified in 1920, were assigned to it.

[fol. 3630] 68. Shortly after the amendment of the 1909 license agreements, in May, 1920, the defendant, which has been careful, at all times, to preserve its rights in the trade name and trademark "Timken", the family name of its founders, sought advice from its American patent and trademark counsel regarding the use of the name "Timken" as stamped on bearings by the English and French companies, and was advised that it was possible for its British licensee to acquire ownership of the trademark in certain territories unless the matter were taken care of by a contract providing for licensing of the trademark to the British licensee and reversion thereof to the defendant at the termination of the license, that the supplemental agreement of 1920 with Wolseley Motors should be revised so that upon termination, by expiration of time or otherwise, of the 1909 agreements, the defendant's rights with respect to the trademark "Timken" should be the same as set forth in Article 10 of the 1920 supplemental agreement in event of the contracts being rescinded, and that registration of the surname "Timken" as a trademark could now be obtained in the United States under the Act of March 19, 1920, and in England under a new trademark act of December 23, 1919.

69. The defendant registered the trademark "Timken", which it had been using since 1912, in the United States in 1920.

70. Commencing in 1920, the defendant made efforts to secure registration of the trademark "Timken" in England but its American trademark counsel were advised by their English associate trademark counsel in January, 1921, that the registration could only be obtained by British Timken and that the defendant would have no rights therein unless some specific arrangement were made whereby, on termination of the license agreement under which bearings were being manufactured in England, the goodwill of the business in respect thereof must revert to the defendant. The defendant on August 22, 1921, instructed its American trademark counsel to proceed to obtain such an agreement from British Timken as the only way to get this registration was through its British licensee.

[fol. 3631] 71. In June, 1921, the defendant instructed its American trademark counsel to have the trademark registered in all civilized countries, and in August, 1921, to go ahead with this registration in other European countries without waiting for the British matter to be settled.

72. In December, 1921, the defendant was surprised to learn that SMG had already registered the trademark "Timken" in France. Under French law the first party to register a trademark in France owns it, subject to annulment by a prior user.

73. The defendant also found that one Max Prausnitzer, sales agent in Germany for E. & O. A. at the time, had registered the trademark "Timken" in Germany in 1916. Although Prausnitzer stated that he had registered the trademark to prevent its appropriation by third parties, he successfully resisted the defendant's application for registration in Germany. Under German law from 1918 to 1939 the first registrant of a trademark acquired incontestable title thereto regardless of the use thereof.

74. The defendant, after procuring registration of the trademark "Timken" in the United States, procured registration thereof prior to 1927 in the foreign countries hereinafter described in the years specified. At all times involved in this action, registrations of trademarks in certain of such countries either (a) could not be set aside by evidence of prior use by a contestant; or could be set aside by such evidence either (b) at any time, or (c) during a limited period after registration (except that a registration obtained with knowledge of the prior user's better right could be set aside at any time) as indicated. The right to set aside registrations in each of these countries could be waived by contract.

[fol. 3632]

	Country	Date of Defendant's Registration	Period for Setting Aside Registration
(a) Countries in which registration could not be set aside			
	Finland	1923	
(b) Countries in which registration could be set aside at any time			
	Belgium	1922	
	Greece	1926	
	Italy [1]	1922	
	Luxembourg [1]	1923	
	Netherlands	1922	
	Portugal [1]	1924	
	Roumania	1923	
	Sweden	1923	
	Switzerland	1923	
	Turkey	1923	
(c) Countries in which registration could be set aside during a limited period			
	Austria	1923	3 years
	Bulgaria	1923	1 year
	Czechoslovakia	1923	3 years
	Denmark	1923	5 years
	Yugoslavia	1924	2 years
	Norway	1922	3 years
	Poland	1926	1 year
	Spain	1923	3 years
Other Countries			
	Australia	1923	
	Hungary	1923	
	India	1923	

[1] Changed to limited periods in 1942, 1945 and 1938, respectively.

75. After the organization of British Timken in 1920, the defendant's officials concluded that British Timken was not advancing nearly as fast as the defendant in new fields of endeavor, was not taking full advantage of the technical information which the defendant was passing on to it, that its methods were inferior to those of the defendant, its costs were higher, and that the quality of bearing made by it was quite inferior to that made by the defendant.

76. Although the royalty payable under the existing 1909 license agreements had been reduced some years prior at the request of British Timken, or one of its predecessors, from 15 per cent to 10 per cent, British Timken again, commencing in 1923, asked repeatedly for a further reduction in royalty to not more than 2½ per cent, representing that its competitor, Skefko, was manufacturing and sell- [fol. 3633] ing tapered bearings at a profit at a price

equivalent to British Timken's cost, including royalty, and was doing a good business in cheap bearings, especially in replacements for bearings on Ford automobiles. Although the defendant continually suggested that British Timken remedy this situation by sending representatives to observe the defendant's improved manufacturing processes for the purpose of cutting its costs of manufacture, nobody was sent for two years after the suggestion was first made in 1923, and no employee of British Timken or its predecessors, visited the defendant for this purpose from 1920 to 1925.

77. In the early part of 1924, Lothrop, an official of the defendant, was sent to British Timken to advise it on cutting costs, and during his stay was told by British Timken that it did not think the defendant had any right to the trademark and trade name "Timken" in England.

78. The defendant wrote its English solicitor, Duncan, on March 25, 1924, authorizing him to negotiate with British Timken an adjustment of the royalty, and advised him that the one thing that it prized over all else was the name "Timken" and that it must have entire control of this name, that, if the matter of the Timken name could be satisfactorily settled, 5 per cent flat royalty on all business should be satisfactory to British Timken, but that as a last resort, in order to get everything that it desired in clearing the name "Timken", and in having entire control of it, it would consider even down to 2-½ per cent on the Ford business only, and 5 per cent on all other business.

79. Under English law there were, and are at present, common law trademark and statutory trademark rights, the former being protected by the Passing Off Act, and the latter by statutory provisions for registration. A common law trademark can be established in England by use of a trademark so that the public has identified the user's goods thereby. Prior to a change in the English trademark act in 1938, both under the statutory and common law of England, a trademark could be validly assigned only with the entire good will of the business in which it was used, but [fol. 3634] not if disassociated from the business with which it had been built up. This is still the English law as to assignment of a common law trademark. However, it was possible both before and after the change in 1938, under English law, to have a situation where the legal

ownership of unregistered trademarks belonged to one party and the equitable ownership to another.

80. On June 19, 1924, an agreement was reached by the defendant and British Timken by which royalties payable by British Timken were reduced to 5 per cent on ordinary business, and 2½ per cent on Ford business, and those payable by SMG were reduced to 5 per cent, commencing on the 1st of January, 1925; provisions as to ownership of the trademark were made; and the 1909 agreements were continued in existence to January 1, 1929. This agreement was evidenced by two formal contracts, one (Plaintiff's Exhibit 11) modifying the 1909 license agreement as to the continent of Europe and British Colonies, being dated December 31, 1924, and the other (Plaintiff's Exhibit 10) modifying the principal 1909 license agreement as to the United Kingdom and the Isle of Man, being dated as of January 1, 1925. Plaintiff's Exhibit 10 recited that the name "Timken" should belong exclusively to defendant and that during the continuance of the principal 1909 agreement as modified from time to time, British Timken should be deemed to be using it as a part of its exclusive license, upon the expiration of the principal agreement British Timken should change its name, and during the continuance and after the expiration of the principal 1909 agreement should otherwise do everything necessary to secure for defendant the exclusive right to the name "Timken". Plaintiff's Exhibit 11 was identical in this respect except that it contained provisions as to the sublicensees of British Timken which were the same as those applicable to British Timken.

81. At the time the amendments to the 1909 license agreements were made in 1924, all the basic patents pertaining to the tapered roller bearing had expired. The defendant was advised by its American patent and trademark counsel prior to the making of the amendments that the [fol. 3635] 1909 license agreements would not expire with the last of the defendant's three original British patents, but would be prolonged to the expiration of other British patents subsequently acquired by it, and that the license to British Timken contained therein to use the trademark and name "Timken" was of great value to British Timken.

82. After the amendment of the 1909 agreements in 1924, and some time prior to September, 1925, a joint ap-

plication for registration of the trademark "Timken" in England was made by the defendant and British Timken, and the defendant undertook to obtain, by agreement, joint registration by it, SMG and British Timken of the French trademark "Timken", and joint registration by it, Prausnitzer and British Timken of the German trademark "Timken", but such joint registrations were never obtained.

83. The joint application for registration of the British trademark "Timken" was abandoned in 1926 upon receipt by the defendant of advice from British trademark counsel that in their opinion it would be denied, that separate registrations by the defendant and British Timken for concurrent user possibly could be obtained, but that applications therefor probably would be denied on the basis of the facts as to user at that time; that, although the 1925 amendment to the 1909 agreement created a contract between the parties "deemed to be the subject of a license" which validly required British Timken to pay a royalty, it was inoperative in so far as it purported to determine ownership of the name "Timken" during the existence of the agreement, because use of the name "Timken" by British Timken was inconsistent with exclusive ownership by the defendant; that, since British Timken was not bound to assign its good will at termination of the 1925 agreement, the defendant thereafter would have to establish title to the trademark "Timken" in England by user as against third persons; and that in order to obtain registration, either a new agreement recognizing the existence of concurrent rights of the defendant in the trademark "Timken" and defining the conditions of user should be executed as a basis for obtaining registrations for concurrent user in [fol. 3636] the future, or the defendant and British Timken should be combined by one's absorbing the other.

84. On January 12, 1927, the defendant's American trademark counsel advised it that the difficulties with respect to the trademark "Timken" in England, New Zealand, France and Germany could be surmounted if it were to take over the business of British Timken, because such action would merge the somewhat conflicting titles of the defendant and British Timken, and, from a legal viewpoint, was by far the best way of handling the situation.

85. After the reduction in royalty in 1924, British Timken continued to ask for further reductions to 2½ per cent

on large orders other than those from Ford. Reports from British Timken demonstrated that it was just getting under way in the industrial bearing field in 1924, and that it was very disappointed with the business done by SMG in France.

86. In 1925 or 1926, Wolseley Motors fell into considerable financial difficulties which resulted in its reorganization.

87. In 1926, the defendant's chief engineer reported to it that on a visit to British Timken in that year he found that it was using antiquated equipment because the management was opposed to obtaining any new equipment on account of lack of funds, and that the average price of its bearings was 10 per cent higher than that of ball bearings, which were favored by British engineers and universally used so that the price handicap was very serious.

Joint Acquisition of British Timken by the Defendant and Dewar (1927).

88. In 1926 Dewar, who was then managing director of Vickers' largest subsidiary and chairman of Vickers committee which supervised all of its subsidiary companies dealing with sales, was made Vice-Chairman of its subsidiary, Wolseley Motors, in order to save as much money as he could for Vickers out of the Wolseley Motors reorganization. In this capacity he became acquainted with Wolseley Motors' wholly-owned British subsidiary, British Timken.

[fol. 3637] 89. As a member of a British commission, while on a visit to the United States to make an economic study, Dewar spent some time at defendant's plant. In 1927, shortly after his return to England, he became interested in acquiring personally an interest in British Timken. As an officer of Wolseley Motors, he knew of the existing agreements between defendant and British Timken, and of their provisions pertaining to territory, royalty and trademark. He also knew that the contracts were to expire on January 1, 1929.

90. On March 10, 1927, Dewar wrote to defendant's president, advising that he had become chairman of British Timken and raising the question of the continuation of the existing agreements between British Timken and defendant. In this letter he stated that he contemplated making an offer to Vickers for the purchase of British Timken and ex-

pressed the thought that it would require about £300,000. He commented, "I do not know whether your Company would care to be interested if I were to make such an offer either permanently or on the basis of the money loaned being repaid out of profits."

91. On March 28, 1927, Dewar cabled defendant, inquiring whether it would be prepared to extend its agreements with British Timken for ten years if he were to take it over, and stating that he had to make up his mind within the next ten days and should like to do it, but did "not think it wise without a ten year's arrangement with" defendant.

92. On March 29, 1927, defendant cabled Dewar in reply, that it was willing to consider an additional ten-year license and reduction of royalty, that with its cooperation costs could be reduced 25 per cent or more, and that it would be more interested in joining with him in purchasing British Timken from Vickers.

93. On March 30, 1927, Dewar replied stating that he was prepared to put up approximately half of the purchase price and that it was "essential that the company have British control of ordinary capital". Dewar was of this opinion because British Timken would then be a British [fol. 3638] controlled company so far as British companies and the British Government were concerned, and this was important because foreign-controlled companies always met with greater sales resistance in England than did British-controlled companies. This cable summarized British Timken's last balance sheet, of September 30, 1926, as follows:

Assets

Plant	£ 3,000
Debtors	39,000
Stocks	42,000
Cash	46,000

Liabilities

Shares	50,000
Sundry Creditors	18,000
Profits	63,000

The cable further stated that works and plant were leased from Wolseley, that a suitable works (factory) and plant

(machinery and equipment) could be purchased for £35,000 and £25,000, respectively, and that the business, with the profit from September, 1926, could be purchased for £260,000.

94. On March 31, 1927, the defendant cabled Dewar that it was willing to become interested in British Timken to the extent of one-half or more of the amount necessary to acquire and reorganize the business and offered to send its representative to close the deal. On April 1, 1927, Dewar acceded to the suggestion that the defendant send a representative, and on the same day the defendant wired its American trademark counsel stating that it was sending its representative to England to negotiate the purchase of a controlling interest in British Timken for it and asking for general suggestions as to what should be done regarding name registration.

95. Defendant sent Ely, a former executive of defendant, to confer with Dewar and instructed him, among other things, that "the registration of 'TIMKEN' must be definitely cleared up", either by obtaining registration for the defendant, or "if absolutely necessary" to obtain it in the name of British Timken, with provision that the registration come to the defendant "at the expiration of the main license agreement with British Timken", and instructed its English solicitor to consider the proper method of clearing up registration in England, France and Germany [fol. 3639] for its protection.

96. Ely conferred with Dewar covering every phase of the proposed undertaking. Ely insisted that the name "Timken" should be kept the property of the defendant in so far as possible. Dewar insisted on British control of the operations of British Timken because, in his opinion, a product made by foreigners, although produced in England, was unpopular, and therefore under foreign control his investment in British Timken would be in jeopardy. Ely acceded to Dewar's insistence on this point, provided that the defendant should be protected, in the event that Dewar's control should prove to be unsuccessful, by reversion of control to the defendant if the profits of British Timken should fall below a certain figure; and it was agreed that control of British Timken should go to the defendant if Dewar should become incapacitated or die, and that the parties should have options on each other's shares of stock

in British Timken in the event of sale. Dewar and Ely also decided that a company owned and operated by the defendant and Dewar should be organized to manufacture tapered roller bearings in France, because SMG was operating in an unsatisfactory manner, because of the French tariff, because of sales resistance by the French people to products of foreign corporations due to their anxiety to have products used in their engineering industry manufactured in France, and because the largest automobile manufacturer in France had decided to use tapered roller bearings. They also decided that a German company owned and operated by the defendant and Dewar should be inaugurated to manufacture tapered roller bearings and operate in Germany in the same way as the company to be organized in France. Since Prausnitzer had registered the German trademark "Timken" as his personal property, they decided to include him in the German business, if necessary, for the purpose of obtaining release of the name "Timken" in Germany by him.

97. During the course of these discussions Ely made his recommendations to the defendant in a letter (Defendant's Exhibit 17) in which he stated:

[fol. 3640] "I feel that there are three plans that should be given consideration.

"1st. Our complete control of British Timken or its successor, without other stockholders, other than qualifying directors' shares, and this is the plan I would recommend if there was available in our organization the proper person or persons, to spend a year to 2 years reorganizing plant, sales, etc. capable of contacting properly in Germany, and starting there a small company, and making entirely new arrangements in France. The present arrangement is most unsatisfactory.

"2nd. Our control with a working minority of British interest. This also requires time in making proper and suitable connections and would be probably the best plan, if Mr. Dewar, or a man of his type were available. To my straight question to Mr. Dewar on this set-up, he said 'No' without qualification.

"3rd. British control of new Company, only so long as British control operates Company with satisfactory profit

and dividends. This is the plan I now recommend, and will cover in more detail.

"In connection with the third plan its whole success depends upon the ability of the British control."

Ely then detailed Dewar's very favorable qualifications, including important business connections in Europe as well as the United Kingdom, which Ely's inquiries had disclosed, and further stated that Dewar desired to invest in British Timken because he felt that with his connections and business which he actually controlled, particularly on industrial work, and by cutting the costs 20 per cent to 25 per cent as Lothrop had advised him could be done, he could make British Timken profitable, and that "Mr. Dewar wants us very much as partners on account of our interest in the profitable operation of the company." Ely stated that agreement had been reached, subject to the defendant's approval, on major points, namely: (1) that Ely and Dewar would negotiate with Vickers for its British Timken shares, and (2) that, upon their purchase, certain arrangements, including changes in the corporate articles of British Timken, would be made to provide for control of British Timken, as between the defendant and Dewar. The substance of these arrangements, which Ely outlined, was subsequently incorporated in the Heads of Agreement of May 16, 1927, hereinafter discussed.

[fol. 3641] 98. The negotiations between Ely and Dewar eventuated in a written instrument denominated "Heads of Agreement", dated May 16, 1927 between defendant and Dewar. It was in effect a memorandum of the concurrence of the parties on the basic subject matter of the negotiations to be later "embodied in more formal documents as soon as practicable." It provided that defendant would contribute £52,500 and Dewar £47,500 for the purchase of the entire 50,000 shares of stock of British Timken, 26,250 to be issued to the defendant and 23,750 to Dewar; that the Articles of British Timken should be altered to provide for two classes of shares, Dewar to hold the majority of the "A" class which should control the company with respect to its ordinary affairs until a minimum net profit of £15,000 was not earned, and a dividend of "25% gross" was not paid, annually, in which event such control should pass to the defendant as owner of a majority of the shares of the

"B" class; that shareholders could transfer shares with the consent of the majority, but must first offer them to the other shareholders; that Dewar was to be the managing director while the shares he owned controlled the company; that upon his death or incapacity for six months to perform the duties of a director the defendant should have the right to purchase his shares; that a new agreement should be entered into between defendant and British Timken extending for ten years the terms of the existing Agreements between them subject to modifications and generally upon such terms and conditions to be mutually agreed, including among others, any practicable steps to be taken for the protection of the name Timken and securing the exclusive reversion on the name in all countries to the defendant at the termination of the Agreement, and arrangements to be made for the formation of continental companies for the manufacture and/or sale of bearings subject to a royalty to be divided between the defendant and British Timken.

99. The basic purpose and agreement of the defendant and Dewar was that the defendant, British Timken, and the companies to be acquired or organized by them in Germany and France, were to manufacture tapered roller [fol. 3642] bearings according to methods developed by the defendant and to sell them under the name "Timken" in their separate territories and to assist each other to sell such bearings everywhere in preference to bearings manufactured by other competing companies such as SKF and its subsidiaries. If one Timken company could not sell such bearings advantageously in a portion of its own territory, another was to make the sale. Provisions in the existing agreements between the defendant and British Timken which limited each to its own territory, were to be continued principally because Dewar did not wish to invest his money in the joint acquisition of British Timken with defendant and in the companies to be jointly acquired or organized by them in Germany and France without assurance that the defendant would not compete with those companies.

The Carrying Out of the "Heads of Agreement" of May 16, 1927

100. On the same day that the Heads of Agreement were executed, May 16, 1927, the purchase of British Timken

from Vickers was effected after waiver (pursuant to agreement between the defendant and Dewar to negotiate with Prausnitzer themselves) of a condition in the offer to purchase that Vickers should make an arrangement with Prausnitzer satisfactory to the purchasers.

101. At the date of the acquisition by the defendant and Dewar of British Timken, British Timken was not, and the defendant did not consider it to be, an actual or a potential competitor of defendant.

At this time British Timken owned virtually no manufacturing equipment, and leased from Wolseley Motors the buildings and machine tools used in the production of bearings. Substantially all of the manufacturing equipment which it owned was obsolete according to practice of the defendant in manufacturing bearings. British Timken had practically no assets other than a certain amount of good will and certain of its manufacturing operations were being carried out, under an agreement, by Wolseley Motors which was manufacturing motor cars on the same premises [fol. 3643] as those occupied in part by British Timken at that time. British Timken employed 300 to 350 people and manufactured not to exceed 100 sizes of tapered roller bearings, mostly "automobile sizes". Its largest net sales in its history of £240,202 in 1926, or in the neighborhood of $1,000,000, had increased only 13% over its next largest net sales in 1920 of £212,524. The defendant's net sales of bearings, alone, in 1926, were $24,362,805; it was employing between 3500 and 4000 persons as early as 1919; and as early as 1909 it was making 139 cone and 51 cup sizes, while in 1927 it was making 887 cone and 359 cup sizes and 54 thrust bearing sizes. A comparison of costs of the defendant and British Timken for the manufacture of three of the four sizes of bearings which British Timken manufactured in the largest quantities, made by the defendant in February, 1927, at Dewar's request before the purchase of British Timken was suggested (Defendant's Exhibit 3), demonstrated that British Timken's cost of manufacture was approximately 200% of that of the defendant on two sizes, and 135% thereof on the third. Ely advised the defendant prior to its purchase in 1927 that "The present British Timken Company is at present more or less asleep." The then existing contract between the defendant and British Timken had only about a year and a half to run and British

Timken could not have successfully continued the manufacture and sale of anti-friction bearings in the absence of the relation it had with the defendant.

102. The defendant acquired British Timken jointly with Dewar because the defendant desired to insure its control of the name and trademark "Timken" in England, the British Colonies, the French Empire, Germany, and elsewhere, and had been advised by its American and British trademark counsel that acquisition of British Timken was the best means of so doing; because it was dissatisfied with the manner in which business in tapered roller bearings had been conducted, under license, by the subsidiaries of Vickers, and their sublicensee, SMG; and because based upon the recommendation of its representative, Ely, it [fol. 3644] determined that the arrangement outlined in the "Heads of Agreement" of May 16, 1927, with Dewar, who had expressed a desire to have the defendant as his partner, and who was apparently exceptionally well qualified to undertake the business, constituted the best method for the defendant to develop the manufacture and sale for original installation of tapered roller bearings in the United Kingdom, France, and Germany, the principal manufacturing foreign countries in which original installation bearing business could be obtained, and the sale thereof for replacement purposes in the territories in which machinery produced in those countries was most likely to be sold. The defendant and Dewar did not purchase British Timken for the purpose or with the intention of preventing competition between the defendant and British Timken as an actual or potential competitor of the defendant in the manufacture and sale of anti-friction bearings.

103. On March 13, 1928, acting pursuant to the "Heads of Agreement" of May 16, 1927, to embody their agreements therein in a more formal document, the defendant, British Timken and Dewar entered into an agreement, (Defendant's Exhibit 197) to make effective, as soon as practicable, new articles of association and by-laws of British Timken, an agreement between British Timken and Dewar as to its managing directorship, an agreement between the defendant and Dewar as to options on shares of British Timken, all as already approved; reconstitution of German Timken pursuant to an agreement signed that day; formation of a French Company; and a license agreement between the de-

fendant and British Timken as already approved, and license agreements between British Timken and German Timken, and between British Timken and the French Company, on the model of, and in accordance with, the license agreement between the defendant and British Timken,

104. Acting pursuant to the agreement of March 13, 1928, the defendant and Dewar caused new articles of association of British Timken, (Defendant's Exhibit 199) to be adopted, section 26 of which gave shareholders first refusal on each other's stock; caused new by-laws of British Timken [fol. 3645] (Defendant's Exhibit 198) to be adopted as to the voting of stock and the powers of the directors which carried out the provisions contained in the Heads of Agreement of May 16, 1927, for control of the company by Dewar so long as it earned the specified minimum amount and dividend, and control by the defendant in the event that it should cease to do so; and caused an agreement (Defendant's Exhibit 24) to be made between British Timken and Dewar which made him Managing Director thereof upon terms provided in the Heads of Agreement of May 16, 1927.

105. Acting pursuant to the agreement of March 13, 1928, the defendant, Dewar and Prausnitzer caused changes to be made in the capitalization, articles of incorporation and by-laws of German Timken as a result of which the defendant became the owner of a majority of the common stock, Dewar of a substantial portion thereof, Prausnitzer 16½ per cent thereof, and British Timken a small amount thereof plus a share of preferred stock which had sufficient votes to control the management of German Timken in all cases where according to the provisions of the German law a simple majority of the votes was sufficient, but not in extraordinary matters where more than a majority vote was required. The defendant was given voting control, by its ownership of a majority of the common stock, on extraordinary matters. Stockholders other than Prausnitzer were given an option on his stock if he should die or become incapacitated, bankrupt or insolvent or should retire, and he paid for his new shares of common stock by the transfer of the trademark and was given an irrevocable contract to act as Managing Director for 5 years from January 1, 1928. A plant was acquired by German Timken, but its business was discontinued in 1934.

106. Acting pursuant to the agreement of March 13,

1928, Dewar, with the consent and cooperation of the defendant, caused French Timken to be organized by means of statutes of incorporation (Defendant's Exhibit 206) adopted on July 11, 1928. The defendant acquired and [fol. 3646] owned a majority, and Dewar a minority, of 9800 "A" shares of stock of French Timken, and British Timken acquired and owned 200 "B" shares which had sufficient votes to control at ordinary general meetings of shareholders, but not at extraordinary meetings to consider the basic affairs of French Timken at which the defendant, as holder of a majority of the stock controlled the vote. The sublicense to SMG was not renewed, and French Timken purchased the French trademark "Timken" from SMG. SMG was purchased by SKF in 1930. French Timken established a plant in France which commenced operations by importing semi-finished components from British Timken and finishing them, and four or five years later commenced to make all its own components. Dewar controlled the ordinary operations and supervised the business activities of French Timken. The defendant and Dewar did not organize French Timken for the purpose or with the intention of preventing competition between the defendant or British Timken with French Timken or SMG as an actual or potential competitor of the defendant or British Timken in the manufacture and sale of anti-friction bearings.

107. Acting pursuant to the agreement of March 13, 1928, the defendant and Dewar entered into an agreement, dated April 20, 1928 (Defendant's Exhibit 200) which provided that upon the death or incapacity of Dewar the defendant should have an option to buy all of his shares in British Timken and in any subsidiary companies (defined as "any Company controlled by" British Timken "so far as regards ordinary business whether by reason of its holding a clear majority of all the issued shares of such Company or shares carrying a voting control or otherwise") and that, if either party should purchase shares of British Timken offered to its shareholders by the other pursuant to Section 26 of its articles of association, such party should have an option to purchase the shares of the offeror in every subsidiary company. On the same day, April 20, 1928, the defendant, British Timken, and Dewar entered into an agreement (Defendant's Exhibit 201) supplemental

to this agreement, providing that each of the parties should have the right to at least one representative on the [fol. 3647] board of directors of any subsidiary Company and must offer its stock to the other before selling to anyone else.

108. Acting pursuant to the agreement of March 13, 1928, the defendant and British Timken entered into a "business agreement" as of January 1, 1928 (Plaintiff's Exhibit 12) to be in effect for a period of ten years. Simultaneously all existing contracts between them were cancelled. Under this agreement the world was divided into respective territories for the manufacture and sale of bearings in this language: "For the purpose of this Agreement the United Kingdom of Great Britain and Northern Ireland and all other countries of Europe and all colonies or dependencies of said United Kingdom and European countries except in or adjacent to North or South America shall be deemed to be the territory of the British Company and the rest of the world shall be deemed to be the territory of the American Company." An exclusive license was granted to British Timken under existing or future patents of defendant for the duration of the agreement. In turn British Timken was to assign absolutely and for all time its existing and future patent rights in defendant's territory. They agreed to inform each other in respect of all inventions and improvements regardless of whether they were patented or not patented. Advice as to methods of manufacture was to be furnished by defendant, and British Timken was obliged to follow it. Each party agreed not to sell bearings directly, or to others for shipment into, the other party's territory, except as assembled component parts of completed articles manufactured in its own territory and for bearing replacement purposes in such completed articles. In the event such sales in or into the other party's territory were made, the seller was obliged to advise the other of the details of the sales and pay the other party an amount of ten per cent of the net sales price. They agreed to endeavor to maintain the distinctive character of the trademark "Timken". British Timken agreed not to manufacture or sell bearings except under the trademark and only in accordance with the provisions of the agreement, [fol. 3648] and to eliminate the name "Timken" from its

corporate name and to refrain from its use as a trademark upon the termination of the contract.

109. The provisions of the 1928 business agreement between the defendant and British Timken relating to the trademark "Timken" established equitable ownership thereof in the defendant under English law, and amounted under English law to a waiver by British Timken of any right it may have had to set aside, on the ground of prior user by British Timken, registrations of the trademark "Timken" in any foreign countries in which the defendant had registered the trademark.

110. Acting pursuant to the agreement of March 13, 1928, the defendant and Dewar caused a business agreement (Plaintiff's Exhibit 16) to be entered into between British Timken and French Timken on June 16, 1928, on the model of the one between defendant and British Timken, allocating to French Timken France and her colonies, dependencies and mandates (except those in North and South America) as its exclusive territory for the manufacture and sale of anti-friction bearings.

111. Acting pursuant to the agreement of March 13, 1928, the defendant and Dewar caused a business agreement (Plaintiff's Exhibit 19) modeled upon the business agreement of January 21, 1928, between the defendant and British Timken, to be entered into in 1929 between British Timken and German Timken.

Maintenance of Relations Between the Defendant and Dewar and Changes in Contractual Relations Between the Timken Companies (1928 to Date)

112. At all times since the making of the Heads of Agreement of May 16, 1927 the defendant and Dewar have collaborated closely in the operation of British Timken and French Timken, and have maintained substantially the same system for control thereof, as between themselves and as to third persons, as that which was inaugurated at the time when they jointly acquired British Timken and jointly organized French Timken.

113. The defendant and Dewar have regarded, and have [fol. 3649] denominated each other, as partners in the operation of British Timken and French Timken, and German Timken, at all times since the making of the Heads of Agreement between them on May 16, 1927. The defendant

expressed in 1929 a desire to keep Dewar an "equal partner in growing business"; the defendant in 1934 referred to the fact that Dewar and it had been partners in the past, stated that more formal arrangements between the defendant and British Timken must be made due to contemplated sale of a portion of its stock to the public, that if Dewar should retire from British Timken in the future it might be unwilling "to continue the same relation with some future partner as in the past", and that it therefore desired to view the proposed new agreements "from the possible standpoint that some one other than Michael Dewar might eventually be a 'party of the other part' ", to which Dewar replied that he contemplated that his interest in British Timken would remain in his family, that when "there would be no Michael Dewar in the relations between British Timken and American Timken, there would be some other Dewar", and that for this reason he had "asked Mr. Pascoe to join the Company, in order to preserve continuity of management and association with yourselves"; and in 1936 Dewar referred again to "our partnership".

114. In 1929, when the defendant and Dewar desired to increase the capitalization of French Timken in order to handle increasing business, Dewar was unwilling to invest more of his own funds in French Timken. The defendant desired "to keep him equal partner in growing business", so Dewar proposed that the defendant advance the necessary funds to French Timken and that one third of British Timken's profits after 1929 be devoted to repaying the advances (French Timken common stock to be issued in their place), subject to the condition that the 1928 ten year business agreement between the defendant and British Timken should be extended to fifteen years. The business agreement was extended and Dewar's proposal was carried out by the parties.

115. The defendant and Dewar transferred their stock in French Timken to an American holding company, International and Commercial Investments, Inc. (hereinafter [fol. 3650] called ICI), in exchange for its common stock, and the defendant subscribed for 3,400 of ICI's $100 par preferred stock. ICI issued three common stock certificates, one to the defendant, and two to Dewar, the certificate for the controlling shares being issued in Dewar's name but put in escrow pursuant to an agreement (Defend-

ant's Exhibit 225) that, if French Timken should fail to earn a stipulated minimum amount on its invested capital, the certificate for such shares should be transferred to the defendant; that each party should have the option to purchase the others' shares of stock in ICI in the event that either should desire to sell, and that the defendant should have the option to purchase Dewar's stock in the event of his death or leaving the management of French Timken; that the defendant should subscribe for a specified number of additional shares of preferred stock of ICI upon demand by it, the proceeds to be applied to the purchase of additional stock or bonds of, or loans to, French Timken; and that, so long as such preferred stock of ICI was outstanding, a British Timken dividend of one-third of its profits was to be applied to the purchase of common stock of ICI. The defendant and Dewar contemporaneously entered into another agreement (Defendant's Exhibit 224) that Dewar, while in control of ICI, would not permit it to sell its French Timken stock, and would vote for the defendant's nominees to act as ICI's minority directors. At this time the controlling Class "B" shares of French Timken, formerly owned by British Timken, were transferred by it, 52.5 per cent to the defendant and 47.5 per cent to Dewar.

116. In 1934, when the value of British Timken had increased greatly, Dewar desired to realize part of his investment therein and to avoid the existing arrangement by which one-third of its profits was used to purchase common stock of ICI because he felt that it was hard on him "to receive a comparatively small dividend from British Timken with the obligation to put half of it aside for future investment in the anti-friction bearing industry in Europe." He also wished to settle the question of control of French Timken, which had lost money, and which the defendant, therefore, had the right to control. At this time the de- [fol. 3651] fendant's investment in French Timken, by way of stock and loans, was $822,128.80 as against Dewar's investment of $31,960.

117. After negotiations, the defendant and Dewar, on August 15, 1934, entered into Heads of Agreement (Defendant's Exhibit 228, 1st Document), which provided as follows:

(1) The capitalization of British Timken was to be changed to an increased number of shares all of one class

and the defendant and Dewar were each to sell one-half of their holdings thereof to the public at a specified price.

(2) Upon such sale, the remaining 50 per cent of the shares of British Timken owned by Dewar and the defendant was to be transferred by them to a holding company in exchange for its class "A" and class "B" shares, respectively, which should have the same rights as to voting control thereof, based upon profits and dividends of British Timken, as had been provided formerly by the articles of association and by-laws of British Timken, and with the same options of the parties on each other's shares in the event of sale.

(3) Adjustment was to be made by the defendant and Dewar, contingent upon consummation of the sale of the British Timken stock, of their interests in French Timken, German Timken, and ICI and its wholly owned subsidiary, International Bearings Investments, Inc. (hereinafter called IBI), so that each would own a one-half interest in each of these corporations. Dewar was to pay the defendant $250,000 in cash and give his note, without interest, in the amount of $150,000, payment of which was to be secured by pledge of his one-half interest in French Timken, German Timken, ICI and IBI, and payable only from distributions with respect thereto in excess of an amount equal to $7500 per year, to the extent of his half interest therein, and was to have the right to elect a majority of the French Timken Board of Directors during his lifetime and active management thereof until it should fail to pay annually $24,000 in dividends or other distributions from accumulated earnings. Control of French Timken was to pass [fol. 3652] to the defendant in the event of Dewar's death, retirement from active management thereof, or in the event of its failure to make such payments.

(4) The parties were "to cause" the 1928 business agreement between the defendant and British Timken to be amended so as to reduce commissions to 5 per cent, to reduce the royalty payable by British Timken to the defendant to ½ of 1 per cent, to permit either the defendant or British Timken to sell bearings in Russia on a basis whereby they would "share equally the expense of negotiating such sales by either company," the company securing the sale to pay the other 2 per cent of the net sale price and the agreement to continue in effect for 15 years after sale of the British Timken stock to the public.

(5) French Timken was to be freed of any obligation to pay royalty or service fees to the defendant or British Timken.

118. Acting pursuant to the Heads of Agreement of August 1934, the defendant and Dewar caused various agreeme. and other documents, which are included or described Defendant's Exhibit 228, to be executed for the purpose carrying out the agreements contained in the Heads of Agreement, contingent upon sale of the stock before August 3, 1935; caused sale in June, 1935, of 50 per cent of their stock in British Timken to outside parties (except 10,000 shares purchased by the defendant at the sale because it determined that it should "maintain somewhat greater ownership" in British Timken than was reached by its joint holdings with Dewar); caused the organization of a holding company known as Timken Holdings, Ltd., with provisions in its articles of association and by-laws which maintained the voting control arrangements between the defendant and Dewar as to British Timken dependent upon its earning the same minimum profits and paying the same minimum dividend as before, to which they transferred all of their British Timken stock, (except the 10,000 shares purchased by the defendant at the sale), and executed an agreement (Defendant's Exhibit 228, 14th Document) which gave the defendant an option on Dewar's shares in Timken Holdings, Ltd. in the event of his death or [fol. 3653] incapacity for six months to act as director of British Timken.

119. Acting pursuant to the Heads of Agreement of August 15, 1934, the defendant and Dewar caused the deposit in the Westminster Bank of London, England, in the joint names of the defendant, The Lux Company (a holding company wholly owned by Dewar) and Pascoe (Dewar's second in command of British Timken), as trustees, of all of the stock of, and 236 promissory notes issued by French Timken, and caused the execution by the defendant, The Lux Company, Pascoe, and Dewar of an agreement (Defendant's Exhibit 228, 15th Document), which provided for the pledge of Dewar's interest in French Timken and German Timken to secure payment of his note to the defendant, and for the control of French Timken as specified in the Heads of Agreement of August 15, 1934. This trust agree-

ment presently governs relations between the defendant and Dewar as to French Timken.

120. Acting pursuant to the Heads of Agreement dated August 15, 1934, the defendant and Dewar caused the defendant and British Timken to enter into a new business agreement (Plaintiff's Exhibit 20), effective January 31, 1935, which originally provided that it was to extend for a period of 16 years, but which was amended by a supplemental agreement dated June 6, 1935 (Plaintiff's Exhibit 24), to provide that it should extend for a period of 30 years from January 1, 1935, at the insistence of the English brokers with whom Dewar negotiated for the sale of stock of British Timken, because they felt that the stock could not be sold to the British public without a long-term agreement with defendant, "particularly for the use of the name" since the goodwill of British Timken "rested largely in the association with" the defendant. This business agreement was substantially the same as the 1928 business agreement between defendant and British Timken. In it were found however, the following provisions:

[fol. 3654] "The American Company (Timken) in its territory may accept and execute orders for bearings for ultimate destination in the British Company's (British Timken's) territory for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorize sales to or known to be destined for manufacturers in the British Company's territory or sales at prices in conflict with the wishes of the British Company and the American Company from time to time will notify the British Company of the details of the sales authorized under this paragraph and will pay to the British Company an amount equal to five per cent (5%) of the net sale price thereof."

Conversely the same provision was made as to prices and payments to defendant for sales of replacement bearings by British Timken in defendant's territory. Russia became the joint territory of defendant and British Timken. Business transacted there was conditioned as follows:

"The prices and terms at or upon which offers are made and orders are accepted shall so far as practicable be mutually agreed from time to time but nevertheless

either of the parties hereto shall be at liberty to quote and accept orders at low prices and extended times for payment without the consent of the other party after having first submitted the prices and other terms to the other party for its consideration and remarks provided that any such quotation or acceptance shall not involve under cutting some quotation already made by the other party."

121. Acting pursuant to the Heads of Agreement of August 15, 1934, the defendant and Dewar caused the 1928 business agreement between French Timken and British Timken to be superseded by a new business agreement between them (Plaintiff's Exhibit 25) dated July 15, 1935. It, too, provided that bearing replacement sales might be made by the defendant, French Timken and British Timken in, and into, their respective territories. The prices had to be satisfactory to the company into whose territory bearings were sold. French Timken was obliged to sell no bearings other than under the trademark "Timken".

122. In 1936, Dewar informed the defendant that it seemed probable that the French Government would require a declaration by French companies of their foreign assets and enforce compulsory repatriation thereof at existing exchange rates. He recommended that French Timken's promissory notes held under the trust agreement in the Westminster Bank depositary account be paid to the extent possible out of gold owned by it while exchange was favor-[fol. 3655] able, and that an agreement then be worked out for lending the money to French Timken in the future as required. He stated that this was "equivalent to paying the money away from the control" of French Timken, but "as far as our partnership is concerned" he was anxious to keep these funds available for French Timken, and that for the same reason he had borrowed personally funds of French Timken and would stand any loss which might result to him from this loan. The defendant agreed to this procedure, but insisted that half of the personal loan from French Timken to Dewar should be carried by its wholly owned subsidiary, Continental Bearings, Inc., so that it might "share any possible losses" which "might result" from the loan.

123. In 1938, the defendant and Dewar caused the defendant, British Timken, and French Timken to enter into a

business agreement dated November 28, 1938 (Plaintiff's Exhibit 22) which embodied the allocations of territory and certain of the other terms and conditions contained in the 1934 business agreement between the defendant and British Timken and the 1935 business agreement between British Timken and French Timken, and which provided that it should continue in effect for a period of 27 years from January 1, 1938. The defendant and Dewar also caused the defendant, British Timken and Dewar to enter into a supplemental business agreement (Plaintiff's Exhibit 27) which also contained certain terms and conditions which had been embodied in the 1934 and 1935 business agreements and provided, in substance, that the defendant and Dewar would cause French Timken to carry out the terms and provisions of the 1938 business agreement between the defendant, British Timken, and French Timken. Taken together, the provisions of these two agreements, in substance, are identical with the combined provisions of the 1934 business agreement between the defendant and British Timken, and the 1935 business agreement between British Timken and French Timken, which they superseded. These two agreements were executed to take the place of the 1934 and 1935 agreements on the advice of French counsel, and govern the present relations between the defendant, French Timken, and British Timken.

[fol. 3656] 124. In 1940, British Timken acquired a plant in England owned by the Fischer Company from the English Custodian of Enemy Property and Dewar consulted with, and obtained the consent of, the defendant in so doing.

125. On March 22, 1948, the defendant, Dewar, and Timken Holdings, Ltd., entered into an agreement (Defendant's Exhibit 239) which canceled existing agreements governing control of the ordinary shares of British Timken owned by the defendant and Dewar through Timken Holdings, Ltd. and, contemporaneously, the defendant and Dewar entered into an agreement (Defendant's Exhibit 240), which gives the defendant an option to purchase all of the ordinary shares of British Timken stock now owned by Dewar (which constitute 25 per cent of its voting stock) in the event of his death or his being incapacitated for six months to act as a director of British Timken, or in the event that he desires to sell the shares, and also gives the defendant the right to control the vote of a majority of those shares com-

bined with specified shares presently owned by it if at any time the profits of British Timken available for dividends upon an average of three consecutive years are reduced below £50,000 for one year. This agreement presently governs relations between the defendant and Dewar as to British Timken.

The Basic Plan of Co-operation between the Defendant, British Timken, and French Timken in the Manufacture and Sale of Bearings, 1927 to Date.

126. At all times since the joint acquisition by defendant and Dewar of British Timken, their joint acquisition of German Timken, and their joint organization of French Timken, the defendant and Dewar have caused those companies to co-operate to sell bearings under the trademark "Timken" all over the world in competition with bearings manufactured by other companies. Their policy has been that if for some reason the defendant, British Timken, or French Timken could not sell advantageously in a portion of its own territory due to inability to make deliveries, conditions of foreign exchange, or production facilities, another one of the three companies should make the sale. The sales forces of the defendant, British Timken, and French [fol. 3657] Timken have identical purposes, "that is, always to sell a Timken bearing whenever it can be done".

127. Tapered roller bearings manufactured by the defendant, British Timken, and French Timken are in most instances identical and interchangeable.

128. The defendant assigns the part numbers used by it, British Timken and French Timken, and keeps a record of them in its master book in its engineering department. Whenever the defendant develops a new bearing it assigns the part a symbol number and immediately sends the blueprints covering its design to British Timken as a matter of routine. If British Timken develops a new part it may assign a new part number; or if it varies the dimensions of an existing part it may use the existing number by adding the letter "X" after the part number; in each case advising the defendant. The symbol for a bearing consists of a number for the cone and a number for the cup, and identical bearings manufactured by the defendant, British Timken, and French Timken bear identical symbol numbers.

129. There has been a constant "stream of information" from the defendant to British Timken as to production methods, machines, products, and other matters. It has always been the policy of British Timken to carry out the suggestions of defendant and they have been departed from only after "an agreed decision as to what British Timken should do or should not do". In the opinion of Dewar it is "difficult to conceive" that British Timken "could have started" without the cooperation of the defendant along these lines. The same information has been communicated to French Timken, principally through British Timken after receipt from the defendant. British Timken has contributed very little such information to the defendant, consisting principally of one or two bearings which were invented and perfected in England within the war years. No such information has been received by the defendant from French Timken.

130. When British Timken develops a need for a certain bearing it usually cables the defendant for a bearing of a [fol. 3658] certain size, or a part number for a certain size which has already been selected, and designates the major dimensions. The defendant then works out the design of the bearing and sends British Timken the part number and detailed prints of the bearing as soon as possible, followed by the design of the tooling which is to be inserted in the machines which are to be used in manufacturing the particular bearing, and a gauge for each operation. The defendant assigns a part number to this bearing.

131. The defendant sends to British Timken a copy of the weekly report made by the defendant's industrial bearing application engineering department to the heads of its sales and engineering departments, which shows in detail the type of work and bearing applications being done for its customers. Occasionally British Timken advises the defendant that it is interested in a bearing application shown on the weekly report which is new to it, in which event the defendant sends to British Timken the same complete information which it would give to its "field man who originally requested the information".

132. At times the defendant has sent certain of its employes to British Timken, French Timken, and German Timken, to assist and instruct their engineers in the design

of new types of bearings, such as industrial and railroad bearings.

133. As soon as the defendant and Dewar jointly acquired British Timken, one of the defendant's executives was sent to British Timken in 1927 to help reorganize it to make tapered roller bearings as closely as possible according to the methods followed by the defendant. He made a thorough examination and report as to the various methods then in force at British Timken, and recommended changes in methods, acquisition of specified modern machinery, and that the minimum dividend for 1927, called for by the agreement between the defendant and Dewar, be passed in order to enable purchase of the machinery. These recommendations were carried out. Thereafter, in almost every year, some employe of the defendant has gone to British Timken and French Timken for the purpose of [fol. 3659] enabling them to cut costs and manufacture bearings more cheaply and of a better standard of quality. These employes have been instructed to introduce the defendant's methods as nearly as possible in various departments of the plants of British Timken and French Timken, and have done so.

134. Employes of British and French Timken have been instructed and trained in the defendant's plants at various times.

135. All methods worked out in the defendant's Research Department, which tests out new methods of manufacturing bearings, new designs thereof, new steels for use in the production thereof and new types of heat treatment, and develops new machine tools and tooling on machine tools, are passed on to British Timken as a matter of routine, although access to this department without a pass is limited to a small number of persons in the defendant's organization. Defendant's Research Department is five times the size of British Timken's.

136. The defendant has assisted British Timken and French Timken in the acquisition of new machine tools and equipment at no profit to itself.

137. Commencing in 1927, as a part of the program to reduce British Timken's costs by 25 per cent, the defendant made a study of British Timken's costs and set up a system by which British Timken and French Timken fur-

nished comprehensive cost data to the defendant, and were given reports comparing their costs with those of the defendant upon the basis of a standard cost. These comparisons resulted in pointing out the operations of British Timken and French Timken which were too costly in comparison with the standard cost determined by the defendant, and resulted in the sending by the defendant of its employes to British Timken and French Timken to cut the costs of certain of such operations by improvement thereof.

138. The defendant has sent its employes to British Timken and French Timken to assist them in selling new types of bearing applications, such as industrial [fol. 3660] and railroad bearings, has furnished copies of its engineering journals, and periodic additions thereto, to British Timken and French Timken, as a routine matter, and the engineering journals of British Timken, French Timken, and German Timken have been substantially the same as that of the defendant.

139. The defendant at all times since 1928 has supplied British Timken and French Timken with copies of its three mediums of advertising, namely, national advertising, trade paper advertising and booklets and pamphlets about different products, as soon as prepared.

140. The "know-how" furnished by the defendant to British Timken and French Timken was not secret. Other manufacturers were admitted to the plants of British Timken and French Timken where they could see it put into operation.

The defendant did not furnish know-how to British Timken and French Timken for the purpose or with the intention of restraining trade or preventing competition between the defendant and British Timken and French Timken, as actual or potential competitors of the defendant in the manufacture and sale of anti-friction bearings.

General Co-operation between
the Timken Companies

141. The defendant, British Timken, and French Timken have adhered substantially to their contractual obligations to operate in the separate territories assigned to them.

142. In 1932, the defendant arranged that British Timken should not quote prices on service bearings going into the defendant's territory, and should state in answer to inquiries that the product should be obtained from the de-

fendant except when the customer demanded a British product or when "SKF or FS are in competition".

143. Each of the parties has refused orders for shipment outside of its territory, referring them to the party in whose territory they were to be used. Thus, from July 1, 1945 to July 20, 1947, alone, the defend- [fol. 3661] ant transmitted 402 inquiries or orders to British Timken and French Timken.

144. In 1929, when The Ford Motor Company attempted to purchase a quantity of tractor bearings from the defendant for use in its Cork, Ireland, plant which was in British Timken territory, the defendant, instead of filling the order, made the bearings and shipped them to British Timken for resale to Ford.

145. In 1939 and in 1940, the defendant instructed its employes that, due to difficulty in obtaining SKF bearings, it was contemplated that American manufacturers who operated plants in British Timken's territory would probably call on the defendant to make deliveries of bearings from its plants, that such deliveries would be in direct violation of the contract with British Timken, and that where such requests were made they should be referred to the main office at Canton in case the defendant might want to effect some arrangement with British Timken to fill such requirements rather than have the customer buy one of the competing tapered roller bearings and have them shipped into British Timken territory, and that they should use their best efforts to persuade the customer that the defendant's "British and French associates" were able to supply their foreign requirements and manufactured "a product comparable in every way to our own".

146. In 1939 and 1940, the defendant instructed its employes that it was not permitted to sell or ship bearings in to, or known to be destined to, British Timken's territory without paying it a 5 per cent commission, and that under such circumstances its prices must be acceptable to British Timken, but that it had an understanding with British Timken that on unsolicited inquiries for bearings going into each other's territory the defendant could quote a 50 per cent discount from its list price on standard bearings and pay a 5 per cent commission on the net sale thereof to British Timken. This arrangement resulted from the defendant's demonstrating to Dewar in 1927 that British Timken's

[fol. 3662] discount on service business was not large enough to meet competition, which caused British Timken to adopt the 50 per cent discount from list price which was the defendant's discount at that time.

147. In 1940, the defendant was advised that the territorial limitations in the contracts applicable to Australia had become a matter of concern to British Timken's distributors due to British Timken's inability to supply sufficient bearings. Thereupon, the provisions of the contracts were relaxed and for the period of the war emergency the defendant was permitted to fill, first only Australian orders, and later orders emanating from any place in British Timken's territory, but only through British Timken's distributors. Prices of such bearings were established by the sellers, namely, British Timken's distributors, and the defendant paid to British Timken the difference between the price at which the bearings were sold by British Timken's representatives and the amount at which a sale would have been made to British Timken by the defendant. This difference was paid because British Timken had the expense of doing the selling and servicing job and the defendant had no selling expense.

148. When, in 1941, representatives of the Australian Government and of the British Purchasing Commission asked whether it would be interested in establishing a bearing plant in Australia to manufacture all types of anti-friction bearings, the defendant stated that Australia was controlled by British Timken and that it would not consider building a plant there, and pointed out that it would be almost impossible to obtain delivery of machine tools suitable for the manufacture of anti-friction bearings, but that if Dewar were interested representatives of the defendant would confer with him about the matter.

149. At the present time the defendant is operating under arrangements with British Timken and French Timken pursuant to which it proceeds to make bearing sales in their territories independently of them and at prices fixed by it "with American competition in mind" [fol. 3663] and not agreed to with them in any fashion.

150. In 1928, the defendant, at the request of British Timken, contacted The Timken-Detroit Axle Company, which purchased tapered roller bearings from the defendant, with a view to preventing its distributor in Hungary

from selling service bearings at prices lower than those established by British Timken. This was accomplished, but the defendant at the same time indicated that it would not undertake to contact American axle companies generally for the same purpose.

151. With respect to the territory of Russia, no Russian buying agencies sought quotations from the defendant and British Timken on the same business at any time.

152. The defendant and British Timken observed the provisions of the business agreement of 1928 between them which gave British Timken an exclusive license under British patents owned by the defendant when, in 1932, the defendant granted to The Ford Motor Company a license to manufacture bearings under its American patents, but advised that it could give it no such license for England or any European plant because British Timken was its exclusive licensee there.

153. The defendant, British Timken, and French Timken have cooperated to meet the competition of other manufacturers of tapered roller bearings. They have considered SKF as a common enemy, and their general policy has been that if a tapered roller bearing is sold it must be a bearing manufactured by one of the Timken companies and not an SKF bearing; their arrangement has been that if customers in British Timken's territory insisted on buying bearings from the defendant they would be permitted to do so, and vice versa, "in order to combat competition"; and an executive of the defendant testified that it was willing to sell bearings at a loss, if necessary, to compete with SKF in Australia and the East Indies during World War II, because it considers SKF's competition unethical (in that the defendant is of the opinion that SKF sells at prices below its cost to "freeze out" competitors). Although there are [fol. 3664] statements in the correspondence between officials of the defendant in evidence as to combatting competition, there is no evidence that the defendant ever sold bearings at below cost in competition with SKF or other competitors. On the contrary, the defendant once disclosed its price on mine wheel bearings to certain officials of New Departure in April, 1933 (Plaintiff's Exhibit 167), for the purpose of inducing them not to sell unfairly at a price admittedly below their cost of production.

154. The defendant, British Timken, and French Tim-

ken have contemplated selling bearings to each other on a most favorable basis to protect themselves from competition by outsiders. In 1929, the defendant suggested that British Timken supply bearings for its industrial requirements in Canada because there was a 15 per cent duty on English products in Canada in comparison with 30 per cent on the defendant's, and if British Timken could sell bearings at low enough base prices the business would be profitable. Dewar of British Timken replied that he would "love to help you compete with SKF in Canada" because he wanted "to take every possible step we can to keep SKF out of the taper roller bearing business anywhere", meaning that this should be done by "under-quoting them in price". In 1939, the defendant suggested to British Timken that it make the defendant its exclusive Canadian distributor for tapered roller, ball and straight roller bearings for new installation business as well as service business, because British Timken's bearings could be shipped free from England into Canada, whereas SKF's bearings shipped from Sweden into Canada were subject to a duty of 17½ per cent, as a means of "putting a club over the head" of SKF, which was making price reductions far below those which the defendant had ever extended in the United States, Canada, and in many foreign countries such as Japan and South America, and British Timken was willing to consider the matter but thought it unlikely that it could help.

155. Although the defendant has sold special alloy steel tubing which it has developed to its competitors who manufacture ball bearings, it stated to British Timken in 1934, that under no circumstances would it [fol. 3665] sell its tubing "to anyone in the world who might as a result harm British Timken, French Timken" or the defendant.

Co-operation by British Timken and French Timken with their Competitors

156. British and French Timken entered into the following agreements with their competitors abroad to share customers and sales in certain markets and to stabilize prices.

157. In 1932, British Timken entered into an agreement with SKF's subsidiary in England to split the Ford busi-

ness in England on a 70-30 basis. This agreement was, not only an arrangement on prices of bearings and the percentage of the total bearings each was permitted to sell, but the parties agreed not to sell replacements of the other's bearings. The division of business as to specific customers was set up on a quota basis. When one of the parties exceeded its quota on a certain customer that party was required to raise its prices until there was compliance with the agreement.

158. In 1932, French Timken entered into an agreement with SKF's subsidiary in France, CAM, which provided for division of all the French bearing business on a participating basis, French Timken only participating in the tapered roller bearing market and SKF in both the ball bearing and tapered roller bearing markets. It was stated in the agreement that "In order to arrive at the allocation of the market as provided in as precise a manner as possible, an intimate commercial collaboration will be established between the two contracting parties, which will have to determine by agreement the tariff prices and discounts for the retail market, the prices and delivery dates quoted for all large orders or important customers." The parties agreed to contact each other "at least every month" and to push the standardization of bearing sizes. This agreement was entered into when Citroen, French Timken's largest customer, fell into financial trouble and SKF financed it on condition that it should buy its steel from Sweden and all its bearings from SKF, with the result that French Timken was left with practically no orders at all and Dewar decided [fol. 3666] that it was better "to have some arrangement with SKF to keep the French Timken company alive rather than let it die, which it would have done without such an arrangement". The defendant was advised that French Timken consistently exceeded the quota provided for it in this agreement. Any bearings imported into France by CAM would have come from Sweden and not from the SKF subsidiary in the United States.

159. The agreements between British Timken and SKF, and French Timken and SKF, were formed without the defendant's execution of the actual agreements, but its officials were in consultation with the officers of British Timken and French Timken concerning them and approved the agreement between French Timken and CAM. These ar-

rangements did not relate to the United States and did not have the effect of restricting the export of tapered roller bearings from the United States or their receipt in the United States. They came to an end at the commencement of World War II in 1939 and have not been renewed.

160. Aside from the agreements by British Timken and French Timken with SKF subsidiaries, the defendant, British Timken and SKF had discussions in 1932 concerning prices in Canada, England and France, although there is no evidence that these discussions led to any agreements other than those referred to in Findings 156-158, inclusive.

161. The policy of the defendant is opposed to combination with competitors for the purpose of fixing prices. Thus, when the defendant was faced with patent litigation based on the Thurston patents, although it realized that the patents might be used as "a move to legalizing the fixing of prices," it nevertheless refused to take such a license with the result that it defended successfully patent litigation against it based upon these patents in Equity Case No. 576 on the Docket of this Court (Defendant's Exhibit 237).

Miscellaneous and Ultimate Findings.

162. Although in 1945 the defendant was subpoenaed to appear and produce books and records, and certain of its [fol. 3667] officials appeared and testified, before the grand jury in the case entitled *United States v. General Motors Corporation, et al.*, No. 18,895 on the Criminal Docket of this Court, involving combination to fix the price of anti-friction bearings in domestic commerce and trade of the United States, and certain other corporate and individual defendants were indicted therein for violations of the Sherman Antitrust Act, neither the defendant nor any of its officers or other employees was indicted therein.

163. The defendant and British Timken and French Timken have not been and are not now engaged in a combination and conspiracy in restraint of trade and commerce in anti-friction bearings among the several states of the United States and with foreign nations and between territories of the United States and foreign nations.

164. The defendant and British Timken and French Timken have not entered into and are not now parties to contracts, agreements and understandings and have not

plan[illegible] and acted together to eliminate competition, between [illegible] unreasonably, and with others, in the manufacture and sale of anti-friction bearings in all markets of the world, including the United States.

165. The defendant and British Timken and French Timken have not formed and effectuated by the means, methods, agreements and understandings set forth in the plaintiff's amended petition a combination and conspiracy in restraint of trade and commerce in anti-friction bearings among the several states of the United States and between the United States and foreign nations.

166. The restraints of trade, if any, resulting from the business agreements, contracts and understandings between the defendant and British Timken and French Timken have been at all times, and are, reasonably ancillary to the creation and maintenance of a joint venture and enterprise by the defendant and Dewar; to the transfer by the defendant to British Timken, French Timken, and German Timken of know-how with respect to the manufacture of bearings, the quality of steel used in connection [fol. 3668] therewith, and the various manufacturing processes specified; and to the licensing of the trademark "Timken" by the defendant to British Timken, French Timken, and German Timken (including the supplying of exclusive information as to the production of anti-friction bearings in connection with such trademark licenses). The provisions of the business agreements, contracts and understandings between the parties imposing such restraints of trade, if any, protect the parties thereto to an extent reasonably necessary as incident to the joint venture and enterprise, the transfer of know-how, and the licensing of the name and trademark "Timken".

167. The restraints of trade, if any, resulting from the business agreements, contracts and understandings between the defendant, British Timken and French Timken, were not imposed for the purpose or with the intention, and did not have the effect, of prejudicing the public interest by unduly restricting competition or obstructing the course of trade, there being at all times during the existence of such agreements, contracts and understandings substantial and vigorous competition between the defendant, British Timken and French Timken, on the one hand, and other manu-

facturers of all types of bearings, on the other, in all markets of the world.

168. The defendant and British Timken and French Timken did not enter into or effectuate the joint enterprise and venture to which they were parties; provide or exchange know-how; grant, or agree to grant, exclusive patent licenses, or assign, or agree to assign patents or patent rights, to each other; or use the trademark "Timken" or the licensing thereof; in furtherance of a combination and conspiracy in restraint of trade and commerce in anti-friction bearings.

169. There is now no appreciable or substantial import or export trade of the United States in anti-friction bearings on a competitive price basis with the territories served by British Timken and French Timken under the business agreements, contracts and understandings between the parties.

[fol. 3669] 170. The defendant and British Timken and French Timken are not now engaged in any combination and conspiracy with others in restraint of trade and commerce in the manufacture and sale of anti-friction bearings.

Conclusions of Law

1. The Court has jurisdiction of this action under the Act of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies", commonly known as the Sherman Antitrust Act.

2. The defendant and British Timken and French Timken have not been and are not now engaged in an unlawful combination and conspiracy in restraint of trade and commerce in anti-friction bearings among the several states of the United States and with foreign nations and between territories of the United States and foreign nations in violation of Sections 1 and 3 of the Sherman Antitrust Act.

3. The defendant and British Timken and French Timken have not entered into and are not now parties to contracts, agreements and understandings, and have not planned and acted together, to eliminate competition, between them unreasonably, and with others, in the manufacture and sale of anti-friction bearings in all markets of the world, including the United States.

4. The defendant and British Timken and French Timken have not formed and effectuated by the means, methods, agreements and understandings set forth in the plaintiff's amended petition an unlawful combination and conspiracy in restraint of trade and commerce in anti-friction bearings among the several states of the United States and between the United States and foreign nations in violation of Sections 1 and 3 of the Sherman Antitrust Act.

5. The restraints of trade, if any, resulting from the business agreements, contracts and understandings between the defendant and British Timken and French Timken have been at all times, and are, reasonably [fol. 3670] ancillary to the creation and maintenance of a lawful joint venture and enterprise by the defendant and Dewar; to the transfer by the defendant to British Timken, French Timken, and German Timken, of know-how with respect to the manufacture of bearings, the quality of steel used in connection therewith, and the various manufacturing processes specified; and to the licensing of the trademark "Timken" by the defendant to British Timken, French Timken, and German Timken (including the supplying of exclusive information as to the production of anti-friction bearings in connection with such trademark licenses). The provisions of the business agreements, contracts and understandings between the parties imposing such restraints of trade, if any, are lawful as protecting the parties thereto to an extent reasonably necessary as incident to the joint venture and enterprise, the transfer of know-how, and the licensing of the name and trademark "Timken".

6. The restraints of trade, if any, resulting from the business agreements, contracts and understandings between the defendant, British Timken and French Timken, were not imposed for the purpose or with the intention, and did not have the legal effect, of prejudicing the public interest by unduly restricting competition or obstructing the course of trade in violation of the Sherman Antitrust Laws, there being at all times during the existence of such agreements, contracts and understandings substantial and vigorous, competition between the defendant, British Timken and French Timken, on the one hand, and other manufacturers of all types of bearings, on the other, in all markets of the world.

7. The defendant and British Timken and French Timken did not enter into or effectuate the joint enterprise and venture to which they were parties; provide or exchange know-how; grant, or agree to grant, exclusive patent licenses, or assign, or agree to assign patents or patent rights, to each other; or use the trademark "Timken" or the licensing thereof; in furtherance of a combination and conspiracy in restraint of trade and commerce [fol. 3671] in anti-friction bearings in violation of the Sherman Antitrust Act.

8. Since there is now no appreciable or substantial import or export trade of the United States in anti-friction bearings on a competitive price basis with the territories served by British Timken and French Timken under the business agreements, contracts and understandings between the parties, there does not exist that present illegality which is essential to equitable relief such as is prayed for by the plaintiff in this case.

9. The defendant and British Timken and French Timken are not now engaged in an unlawful combination and conspiracy with others in restraint of trade and commerce in the manufacture and sale of anti-friction bearings in violation of the Sherman Antitrust Act.

10. The amended complaint of the plaintiff should be dismissed in its entirety, and a judgment in this action should be rendered for the defendant.

————————, U. S. District Judge.

[fol. 3672] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR STAY OF EXECUTION PENDING DISPOSITION OF DEFENDANT'S MOTIONS ADDRESSED TO JUDGMENT—Filed February 24, 1950

Defendant moves the Court for an order staying execution of and any proceedings to enforce the final judgment entered herein on February 15, 1950, pending disposition of defendant's motion for a new trial, defendant's objections and exceptions to and motion to amend the Court's

findings of fact and conclusions of law, and defendant's motion to make new findings of fact and conclusions of law. The ground for this motion is that irreparable injury might result to defendant if the requested stay be not granted.

(S.) Luther Day and John G. Ketterer, Attorneys for Defendant.

[fol. 3673] [Title omitted]

NOTICE OF MOTION

TO: Robert B. Hummel, Esq.,
237 Leader Building,
Cleveland, Ohio,
Attorney for Plaintiff

Please take notice that the undersigned will bring the above motion on for hearing before this Court at the Federal Building, Public Square, Cleveland, Ohio, on the 27th day of February, 1950, at 10 o'clock A.M., or as soon thereafter as counsel can be heard.

(S.) Luther Day and John G. Ketterer, Attorneys for Defendant.

Acknowledgment of Service

Receipt of a copy of the foregoing motion and notice of motion is hereby acknowledged this 24th day of February, 1950.

(S.) Robert B. Hummel, Attorney for Plaintiff.

[fol. 3674] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION CONSENTING TO GRANTING OF MOTION FOR STAY —Filed March 2, 1950

We, the attorneys for the respective parties, do hereby stipulate that the plaintiff consents to the immediate granting without bond of the defendant's motion for stay of execution pending disposition of the defendant's motion for

a new trial, and objections and exceptions to, and motion to amend and to make new and additional, findings of fact and conclusions of law; that the plaintiff may have leave to file its memorandum with respect to said motions, objections and exceptions on or before March 16, 1950; and that the Court may enter an order accordingly, notice by the Clerk being hereby waived.

(S.) Robert B. Hummel, Attorney for Plaintiff;
Luther Day, Attorney for Defendant.

It is so ordered:

(S.) Freed, U. S. District Judge.

[fol. 3675] In United States Dictrict Court

[Title omitted]

Ruling on Motion for New Trial; Objections & Exceptions to, Motion to Amend Findings—June 13, 1950

Ruling:

"The instant pleading neither raises new questions nor presents problems different from those which were thoroughly considered in former hearings. The motion for new trial and the objections and exceptions to, and motion to amend and to make new and additional, findings of fact and conclusions of law are overrruled.

June 13, 1950.

(S.) Freed, U. S. District Judge."

[fol. 3676] [File endorsement omitted]

In the United States District Court

[Title omitted]

Order—Filed June 14, 1950

Upon consideration, it is ordered that defendant's motion for a new trial and the objections and exceptions to, and motion to amend and to make new and additional, findings of fact and conclusions of law are hereby overruled.

(S.) Freed, United States District Judge.

[fols. 3677-3722] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO CORRECTIONS IN TRANSCRIPT OF PROCEEDINGS—Filed June 21, 1950

We, the attorneys for the respective parties, do hereby stipulate that the transcript recording the proceedings in the above entitled case, including the trial thereof, the hearing on the motion as to findings of fact and conclusions of law, and the hearing relating to the form of final judgment to be entered therein, may be corrected in the respects and in the manner shown on Appendix A, attached hereto and made part hereof as if fully rewritten herein; that, if there are any discrepancies between quotations from exhibits in evidence in the above entitled case appearing in the transcript, or the record prepared therefrom, and such exhibits, then the exhibits shall govern; and that the Court may enter an Order accordingly, notice by the Clerk being hereby waived.

(S.) Robert B. Hummel, Attorney for Plaintiff; Luther Day and John G. Ketterer, Attorneys for Defendant.

It is so ordered.

(S.) Freed, United States District Judge.

[fol. 3723] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed July 28, 1950

Now comes The Timken Roller Bearing Company, defendant in the above entitled cause, and says that on the 15th day of February, 1950, this Court entered its Final Judgment against the defendant herein, that on February 24, 1950, the defendant filed its Motion for a New Trial; and Objections and Exceptions, and Motion to Amend and Make New, and Additional, Findings of Fact and Con-

clusions of Law, and that on June 14, 1950, this Court entered its order overruling said motions. The defendant, considering itself aggrieved thereby, does hereby pray that an appeal be allowed to the Supreme Court of the United States from said Final Judgment and from each and every part thereof. Pursuant to Rule 12 of the Supreme Court, the defendant presents to this Court herewith a stafement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause. The particulars wherein the aforesaid defendant considers the Final Judgment in this cause erroneous are set forth in an assignment of errors and prayer for reversal accompanying this petition, to which reference is hereby made.

Wherefore, the above named defendant prays that its appeal may be allowed; that citation be issued as provided by law; that execution against the defendant of all of the provisions of the Final Judgment entered herein, and compliance by this defendant therewith be suspended [fol. 3724] and stayed, and that a supersedeas be granted, pending the hearing and final determination and disposition of this cause upon appeal; that an order be made fixing the amount of the appeal and supersedeas bond and security to be given by the defendant as appellant herein conditioned as the law directs; and that a transcript of the record, proceedings, evidence and documents upon which said Final Judgment was based, duly authenticated, be transmitted to the Supreme Court of the United States in accordance with the rules in such case made and provided.

(S.) Luther Day, 1759 Union Commerce Building, Cleveland, Ohio; John G. Keterer, First National Bank Building, Canton, Ohio, Counsel for Defendant-Appellant, The Timken Roller Bearing Company.

[fol. 3725] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 28, 1950

The Timken Roller Bearing Company, defendant in the above entitled cause, having made and filed its petition for an appeal to the Supreme Court of the United States from the Final Judgment of this Court herein, and from each and every part thereof, and having made and filed and presented its assignment of errors and prayer for reversal and its statement as to the jurisdiction of the Supreme Court of the United States on appeal, pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal be, and the same is hereby, allowed and granted as prayed for.

It is further ordered that the amount of the appeal and supersedeas bond be and the same is hereby fixed in the sum of Two Hundred Fifty Dollars ($250.00), with good and sufficient security, and shall be conditioned as may be required by law, and that the execution against the above named defendant of all of the provisions of the Final Judgment entered herein, and compliance by the defendant with said Final Judgment be, and the same are, hereby suspended and stayed pending the hearing and final determination of this cause upon appeal.

It is further ordered that a duly authenticated transcript of the record, proceedings, evidence and documents upon [fol. 3726] which said Final Judgment is based be transmitted to the Supreme Court of the United States in accordance with the rules in such case made and provided.

It is further ordered that citation shall issue in accordance with law.

(S.) Freed, United States District Judge for the Northern District of Ohio, Eastern Division.

Dated: July 28, 1950.

[fols. 3727-3730] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

CITATION—Filed July 28, 1950

To the United States of America, Appellee.

Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States in the City of Washington, District of Columbia, within forty days from the date hereof, pursuant to an order allowing an appeal from the Final Judgment made and entered in the above entitled cause, to show cause, if any there be, why said Final Judgment rendered against The Timken Roller Bearing Company, defendant-appellant, should not be corrected, reversed and set aside.

(S.) Freed, United States District Judge for the Northern District of Ohio, Eastern Division.

Dated: July 28, 1950.

[fol. 3731] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL BY DEFENDANT—Filed July 28, 1950

The Timken Roller Bearing Company, defendant in the above entitled cause, in connection with its petition for an appeal to the Supreme Court of the United States in this cause, says that, in the record and proceedings, and in the entry of its final judgment, herein, the District Court committed manifest errors to the prejudice of this defendant, and in connection with its said appeal assigns the following errors upon which it relies to reverse the final judgment entered herein.

Holding of the Court

1. The District Court erred in finding, concluding and adjudging that this defendant has engaged in an unlawful combination and conspiracy in restraint of trade and commerce in anti-friction bearings between the United States and foreign nations with British Timken, Ltd. (a British joint stock company hereinafter called "British Timken") and with Societe Anonyme Francaise Timken (a French corporation hereinafter called "French Timken"), and has entered into unlawful contracts, agreements and understandings with, and has planned and acted with, British Timken and French Timken to eliminate competition among themselves and with others in the production, sale and distribution of anti-friction bearings in all markets of the world, in violation of Sections 1 and 3 of the Act of Congress of July 2, 1890, 26 Stat. 209, 15 U.S.C. §§ 1 and 3, known as the Sherman Antitrust Act (Final Judgment, Par. III).

[fol. 3732]

Failure to Hold

2. The District Court erred in failing to find as a fact and to conclude as a matter of law that the defendant and British Timken and French Timken have not been and are not now engaged in an unlawful combination and conspiracy in restraint of trade and commerce in anti-friction bearings among the several states of the United States and between territories of the United States and foreign nations in violation of Sections 1 and 3 of the Sherman Antitrust Act.

3. The District Court erred in failing to find as a fact and to conclude as a matter of law that the defendant and British Timken and French Timken have not entered into and are not now parties to contracts, agreements and understandings, and have not planned and acted together, to eliminate competition, between them unreasonably, and with others, in the manufacture and sale of anti-friction bearings in all markets of the world, including the United States.

4. The District Court erred in failing to find as a fact and to conclude as a matter of law that the defendant and British Timken and French Timken have not formed and effectuated by the means, methods, agreements and under-

standings set forth in the plaintiff's amended petition a combination and conspiracy in restraint of trade and commerce in anti-friction bearings among the several states of the United States and between the United States and foreign nations in violation of Sections 1 and 3 of the Sherman Antitrust Act.

5. The District Court erred in failing to find as a fact and to conclude as a matter of law that the restraints of trade, if any, resulting from the business agreements, contracts and understandings between the defendant and British Timken and French Timken have been at all times, and are, reasonably ancillary (1) to the creation and maintenance of a lawful joint venture and enterprise by the defendant and an English businessman, M. B. U. Dewar, through their joint acquisition and control of British Timken and German Timken (now defunct) and joint organization and control of French Timken, to develop foreign trade of the defendant in anti-friction bearings under the [fol. 3733] trademark "Timken"; (2) to transfer by the defendant to British Timken, French Timken and German Timken, of know-how with respect to the manufacture of bearings, the quality of steel used in connection therewith, and the various manufacturing processes specified in such business agreements; and (3) to the licensing of the trademark "Timken" by the defendant to British Timken, French Timken, and German Timken (including the supplying of exclusive information as to the production of anti-friction bearings in connection with such trademark licenses). The provisions of the business agreements, contracts and understandings between the parties imposing such restraints of trade, if any, were for the purpose of, and lawful as, protecting the parties thereto to an extent reasonably necessary as incident to the joint venture and enterprise, the transfer of know-how, and the licensing of the name and trademark "Timken".

6. The District Court erred in failing to find as a fact and to conclude as a matter of law that the restraints of trade, if any, resulting from the business agreements, contracts and understandings between the defendant, British Timken and French Timken, were not imposed for the purpose or with the intention, and did not have the legal effect, of prejudicing the public interest by unduly restricting competition or obstructing the course of trade in violation

of the Sherman Antitrust Act, there being at all times during the existence of such agreements, contracts and understandings, substantial and vigorous competition between the defendant, British Timken and French Timken, on the one hand, and other manufacturers of all types of bearings, on the other, in all markets of the world.

7. The District Court erred in failing to find as a fact and to conclude as a matter of law that the defendant and British Timken and French Timken did not enter into or effectuate the joint enterprise and venture to which they were parties, provide or exchange know-how, grant, or agree to grant, exclusive patent licenses, or assign, or agree to assign patents or patent rights, to each other, or use the trademark "Timken" or the licensing thereof, in furtherance of a combination and conspiracy in restraint of trade [fol. 3734] and commerce in anti-friction bearings in violation of the Sherman Antitrust Act.

8. The District Court erred in failing to find as a fact and to conclude as a matter of law that, since there is now no appreciable or substantial import or export trade of the United States in anti-friction bearings on a competitive price basis with the territories served by British Timken and French Timken under the business agreements, contracts and understandings between the parties, there does not exist that present illegality which is essential to equitable relief such as is prayed for by the plaintiff in this cause.

9. The District Court erred in failing to find as a fact and to conclude as a matter of law that the defendant and British Timken and French Timken are not now engaged in an unlawful combination and conspiracy with others in restraint of trade and commerce in the manufacture and sale of anti-friction bearings in violation of the Sherman Antitrust Act.

Final Judgment

10. The District Court erred in enjoining the defendant from receiving, granting, or exchanging any exclusive patent licenses from, to, or with British Timken or French Timken, "in such a way as to deny any third person access thereto" under any circumstances, in perpetuity, when it was not alleged, as the Court stated (Memorandum, Par. 137), that the parties engaged in this practice as part of

the combination and conspiracy alleged (Final Judgment, Pars. V, VII).

11. The District Court erred in enjoining the defendant from receiving, granting, or exchanging any exclusive patent licenses from, to, or with British Timken or French Timken, "in such a way as to deny any third person access thereto" under any circumstances, in perpetuity, in that the Final Judgment thus deprives the defendant of its property without just compensation and without due process of law, contrary to the Fifth Amendment of the Constitution of the United States (Final Judgment, Pars. V, VII).

[fol. 3735] 12. The District Court erred in enjoining the defendant from receiving, granting or exchanging exclusively, "in such a way as to deny any third person access thereto", any know-how consisting of information, advice and assistance with respect to any invention, discovery, improvement, practice, formula, advice, method or other technical information relating to the production of anti-friction bearings from, to, or with British Timken or French Timken, under any circumstances, in perpetuity, when, it was not alleged, as the Court stated (Memorandum, Par. 137), that the parties engaged in this practice as part of the combination and conspiracy alleged (Final Judgment, Pars. V, VII).

13. The District Court erred in enjoining the defendant from receiving, granting, or exchanging exclusively, "in such a way as to deny any third person access thereto", any know-how consisting of information, advice and assistance with respect to any invention, discovery, improvement, practice, formula, advice, method or other technical information relating to the production of anti-friction bearings from, to, or with British Timken or French Timken under any circumstances, in perpetuity, in that the Final Judgment thus deprived the defendant of its property without just compensation and without due process of law, contrary to the Fifth Amendment of the Constitution of the United States (Final Judgment, Pars. V, VII).

14. The District Court erred in enjoining the defendant from receiving, granting or exchanging exclusively, "in such a way as to deny any third person access thereto", any material or machinery used in the production of anti-friction bearings, or any information, advice, assistance or

rights with respect thereto, from, to, or with British Timken or French Timken, under any circumstances, in perpetuity, when it was not alleged, as the Court stated (Memorandum, Par. 137), that the parties engaged in this practice as part of the combination and conspiracy alleged (Final Judgment, Pars. V, Q, VII, A).

[fol. 3736] 15. The District Court erred in enjoining the defendant from receiving, granting, or exchanging exclusively, "in such a way as to deny any third person access thereto," any machinery or material used in the production of anti-friction bearings, or any information, advice, assistance or rights with respect thereto, from, to, or with British Timken or French Timken, under any circumstances, in perpetuity, in that the final judgment thus deprives the defendant of its property without just compensation and without due process of law, contrary to the Fifth Amendment of the Constitution of the United States (Final Judgment, Pars. V, VII).

16. The District Court erred in enjoining the defendant in perpetuity from entering into any agreement with British Timken or French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof, to fix resale prices of anti-friction bearings produced by the defendant for sale or distribution in any other territory or market, thus depriving the defendant of its rights under the Miller-Tydings Act of August 17, 1937, 50 Stat. 693, 15 U.S.C. 1 (Final Judgment, Pars. V, VII).

17. The District Court erred in enjoining the defendant from refusing to sell anti-friction bearings to any person at prices and on terms corresponding to those regularly offered to purchasers of the same classification for resale into defendant's territory where the reason for such refusal is that the bearings are for resale or for other distribution in the territory of British Timken or French Timken, in that the Final Judgment in this respect is beyond the jurisdiction of the Court to prevent or restrain violations of the Sherman Act under Section 4 thereof, and in that the Court's Final Judgment deprives the defendant of its right freely to exercise its own independent discretion as to the parties with whom it will deal and compels it to do business with persons other than those chosen by it, and thus deprives the defendant of its property without just compensation and without due process of law, con-

trary to the Fifth Amendment of the Constitution of the United States (Final Judgment, Par. VI).

[fol. 3737] 18. The District Court erred in enjoining the defendant from refusing to sell anti-friction bearings to any person or discriminating as to availability of prices and terms and conditions of sale of such bearings, or failing to provide services and assistance relating to the disposition or use thereof comparable to that made available to distributors or users of bearings in defendant's territory, for the reason that such bearings are for use, sale or distribution in some country other than the defendant's territory, as defined in the Court's Final Judgment, in that the Final Judgment in this respect is beyond the Court's jurisdiction to prevent or restrain violations of the Sherman Act, under Section 4 thereof, and in that the Final Judgment in this respect deprives the defendant of its right freely to exercise its own independent discretion as to the parties with whom it will deal, and compels it to do business with persons other than those chosen by it, and to enter into business and perform services in connection therewith, and thus deprives the defendant of its property without just compensation therefor and without due process of law, contrary to the Fifth Amendment of the Constitution of the United States (Final Judgment, Par. IX).

19. The District Court erred in ordering the defendant to divest itself of all of its stock holdings, either direct or indirect, in British Timken or French Timken, when the uncontroverted evidence in the record discloses, and the District Court found, that such stock holdings and interests were not acquired in connection with the conduct of the alleged combination and conspiracy (from 1928 to date of the complaint), and that the stock had not been used to control British Timken and French Timken, or otherwise, in the carrying out of such combination and conspiracy, and the only basis upon which the plaintiff urged such divestiture was that the ownership of such investments by the defendant in British Timken and French Timken constitute an inducement and incentive to the defendant not to compete with those companies, and the uncontroverted evidence in the record discloses that such divestiture would [fol. 3738] constitute an undue hardship and punishment to the defendant (Final Judgment, Par. VIII).

20. The District Court erred in ordering and decreeing

that the provisions of the Final Judgment herein applicable to the defendant shall apply to the defendant, its officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice thereof by personal service or otherwise (Final Judgment, Par. II).

21. The District Court erred in ordering and decreeing that there be terminated, and that the defendant be enjoined from further performance and enforcement of any of the provisions, including those involving rights or obligations upon termination, of the "Business Agreement" dated November 28, 1938, between the defendant, British Timken and French Timken, the "Supplemental Business Agreement" dated November 29, 1938, between the defendant, Michael B. U. Dewar and British Timken, the "Agreement with respect to British Timken, Limited" dated March 22, 1948, between the defendant and Michael B. U. Dewar, and the undated "Agreement cancelling previous Agreements and By-laws of Timken Holdings, Ltd. and for transfer by Mr. Dewar to the Canton company of his shares in Timken Holdings, Ltd." between the defendant, Michael B. U. Dewar and Timken Holdings, Ltd., and any agreements amendatory thereof or supplemental thereto, and in declaring the first two of said agreements to be unlawful (Final Judgment, Par. IV).

22. The District Court erred in enjoining the defendant from entering into, performing, adopting, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under, any combination conspiracy, contract, agreement, arrangement, understanding, or concerted plan of action with British Timken, French Timken, or any subsidiary, agent, assign, sales representative or distributor thereof

(a) to allocate or divide territories or markets for the production, sale or other distribution of anti-friction bearings;

[fol. 3739] (b) to limit, restrain or prevent importation into or exportation from the United States of anti-friction bearings;

(c) to refrain from, restrain or limit production, sale or other distribution of anti-friction bearings through quotas or otherwise or to apportion customers for anti-friction bearings in any territory or market;

(d) to refrain from competing, or to leave any person free from competition in, the production, sale or other distribution of anti-friction bearings in any territory or market;

(e) to exclude any producer or distributor of anti-friction bearings from any territory or market, or to interfere with or restrict any such producer or distributor in competing in any territory or market;

(f) to fix, maintain or adhere to prices or price ranges or other terms and conditions of sale or resale of anti-friction bearings produced by defendant for sale or other distribution in any other territory or market, or produced by any other person for sale or any other distribution in the United States;

(g) to receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto; (1) any assignment, license, or grant of immunity under a patent or patent application relating to anti-friction bearings; (2) information, advice, assistance or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method, or other technical information, relating to the production of anti-friction bearings; or (3) any material or machinery used in the production of anti-friction bearings, or [fol. 3740] any information, advice, assistance or rights with respect to any such material or machinery (Final Judgment, Par. V).

23. The District Court erred in enjoining the defendant from referring any order or inquiry for anti-friction bearings to British Timken or French Timken, or any subsidiary, agent, sales representative, or distributor thereof (Final Judgment, Par. VI, A).

24. The District Court erred in enjoining the defendant from refusing to sell anti-friction bearings to any person at prices and on terms and conditions of sale corresponding to those regularly offered to purchasers of the same classification for resale or other distribution in defendant's territory (defined in the Court's Final Judgment herein, as including the United States, Canada, Mexico, Central America and the West Indies, South America, the rest of the world not allocated to British Timken or French Timken in 1938 as production and sales territories by the Business

Agreement dated November 28, 1938 between defendant, British Timken and French Timken, and by the Supplemental Business Agreement dated November 29, 1938, between defendant, Michael B. U. Dewar and British Timken, and by later agreement, Hong Kong) where the reason for such refusal is that the bearings are for resale or other distribution in British territory (defined in the Court's Final Judgment herein as those parts of the world allocated in 1938 as production and sales territories to British Timken by the foregoing Business Agreements, including the United Kingdom, Eire and all other countries other than France and Russia on the Continent of Europe, and all dominions, colonies, mandates and dependencies of the United Kingdom and of other European countries in any other part of the world except those of France, those located in or adjacent to North and South America, and by later agreement, Hong Kong), or in French territory (defined in the Court's Final Judgment herein as production and sales territories allocated in 1938 to French Timken by the foregoing Business Agreements, including France, and its dominions, colonies, mandates and dependencies in any part of the world other than those located in or adjacent to North or South America) (Final Judgment, Par. VI, B).

[fol. 3741] 25. The District Court erred in enjoining the defendant from selling or offering for sale to, or purchasing or offering to purchase from, British Timken or French Timken anti-friction bearings at preferential prices, discounts, terms, and conditions of sale (Final Judgment, Par. VI, C).

26. The District Court erred in enjoining the defendant from offering or paying to, or receiving from or accepting from, British Timken or French Timken any commission, rebate, penalty or other payment in connection with the sale or the distribution of anti-friction bearings to any other person in any territory or market (Final Judgment, Par. VI, D).

27. The District Court erred in enjoining the defendant from appointing or employing as agent, sales representative or distributor of the defendant, or in any way selling or otherwise distributing anti-friction bearings through, or acting for, or representing as agent, sales representative,

or distributor in connection with anti-friction bearings, British Timken, French Timken, or subsidiaries thereof (Final Judgment, Par. VI, E and F).

28. The District Court erred in enjoining the defendant from reserving or protecting for British Timken, French Timken, or subsidiaries thereof, any market or territory for the production, sale or other distribution of anti-friction bearings (Final Judgment, Par. VI, G).

29. The District Court erred in enjoining the defendant from entering into, performing, enforcing, adhering, maintaining, furthering or renewing, directly or indirectly, any contract, agreement, combination, understanding or arrangement with British Timken and/or French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof, which provides for (1) assignment, license or grant of immunity under any patent or patent application, or (2) the receipt, grant, disclosure, [fol. 3742] rendering available or exchange of information or advice, assistance or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method or other technical information, relating to the production of anti-friction bearings, or of any material or machinery used in the production thereof, or of any information, advice, assistance or rights with respect to any such material or machinery, or (3) the transfer of any right or immunity under a trademark or name relating to the production of anti-friction bearings, upon the condition or requirement that British Timken and/or French Timken, or any such subsidiary, successor, assign, agent, sales representative, or distributor thereof, shall perform any one or more of the following acts, namely:

(a) allocate or divide territories or markets for the production, sale or other distribution of anti-friction bearings;

(b) limit, restrain or prevent importation into or exportation from the United States of anti-friction bearings;

(c) refrain from, restrain or limit production, sale or other distribution of anti-friction bearings, through quotas or otherwise, or apportion customers for anti-friction bearings, in any territory or market;

(d) refrain from competing or leave any person free from competition in the production, sale or other distribution of anti-friction bearings in any territory or market;

(e) exclude any producer or distributor from any market for anti-friction bearings, or interfere with or restrict any producer or distributor in competing in any such market;

(f) maintain or adhere to fixed prices or price ranges, or other terms and conditions of sale or resale of anti-friction bearings;

(g) receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto [fol. 3743] (1), any assignment, license or grant of immunity under a patent or patent application, relating to anti-friction bearings; (2) information, advice, assistance or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method, or other technical information relating to the production of anti-friction bearings; or (3) any material or machinery used in the production of anti-friction bearings, or any information, advice, assistance or rights with respect to any such material or machinery; or

(h) restrict the use or disposition of any anti-friction bearings bought from defendant (Final Judgment, Par. VII).

30. The District Court erred in ordering the defendant, within two years from the date of the Court's final judgment, to divest itself of all stock holdings and other interests, direct or indirect, in British Timken and French Timken, and within one year therefrom to present to the Court for its approval a plan for such divestiture (Final Judgment, Par. VIII, A).

31. The District Court erred in enjoining the defendant from acquiring directly or indirectly any ownership and interest in (by purchase or acquisition of securities, or through the exercise of any option or otherwise), or any control over, British Timken or French Timken, or any subsidiary, successor or assign thereof (Final Judgment, Par. VIII, B(1)).

32. The District Court erred in enjoining the defendant from exercising any influence or control over the production, sales or other business policies of, or causing, authorizing or knowingly permitting any officer, director or employee of the defendant or its subsidiaries to serve as an officer, director or employee of, British Timken or French Timken, or any subsidiary, successor, assign, sales repre-

sentative or distributor thereof (Final Judgment, Par. VIII, B (2) and (3)).

33. The District Court erred in enjoining the defendant [fol. 3744] from refusing to sell anti-friction bearings to any person, or discriminating as to availability and prices, terms and conditions of sale of such bearings, or failing to provide services and assistance relating to the distribution or use of such bearings comparable to the services and assistance made available to distributors and users of such bearings in defendant's territory (as defined in the Final Judgment herein), where the reason for such discrimination or failure is that such bearings are for use, resale or other distribution, either in their original form or incorporated in another product, in some country or area other than the defendant's territory as defined in said Final Judgment (Final Judgment, Par. IX).

34. The District Court erred in ordering that the defendant for a period of six months insert at reasonable intervals in trade journals of appropriate circulation in British territory and French territory advertisements advising the bearing purchasing public of the nature of the Final Judgment in so far as it concerns the removal of the restrictions which had previously prevented the sale of bearings by the defendant in British and French territory, and that the defendant give similar notice in writing to all persons who have made written inquiry to defendant regarding the purchase or distribution of anti-friction bearings for export since July 1, 1945 (Final Judgment, Par. X).

35. The District Court erred in ordering the defendant to provide copies of the Final Judgment to British Timken, French Timken, and all directors, officers, subsidiaries, sales representatives and distributors thereof and of the defendant (Final Judgment, Par. XI).

36. The District Court erred in ordering the defendant to permit representatives of the Department of Justice of the United States to have access from time to time to the defendant's books, ledgers, correspondence and other records and documents, and to interview its officers or em- [fol. 3745] ployees as to any matters contained in the Final Judgment (Final Judgment, Par. XII).

37. The District Court erred in retaining jurisdiction of this cause for the purpose of making further orders for the construction or carrying out of the judgment, for the

modification of any of the provisions thereof, and for enforcement of compliance therewith and punishment of violations thereof (Final Judgment, Par. XIII).

38. The District Court erred in entering judgment against the defendant for costs to be taxed in this cause (Final Judgment, Par. XIV).

Failure to Make Findings of Fact and Conclusions of Law

39. The District Court erred in overruling the motion of the defendant that Court reject and disregard a document lodged by the plaintiff with the Court denominated "Findings of Fact and Conclusions of Law" which was, in fact, a proposed journal entry adopting the memorandum of opinion theretofore filed by the Court as the Court's findings of fact and conclusions of law.

40. The District Court erred in adopting as its findings of fact and conclusions of law in this cause, over the objection of the defendant, the Court's memorandum of opinion, which contained intermingled statements of fact, discussion of the evidence, inferences, arguments and observations of the Court, and did not discuss, in large part, the uncontroverted evidence in the cause demonstrating the legality of the relations between the defendant, British Timken and French Timken.

41. The District Court erred in not making, as requested by defendant, findings of fact and conclusions of law as required by law and by the Rules of Federal Civil Procedure and by the rules of the Court.

Purported Findings of Fact

42. The District Court erred in finding as a fact, or holding, that there is a tapered roller bearing market and industry, in which the defendant, British Timken and French Timken occupy dominant positions, separate and distinct from the anti-friction bearing market and industry (Court's Memorandum, Pars. 9, 15 and 146).

[fol. 3746] 43. The District Court erred in finding as a fact, or holding, that command of approximately 71 to 82 percent of the "tapered roller bearing industry" in the United States during the years 1941 to 1945, and 25 per cent of total production of anti-friction bearings in the

United States by the defendant, of approximately 90 per cent of production of tapered roller bearings and 20 per cent of that of all anti-friction bearings in England by British Timken, and of about 80 percent of the production of tapered roller bearings, constituting 10 per cent of that of all anti-friction bearings in France by French Timken, "spells out the dominant position of defendant, British Timken and French Timken both in the tapered and anti-friction bearing industry" (Court's Memorandum, Pars. 11 to 15, inclusive).

44. The District Court erred in finding as a fact, or holding, that, "while tapered bearings compete with other types of anti-friction bearings and to a much lesser extent with friction bearings, tapered bearings, because of their design and applicability for particular use, enjoy freedom from competition, just as for certain definite uses, ball bearings are free from competition" and that there is competition between tapered roller bearings and other types of anti-friction bearings only to a limited extent (Court's Memorandum, Pars. 19 and 130).

45. The District Court erred in finding as a fact, or holding, that tapered bearings "constitute a distinctive type of anti-friction bearings which fulfills a requirement not supplied or satisfied by others" (Court's Memorandum, Par. 20).

46. The District Court erred in finding as a fact, or holding, that "in order to view the conduct of defendant in the proper perspective during the period of time when it is accused of violating the antitrust laws, it is essential to examine its prior activities which the Government claims culminated in the agreements, contracts and understandings to eliminate competition, assailed in this action" and that "against the backdrop" of its relations with Vickers, Ltd.'s subsidiaries, it must "view the conduct of defendant [fol. 3747] to resolve the questions raised by the charges of anti-trust violations beginning in 1928" (Court's Memorandum, Pars. 23, 32, second sentence).

47. The District Court erred in finding as a fact, or holding, that in 1927 British Timken was a prosperous and growing concern (Court's Memorandum, Par. 34).

48. The District Court erred in finding as a fact, or holding, that "since it was founded, defendant held a commanding position in its field of manufacture"; that "By

1928 it became the Titan of the roller bearing industry" and "It had purchased the assets of its principal competitors in the United States," and that its position in "the industry" in 1928 was the same as "its position therein" in 1941 (Court's Memorandum, Pars. 35 and 36).

49. The District Court erred in finding as a fact, or holding, that British Timken's potent leadership in "the industry" in 1928 "compared favorably with that of the defendant", that British Timken had shown "a substantial growth from the time the principal contracts were made," and "had increased its productive capacity, experience in manufacture and sales output to an extent that it became a potential formidable competitor in the field of roller bearings", and had "experienced a relatively greater growth in the business than did defendant," so that agreements made between the defendant and British Timken during the years between 1928 and 1938 "were made between two manufacturers who on the basis of the evidence, were properly characterized as the largest manufacturer in the world and the largest manufacturer in Great Britain respectively" (Court's Memorandum, Par. 36).

50. The District Court erred in finding as a fact, or holding, that "personal negotiations between an executive of defendant and Dewar" took place in 1927, when the uncontroverted evidence is that such negotiations were between defendant's agent, a former executive of defendant, and Dewar (Court's Memorandum, Par. 41).

[fol. 3748] 51. The District Court erred in finding as a fact, or holding, that the Business Agreement of 1928 between the defendant and British Timken "followed generally the pattern of those which preceded it." (Court's Memorandum, Par. 48).

52. The District Court erred in finding as a fact, or holding, that S.M.G. was exclusively licensed by British Timken or its predecessor, and that it was the only manufacturer of tapered roller bearings in France until 1928 (Court's Memorandum, Par. 53).

53. The District Court erred in finding as a fact, or holding, that defendant and British Timken organized a new German company with the same name as Prausnitzer's Deutsche Timken Gesellschaft—when the uncontroverted evidence in the record is that the defendant and Dewar

acquired jointly stock control of Prausnitzer's company (Court's Memorandum, Par. 57).

54. The District Court erred in finding as a fact, or holding, that defendant and British Timken own all the stock of French Timken—when the uncontroverted evidence is that the defendant and Dewar own all of such stock (Court's Memorandum, Par. 66).

55. The District Court erred in finding as a fact, or holding, that the 1938 "Business Agreements" between defendant, British Timken, French Timken and Dewar prevented the parties from selling in each other's territory, fixed prices on all replacement bearings sold in each other's territories, and fixed prices on bearings sold in Russia (Court's Memorandum, Par. 69).

56. The District Court erred in finding as a fact, or holding, that letters and memoranda of the contracting parties, and particularly of the officers of defendant show that "the respective trade provinces" of the defendant, British Timken and French Timken "were to be preserved regardless of the unsatisfied demand for bearings in the various parts of the world" and that "over the entire span of years during which the restrictions existed the parties did not deviate from their course of conduct." (Court's Memorandum, Par. 72).

[fol. 3749] 57. The District Court erred in finding as a fact, or holding, that strict adherence to territorial restrictions applicable to Australia contained in the Business Agreement between the defendant and British Timken, "because a matter of grave concern to British Timken's distributors and eventually to the British Purchasing Commission," that "There was a serious interference in Australian war production due to British Timken's inability to supply bearings," that "The threat of sales by competitors to supplant the meager amount of bearings, and the clamor of Australian distributors, eventuated in the relaxation of the theretofore inflexible provisions of the contracts" between defendant and British Timken, that defendant was permitted to fill orders from British Timken only at prices designated by British Timken, and that "the voluminous correspondence on the subject matter bears out the critical situation which existed and which required the reluctant alteration of established policy" (Court's Memorandum, Pars. 78, 79).

58. The District Court erred in finding as a fact, or holding, that certain communications demonstrated "that the parties not only sought the preservation of their respective sales fields, but that they supported the agreements by the maintenance of price fixing arrangements"; that "The protective discount policy insured the parties against competition from each other in replacement bearings" and that "Defendant sold at a 70% discount for export on its own territory, but quoted prices representing a 50% discount from the American list on standard bearings in response to unsolicited inquiries from British Timken's territory" in order to preserve their respective sales fields (Court's Memorandum, Par. 88).

59. The District Court erred in finding as a fact, or holding, that "other steps were taken to prevent outsiders from disturbing the agreements" between defendant and British Timken "as the particular situation required" (Court's Memorandum, Par. 89).

60. The District Court erred in finding as a fact, or holding, that the defendant, British Timken and French Timken "deviated from adherence to protective prices only in cases where competition of outsiders required that [fol. 3750] it be done" (Court's Memorandum, Par. 92).

61. The District Court erred in finding as a fact, or holding, that "In the joint territory of Russia, the pricing provisions spelled out in written contracts were carried out to the letter" (Court's Memorandum, Par. 94).

62. The District Court erred in finding as a fact, or holding, that, because the defendant, British Timken and French Timken construed their "contractual obligations for the interchange of information relating to the manufacture of bearings and of all inventions and discoveries, whether they were patented or not, as being for their mutual benefit only, to the exclusion of all others," any "information pertaining to their manufacture was denied to outsiders unless consent was obtained from the party affected" (Court's Memorandum, Par. 95).

63. The District Court erred in finding as a fact, or holding, that British Timken and French Timken have become identified as producers of "Timken" bearings and that the good will which they built up and the competitive position which they have acquired in the territories allocated to them is under the name "Timken", that the retention of the

good will and place of dominance of British Timken and French Timken in their respective business fields depends on the continued right to use the name "Timken" and that "The severance of contractual relations meant the termination of their ability to profit by the many years of experience in manufacture and successful business dealing with their customers." (Court's Memorandum, Par. 96).

64. The District Court erred in finding as a fact, or holding, that, "In addition to dividing the world into restricted manufacturing and marketing areas, maintaining price fixing arrangements, and interchange of discoveries, know-how and inventions to the exclusion of others, defendant, British Timken and French Timken co-operated to shut out the competition of other dealers in tapered roller bearings." (Court's Memorandum, Par. 97).

[fol. 3751] 65. The District Court erred in finding as a fact, or holding, that the territorial divisions between defendant, British Timken and French Timken were made for the purpose, in part, of eliminating the competition of other tapered bearing producers (Court's Memorandum, Par. 98).

66. The District Court erred in finding as a fact, or holding, that "Dewar's testimony in this regard was:

> 'We had a common enemy in the Swedish S. K. F. who had begun the manufacture of tapered roller bearings, and our general policy was that if a tapered roller bearing was sold it had got to be a Timken and not a S. K. F. To us it was really immaterial whether it was made in the United States or whether it was made in Great Britain or France, provided it carried the name 'Timken'. We used to sell at the request of the American Company in the Argentine and the American Company has sold at our request in our territories.'"

—whereas the record discloses that the testimony of Dewar quoted by the Court did not constitute all of his testimony as to the purpose of the provisions as to the divisions of territory contained in the agreements of defendant, British Timken and French Timken (Court's Memorandum, Par. 99).

67. The District Court erred in finding as a fact, or holding, that "the sales of bearings by defendant, British Timken, and French Timken to each other were on a most favorable basis to supplement the plan of strict compliance

with allocated areas and to protect themselves from competition by outsiders" (Court's Memorandum, Par. 103).

68. The District Court erred in finding as a fact, or holding, that "Defendant and British Timken made certain that the alloy steel made by defendant, especially adapted for the manufacture of bearings, was not made available for use by their competitors" (Court's Memorandum, Par. 104).

69. The District Court erred in finding as a fact, or holding, that "The collaboration of defendant, British Timken and French Timken to eliminate competition with each other and to eliminate the competition of other bearing producers was augmented by agreements with British Timken and French Timken with their competitors abroad to share customers and sales in certain markets and to stabilize prices" (Court's Memorandum, Par. 106).

[fol. 3752] 70. The District Court erred in finding as a fact, or holding, that certain agreements characterized by the Court as cartels made by British Timken and French Timken were "the result of the understandings and cooperation of defendant with British Timken and French Timken to bring them about," that "defendant's territory was affected" and " It was the beneficiary of their operations," and that its officials "prompted and approved the agreements" (Court's Memorandum, Par. 110).

71. The District Court erred in finding as a fact, or holding, that the lengthy recital of letters, reports and memoranda made by the Court in its Memorandum paints such a clear picture of the conduct of the accused companies, including the defendant, over the period of years that it leaves no room for dispute or contradiction on the salient facts (Court's Memorandum, Par. 116).

72. The District Court erred in finding as a fact, or holding, that the evidence conclusively establishes the assertions of the plaintiff, namely, that the defendant, British Timken and French Timken have imposed restraints on foreign commerce in anti-friction bearings "by (1) allocating trade territories throughout the world, each agreeing with limited exceptions not to manufacture or sell in the other's territory; by (2) fixing of prices on products sold by any party in the territory of the other party; by (3) mutual cooperation and assistance to protect each other's markets and to eliminate the competition of outsiders; and by (4) partici-

pation in foreign cartels which restrict exports by United States producers" (Court's Memorandum, Par. 117).

73. The District Court erred in finding as a fact, or holding, that the evidence in the instant cause "discloses an extensive and far-reaching combination to smother all competition between defendant, British Timken and French Timken, and to stifle or suppress competition of other manufacturers by joint effort against them or by agreement with them" (Court's Memorandum, Par. 119).

74. The District Court erred in finding as a fact, or holding, that the present relationship of the defendant, British [fol. 3753] Timken and French Timken "is not only the culmination of the successive agreements between them beginning in 1928", but also "the outgrowth of the principal agreements" made in 1909 between the defendant and Electric & Ordnance Accessories Company, Ltd. (predecessor of British Timken and a wholly-owned subsidiary of Vickers, Ltd., and hereinafter called E. & O. A.) "when world markets were divided and competition was eliminated" (Court's Memorandum, Par. 120).

75. The District Court erred in finding as a fact, or holding, that after the expiration of the principal patents owned by the defendant, the restrictions imposed (by the 1909 patent license agreements between the defendant and E. & O.A. and its successor, British Timken, prior to the acquisition of British Timken by defendant and Dewar in 1927) continued, but no longer revolved around the patents, and instead "were without pretense contracts for the avowed purpose of suppressing competition" (Court's Memorandum, Par. 121).

76. The District Court erred in finding as a fact, or holding, that, "When in 1928 the American, British and French companies agreed to continue their activities, British Timken had grown from infancy in the bearing industry to a position of dominance and was a potential competitor with whom defendant had to reckon" (Court's Memorandum, Par. 122).

77. The District Court erred in finding as a fact, or holding, that each of the defendant, British Timken and French Timken was "independent of the others, but joined for the sole and only purpose of mutual benefits" (Court's Memorandum, Par. 123).

78. The District Court erred in finding as a fact, or hold-

ing, that the territorial limitations imposed by the defendant, British Timken and French Timken on each other were designed for the purpose of preventing competition, and were reinforced by price agreements, that the word "Timken" had become synonymous with tapered roller bearings, and that in order "to eliminate the competition of other purchasers, defendant supplied British Timken and French Timken, and them alone, with [fol. 3754] know-how in the production of bearings", and insisted that the bearings produced and sold by them be identified by the name "Timken" (Court's Memorandum, Par. 124).

79. The District Court erred in finding as a fact, or holding, that "cartel agreements in France, England, and Italy were made by defendant, British Timken and French Timken with the knowledge, approval and cooperation of the defendant to effectuate the plan of excluding competition of others in the territories of the defendant, British Timken and French Timken" (Court's Memorandum, Par. 125).

80. The District Court erred in finding as a fact, or holding, that "The French anti-friction cartel, the English S.K.F.—British Timken cartel, and the agreements with Bock and R.I.V. fortified defendant in the over all plan of suppressing competition in the sale of tapered bearings" (Court's Memorandum, Par. 126).

81. The District Court erred in finding as a fact, or holding, that the combined relationship between defendant, British Timken and French Timken constitutes a pool of "separate firms to maintain prices above a competitive figure" commonly known as a "cartel" (Court's Memorandum, Par. 127).

82. The District Court erred in finding as a fact, or holding, that "The benefits of the competitive price system under the Sherman Act would be lost to the vast number of manufacturers whose machinery and equipment are geared to use only tapered bearings if the operation of the Act were to be construed otherwise than as prohibiting arrangements for dividing markets", and, therefore, inferentially, that the arrangements between the defendant and its associate companies prevent price competition in tapered bearings (Court's Memorandum, Par. 131).

83. The District Court erred in finding as a fact, or holding, that the defendant, British Timken and French Tim-

ken engaged in "the practice of selling only at prices agreeable to the party into whose territory the sales were made", carried out contractual provisions "for an agreed price on replacement parts", and entered into "other price [fol. 3756] fixing arrangements" (Court's Memorandum, Par. 132).

84. The District Court erred in finding as a fact, or holding, that "Both the territorial sales limitations and price fixing constitute a menace to international trade in tapered bearings," (Court's Memorandum, Par. 133).

85. The District Court erred in finding as a fact, or holding, that the "association of defenda t, British Timken and French Timken, for the purpose of protecting each other's markets, and the exclusion of outsiders from the tapered bearing market, is no less harmful and injurious to the unrestricted flow of commerce in bearings than territorial sales limitation and price fixing" (Court's Memorandum, Par. 134).

86. The District Court erred in finding as a fact, or holding, that the defendant participated in foreign cartels and that this participation "completed the circle within which the alleged combination between defendant, British Timken and French Timken operated to forestall competition" (Court's Memorandum, Par. 135).

87. The District Court erred in finding as a fact, or holding, that the cartel agreements between British Timken and French Timken and foreign competitors "had a direct and influencing effect on trade in tapered bearings between the United States and foreign countries" (Court's Memorandum, Par. 136).

88. The District Court erred in finding as a fact, or holding, that exclusive exchange of know-how and enforcement of trademark restrictions by and between the defendant, British Timken and French Timken "have been most helpful in buttressing the other illegal conduct to achieve the desired result" and "were integral parts of the general scheme to suppress trade" (Court's Memorandum, Par. 137).

89. The District Court erred in finding as a fact, or holding, that the defendant, British Timken and French Timken "are separate corporations who, in their respective territories both before and after their agree- [fol. 3756] ments, were potential competitors in the tapered

bearing market", and "occupied dominant positions in the entire anti-friction bearing industry" (Court's Memorandum, Par. 144).

90. The District Court erred in finding as a fact, or holding, that the evidence discloses "an intent to operate a smoothly running organization to control commerce in the tapered bearing industry throughout the entire world" (Court's Memorandum, Par. 146).

91. The District Court erred in finding as a fact, or holding, that "In the face of the numerous agreements and the clear expressions of defendant's officers in the volumes of letters and memoranda offered in evidence, it is difficult to understand how anyone can disclaim a clear intent to restrict competition", and that "It is likewise difficult to place credence in the assertion that there was no intent to restrain trade" in view of certain comments of the defendant's President (made in 1933), if the statements are to be construed as findings of fact or a holding that the defendant intended to restrict competition and restrain trade (Court's Memorandum, Pars. 147, 148).

92. The District Court erred in finding as a fact, or holding, that the common undertaking between the defendant and Dewar "was a joint venture only in the sense that they jointly undertook to continue the manufacture and distribution of bearings with all the limitations and restrictions which had theretofore been imposed" (Court's Memorandum, Par. 150).

93. The District Court erred in finding as a fact, or holding, that throughout the trial of this cause "All of the defendant's officers and employees" took great pains "to make reference time and again to 'our joint venture' and to 'our partners'" (Court's Memorandum, Par. 151).

94. The District Court erred in finding as a fact, or holding, that the relationship of the defendant with British Timken and French Timken, as to the manufacture and sale of bearings in issue in this cause, did not originate with the agreement between the defendant and Dewar, but that instead the "defendant had maintained the territorial market restrictions with the predecessors of British Timken and in [fol. 3757] France with the predecessor of French Timken" (Court's Memorandum, Par. 152).

95. The District Court erred in finding as a fact, or holding, that S.M.G. was the "predecessor" of French Timken (Court's Memorandum, Par. 152).

96. The District Court erred in finding as a fact, or holding, that the only substantial change in the relationship of the parties "resulting from the Dewar-defendant contract was, that defendant acquired a stock ownership in British Timken and French Timken," and that the execution of the 1928 contracts between the defendant and British Timken, and British Timken and French Timken, did not mark the beginning of new business contacts, but instead "merely extended the restrictive arrangements which had existed for almost twenty years between potential competitors" (Court's Memorandum, Par. 153).

97. The District Court erred in finding as a fact, or holding, that the restraints imposed by the business agreements between the defendant and British Timken and French Timken were not ancillary to a joint venture between the defendant and Dewar, but "To the contrary, the arrangements were made to carry on effectively the combination to eliminate competition between the parties and to frustrate any competition of outsiders" (Court's Memorandum, Par. 154).

98. The District Court erred in finding as a fact, or holding, that "the underlying motive of Dewar for making" the Heads of Agreement of May 16, 1927, between the defendant and Dewar, which outlined the arrangements to be carried on by the parties in connection with their joint acquisition of British Timken and proposed acquisition or organization of other corporations in other European countries such as France and Germany, was "Dewar's desire to escape defendant's competition and to continue the existing contracts" between the defendant and British Timken (Court's Memorandum, Par. 155).

99. The District Court erred in finding as a fact, or holding, that the defendant had no control over the business conduct of either British Timken or French Timken, and that all advice in respect of improved production and [fol. 3758] technical information supplied by the defendant to British Timken and French Timken, instead of being given in support of, and as a part of a joint venture between the defendant and Dewar to carry on the manufacture and sale of tapered roller bearings in foreign countries through the instrumentality of foreign corporations, such as British Timken and French Timken, was, instead "in support of the combination to eliminate competition among the parties and with others" (Court's Memorandum, Par. 156).

100. The District Court erred in finding as a fact, or holding, that British Timken and French Timken retained their corporate entities and jealously guarded their independence in dealing with the defendant; that Dewar regarded himself as synonymous with British Timken; that Hess, an executive of the defendant, "abandoned, even in name, the partnership fiction" in 1934, and that, even if the parties had thought they were engaged in a joint venture, "by 1934 neither believed that such relationship existed" (Court's Memorandum, Pars. 157 to 159, inclusive).

101. The District Court erred in finding as a fact, or holding, that the defendant "simply acquired substantial interests in a dominant manufacture of bearings in England, participated in the formation of, and invested in the stock of a potential competitor in France" (Court's Memorandum, Par. 160).

102. The District Court erred in finding as a fact, or holding, that in 1928 defendant had "serious doubt of its ownerships of the mark" in "the various territories assigned to British and French Timken", that "in some markets British Timken's predecessor was the owner of" the trademark "Timken"; that "In Germany one Prausnitzer was the sole owner of the trademark 'Timken'"; that "defendant could not use the mark in a great portion of the world"; that the defendant was primarily concerned "not in safeguarding the trademark rights which it then possessed, but rather in acquiring the rights obtained by other manufacturers, as a consequence of the early license agreements in areas where defendant had agreed not to manufacture and sell"; and that "Its own covenants not to make or sell [fol. 3759] bearings in territories allotted to others brought about the situation that the trademark 'Timken' was registered and owned by others" (Court's Memorandum, Pars. 182, 183).

103. The District Court erred in finding as a fact, or holding, that the agreements attempted to remedy the defendant's "dubious trademark" rights (Court's Memorandum, Par. 184).

104. The District Court erred in finding as a fact, or holding, that the defendant's "own counsel in England" brought the matter of the trademark situation to the defendant's attention in a letter on April 2, 1927,—when the uncontroverted evidence in the record is that this letter was

sent to the defendant by its American trademark counsel. (Court's Memorandum, Par. 185).

105. The District Court erred in finding as a fact, or holding, that "Despite counsel's optimism concerning world control of the mark, great difficulty was encountered in effecting registration in many countries." (Court's Memorandum, Par. 186).

106. The District Court erred in finding as a fact, or holding, that "the trademark provisions of the challenged contracts were subsidiary and secondary to the central purpose of allocating trade territories"; and that the defendant entered into the business agreements with British Timken and French Timken "not for the purpose of exercising its right to protect the trademark 'Timken' from its unlawful use by British Timken and French Timken, nor to protect the public from British or French Timken passing off their products as those of defendant, but for the purpose of preventing competition in the sale of bearings" (Court's Memorandum, Pars. 187, 188).

107. The District Court erred in finding as a fact, or holding, that the defendant's contention as to the trademark is founded "on the tenuous premise that it was the equitable owner of the mark outside of the marketing territory allocated to it"—when the uncontroverted evidence discloses that the defendant was the registered legal owner of the mark in many of the commercial areas in Europe and elsewhere all over the world outside of the territory [fol. 3760] allocated to it by the business agreements. (Court's Memorandum, Par. 189).

108. The District Court erred in finding as a fact, or holding, that the "repeated and persistent provisions of the successive contracts for territorial restrictions, contradict any claim" that defendant, British Timken and French Timken lacked the ability to compete with each other (Court's Memorandum, Par. 204).

109. The District Court erred in finding as a fact, or holding, that "the ingenuity of the American businessman, fortified by the advantages of free competition in many instances has been able to penetrate the strongest tariff walls", that "the evidence bears out the fact that there was and there is potential competition in the international roller bearing market" and the contracts were made "for the very purpose of regulating and restricting it"; and that had it

not been for the rigid restrictions provided in the contracts between the defendant, British Timken and French Timken and their strict enforcement in actual practice "the volume of business with foreign countries would have been of considerable size" (Court's Memorandum, Pars. 205-208, inclusive).

110. The District Court erred in finding as a fact, or holding, that the defendant, British Timken and French Timken have formed a world cartel in tapered roller bearings, have divided the world into exclusive sales territories, have fixed prices, have agreed to and did attempt to eradicate competition of outsiders, and combined with competitors to fix prices (Court's Memorandum, Par. 210).

Purported Conclusions of Law

111. The District Court erred in stating as a conclusion of law, or holding, that the defendant, British Timken and French Timken occupy, as a matter of law, dominant positions in the anti-friction bearing industry and a separate and distinct tapered roller bearing industry (Court's Memorandum, Pars. 15, 35).

112. The District Court erred in stating as a conclusion of law, or holding, that in the basic questions involved in [fol. 3761] this cause the reasons for the making of large numbers of contracts, why they were modified and extended from time to time, and various covenants were inserted in them, and why the present contracts have such long duration, are of no significance, but that, instead, "The controlling facts are that they were made and that they contained certain provisions which may bring them under the condemnation of the Sherman Act" (Court's Memorandum, Par. 67).

113. The District Court erred in stating as a conclusion of law, or holding, that the 1909 patent license agreements between defendant and E. & O. A. were illegal under the Sherman Act, if this is the inferential conclusion of law, or holding, of the District Court (Court's Memorandum, Par. 120).

114. The District Court erred in stating as a conclusion of law, or holding, that the extent to which alleged cartel agreements made by British Timken and French Timken were "successful in impeding competition is of no moment.

It is sufficient that that was the end sought to be accomplished" (Court's Memorandum, Par. 126).

115. The District Court erred in stating as a conclusion of law applicable to this cause, or holding, that "it is an imperative of the Sherman Act that all combinations in restraint of international trade and all agreements to restrict competition be condemned" (Court's Memorandum, Par. 127).

116. The District Court erred in stating as a conclusion of law, or holding, that the allocation of markets as between the defendant, British Timken and French Timken under their business agreements from 1928 to date were illegal under the Sherman Act (Court's Memorandum, Pars. 128, 129, 133).

117. The District Court erred in stating as a conclusion of law, or holding, that the provisions in the business agreements between the defendant, British Timken and French Timken, which required them, in making replacement sales in each other's territory only at prices agreeable to the party into whose territory the sales were made, and for other alleged price-fixing arrangements between them, were [fol. 3762] in violation of the Sherman Act (Court's Memorandum, Pars. 132, 133).

118. The District Court erred in stating as a conclusion of law, or holding, that "the association of defendant, British and French Timken for the purpose of protecting each other's markets and the exclusion of outsiders from the tapered bearing market" was in violation of the Sherman Act (Court's Memorandum, Par. 134).

119. The District Court erred in stating as a conclusion of law, or holding, that "the participation in the foreign cartels by defendant" under the circumstances outlined in the Court's Memorandum, constituted a violation of the Sherman Act, and that the fact that the agreements were made on foreign soil did not relieve the defendant from responsibility (Court's Memorandum, Pars. 135, 136).

120. The District Court erred in stating as a conclusion of law, that exclusive exchange of "present and future know-how and inventions, patented or unpatented" should be considered by the Court in deciding this case and granting relief therein, when the Court conceded that there was no charge made in the complaint as to this alleged practice (Court's Memorandum, Par. 137).

121. The District Court erred in stating as a conclusion of law, or holding, that the restraints of foreign commerce resulting from the agreements and action of defendant, British Timken and French Timken were not reasonable within the meaning of the Sherman Act, but instead were "unreasonable per se" (Court's Memorandum, Pars. 142, 143).

122. The District Court erred in stating as a conclusion of law, or holding, that any restraints imposed on commerce by the defendant, British Timken and French Timken were not reasonably ancillary to the close relation between the defendant and Dewar analogous to a partnership or joint venture, but instead constituted merely a continuation of restraints on commerce imposed by the 1909 agreements between the defendant and E. & O. A. and its successor subsidiaries of Vickers, Ltd., so that "The only substantial change in the relationship of the parties resulting from the Dewar-defendant contract was that defendant acquired a [fol. 3763] stock ownership in British Timken and French Timken", and instead of being restraints reasonably ancillary to a joint venture between defendant and Dewar, the restraints imposed by the 1928 business agreements between defendant, British Timken and French Timken "were made to carry on effectively the combination to eliminate competition between the parties and to frustrate any competition of outsiders" (Court's Memorandum, Pars. 149, 150, and 152 to 154, inclusive).

123. The District Court erred in stating as a conclusion of law, inferentially, if that was the District Court's intention, because Dewar managed and operated British Timken and French Timken and defendant had "no control over the business conduct of either", no joint venture to which restraints of competition could be reasonably ancillary existed (Court's Memorandum, Par. 156).

124. The District Court erred in stating as a conclusion of law applicable to this cause, or holding, if it so intended, that the "repeated assertion" by the defendant, in the course of its business relations with Dewar, that "it was in a joint venture or was a member of a partnership does not make it so" (Court's Memoraundum, Par. 160).

125. The District Court erred in stating as a conclusion of law, or holding, inferentially, if that was the District Court's intention, assuming that there could be a joint ven-

ture between the defendant and Dewar, the restraints imposed by the arrangements and action of defendant, Dewar, British Timken and French Timken cannot be justified because the association was not formed for the purpose of a lawful business enterprise involving restraints to protect established business interest, but, instead, was "formed for the purpose of continuing a combination to allocate exclusive sales territories in the world, to fix prices and to eliminate competition and fix prices both within and without the combination" (Court's Memorandum, Pars. 161 to 163, inclusive).

126. The District Court erred in stating as a conclusion of law, or holding, that the restraints imposed could not be reasonably ancillary to the transfer of know-how by the defendant to British Timken and French Timken, because [fol. 3764] one who possesses greater knowledge or superior skill in the manufacture of a product, while entitled to be fairly and adequately compensated if he furnishes his knowledge or skill to others, is not entitled to exact as a price for such contribution complete freedom from competition (Court's Memorandum, Pars. 165 to 178, inclusive).

127. The District Court erred in stating as a conclusion of law, or holding that the restraints imposed by the agreements, arrangements and conduct of the defendant, Dewar, British Timken and French Timken were not and could not be reasonably ancillary to the granting of a license by the defendant to British Timken and French Timken to use the trademark "Timken" (Court's Memorandum, Pars. 179, 180).

128. The District Court erred in stating as a conclusion of law, or holding, that in 1928 the defendant was primarily concerned in acquiring trademark rights obtained by other manufacturers, as a consequence of the early patent license agreements, in areas where the defendant had agreed not to manufacture and sell with the result that "The trademark 'Timken' was registered and owned by others", rather than in safeguarding the "trademark rights which it then possessed" (Court's Memorandum, Par. 183).

129. The District Court erred in stating as a conclusion of law, or holding, that "Defendant's assertion that it was the sole equitable owner of the mark is unimpressive", and that it "did not and could not have a right to license a

trademark in markets where it did not own the mark" (Court's Memorandum, Pars. 184, 190).

130. The District Court erred in stating as a conclusion of law, or holding, that the "trademark right is not comparable to the right an owner has in a chattel or realty" and is not a right "in gross or at large"; and inferentially, therefore, if this was the District Court's intention, that the right to use it cannot be licensed (Court's Memorandum, Pars. 193 to 196).

[fol. 3765] 131. The District Court erred in stating as a conclusion of law applicable to this cause, or holding, that "a trademark brands a product as to its origin" only (Court's Memorandum, Par. 199).

132. The District Court erred in stating as a conclusion of law applicable to this cause, or holding, that "If a trademark may be the legal basis for allocating world markets, fixing of prices, restricting competition, the unfailing device has been found to destroy any vestige of inhibition set up by the Sherman Act"; that "The rights pertaining to trademarks and trade names were well known long before that legislative act was passed by Congress"; and that "It is certain that it was never intended that the consequences of violations of the antitrust laws may be escaped by the licensing of trade marks" (Court's Memorandum, Par. 200).

133. The District Court erred in stating as a conclusion of law, or holding, that the repeated provisions of the successive contracts for territorial restrictions between the defendant, British Timken and French Timken contradict any claim of lack of ability to compete on a competitive price basis in their respective territories, that the facts that inquiries for bearings were made by foreign purchasers and that small competitors of the defendant in the United States made shipments abroad on a relatively large scale is convincing evidence of potential competition and the destructive effect of the alleged combination of the defendant, British Timken and French Timken, and that therefore the illegality which is essential to the granting of equitable relief in the instant cause exists (Court's Memorandum, Pars. 201 to 208).

134. The District Court erred in stating as a conclusion of law applicable to this cause, or holding, that "The defenses offered do not constitute justifications for such

patent violations of the antitrust laws" and that "the Government is entitled to a decree" (Court's Memorandum, Pars. 210, 211).

[fol. 3766] District Court's Failure to Make New and Additional Findings of Fact and Conclusions of Law

135. The District Court erred in overruling the motion of the defendant after final judgment to amend the Court's findings of fact and conclusions of law, and to make new and additional findings of fact and conclusions of law, by adopting as its findings of fact and conclusions of law those requested by the defendant in a document attached to and made part of said motion.

136. The District Court erred in failing and refusing to make the findings of fact and conclusions of law requested by the defendant in its motion after final judgment to amend the Court's findings of fact and conclusions of law and to make new, and additional, findings of fact and conclusions of law, which, to the extent that they do not duplicate findings of fact and conclusions of law purportedly made by the Court, are, in substance, as set forth in the following assignments of error, Nos. 137 to 196, inclusive.

Requested Findings of Fact.

137. Position of the Timken Companies in the bearing industry. The District Court erred in failing to find as a fact, that all types of anti-friction bearings compete with each other and can be used in almost any kind of position in which anti-friction bearings can be used; that all types of roller bearings, including tapered roller bearings manufactured by the defendant, can be used in almost any type of work where an anti-friction bearing can be used; and that, aside from the field in which small bearings, such as the miniature types which can be seen only with a magnifying glass, are being used, and the field in which large roller bearings are most practicable due to the bulky housing required for ball bearings, roller bearings (including tapered roller bearings) compete with ball bearings in the United States, the United Kingdom and Europe, in 90 per cent of the places where either ball or roller bearings can be applied, and the success of the anti-friction bearing manufacturers depend upon salesmanship or economy of the [fol. 3767] bearing; and that the price of the bearing and cost of the mounting for the bearing are the considerations

which determine the economy of the bearing (Requested Findings Nos. 10-13, inclusive).

138. The District Court erred in failing to find as a fact that anti-friction bearings compete with friction bearings on many applications; that many more friction type bearings than anti-friction bearings are manufactured in the United States, and that since 1935 an increasing part of the business of all anti-friction bearing manufacturers has been to induce users of friction to substitute anti-friction bearings (Requested Finding No. 16).

139. The District Court erred in failing to find as a fact that at the present time the defendant's output of tapered roller bearings constitutes 25 per cent of the total anti-friction bearings and 50 per cent of the production of roller bearings in the United States; that while in 1927 the defendant was competing with 8 manufacturers of tapered roller bearings as well as manufacturers of other types, at the present time it competes in the United States with 14 manufacturers of tapered roller bearings, 18 manufacturers of straight roller bearings, 25 manufacturers of ball bearings, and 6 manufacturers of special type bearings; that the number of manufacturers of tapered roller bearings in the United States is greater than it ever was before, that certain of them, such as Bower and New Departure, have grown more than the defendant since 1927, and that its competitors include Hyatt, a manufacturer of tapered and straight roller bearings, which is a division of General Motors Corporation, American S.K.F., a subsidiary of Swedish S.K.F., and Bower, which sold $20,000,000 worth of bearings as compared with the defendant's $70,000,000 worth in 1947 (Requested Findings Nos. 19, 20).

140. The District Court erred in failing to find as a fact that British Timken, while it manufactures and has manu- [fol. 3768] factured approximately 90 per cent of tapered roller bearings produced in the United Kingdom and its sole competitor therein in the manufacture of tapered roller bearings is and has been Skefko, the English subsidiary of S.K.F., competes in the sale of anti-friction bearings with well established ball bearing manufacturers such as Hoffman and Ransome & Marles, and has been engaged at all times in pioneering the sale of the tapered roller bearings in the markets in which it has sold, because far more ball bearings than tapered roller bearings were used, the ball

bearing companies being very well known and the sale of tapered roller bearings having been developed largely by displacing ball bearings (Requested Findings Nos. 15; 21).

141. The District Court erred in failing to find as a fact that French Timken, while it manufactures and has manufactured approximately 80 per cent of the tapered roller bearings produced in France, competes in the manufacture and sale thereof with Rossi, C.A.M., the French subsidiary of S.K.F., and Renault, companies which also manufacture ball bearings and other types of anti-friction bearings, as well as manufacturers of other types of bearings, and has been engaged at all times in pioneering the sale of tapered roller bearings in the markets which it sells, because far more ball bearings than tapered roller bearings have been used in the French market, the ball bearing manufacturers being very well known and the sale of tapered roller bearings having been developed largely by displacing ball bearings (Requested Findings Nos. 15; 22).

142. The District Court erred in failing to find as a fact that S.K.F.'s pre-World War II production of anti-friction bearings was one-third of the world's supply; that, as of 1945, S.K.F.'s subsidiaries in France and Germany were the largest producers of anti-friction bearings in those countries; and that, as of 1945 of twenty to thirty manufacturers of anti-friction bearings in the United States, the largest was a subsidiary of an automobile manufacturer (Requested Finding No. 24).

[fol. 3769] 143. The District Court erred in failing to find as a fact that the combined volumes of sales of the defendant, British Timken and French Timken constitute approximately 23.22 per cent of those of the combined anti-friction bearing industries of the United States, the United Kingdom and France (Requested Finding No. 23).

144. The method of marketing bearings. The District Court erred in failing to find as a fact that sales of bearings for original installation constitute 95 per cent of the output of bearings, and provide the basis for (because they are most likely to lead to), replacement sales, constituting the balance of 5 per cent; that sale of bearings for original installation involves contact with the customer by the defendant's sales engineers in competition with sales engineers of other manufacturers of all types of anti-friction bearings; and that, while competition between the different

types of anti-friction bearings for original installation ends at the adoption of a design of a specific type of bearing because, once that particular type of bearing is incorporated, other types can not be substituted for replacement, nevertheless, tapered roller bearings manufactured by competitors of the defendant are interchangeable with its bearings, since almost all tapered roller bearing manufacturers copy the defendant's bearings dimensions and as a convenience to customers use the same system of parts numbers on their bearings as that used by the defendant (Requested Findings Nos. 25-29, inclusive).

145. The District Court erred in failing to find as a fact that the defendant, British Timken and French Timken conduct their replacement business through authorized distributors and stocking jobbers, who purchase and stock various sizes of bearings and parts for the purpose of serving customers, pursuant to a system of discounts from list price which are changed from time to time in order to meet competition, and that, in addition to that which comes to dealers or jobbers, replacement business consists of unsolicited inquiries to the defendant which orginate with [fol. 3770] persons who had had no previous contact with its sales organization, ordinarily amounting to $15,000 to $20,000 in value per year (Requested Finding No. 30).

146. Foreign commerce in anti-friction bearings. The District Court erred in failing to find as a fact that machinery, aside from that built in the United States, during the period involved herein, 1928 to date, has been manufactured chiefly in the countries of western Europe; that bearings are invariably components of such machinery; that the demand for anti-friction bearings outside the machinery producing countries consists of replacement business; that replacement bearing business generally has a natural tendency to follow original installation business and to go to the manufacturers located in those countries in which bearings to be replaced were originally manufactured and installed; and that, outside of the United States, anti-friction bearings have been manufactured principally in Sweden, Germany, Italy, United Kingdom, France and Switzerland (Requested Findings Nos. 31, 32 and 56).

147. The District Court erred in failing to find as a fact that from 1928 to date exports of anti-friction bearings by United States anti-friction bearing manufacturers have

been made principally to Canada for use in the manufacture of automobiles in Canada in plants affiliated with American automobile producers, lesser amounts going to European, Latin American countries, Japan, Australia, the Philippine Islands, and occasionally large shipments to Soviet Russia, and that the total exports from the United States for the alternate years from 1925 to 1939 averaged only 2.3 per cent of the total United States production thereof in those years (Requested Finding No. 33).

148. The District Court erred in failing to find as a fact that imports into the United States from Europe (where the other principal producers of anti-friction bearings are located) are principally from the S.K.F. plants and from Hoffman of England to American affiliates of those companies, largely in sizes and types which they do not [fol. 3771] produce advantageously in the United States, and that imports of anti-friction bearings into the United States averaged less than one per cent of the total United States production thereof for the alternate years 1925 through 1939 (Requested Finding, No. 34).

149. The District Court erred in failing to find as a fact that from the commencement in 1914 of World War I to date there has evolved a complete change in foreign trade from free competition on the basis of price, regulated only by tariff restrictions, to a trade administered and controlled by governments under rigid licensing systems in which price competition has no place, because these systems are administered according to the political and economical authorities of the particular countries which impose them, with the result that there is no substantial free competition on the basis of price in foreign trade today, and there is no likelihood of a return thereto in the future (Requested Findings, Nos. 35-52, inclusive).

150. The District Court erred in failing to find as a fact that at the present time many foreign countries, including the United Kingdom, France, Sweden, and Switzerland, impose substantial tariffs upon imports of anti-friction bearings, including those manufactured by the defendant (Requested Finding No. 53).

151. The District Court erred in failing to find as a fact that, as a result of the various restrictions imposed by foreign countries from the period since the commencement of World War I in 1914, consisting of the nationalistic

policies of the various nations to enforce local purchase of domestic goods, tariff regulations, formation by the United Kingdom of the sterling bloc, fluctuation of currency values, and government regulation and licensing of exports, imports and foreign exchange, American manufacturers of anti-friction bearings, including the defendant, from 1927 to date, could not have exported bearings manufactured in the United States to the United Kingdom, France, Germany or the other European machinery manufacturing [fol. 3772] countries in successful price competition with anti-friction bearings manufactured in those countries (Requested Finding No. 54).

152. The District Court erred in failing to find as a fact that at all times from 1927 to date, it has been necessary for an American manufacturer of anti-friction bearings, including the defendant, in order to do a successful foreign business therein, to establish plants to produce bearings in the foreign countries in which original installation sales are to be made; that since practically all of the manufacturing of machinery outside of the United States has taken place in the western European nations from 1927 to date, it has been necessary to establish plants in those countries to obtain original installation bearing business therein; and that the only foreign countries in which it was profitable to establish such plants were the United Kingdom, France, Germany and possibly Italy (Requested Finding, No. 55).

153. The District Court erred in failing to find as a fact that in order to obtain original installation bearing business in the United Kingdom, France and Germany it has been advisable from 1927 to date, not only to operate plants in those countries, but also to operate them under local management and with local personnel, accompanied by investment of local capital, because (1) the method of selling bearings for original installation requires the services of engineers who are familiar with local engineering practices and with the temperament of the customers of that nationality; (2) machinery manufacturers requiring speedy technical advice and service are reluctant to purchase bearings from manufacturers thereof who are not located nearby; (3) there is a strong national interest in each country in having an economy which is as nearly integrated as possible and is not dependent upon an outside source of supply of anti-friction bearings; (4) there is a national hostility to-

ward the product of foreigners in those countries and a pronounced national interest in supporting the product of local [fol. 3773] manufacturers which has been of especial importance to the defendant because its tapered roller bearing is essentially an American product competing largely with the ball bearing, essentially a European product developed locally in England, France, Germany and Sweden; (5) bearings in European countries are manufactured largely to metric rather than to inch measurements, which makes it much more practical to have plants in those countries if sales are to be made there; (6) high tariffs in the United Kingdom, France and Germany have made it advisable to have plants therein to avoid the tariff; and (7) the various restrictions on imports, exports and foreign exchange have made it necessary to manufacture bearings in the countries in which they are to be sold for original installation (Requested Findings Nos. 55 to 57, inclusive).

154. *Results of restrictions on United States import trade in anti-friction bearings.* The District Court erred in failing to find as a fact that neither British Timken nor French Timken could have sold anti-friction bearings on a competitive price basis for original installation or replacement in the United States because of the United States tariff and because of their higher costs of production (Requested Findings Nos. 58 to 60, inclusive).

155. *Relations between the defendant, subsidiaries of Vickers, Ltd., and La Societe Mechanique de Genvilliers generally and as to the trademark "Timken" 1909-1927.* The District Court erred in failing to find as a fact that the agreement of June 16, 1909, between the defendant and Electric & Ordnance Accessories Company, Ltd. (hereinafter called E. & O. A.), covering the United Kingdom and the Isle of Man, provided for a royalty of 15 per cent of the net invoice price of all sales to be paid by E. & O. A. to the defendant (Requested Finding No. 61).

156. The District Court erred in failing to find as a fact that the second agreement between the defendant and E. & O. A., covering licensing by the defendant of certain patents to be obtained in European countries, undertook to license [fol. 3774] manufacture and sale of tapered bearings in countries in which such patents had not then been obtained only "so far as the licensor lawfully can do so in the absence of such patents or grants" (Requested Finding No. 62).

157. The District Court erred in failing to find as a fact that neither at the time the 1909 contracts between the defendant and E. & O. A. were made, nor at any other time, was E. & O. A. an actual or potential competitor of the defendant in the manufacture and sale of anti-friction bearings (Requested Finding No. 63).

158. The District Court erred in failing to find as a fact that Societe de Mechanique de Genvilliers (hereinafter called S.M.G.) was not at any time an actual or potential competitor of defendant in the manufacture and sale of anti-friction bearings (Requested Finding No. 64).

159. The District Court erred in failing to find as a fact that in 1920, when Vickers, Ltd. sought to assign the rights of its wholly-owned subsidiary, E. & O. A., to Wolseley Motors, Ltd., another wholly-owned Vickers subsidiary, the defendant objected to the assignment on the ground that it did not feel that the sale of tapered roller bearings would be prosecuted by the new business organization, a motor car manufacturer, any better than it had been in the past, even though the directors of Wolseley Motors had decided that bearings manufactured under the 1909 license agreements should be made under an entirely separate organization, to trade under an entirely different name; that the agreements of June 16, 1909, between the defendant and E. & O. A., were modified on April 6, 1920 by two separate written agreements between the defendant and Wolseley Motors only after a satisfactory agreement had been reached between the defendant and Wolseley Motors on March 29, 1920, and that Wolseley Motors, after succeeding E. & O. A. as a party to the contracts with the defendant, was not and never was thereafter a potential competitor of the defendant in the manufacture and sale of anti-friction bearings (Requested Findings Nos. 65, 66).

[fol. 3775] 160. The District Court erred in failing to find as a fact that shortly after the amendment of the 1909 license agreements in May, 1920, the defendant was advised by its American trademark counsel, regarding the use of the name "Timken" as stamped on bearings by British Timken and S.M.G., that it was possible for British Timken to acquire ownership of the trademark "Timken" in that licensee's territory unless the matter were taken care of by a contract providing for licensing of the trademark to the British licensee and reversion thereof to the de-

fendant at the termination of the license, that the supplemental agreement of 1920 with Wolseley Motors should be revised to accomplish that purpose, and that the registration of the surname of "Timken" as a trademark could now be obtained in the United States under the Trademark Act of March 19, 1920, and in England under a new trademark act of December 23, 1919; that the defendant registered the trademark "Timken", which it had been using since 1912 in the United States, in 1920, and sought to obtain registration thereof in England and all civilized countries, but was advised by trademark counsel in 1921 that registration could be obtained only by British Timken, which had been organized as a wholly-owned subsidiary of Vickers, Ltd. and had taken over the rights of Wolseley Motors under the 1909 license agreements in 1920; was surprised to learn in December, 1921, that S.M.G. had already registered the trademark "Timken" in France and had become thereby under French law the owner thereof; and that the defendant also found that Prausnitzer, sales agent in Germany for E. & O. A., at the time, had registered the trademark "Timken" in Germany in 1916, that he successfully resisted the defendant's application for registration in Germany, and that under German law from 1918 to 1939 the first registrant of the trademark acquired incontestable title thereto regardless of the use thereof (Requested Findings Nos. 68 to 73, inclusive).

161. The District Court erred in failing to find as a fact that prior to 1927 the defendant procured registration of [fol. 3776] the trademark "Timken" in Belgium, Italy, The Netherlands and Norway in 1923, in Finland, Luxembourg, Rumania, Sweden, Switzerland, Turkey, Austria, Bulgaria, Czecho-slovakia, Denmark, Spain, Australia, Hungary and India in 1923, in Portugal, Yugo-slavia in 1923, and in Greece and Poland in 1926, and that at all times involved in this cause registrations of trademarks in certain of such countries either (a) could not be set aside by evidence of prior use by a contestant, or could be set aside by such evidence either (b) at any time, or (c) during a limited period after registration (except that a registration obtained with knowledge of the prior user's better right could be set aside at any time) but that the right to set aside registrations in each of these countries could be waived by contract (Requested Finding No. 74).

162. The District Court erred in failing to find that, after the organization of British Timken in 1920, the defendant's officials concluded that it was not progressing in a satisfactory manner; that, although the royalty under the two patent license agreements of 1909 had been cut from 15 to 10 per cent, nevertheless, British Timken, commencing in 1923, asked for a further reduction to not more than 2½ per cent, in order to meet competition, but did not take advantage of defendant's offers for assistance by instructing British Timken observers in the defendant's improved methods of production processes for the purpose of cutting costs; that in 1924 an official of defendant, who was sent to British Timken to advise it on cutting costs, was told by British Timken that it did not think that the defendant had any right to the trademark and trade name "Timken" in the United Kingdom; that the defendant in 1924 authorized its British solicitor to negotiate with British Timken an adjustment of the royalty and advised him that it must have entire control of the Timken name, and would adjust the royalty in order to obtain such control; that it is possible under English law to have a situation in which the legal ownership of unregistered trademarks belongs to one party and equitable ownership to another; [fol. 3777] and that on June 19, 1924, the defendant having been advised by its American patent and trademark counsel that although the basic patents upon which the 1909 patent license agreements were based had expired, nevertheless, the license agreements would be prolonged to the expiration of other British patents subsequently acquired by defendant, and that the license to British Timken to use the trademark and name "Timken" was of great value to British Timken, the defendant and British Timken reached an agreement by which royalties payable by British Timken were reduced to 5 per cent on ordinary business and 2½ per cent on Ford business, royalties payable by S.M.G. were reduced to 5 per cent commencing January 1, 1925, the defendant's exclusive ownership of the trademark was recognized and British Timken agreed that it should "be deemed to be using the said name as part of the subject matter of the license", and the 1909 license agreements were continued in existence to January 1, 1929 (Requested Findings Nos. 75 to 81, inclusive).

163. The District Court erred in failing to find as a fact

that, after the amendment of the 1909 agreements in 1924, the defendant and British Timken sought to obtain joint registration of the trademark in England, but that such joint registration was never obtained; that the joint registration for the British trade name "Timken" was abandoned in 1926 upon advice from British trademark counsel that it would be denied and that, either a new agreement should be drawn as a basis for obtaining registrations for concurrent user by defendant and British Timken, or the defendant and British Timken should be combined by one's absorbing the other; and that on January 12, 1927 defendant's American trademark counsel advised it that the difficulties with respect to the trademark in England, New Zealand, France and Germany could be surmounted if it were to take over the business of British Timken, because such action would merge the somewhat conflicting titles of defendant and British Timken, and, from a legal view-[fol. 3778] point, was by far the best way of handling the situation (Requested Findings Nos. 82 to 84, inclusive).

164. The District Court erred in failing to find as a fact that after the reduction in royalty in 1924 British Timken continued to ask for further reductions on large orders other than those from Ford, was just getting under way in the highly important industrial bearing field in 1924, and admitted that it was very disappointed with the business done by S.M.G. in France; that Wolseley Motors, the parent of British Timken, fell into considerable financial difficulties in 1925 or 1926, which resulted in its reorganization; and that in 1926 the defendant was advised that British Timken was using antiquated equipment because the management was opposed to obtaining any new equipment on account of lack of funds, and that the average price of its bearings was 10 per cent higher than that of ball bearings which were favored by British engineers and universally used, so that the price handicap was very serious (Requested Findings Nos. 85 to 87, inclusive.)

165. Joint acquisition of British Timken by the defendant and Dewar in 1927. The District Court erred in failing to find as a fact that on March 30, 1927, Dewar advised defendant that he was prepared to put up approximately half of the purchase price of British Timken, and that it was "essential that the company have British control of ordinary capital"; that he was of this opinion because

British Timken would then be a British controlled company so far as British companies and the British Government were concerned, and that this was important because foreign controlled companies always meet with greater sales resistance in England than do British companies; that on March 31, 1927, the defendant cabled Dewar that it was willing to become interested in British Timken to the extent of one-half or more of the amount necessary to acquire and reorganize it; and that, when on April 1, 1927, Dewar acceded to the defendant's suggestion that it send a repre- [fol. 3779] sentative, the defendant advised its American trademark counsel that it was negotiating the purchase of a controlling interest in British Timken and desired suggestions as to what should be done regarding the name registration, and instructed its representative that the registration of the name "Timken" in the United Kingdom, France and Germany must be definitely cleared up (Requested Findings Nos. 92 to 95, inclusive).

166. The District Court erred in failing to find as a fact that in negotiations between defendant's representative and Dewar, the former insisted that the name "Timken" should be kept the property of the defendant in so far as possible; that Dewar insisted upon British control of the operations because a product made by foreigners, although produced in England, was unpopular, and under foreign control his investment and business would be in jeopardy; that the defendant's representative agreed to British control of operations provided the defendant would be protected by reversion of control if the profits of British Timken should fall below a certain figure; that control should go to the defendant if Dewar should become incapacitated or die, and that the parties should have options on each other's shares in British Timken in event of sale; that it was agreed that a company owned and operated by defendant and Dewar should be organized to manufacture tapered roller bearings in France because S.M.G. was operating in an unsatisfactory manner, because of the French tariff, because of French hostility to foreign products, and because the largest automobile manufacturer in France had decided to use tapered roller bearings; and that a German company owned and operated by the defendant and Dewar should be inaugurated to manufacture tapered roller bearings in Germany, Prausnitzer to be in-

cluded in the German business if necessary for the purpose of obtaining release of the trademark "Timken" in Germany which had been registered as his personal property (Requested Finding No. 96).

167. The District Court erred in failing to find as a fact [fol. 3780] that the defendant's representative in such negotiations with Dewar advised it, during the negotiations, that three plans with respect to British Timken should be given consideration; namely (1) complete control thereof by the defendant, which he would recommend if the defendant had a person in its organization capable of reorganizing British Timken, and organizing a small company in France due to the unsatisfactory nature of the existing arrangements in France; (2) control by the defendant with a "working minority of British interest", which would be the best plan if Dewar, or a man of his type, were available, but that Dewar had refused to consider such a proposition; and (3) British control only so long as British control operated British Timken with satisfactory profit and dividends, a plan, the success of which would depend wholly upon the "the ability of the British control", and which he recommended, because Dewar was willing to accept it and was a business man of exceptional ability and with exceptional business contacts; that Dewar expected to cut British Timken costs 20 to 25 per cent with defendant's assistance, and wanted the defendant "very much as partners on account" of the defendant's interest in the profitable operation of British Timken if it were a partner; and that he had agreed with Dewar to negotiate jointly with Vickers, Ltd., for its British Timken shares, and upon their purchase to make certain arrangements to provide for control of British Timken as between defendant and Dewar (Requested Finding No. 97).

168. The District Court erred in failing to find as a fact that the "Heads of Agreement" dated May 16, 1927, signed by defendant and Dewar, which resulted from the foregoing negotiations (summarized in the Court's Memorandum, Pars. 41-43, inclusive), provided that upon Dewar's death or incapacity for six months, the defendant should have a right to purchase his shares; that shareholders desiring to sell British Timken stock must first offer the stock [fol. 3781] to the other shareholders; and that arrangements should be made for the formation of continental

companies for the manufacture and/or sale of bearings subject to a royalty to be divided between the defendant and British Timken (Requested Finding No. 98).

169. The District Court erred in failing to find as a fact that the basic purpose of the defendant and Dewar in entering into the "Heads of Agreement" dated May 16, 1927, was that the defendant, British Timken, and the companies to be acquired or organized by them in Germany and France, were to manufacture tapered roller bearings according to methods developed by the defendant and to sell them under the name "Timken" in the separate territories allocated to the companies, and to assist each other to sell such bearings everywhere in preference to bearings manufactured by other competing companies, such as S.K.F. and its subsidiaries; that if one Timken company could not sell such bearings advantageously in its own territory another was to make the sale; and that the provisions in the existing agreements between the defendant and British Timken which limited each its own territory were to be continued principally because Dewar did not wish to invest his money in the joint acquisition of British Timken with the defendant and in the companies to be jointly acquired and organized by them in Germany and France without assurance that the defendant would not compete with those companies (Requested Finding No. 99).

170. The District Court erred in failing to find as a fact that at the date of the acquisition, by the defendant and Dewar, of British Timken on May 16, 1927, British Timken was not, and the defendant did not consider it to be, an actual or potential competitor of the defendant; that at that time British Timken owned virtually no manufacturing equipment, and that which it owned was obsolete; that it leased its plant and machine tools; that it had practically no assets other than a certain amount of goodwill; that its [fol. 3782] largest net sales in its history were approximately $1,000,000 in 1926, as compared with defendant's $24,362,805; that British Timken's costs of manufacture of three of the four sizes of bearings which it manufactured in the largest quantities was approximately 200% of that of the defendant on two sizes and 135% on the third; and that the then existing agreement between the defendant and British Timken had only about a year and a half to run and British Timken could not have continued to manufacture

and sell anti-friction bearings in the absence of the relation it had with the defendant (Requested Finding No. 101).

171. The District Court erred in failing to find as a fact that the defendant acquired British Timken jointly with Dewar because it desired to insure its control of the name and trademark "Timken" in England, France, Germany and elsewhere and had been advised by its American and British trademark counsel that acquisition of British Timken was the best means of so doing; because it was dissatisfied with the manner in which business in Timken roller bearings had been conducted under license by the subsidiaries of Vickers, Ltd. and their sublicensee, S.M.G.; and because, based upon the recommendation of its representative, it determined that the arrangement outlined in the "Heads of Agreement" of May 16, 1927, with Dewar, who had expressed a desire to have the defendant as a partner and who was apparently and exceptionally well qualified to undertake the business, constituted the best method for the defendant to develop the manufacture and sale for original installation of tapered roller bearings in the United Kingdom, France and Germany, the principal manufacturing foreign countries in which original installation bearing business could be obtained, and the sale thereof for replacement purposes in the territories in which machinery produced in those countries was most likely to be sold; and that the defendant and Dewar did not purchase British Timken for the purpose or with the intention of preventing competition between the defendant and British Timken as an actual or potential competitor of the defendant (Requested Finding No. 102). [fol. 3783] 172. The District Court erred in failing to find as a fact that, pursuant to a more formal agreement made on March 15, 1928, between the defendant, British Timken and Dewar (in accordance with the provision of the Heads of Agreement of May 16, 1927, that the agreements therein should be embodied in a more formal document) the defendant and Dewar jointly (1) caused new articles of association and by-laws of British Timken to be adopted which carried out their agreement as to voting control thereof, and for first refusal to each of the shareholders in the event of sale of stock by the other; (2) caused an agreement to be made between British Timken and Dewar which made him managing director thereof upon the terms pro-

vided; (3) acquired stock interests in German Timken, and caused changes to be made in its capitalization, articles of incorporation and by-laws which gave to British Timken control (through a special class of stock) of its management in ordinary matters, and to the defendant control in extraordinary matters, and to the other shareholders first refusal of Prausnitzer's stock in the event of his death, incapacity, insolvency or retirement; (4) caused French Timken to be organized on July 11, 1928, in such a way as to give to British Timken stock control (through a special class of stock) with respect to ordinary matters, but to the defendant stock control in extraordinary matters; (5) entered into an agreement dated April 20, 1928, which gave the defendant an option on Dewar's shares in British Timken and in any subsidiary companies, defined as "any Company controlled by" British Timken so far as regards ordinary business whether by reason of its holding a clear majority of all the issued shares of such Company or the shares carrying a voting control) and giving each party exercising its right to first refusal on shares of the other in British Timken, an option to purchase the shares of the offeror in every subsidiary company, and further agreed in a Supplemental Agreement of the same date that each [fol. 3784] must offer the other its or his stock in any subsidiary company before selling to anyone else; (6) caused the defendant and British Timken to enter into a new "Business Agreement" as of January 1, 1928; and (7) caused Business Agreements to be entered into between British Timken and French Timken on June 16, 1928, and between British Timken and German Timken in 1929, respectively, on the model of the one between the defendant and British Timken (Requested Findings Nos. 103-111, inclusive).

173. The District Court erred in failing to find as a fact that the provisions of the 1928 Business Agreement between the defendant and British Timken relating to the trademark "Timken" established equitable ownership thereof in the defendant under English law and amounted thereunder to a waiver by British Timken of any right it might have had to set aside, on the ground of prior user by British Timken, registration of the trademark "Timken" in any foreign country in which the defendant had registered the trademark (Requested Finding No. 109).

174. Maintenance of relations between the defendant and Dewar (1928 to date). The District Court erred in failing to find as a fact that at all times since the making of the Heads of Agreement of May 16, 1927, the defendant and Dewar have collaborated closely in the operation of British Timken and French Timken and have maintained substantially the same system for control thereof as between themselves and as to third persons as that which was inaugurated at the time when they jointly acquired British Timken and jointly organized French Timken; and that they have regarded each other as partners in the operation of British Timken and French Timken and German Timken at all times since the making of the Heads of Agreement between them on May 16, 1927 (Requested Findings Nos. 112, 113).

175. The District Court erred in failing to find as a fact that, when in 1929 the defendant and Dewar desired to increase the capitalization of French Timken in order to handle increasing business, Dewar was unwilling to invest more of his own funds in French Timken so that the de- [fol. 3785] fendant, which expressed a desire "to keep him an equal partner in growing business" arranged to advance the necessary funds to French Timken under an agreement, suggested by Dewar, that one-third of British Timken's profits after 1929 be devoted to repaying the advances (French Timken common stock to be issued in their place), and the 1928 ten year Business Agreement between the defendant and British Timken to be extended to fifteen years; and that this Agreement was carried out through the medium of an American holding company, International and Commercial Investments, Inc. (hereinafter called I.C.I.), organized to hold the French Timken stock of the defendant and Dewar, and through an escrow and other agreements as to I.C.I. stock, in such a way as to maintain the balance of control of French Timken as between them (Requested Findings Nos. 114, 115).

176. The District Court erred in failing to find as a fact that in 1934, when the value of British Timken stock had increased greatly and Dewar desired to realize part of his investment therein and to avoid the existing arrangement by which his half of one-third of the profits was used to purchase common stock of I.C.I., and when the defendant's investment in French Timken by way of stock and

loans amounted to $822,128.80 as against defendant's investment of $31,960, the defendant and Dewar, pursuant to Heads of Agreement executed on August 15, 1934, rearranged their joint enterprise to provide (1) for an increased number of shares of British Timken, all of one class, the defendant and Dewar each to sell one-half of their holdings thereof to the public at a specified price; (2) for transfer of the remaining 50% of shares of British Timken owned by Dewar and the defendant to a holding company organized in such a way as to maintain the same rights as to voting control between them as had been provided formerly by the articles of association and by-laws of British Timken and with the same options of the parties on each other's shares in the event of sale; (3) for adjustment by the defendant and Dewar (contingent upon consummation of the sale of British Timken stock to the public) of their [fol. 3786] interests in French Timken, German Timken and I.C.I., and its wholly-owned subsidiary, International Bearings Investments, Inc. (hereinafter called "I.B.I.") pursuant to which the defendant and Dewar would each own a one-half interest in each of these corporations, Dewar would pay the defendant $250,000 in cash out of the proceeds of the sale of his British Timken stock, Dewar would give the defendant a note without interest in the amount of $150,000, secured by pledge of his one-half interest in French Timken, German Timken, I.C.I. and I.B.I., and payable only from distributions with respect thereto in excess of $7500 per year, Dewar to have control of French Timken during his lifetime and active management thereof until it should fail to pay annually $24,000 in dividends or other distributions from accrued earnings and control to pass to the defendant in the event of Dewar's death, retirement, or in the event of French Timken's failure to make such payments; (4) for amendment of the 1928 Business Agreement between the defendant and British Timken in certain respects, and its continuance in effect for fifteen years after the sale of the British Timken stock to the public, and (5) for freeing of French Timken from any obligation to pay royalties or service fees to the defendant or British Timken (Requested Findings Nos. 116, 117).

177. The District Court erred in failing to find as a fact that, acting pursuant to the Heads of Agreement of August 15, 1934, the defendant and Dewar caused various agree-

ments and other documents to be executed for the purpose of carrying them out; caused the sale in June, 1935, of 50% of their stock in British Timken (the defendant purchasing 10,000 shares at the sale, because it determined that it should "maintain somewhat greater ownership" in British Timken than was reached by its joint holdings with Dewar); caused the organization of a holding company known as Timken Holdings, Ltd., which maintained voting control of British Timken as between the defendant and Dewar as specified in the Heads of Agreement of August 15, 1934; and caused the deposit in the Westminster Bank of London, England, in the joint names of three trustees, [fol. 3787] including the defendant, of all of the stock of, and 236 promissory notes issued by, French Timken pursuant to a trust agreement providing for the pledge of Dewar's interest in French Timken and German Timken to secure payment of his note to the defendant as specified in the Heads of Agreement of August 15, 1934, which trust agreement presently governs relations between the defendant and Dewar as to French Timken (Requested Findings Nos. 118, 119).

178. The District Court erred in failing to find as a fact that, acting pursuant to the Heads of Agreement dated August 15, 1934, the defendant and Dewar caused British Timken to enter into a new Business Agreement with the defendant, effective January 31, 1935, which originally was to be effective for 16 years, but subsequently was amended to extend for 30 years from January 1, 1935, at the insistence of English brokers with whom Dewar negotiated for the sale of stock of British Timken because they felt that the stock could not be sold to the public without a long term agreement with defendant "particularly for the use of the name", since the goodwill of British Timken "rested largely in the association with" the defendant; and caused the 1928 Business Agreement between French Timken and British Timken to be superseded by a new Business Agreement between them dated July 15, 1935, which incorporated the amendments agreed upon by the defendant and Dewar in the Heads of Agreement of August 15, 1934 (Requested Findings Nos. 120, 121).

179. The District Court erred in failing to find as a fact that in 1936 Dewar recommended action with respect to funds of French Timken which, he stated, was equivalent

to taking such funds away from its control, but "as far as our partnership is concerned" was for its ultimate benefit (Requested Finding No. 122).

180. The District Court erred in failing to find as a fact that in 1938 the defendant and Dewar caused the defendant, British Timken and French Timken to enter into a Business [fol. 3788] Agreement dated November 28, 1938, which embodied the allocations of territory and certain of the other conditions contained in the 1934 and 1935 Business Agreements between the defendant and British Timken and between British Timken and French Timken, respectively, and which provided that it should continue in effect for a period of twenty-seven years from January 31, 1938; that the defendant and Dewar in 1938 also caused the defendant, British Timken and Dewar to enter into a supplemental Business Agreement which also contained certain terms and conditions which had been embodied in the 1934 and 1935 Business Agreements and provided in substance that the defendant and Dewar would cause French Timken to carry out the terms and provisions of the 1938 Business Agreement between the defendant, British Timken and French Timken; and that taken together the provisions of these two Business Agreements in substance are identical with the combined provisions of the 1934 and 1935 Business Agreements between the defendant and British Timken and British Timken and French Timken, respectively, which they were executed to replace on the advice of French counsel, and the two 1938 Agreements govern the present relations between the defendant, French Timken and British Timken (Requested Finding No. 123).

181. The District Court erred in failing to find as a fact that in 1940 British Timken acquired a plant in England owned by the Fischer Company, from the English Custodian of Enemy Property and that Dewar in so doing consulted with, and obtained the consent of, the defendant (Requested Finding No. 124).

182. The District Court erred in failing to find as a fact that on March 22, 1948, the defendant and Dewar and Timken Holdings, Ltd. entered into an agreement which canceled existing agreements governing control of the ordinary shares of British Timken owned by the defendant and Dewar through Timken Holdings, Ltd., and that contemporaneously the defendant and Dewar entered into an

agreement which gives the defendant an option to purchase all the ordinary shares of British Timken stock now owned by Dewar (which constitute 25% of its voting stock) in the event of his death or is being incapacitated for six months to act as its director or in the event that he desires to sell the shares, and also gives the defendant the right to control the vote of a majority of those shares combined with speci- [fol. 3789] fied shares presently owned by it, if at any time the profits of British Timken available for dividends based upon an average of three consecutive years are reduced below £50,000 for one year; and that the latter agreement presently governs relations between the defendant and Dewar as to the control of British Timken (Requested Finding No. 125).

183. The basic plan of cooperation between the defendant British Timken and French Timken in the manufacture and sale of bearings (1927 to date). The District Court erred in failing to find as a fact that at all times since the joint acquisition by the defendant and Dewar of British Timken, and of German Timken, and their joint organization of French Timken, the defendant and Dewar caused those companies to cooperate to sell bearings under the trademark "Timken" all over the world in competition with bearings manufactured by other companies; that their policy has been that if one of the Timken companies cannot sell advantageously in a portion of its own territory, another of the three companies shall make the sale (Requested Finding No. 126).

184. The District Court erred in failing to find as a fact that tapered roller bearings manufactured by the defendant, British Timken and French Timken are in most instances identical and interchangeable; that the part numbers used by the three companies are assigned by the defendant; that blueprints covering the design of any bearings developed by the defendant are sent to British Timken as a routine matter; that, if British Timken develops a new part it assigns a new part number and advises the defendant, and that identical bearings manufactured by the defendant, British Timken and French Timken bear identical symbol numbers; that there has been a constant stream of information from the defendant to British Timken as to production methods, machines, products and other matters which has been communicated to French Timken and

that British Timken has departed from the suggestions of the defendant only after "an agreed decision as to what [fol. 3790] British Timken should do or should not do"; that when British Timken develops a need for a certain bearing the defendant works out the design of the bearing, tooling to be inserted in the machines which are to be used in manufacturing the particular bearing, and gauge to be used in each operation, and assigns the part number therefor; that the defendant sends British Timken copies of its weekly reports to heads of sales and engineering departments which show the type of work and bearing applications being done for customers and, if British Timken requests it, the same complete information which it would give to its own field men with respect to any particular bearing application; that as soon as the defendant and Dewar jointly acquired British Timken one of the defendant's executives was sent to British Timken in 1927 to help reorganize it to make tapered roller bearings as closely as possible according to the methods followed by the defendant, and that his recommendations were carried out; that thereafter in almost every year some employee of the defendant has gone to British Timken and French Timken to introduce the defendant's methods as nearly as possible in various departments of their plants for the purpose of cutting costs and enabling them to manufacture bearings more cheaply and of a better standard of quality; that employees of the defendant have been sent to British Timken, French Timken and German Timken to assist and instruct their engineers in designing new types of bearings; that employees of British Timken and French Timken have been trained and instructed in the defendant's plants at various times; that new methods, designs and bearings and materials, machine tools and tooling worked out in the defendant's Extensive Research Department are passed on to British Timken as a matter of routine; that the defendant has assisted British Timken and French Timken in the acquisition of new machine tools and equipment at no [fol. 3791] profit to itself; that the defendant, commencing in 1927, as a part of the program to reduce British Timken's costs by 25%, made a study and set up a system by which British Timken and French Timken furnished comprehensive cost data to the defendant and were given reports comparing their costs with those of the defendant,

which constituted the basis for the sending by the defendant of its employees to cut the costs of certain of the operations of British Timken and French Timken; and that the defendant has sent its employees to British Timken and French Timken to assist them in selling bearing applications, and has furnished them with copies of its engineering journals and periodic additions thereto, and with copies of its three mediums of advertising, as soon as prepared (Requested Findings Nos. 127-139, inclusive).

185. The District Court erred in failing to find as a fact that the defendant did not furnish know-how to British Timken or French Timken for the purpose, or with the intention, of restraining trade or preventing competition between British Timken and French Timken as actual or potential competitors of the defendant in the manufacture and sale of anti-friction bearings (Requested Finding No. 140).

[fol. 3792] 186. General cooperation between the Timken companies. The District Court erred in failing to find as a fact that, when the defendant instructed its employees in 1939 and 1940 that it had an understanding with British Timken that on all unsolicited inquiries for bearings going into each other's territory the defendant could quote a 50% discount from its list price on standard bearings and pay a 5% commission on the net sale thereof to British Timken, the defendant was referring to an arrangement which resulted from the defendant's demonstration to Dewar in 1927 that British Timken's discount on this business was not large enough to meet competition, which caused British Timken to adopt the defendant's discount at that time, 50% discount from market price (Requested Finding No. 146).

187. The District Court erred in failing to find as a fact that in 1940, when the provisions of the Business Agreements between the defendant and British Timken were relaxed for the period of the war emergency and the defendant was permitted to fill orders from British Timken's territory through British Timken's distributors, prices for such bearings were established by the sellers, namely British Timken's distributors, and the defendant paid British Timken the difference between the price at which the bearings were sold by its representatives and the amount at which a sale would have been made to British Timken by

the defendant, because British Timken had the expense of performing the sale and servicing with respect to such bearings and the defendant had no selling expense (Requested Finding No. 147).

188. The District Court erred in failing to find as a fact that, when in 1941 the defendant was asked by the British Purchasing Commission whether it would be interested in establishing a bearing plant in Australia, the defendant pointed out that Australia was controlled by British Timken and that it would not consider building a plant there, that in any event it would be almost impossible to obtain delivery of machine tools suitable for the manufacture of anti-friction bearings there, but that if Dewar were interested, the defendant would confer with him about the matter (Requested Finding No. 148).

[fol. 3793] 189. The District Court erred in failing to find as a fact that at the present time the defendant is operating under arrangements with British Timken and French Timken pursuant to which it proceeds to make bearing sales in their territories independently of them and at prices fixed by it "with American competition in mind" and not agreed to with them in any fashion (Requested Finding No. 149).

190. The District Court erred in failing to find as a fact that, although the defendant, British Timken and French Timken have cooperated to meet the competition of other manufacturers of tapered roller bearings and have thus considered S.K.F. and its subsidiaries as a common business enemy, have arranged that if customers of British Timken insist on buying defendant's bearings they would be permitted to do so, and vice versa, "in order to combat competition", and an executive of the defendant testified that it was willing to sell bearings at a loss, if necessary, to compete with S.K.F. in Australia and the East Indies during World War II because it considers S.K.F.'s competitors unethical (in that the defendant is of the opinion that S.K.F. sells at prices below its cost to "freeze out" competitors), and there are various statements in the correspondence between officials of the defendant in evidence as to "eradicating" or "combatting" competition, there is no evidence in the record that the defendant ever sold bearings at below cost

in competition with S.K.F. or other competitors (Requested Finding No. 153).

191. The District Court erred in failing to find as a fact that the defendant has sold special alloy steel tubing which it has developed to its competitors who manufacture ball bearings (Requested Finding No. 155).

192. Cooperation by British Timken and French Timken with other competitors. The District Court erred in failing to find as a fact that, when in 1932 French Timken entered into an agreement with S.K.F.'s subsidiary in France, C.A.M., which provided for division of all the French bearing business, as outlined in the Court's Memorandum (Pars. 113, 114), this agreement was entered into because Citroen, French Timken's largest customer fell into financial trouble and S.K.F. financed it on condition that it should buy its steel from Sweden and all of its bearings from S.K.F., with the result that French Timken was left with practically no orders at all, and Dewar decided that it was better "to have some arrangement with S.K.F. to [fol. 3794] keep the French Timken company alive rather than let it die, which it would have done without such an arrangement"; that the defendant was advised that French Timken consistently exceeded the quotas provided for in this agreement; and that any bearings imported into France by C.A.M. would have come from Sweden and not from the S.K.F. subsidiary in the United States (Requested Finding No. 158).

193. The District Court erred in failing to find as a fact that, while the defendant's officials were in consultation with the officers of British Timken and French Timken concerning the agreements between British Timken and S.K.F., and French Timken and S.K.F., and approved the agreement between French Timken and C.A.M., these arrangements did not relate to the United States and did not have the effect of restricting the export of tapered roller bearings from the United States or their import into the United States, and came to an end at the commencement of World War II in 1939 and have not been renewed (Requested Finding No. 159).

194. The District Court erred in failing to find as a fact that, aside from the agreements by British Timken and French Timken with S.K.F.'s subsidiaries, the defendant, British Timken and S.K.F. had discussions in

1932 concerning prices in Canada, England and France, but there is no evidence that these discussions led to any agreements other than those between British Timken and French Timken with S.K.F.'s subsidiaries referred to in the next preceding assignment of error. (Requested Finding No. 160).

195. The District Court erred in failing to find as a fact that the policy of the defendant is opposed to combination of competitors for the purpose of fixing prices, and that, although the defendant was subpoenaed in 1945 before the Grand Jury in the case entitled United States v. General Motors Corp. et al., No. 18,895 on the docket of the United States District Court for the Northern District of Ohio, Eastern Division, involving a combination to fix prices of anti-friction bearings in United States domestic commerce, and certain other corporations and individuals were indicted therein for violations of the Sherman Act, neither defendant nor any of its officers were indicted (Requested Findings Nos. 161, 162).

[fol. 3795] Requested Ultimate Findings of Fact and Requested Conclusions of Law.

196. The District Court erred in failing to find as facts and to state as its conclusions of law that the defendant did not combine with British Timken or French Timken to violate the Sherman Act, but instead, that any restraints on commerce resulting from the defendant's agreements, arrangements and actions with British Timken and French Timken were and are reasonably ancillary to the conduct of a joint venture, the transfer of know-how and the licensing of the trademark "Timken", and that, since there is now no appreciable import or export trade of the United States in anti-friction bearings, there does not exist that present illegality which is essential to equitable relief, all as more specifically set forth in foregoing Assignment of Errors Nos. 2 to 9, inclusive, which are adopted by reference.

197. The final judgment of the District Court and the portions thereof to which reference is made in Assignment of Errors Nos. 10 to 38, inclusive, are contrary to law, not sustained by the evidence and clearly erroneous.

198. The District Court's purported findings of fact, to which reference is made in Assignment of Errors Nos. 42 to 110, inclusive, are contrary to law, manifestly against

the weight of the evidence, not sustained by any evidence, and clearly erroneous.

199. The District Court's purported conclusions of law to which reference is made in Assignment of Errors Nos. 111 to 136, inclusive, are each and all contrary to law and not sustained by the evidence.

200. The District Court erred in admitting in evidence, over the objection of this defendant, each of the following plaintiff's exhibits, to wit: 21A, 21B, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 173, 174, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190 and 191.

201. The District Court erred in admitting in evidence, [fol. 3796] over the objection of this defendant, and in part basing thereon certain of its findings of fact, testimony as to the participation of British Timken and French Timken in alleged agreements with subsidiaries of S.K.F. and others, as to quotas and prices for the sale of anti-friction bearings.

202. The District Court erred in excluding from evidence each of the following exhibits sought to be introduced by the defendant, to wit: 108 and 126.

203. The District Court erred in sustaining the objection of the plaintiff to evidence offered by the defendant to the effect that British Timken was advised by the British Government in 1948 that continued importations of tapered roller bearings into England could not be permitted, and that it would be necessary for British Timken to expand its facilities to take care of the demand in England, or the Government would try to find some other anti-friction bearing manufacturer who would undertake the necessary expansion program, and if no one else could be found to do so, the Government would undertake it itself.

204. The District Court erred in not granting defendant's motion at the conclusion of the plaintiff's evidence to dismiss this cause and enter judgment therein for the defendant upon the ground that upon the facts and the law plaintiff had shown no right to relief as against this defendant; and in not granting a similar motion at the conclusion of all of the evidence herein.

205. The District Court erred in failing to sustain the objections and exceptions of this defendant to the following findings of fact, if the numbered paragraphs, or any of them, set forth in the Court's memorandum of opinion

adopted by it as its findings of fact, are sufficient in form to constitute findings of fact, namely: 15; 19; 20—1st sentence; 22—2nd sentence; 23; 33; 34; 35—3rd sentence; 36—except 5th sentence; 45; 48—1st sentence; 53; 65; 67; 69; 70; 71—3rd sentence; 72; 78; 79; 88; 89; 92; 94; 95; [fols. 3797-3816] 96; 97; 98; 99—1st line (not entire testimony); 103—1st sentence; 104; 106; 107; 110; 112—1st two lines; 116; 117; 119; 120; 121; 122; 123; 124; 125; 126; 127; 129; 131; 132; 133; 134; 135; 136—2nd sentence; 137—2nd and 3rd sentences; 143; 144—except 1st sentence; 145—insofar as it suggests defendant made a *defense* on the basis of good intentions; 146; 147; 148; 149; 150; 151—3rd sentence; 152; 153; 154; 155; 156; 157; 158; 159; 160; 177—2nd sentence; 180; 182; 183; 185; 186; 187—4th sentence, including quotation; 188; 190; 202—last sentence; 204; 205; 206; 207; 208; 210—except last sentence; and to the following conclusions of law if the numbered paragraphs, or any of them set forth in the Court's memorandum of opinion, adopted by it as its conclusions of law, are determined to be sufficient in form to constitute conclusions of law, namely; 67—2nd sentence; 120; 126; 127; 128; 129; 130; 131; 132; 134; 135; 136—1st sentence; 143; 145—insofar as it suggests defendant made a *defense* on the basis of good intentions; 150; 153; 154; 161; 162; 172; 174; 175; 176; 177; 178; 180; 182; 183; 184; 190; 193; 194; 195; 196; 197; 198; 199; 200; 210—last sentence; 211—1st sentence; and in failing to adopt in lieu thereof the defendant's requested findings of fact Nos. 1 to 170, inclusive, and conclusions of law, Nos. 1 to 10, inclusive, submitted by the defendant.

206. The District Court erred in overruling the motion of this defendant after final judgment for a new trial and for judgment for this defendant.

Wherefore, the defendant, The Timken Roller Bearing Company, prays that the Final Judgment of the District Court as to it in this cause may be reversed and held for naught, and for such other relief as the Court may deem just and proper in the premises.

Luther Day, 1759 Union Commerce Building, Cleveland, Ohio; John G. Ketterer, First National Bank Building, Canton, Ohio, Counsel for Defendant—Appellant.

[fol. 3817] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed August 3, 1950

To the Clerk of the above named Court:

You will please prepare a transcript of the record in the above entitled cause to be transmitted to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint with Exhibits A and B thereto.
2. Plaintiff's Interrogatories Nos. 1, 2 and 8.
3. Amended complaint with Exhibits A and B thereto.
4. Answer of defendant to amended complaint.
5. Order releasing certain witnesses from oath of secrecy before Grand Jury.
6. Transcript of record of trial of case from March 22 to April 27, 1948, inclusive, consisting of pages 1 to 2894, inclusive, including plaintiff's Exhibits 1 to 28, inclusive, 34 to 49, inclusive, 51 to 86, inclusive, 95 to 150, inclusive, 151 A, 151 B, 153 to 169, inclusive, 173 to 176, inclusive, and 179 to 191, inclusive; and defendant's Exhibits 1 to 74, inclusive, and 76 to 251, inclusive.
7. Stipulation and order making document entitled "Current Export Bulletin 434" part of defendant's Exhibit No. 248.

[fol. 3818] 8. District Court's memorandum of opinion finding for the plaintiff.

9. Proposed journal entry adopting the District Court's memorandum of opinion as its Findings of Fact and Conclusions of Law, submitted by the plaintiff.

10. Defendant's motion for an order rejecting document lodged by plaintiff denominated "Findings of Fact and Conclusions of Law" and requiring plaintiff to submit a draft of the findings of fact and conclusions of law required by Rule 58(a).

11. District Court's order adopting its memorandum of opinion as its findings of fact and conclusions of law.

12. Order denying motion of defendant for order rejecting document lodged by plaintiff denominated findings of fact and conclusions of law.

13. Plaintiff's draft of proposed final judgment.

14. Defendant's objections to draft of judgment proposed by the plaintiff.

15. Transcript of record of hearing of objections to proposed decree from September 28, 1949 to October 3, 1949, inclusive, consisting of pages 1 to 440, inclusive, including plaintiff's Exhibits 1 to 6, inclusive, and defendant's Exhibits A to C, inclusive, introduced at such hearing of objections to the proposed decree.

16. Application of defendant for an order admitting in evidence an exhibit in connection with the hearing on the form of final judgment.

17. District Court's order granting application and admitting in evidence as defendant's Exhibit D (decree) the memorandum attached to the defendant's application for an order admitting in evidence an exhibit in connection with the hearing on the form of final judgment.

[fol. 3819] 18. Application of plaintiff for an order admitting in evidence the exhibits in connection with the hearing on the form of judgment.

19. District Court's order granting application admitting in evidence plaintiff's Exhibit 8 (decree).

20. District Court's Final Judgment.

21. Motion of defendant for a new trial, and objections and exceptions to, and motion to amend and to make new and additional, findings of fact and conclusions of law.

22. Motion of defendant for stay of execution pending disposition of defendant's motions addressed to the District Court's final judgment.

23. Stipulation and order granting without bond the defendant's motion for stay of execution pending disposition of the defendant's motion for a new trial, and objections and exceptions to, and motion to make new and additional, findings of fact and conclusions of law, and that plaintiff may have leave to file its memorandum on said motions on or before March 16, 1950.

24. Endorsed ruling overruling motion for a new trial, and objections and exceptions to, and motion to make new and additional, findings of fact and conclusions of law.

25. Order overruling motion of defendant for new trial, and objections and exceptions to, and motion to make new and additional, findings of fact and conclusions of law.

26. Stipulation and order as to corrections of transcript of proceedings.

27. Petition for appeal.
28. Order allowing appeal.
29. Citation on appeal and acknowledgments of service thereof.
30. Assignment of errors.
31. Statement of jurisdiction of the Supreme Court of the United States.
32. Statement of defendant-appellant directing plaintiff-appellee's attention to paragraph 3 of Rule 12 of Revised Rules of the Supreme Court of the United States.
[fols. 3820-3909] 33. Acknowledgments of service of copies of petition for appeal, order allowing appeal, assignment of errors, and of the statement directing attention to the provisions of Paragraph 3 of Rule 12 of the Supreme Court of the United States.
34. This praecipe.

Dated: August 1, 1950.

(S.) Luther Day, John G. Ketterer, Counsel for Defendant-Appellant.

Service of the foregoing praecipe, together with a copy thereof, is hereby acknowledged this 1st day of August, 1950.

(S.) Arnold Raum, Acting Solicitor General, Solicitor General of the United States. Counsel for Plaintiff-Appellee.

Service of the foregoing praecipe, together with a copy thereof, is hereby acknowledged this 3rd day of August, 1950.

(S.) Robert B. Hummel, Acting Chief, Great Lakes Office Antitrust Division, Department of Justice, Counsel for Plaintiff-Appellee.

[fol. 3910] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO HAVE ORIGINAL PAPERS IN THE DISTRICT COURT TRANSMITTED TO THE SUPREME COURT OF THE UNITED STATES, AS A PART OF THE RECORD UPON APPEAL—Filed August 25, 1950

Now comes The Timken Roller Bearing Company, defendant-appellant in the above entitled cause, and moves that the Court, pursuant to Rule 10, paragraph 4, and Rule 18 of the Rules of the Supreme Court of the United States, authorize and instruct the Clerk of the District Court of the Northern District of Ohio, Eastern Division, to transmit and certify separately as models and exhibits of material in this case and as a part of the record upon appeal from the Final Judgment of this Court in the above entitled cause, to be filed in the Supreme Court of the United States, the following original, physical exhibits received in evidence in this case; to wit, Plaintiff's Exhibits 1, 2, 3, 135, 136, 150, 161, 162, 163, 170, 171, 172, and 191, and Defendant's Exhibits 49, 50, 51, 52, 55, 56, 57, 58, 59, 157, 158, 159, 160, 161, 165, 166, and 170, on the ground that it is proper that such original exhibits should be inspected by the Supreme Court but that it is impossible to incorporate true copies of some of such exhibits, and extremely inconvenient to incorporate copies of others thereof, in the transcript of the Record to be prepared by the Clerk of this Court.

Defendant-appellant further moves that, pursuant to Rule 10, paragraph 4 of the Supreme Court of the United States, the Court authorize and instruct the Clerk of the District Court of the Northern District of Ohio, Eastern Division, to transmit and certify, as part of the Record upon appeal from the Final Judgment of this Court in the [fols. 3911-3914] above entitled case, to be filed in the Supreme Court of the United States, the original stenographic transcript of the Record of the trial of the case from March 22 to April 27, 1948, inclusive, consisting of pages 1 to 2894, inclusive, the original stenographic transcript of the Record of the hearing held June 20, 1949, on the defendant's motion for an order rejecting a document lodged by the plaintiff entitled "Findings of Fact and Conclusions of

Law", and requiring the plaintiff to submit a draft of Findings of Fact and Conclusions of Law required by Rule 5(a), consisting of pages 1 to 60, inclusive; and the original transcript of the Record of the hearing on objections to the proposed Final Judgment in this case from September 28, 1949, to October 3, 1949, consisting of pages 1 to 440, inclusive, corrected in accordance with the stipulation and order as to corrections in the transcript of proceedings filed in this case on June 21, 1950, on the ground that a great deal of work and expense would be required to prepare and compare with the original copy of the transcript the corrected portions thereof.

(S.) Luther Day, John G. Ketterer, Attorneys for Defendant-Appellant.

Waiver of Notice and Consent

Notice of the foregoing motion is hereby waived; receipt of a copy of the motion and supporting brief is acknowledged; and plaintiff-appellee consents to the granting of said motion.

Philip B. Perlman, Solicitor General of the United States, by (S.) Robert B. Hummel, Acting Chief, Great Lakes Office, Anti-Trust Division, United States Department of Justice, Attorneys for Defendant-Appellant.

[fol. 3915] [File endorsement omitted]

In United States District Court

[Title omitted]

Order on Motion to Have Original Papers in the District Court Transmitted to the Supreme Court of the United States as a Part of the Record Upon Appeal—Filed August 29, 1950

On motion of The Timken Roller Bearing Company, defendant-appellant in the above entitled cause, and it appearing to the Court that it is proper that the original papers in the above entitled cause specified in said motion be transmitted to the Supreme Court of the United States, pursuant to Rule 10, paragraph 4 thereof,

It is hereby ordered:

That the Clerk of this Court transmit and certify separately, as models and exhibits of material in this case, as a part of the record upon appeal from the Final Judgment of this Court, the following original exhibits constituting evidence therein, to-wit:

Plaintiff's Exhibits 1, 2, 3, 135, 136, 150, 161, 162, 163, 170, 171, 172, 191.

Defendant's Exhibits 49, 50, 51, 52, 55, 56, 57, 58, 59, 157, 158, 159, 160, 161, 165, 166 and 170, and that the Clerk of this Court include with, and as part of, the Transcript of material parts of the Record in this case to be certified and transmitted to the Clerk of the Supreme Court of the United States, pursuant to Rule 10, paragraph 2 thereof, the original stenographic transcript filed in this Court of the record of the trial of the above entitled cause from [fol. 3916] March 22 to April 27, 1948, inclusive, consisting of pages 1 to 2894, inclusive; the original stenographic transcript filed in this Court of the record of the hearing held June 20, 1949, on the defendant's motion for an order rejecting a document lodged by the plaintiff, entitled "Findings of Fact and Conclusions of Law" and requiring the plaintiff to submit a draft of Findings of Fact and Conclusions of Law required by Rule 5 (a), consisting of pages 1 to 60, inclusive; and the original stenographic transcript filed in this Court of the record of the hearing on objections to the proposed Final Judgment in this case from September 28, 1949 to October 3, 1949, consisting of pages 1 to 440, inclusive, all corrected in accordance with the Stipulation and Order as to corrections in the transcript of proceedings in this case filed in this Court on June 21, 1950.

Dated: August 29, 1950.

(S.) Freed, Judge of the District Court for the Northern District of Ohio, Eastern Division.

Notice by Clerk hereby waived.

[fol. 3917] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO ENLARGE TIME FOR DOCKETING CASE IN THE SUPREME COURT OF THE UNITED STATES—Filed August 23, 1950

Comes now the appellant in the above-entitled case and moves pursuant to Rule 11 Paragraph 1 of the Rules of the Supreme Court of the United States, that this Honorable Court extend and enlarge, until October 6, 1950, the time within which this case on appeal shall be docketed in the Supreme Court of the United States, and the time within which the record on appeal shall be filed in said court, on the grounds that, concurrently with the preparation of the case for docketing, in which counsel for the appellant desire to assist the Clerk of this Court, the appellant must prepare, and file with the Supreme Court not later than September 5, 1950, a brief in opposition to appellee's Motion to Dismiss the Appeal and to Affirm the Judgment in this case, and appellee's Statement Making Against the Jurisdiction of the Supreme Court in this case, copies of which motion and statement were handed to appellant's attorneys on July 16, 1950; that appellant is advised by the Clerk that, due to the large amount of work required in preparing exhibits for inclusion in the transcript of the record, copies of papers, and an index for the record, it will be difficult to complete preparation of the record for docketing the time required; and that for the above reasons it will be extremely difficult for appellant to complete the docketing of the case on the return day, September 6, 1950.

[fol. 3918] Wherefore, appellant requests that this Honorable Court grant the relief above requested, and such other and further relief as this Court may deem just and equitable.

Respectfully submitted, (S.) Luther Day, John G. Ketterer, George H. Rudolph, Counsel for Defendant-Appellant, The Timken Roller Bearing Company.

NOTICE OF MOTION

To Philip B. Perlman,
Solicitor General of the United States,
Washington, D. C., and

Robert B. Hummel,
Acting Chief, Great Lakes Division,
Anti-Trust Division,
Department of Justice of the United States,
905 Public Square Building,
Cleveland, Ohio.

Please take notice that the defendant-appellant, The Timken Roller Bearing Company, has filed the foregoing motion in the above entitled case for an order extending and enlarging the time within which to docket the appeal and file the record on appeal in the Supreme Court of the United States, and that the same will be on for hearing before the Honorable Emerich B. Freed, Judge of the District Court of the United States for the Northern District of Ohio, Eastern Division, Federal Building, Cleveland, Ohio, on ——, 1950, at — o'clock —.

(S.) Luther Day, John G. Ketterer, George H. Rudolph, Attorneys for Defendant-Appellant.

Copies of the foregoing motion, notice of motion and brief in support thereof were served upon counsel for the plaintiff-appellee by handing one copy to Robert B. Hum-[fol. 3919] mel, one of counsel for the plaintiff-appellee, this — day of August, 1950, and by depositing in the mail another copy addressed to Philip B. Perlman, Solicitor General of the United States, Washington, D. C., on this — day of August, 1950.

(S.) George H. Rudolph, Attorney for Defendant-Appellant.

[fol. 3920] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING MOTION FOR EXTENSION AND ENLARGEMENT OF TIME FOR DOCKETING APPEAL—Filed August 29, 1950

On application of the defendant-appellant in the above entitled cause, The Timken Roller Bearing Company, and for good cause shown, pursuant to Rule 11, paragraph 1 of the Rules of the Supreme Court it is hereby

Ordered that the time within which the case of the defendant-appellant on appeal shall be docketed, and the record on appeal filed, by the defendant-appellant in the Supreme Court of the United States is hereby enlarged and extended to and including October 6th, 1950.

Dated: August 29, 1950.

(S.) Freed, United States District Judge for the Northern District of Ohio, Eastern Division.

[fol. 3921] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL MOTION TO HAVE ORIGINAL PAPERS IN THE DISTRICT COURT TRANSMITTED TO THE SUPREME COURT OF THE UNITED STATES, AS A PART OF THE RECORD UPON APPEAL —Filed September 21, 1950

Now comes The Timken Roller Bearing Company, defendant-appellant in the above entitled cause, and moves that the Court, pursuant to Rule 10, paragraph 4, and Rule 18 of the Rules of the Supreme Court of the United States, authorize and instruct the Clerk of the District Court of the Northern District of Ohio, Eastern Division, to transmit and certify separately as models and exhibits of material in this case and as a part of the record upon appeal from the Final Judgment of this Court in the above entitled cause, to be filed in the Supreme Court of the United States (in addition to those exhibits as to which were the subject of

a similar motion filed on August 25, 1950) the following original, physical exhibits received in evidence in this case; to wit, Defendant's Exhibits 54, 241, A (decree) and B (decree), on the ground that it is proper that such original exhibits should be inspected by the Supreme Court but that it is impossible to encorporate true copies of Defendant's Exhibit 54, and extremely inconvenient to incorporate copies of Defendant's Exhibits 241, A (decree) and B (decree) in the transcript of the Record to be prepared by the Clerk of this Court.

[S:] Luther Day, John G. Ketterer, Attorneys for Defendant-Appellant.

[fol. 3922] Waiver of Notice and Consent

Notice of the foregoing motion is hereby waived; receipt of a copy of the motion and supporting brief is acknowledged; and plaintiff-appellee consents to the granting of said motion.

(S.) Philip B. Perlman, Solicitor General of the United States; Robert B. Hummel, Acting Chief Great Lakes Office, Anti-Trust Division, United States Department of Justice, Attorneys for Defendant-Appellant.

[fols. 3923-3928] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ON SUPPLEMENTAL MOTION TO HAVE ORIGINAL PAPERS IN THE DISTRICT COURT TRANSMITTED TO THE SUPREME COURT OF THE UNITED STATES AS A PART OF THE RECORD UPON APPEAL—Filed September 21, 1950

On motion of The Timken Roller Bearing Company, defendant-appellant in the above entitled cause, and it appearing to the Court that it is proper that the original papers in the above entitled cause specified in said motion

be transmitted to the Supreme Court of the United States, pursuant to Rule 10, paragraph 4, and Rule 18 thereof,

It is hereby ordered:

That the Clerk of this Court transmit and certify separately, as models and exhibits of material in this case, as a part of the record upon appeal from the Final Judgment of this Court, the following original exhibits constituting evidence therein, to wit:

Defendant's Exhibits 54, 241, A (decree) and B (decree).

Dated 9/21/50.

[S.] Freed, Judge of the District Court for the Northern District of Ohio, Eastern Division.

[fol. 3928a] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING MOTION FOR EXTENSION AND ENLARGEMENT OF TIME FOR DOCKETING APPEAL IN THE SUPREME COURT OF THE UNITED STATES.—Filed September 29, 1950.

Upon application made and for good cause shown pursuant to Rule 11, paragraph 1 of the Rules of the Supreme Court it is hereby

Ordered that the time within which the case of the defendant-appellant on appeal shall be docketed, and the record on appeal filed, by the defendant-appellant in the Supreme Court of the United States is hereby enlarged and extended to and including October 13, 1950.

Dated: September 29, 1950.

(S.) Freed, United States District Judge for the Northern District of Ohio, Eastern Division.

[fol. 3928b] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1950

No. 352

ORDER NOTING PROBABLE JURISDICTION—November 6, 1950

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Clark took no part in the consideration or decision of this question.

[fol. 3928c] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1950

No. 352

APPELLANT'S STATEMENT OF POINTS ON WHICH IT INTENDS TO RELY AND ITS DESIGNATION OF THE PARTS OF THE RECORD WHICH IT THINKS NECESSARY FOR THE CONSIDERATION THEREOF—Filed October 23, 1950.

The appellant, The Timken Roller Bearing Company, pursuant to Rule 13, paragraph 9 of this Court, states the points on which it intends to rely on this appeal, and designates the portions of the record to be printed which it thinks necessary for the consideration thereof as follows:

STATEMENT OF POINTS TO BE RELIED UPON

Appellant intends to rely upon its assignment of errors herein and upon the following points based thereon:

1. The District Court erred in holding that the appellant has engaged in an unlawful combination and conspiracy in restraint of trade and commerce in anti-friction bearings between the United States and foreign nations, with British Timken, Ltd. (a British joint stock company hereinafter called "British Timken") and with Societe Anonyme Francaise Timken (a French corporation hereinafter called "French Timken"), and has entered into unlawful contracts, agreements and understandings with, and has planned and acted with, British Timken and French Timken to eliminate competition among themselves and with others [fols. 3928c-1-2] in the production, sale and distribution

of anti-friction bearings in all markets of the world, in violation of Sections 1 and 3 of the Act of Congress of July 2, 1890, 26 Stat. 209, 15 U.S.C. §§ 1 and 3, known as the Sherman Antitrust Act.

2. The District Court erred in failing to hold that the restraints of trade, if any, resulting from the business agreements, contracts and understandings between the appellant and British Timken and French Timken have been at all times, and are, reasonably and lawfully ancillary and necessary to the creation and maintenance of a lawful joint venture and enterprise by the appellant and one M. B. U. Dewar, a British businessman, through their joint acquisition and control of British Timken and German Timken (now defunct) and joint organization and control of French Timken, to develop foreign trade and good will of the appellant in anti-friction bearings under the trademark "Timken".

3. The District Court erred in failing to hold that the restraints of trade, if any, resulting from the business agreements, contracts and understandings between the appellant and British Timken and French Timken have been at all times and are reasonably and lawfully ancillary and necessary to the transfer by the appellant to British Timken and French Timken of know-how with respect to the manufacture of bearings, the quality of steel used in connection therewith, and the various manufacturing processes specified in such business agreements.

4. The District Court erred in failing to hold that the restraints of trade, if any, resulting from the business agreements, contracts and understandings between appellant and [fol. 3928c-3] British Timken and French Timken have been at all times and are reasonably and lawfully ancillary and necessary to the licensing of the trademark "Timken" by the appellant to British Timken and French Timken, including the supplying of exclusive information by the appellant to British Timken and French Timken as to the production of anti-friction bearings in connection with such trademark licenses, thus holding, in effect, that it was illegal for the appellant: (a) to grant a license for the use of its trademark "Timken" in a group of foreign countries rather than for a single country; (b) to grant an exclusive license for the use of its trademark "Timken" to British Timken and French Timken in specified foreign countries and in

connection therewith to agree not to use its mark in such countries; (c) to grant a license for the use of its trademark "Timken" by British Timken and French Timken in foreign countries without granting to British Timken and French Timken the right also to use such mark in the United States; (d) to license the use of its trademark "Timken" by British Timken and French Timken, respectively, in distinct groups of foreign countries, while withholding a license to them as to other countries; (e) to grant a license to British Timken and French Timken for the use of the trademark "Timken" in foreign countries, and to communicate to British Timken and French Timken technical advice, information and know-how, to the end that the standard and quality of the products of British Timken and French Timken under the trademark "Timken" might be equivalent to those of appellant, while withholding such technical information and know-how from third parties; and (f) to license the use of its trademark "Timken" to British Timken and French Timken in foreign countries in which it did not have [fol. 3928c-4] the mark registered, as a means of developing good will in the mark in those areas, and, having permitted British Timken and French Timken to register the mark "Timken" in their own names in Great Britain and France, respectively, to obtain an undertaking by them to assign back such registrations to appellant at the termination of the license, and to demand compliance by British Timken and French Timken with such undertakings and the reversion of the trademark "Timken" to itself.

5. The District Court erred in failing to hold that the restraints of trade, if any, resulting from the business agreements, contracts and understandings between the appellant, British Timken and French Timken, were not imposed for the purpose or with the intention, and did not have the legal effect, of prejudicing the public interest by unduly restricting competition or obstructing the course of trade in violation of the Sherman Antitrust Act, there being at all times during the existence of such agreements, contracts and understandings substantial and vigorous competition between the appellant, British Timken and French Timken, on the one hand, and other manufacturers of all types of bearings, on the other, in all markets of the world.

6. The District Court erred in failing to hold that, since

there is now no appreciable or substantial import or export trade of the United States in anti-friction bearings on a competitive price basis with the territories served by British Timken and French Timken under the business agreements, contracts and understandings between the parties, there does not exist that present illegality which is essential to equitable relief such as is prayed for by the appellee in this cause.

[fol. 3928c-5] 7. The final judgment of the District Court is erroneous, beyond its jurisdiction, exceeds the permissible limits of the discretion conferred upon it, and deprives the appellant of its property without just compensation and without due process of law, contrary to the Fifth Amendment of the Constitution of the United States, in the following respects:

(a) It enjoins the appellant in perpetuity from granting to or receiving from British Timken or French Timken exclusively "in such a way as to deny any third person access thereto" know-how, machinery, materials and patents, even though it was not alleged in the amended complaint that these constituted part of the means adopted by the appellant and its alleged co-conspirators to carry on the alleged conspiracy.

(b) It enjoins the appellant in perpetuity from granting to or receiving from British Timken and French Timken exclusive know-how, patent licenses, trademark licenses, machinery or material in the production of anti-friction bearings, in that such transfers are prohibited when made "in such a way as to deny any third person access" thereto, thus depriving appellant of its property without due process of law, contrary to the Fifth Amendment to the Constitution of the United States.

(c) It enjoins the appellant in perpetuity from entering into any agreement with British Timken or French Timken, or any subsidiary, successor, assign, sales agent, representative or distributor thereof, to fix resale prices of anti-
[fol. 3928c-6] friction bearings produced by the appellant, thus depriving it of its rights under the Miller-Tydings Act, 50 Stat. 693, 15 U. S. C. 1.

(d) It enjoins the appellant in perpetuity from refusing to sell anti-friction bearings to any person at prices and on terms corresponding with those regularly offered to purchasers of the same classification for resale into the appel-

lant's territory, and from failing to provide services or assistance relating to the disposition or use thereof comparable to that made available to distributors or users of bearings in the appellant's territory, where the reason for such refusal is that the bearings are for resale, or other distribution, in the territory of British Timken or French Timken, or in some country other than the appellant's territory, as defined in the Final Judgment, thus exceeding the Court's jurisdiction to prevent and restrain violations of the Sherman Act under Section 4 thereof, and depriving the appellant of its property without just compensation and without due process of law, contrary to the Fifth Amendment to the Constitution of the United States, by denying to the appellant the right to choose the parties with whom it will deal and compelling it to do business with persons other than those chosen by it.

(e) It enjoins the appellant from entering into any agreement with British Timken or French Timken for the transfer of any right or immunity under any trademark or name [fol. 3928c-7] relating to the production of anti-friction bearings upon the condition that either of these two companies shall allocate or divide territories for the production or sale of anti-friction bearings, exclude any producer or distributor from any market for anti-friction bearings, or receive, grant, or exchange know-how or materials or machinery used in the production of anti-friction bearings in such a way as to deny any third person access thereto, thus depriving the appellant of its lawful right to license the trademark "Timken", or any other trademark, in the various respects set forth in paragraph 4, subdivisions (a) through (f) hereof.

(f) The Final Judgment requires the appellant to divest itself of all of its stockholdings and financial interest, either direct or indirect, in British Timken and French Timken, when the uncontroverted evidence in the record discloses, and the District Court found, that such stockholdings and interest were not acquired in connection with the alleged conduct of the alleged conspiracy and that the stock had not been used to control British Timken and French Timken in the carrying out thereof, the only basis upon which the appellee urged such divestiture being that the ownership of such investments by the appellant would constitute an inducement and incentive not to compete with British Timken

and French Timken, and the uncontroverted evidence in the record disclosing that such divestiture would constitute [fol. 3928c-8] a hardship to and punishment of the appellant, thus exceeding the jurisdiction of the District Court under section 4 of the Sherman Act.

8. The District Court erred in not making, as requested by the appellant, proper findings of underlying subsidiary and ultimate facts on all issues in the case separately found, and conclusions of law separately stated, as required by Rule 52 of the Federal Rules of Civil Procedure (because the findings of fact and conclusions of law did not sufficiently appear in the memorandum filed by the Court); in adopting, upon the motion of the appellee, the Court's memorandum opinion as its findings of fact and conclusions of law, and in overruling the appellant's motion after judgment that the Court adopt, in lieu of such purported findings of fact and conclusions of law, the proposed findings of fact and conclusions of law submitted by the appellant with its motion.

9. The purported findings of fact upon which the District Court based its Final Judgment are manifestly against the weight of the evidence, not sustained by any evidence, and clearly erroneous.

[fol. 3928c-9] (Designation of Part of Record to Be Printed Omitted in Printing)

[fol. 3928c-10] Luther Day, John G. Ketterer, Counsel for Appellant.

Service of the foregoing Statement of Points on which The Appellant Intends to Rely, and Designation of Portions of the Record It Deems Necessary for the Consideration Thereof, is hereby acknowledged this 23 day of October, 1950.

Philip B. Perlman, Solicitor General of the United States, Counsel for Appellee.

[fols. 3928c-11–3928d] [File endorsement omitted.]

[fol. 3928-"E"] IN THE SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO RECORD—Filed December 12, 1950

It is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled cause that either of the parties may refer in its briefs and argument to any exhibit including any portion thereof, which is part of the record filed in the Supreme Court of the United States but which has not been printed.

Luther Day, Counsel for Appellant; Philip B. Perlman, Solicitor General, Counsel for Appellee.

November 30, 1950.

[fol. 3928e-1] [File endorsement omitted]

[fol. 3929] PLAINTIFF'S EXHIBIT No. 4

Copy

The Timken Roller Bearing Company

Inter-Organization Correspondence

January 16, 1933

(Industrial Field Men)

Subject—Competition

None of us, and we here at the home office must be included, know very much about selling in a highly competitive market. We have had about 8 years, which is just about the length of time we took to develop our industrial department, selling our tapered roller bearings without any tapered roller bearing competition. Gilliam and Bock were out of the picture before we really got organized industrially, and we have had rather easy sledding from the tapered roller bearing standpoint. True we have had a very difficult task in selling our bearings over self aligning straight roller and ball bearings, and don't think for a minute we want to in the least discredit that wonderful job that was done. At the same time after that good selling

job was done and our bearings were installed as a part of their regular equipment we did not have to face that keen competitive situation of tapered roller bearings coming into the picture.

L. M. Klinedinst.

[fols. 3930-4006] PLAINTIFF'S EXHIBIT No. 5

Copy.

A. M. Donze Canton, 5-27-43.

Such a situation cannot happen this time. We shall have to fight our way out of it. Many of the customers listed on the attached sheet have used our company exclusively for many years. They have not known of two sources of supply. They did not know that Timken supplied 85% of the tapered roller bearings in the country. The reason for that was obvious; we were always able to take care of these people so that it was not necessary to go outside and ask for additional supplies of bearings.

L. M. Klinedinst.

LMK:BAS

[fol. 4007] PLAINTIFF'S EXHIBIT No. 13

Agreement

This Agreement, made this 31st day of December 1927, by and between The Timken Roller Bearing Company, a corporation of Ohio, located at Canton, Ohio, and International Harvester Company, a corporation of New Jersey, located at Chicago, Illinois, witnesseth:

Whereas, both parties hereto are engaged in the manufacture of taper roller bearings and it is desired to enter into an agreement between the parties to mutually license said parties under certain patents and with respect to certain bearings and machines made and used by the respective parties.

Now, Therefore, it is hereby agreed by the parties hereto as follows:

1. The Timken Roller Bearing Company hereby licenses and empowers said International Harvester Company to

make taper roller bearings and parts thereof under the Miller patent No. 1,892,019 dated September 27, 1921, for Taper Roller Bearings, now owned by The Timken Roller Bearing Company for use only in machines made and sold by the International Harvester Company and for sale as complete bearings only for replacement of bearings on machines sold by said International Harvester Company, it being understood and agreed that said International Harvester Company shall have no right to sell such bearings or parts thereof separately except for replacement of bearings in machines sold by it.

2. The Timken Roller Bearing Company hereby licenses and empowers the International Harvester Company to make, use and sell taper roller bearings of the type and construction now being made and sold by it and identified by the drawing attached hereto and marked "Exhibit A,", under any patent additional to said Miller patent, now owned or controlled by The Timken Roller Bearing Company, the license granted under this paragraph, however, being limited to the specific construction disclosed in said exhibit and not extending to any general license to make other constructions under said patent or patents owned or controlled by The Timken Roller Bearing Company. It is agreed, however, that said license granted in this [fol. 4008] paragraph shall not extend to any bearings or parts thereof made or sold by International Harvester Company other than those made by it for use on machines sold by it or sold for replacements of bearings made and sold with such machines by it.

Headers

3. It is hereby agreed that International Harvester Company has, and shall continue to have, the right to use the Marville Header now employed by it for heading rolls free from any claim of infringement under patents by The Timken Roller Bearing Company. It is also agreed that the International Harvester Company shall be, and is hereby given the right, authority and permission to purchase and to use Waterbury-Farrel header for the purpose of heading rolls so far as The Timken Roller Bearing Company has the right to grant such permission, authority and consent.

Grinding Body of Rolls

4. It is hereby agreed that International Harvester Company shall have the right to continue to use the centerless grinder now employed by it for grinding the body of the rolls and consisting of a machine with a hand feed with a reciprocating support for the roll, and the right to purchase and use centerless grinders having a hopper and a reciprocating support for the roll with either automatic or semi-automatic feed notwithstanding any agreement now existing between The Timken Roller Bearing Company and the Cincinnati Grinders, Inc., or other suppliers of said centerless granding machines, and notwithstanding any patent or patents which said The Timken Roller Bearing Company may have upon said centerless grinders of the type and having attachments herein described, providing it is understood that this paragraph shall not convey to International Harvester Company a license under any patents which The Timken Roller Bearing Company may have or acquire on the spiral feed for centerless grinders, nor authorize International Harvester Company to purchase such spiral feed constructions from any supplier with whom said The [fol. 4009] Timken Roller Bearing Company may have an exclusive purchasing agreement.

It is hereby agreed that International Harvester Company has the right to use and may continue to use and to purchase machines of the center grinding type now employed by it, any agreement made or which may be made between The Timken Roller Bearing Company and any suppliers of such machines to the contrary notwithstanding, or under any patent or patents owned by The Timken Roller Bearing Company.

End Face Grinding

5. It is hereby agreed that International Harvester Company shall have the right to continue to use and to purchase machines of the character and construction now employed by it for end face grinding, the present machines of International Harvester Company for this purpose being Brown and Sharp grinders.

Cage or Retainer

6. It is hereby agreed that International Harvester Company shall have the right to make, or cause to be made for

it, cages or retainers of the present form now used in its bearings, as shown in the exhibit "A" hereto attached, and shall have the right to use or cause to be used the machines and methods now employed by it or under its direction, which machines and methods are hereby specified to be as follows:

(a) Drawing a flat bank to cup form.

(b) Punching an index hole with keyway therein in base.

(c) Inserting cup in die and indexing for each aperture and rib and punching each aperture separately.

(d) Swedging the angular faces on the inner parts of the ribs to conform to rolls.

(e) Taking out bottom by turning on laths.

Such right and permission is recognized and authorized by The Timken Roller Bearing Company notwithstanding any agreement with any suppliers on any patent or patents now owned by The Timken Roller Bearing Company.

[fol. 4010] Assembling Rollers and Cages or Retainers

7. It is agreed that the method and machines now employed by International Harvester Company for assembling the rolls and the cages or retainers shall be recognized and authorized to be used by International Harvester Company, any patent or supplier's agreement of The Timken Roller Bearing Company to the contrary notwithstanding, which method and machines are specified as follows:

(a) Placing rollers in cage.

(b) Forcing caging by plunger into conical die provided with fixed rib contacting abutments which set or force inwardly the ribs against the rolls.

Cup or Ring

8. It is agreed that International Harvester Company has the right to use and may continue to use any supplier's agreement or patent of The Timken Roller Bearing Company to the contrary notwithstanding, the machines and methods now used by it for forming the cup or outer ring of the bearing which machines and methods are hereby specified as follows:

(a) Forming by automatic screw machines from tubing or forming by forging from bar stock.

(b) Carbonizing and heat treating.

(c) Blanchard machine grinding for width on one side.

(d) Heald Sisematic #72 or Bryant #6 machine grinding on interior.

(e) Brown and Sharp, Norton a centerless grinding on exterior.

Cone

9. It is agreed that the right of International Harvester Company to use and continue to use its present machines and methods for making the cone of its bearings is hereby recognized and authorized by The Timken Roller Bearing Company, any supplier's agreement or patent of the said The Timken Roller Bearing Company to the contrary notwithstanding, which methods and machines are hereby specified as follows:

[fol. 4011] (a) Gormed from tubing on automatic screw machines or forging from bar stock.

(b) Grinding by Blanchard machine on two faces.

(c) Grinding internally on Heald or Bryant machines.

(d) Grinding O. D. body on Brown and Sharp Universal machine.

(e) Flange grinding by Brown and Sharp Universal machines.

Quenching Machines

10. It is also agreed that International Harvester Company has the right to use and continue to use the quenching machine now employed by it, any supplier's agreement or patent now owned by The Timken Roller Bearing Company to the contrary notwithstanding.

11. It is also agreed that International Harvester Company has the right to use and to continue to use the gaging machines now employed by it.

It is hereby agreed that said International Harvester Company reserves to itself a non-exclusive right and license to make bearings of the type devised now made and sold by it as shown in exhibit "A" attached hereto, for use only in machines made and sold by International Harvester Company and made and sold for replacement of such bearings, and subject only to said reservation, said International Harvester Company hereby grants to said The Timken Roller Bearing Company the exclusive right and license to make, use and sell taper roller bearings of the

type devised by said International Harvester Company embodied in exhibit "A" under any patent or patents that may be obtained by said International Harvester Company on said bearing, and free and clear of any and all license fees, which license said International Harvester Company agrees to confirm by suitable written instrument after the issue of said patent or patents.

12. The International Harvester Company hereby grants The Timken Roller Bearing Company a non-exclusive license to make and use in its own shops any of the special machines devised by International and now used by it under any patent or patents that may be issued to International Harvester Company thereon, and including particularly the [fol. 4012] quenching machine devised by International Harvester Company and now used by it, and the special gages designed and now used by International Harvester Company.

13. The International Harvester Company agrees to apply at its own expense for patents in foreign countries for said bearing shown in exhibit "A", and does grant said The Timken Roller Bearing Company or a subsidiary or an associate company now or hereafter established by it, a license under any and all such foreign patents, free and clear of royalties or license fees.

Said International Harvester Company agrees to advise said The Timken Roller Bearing Company of the countries in which foreign applications are filed, and if additional foreign patents are desired by said The Timken Roller Bearing Company, said International Harvester Company promises to file same in such additional countries, at the expense of The Timken Roller Bearing Company, and to assign such patents to The Timken Roller Bearing Company.

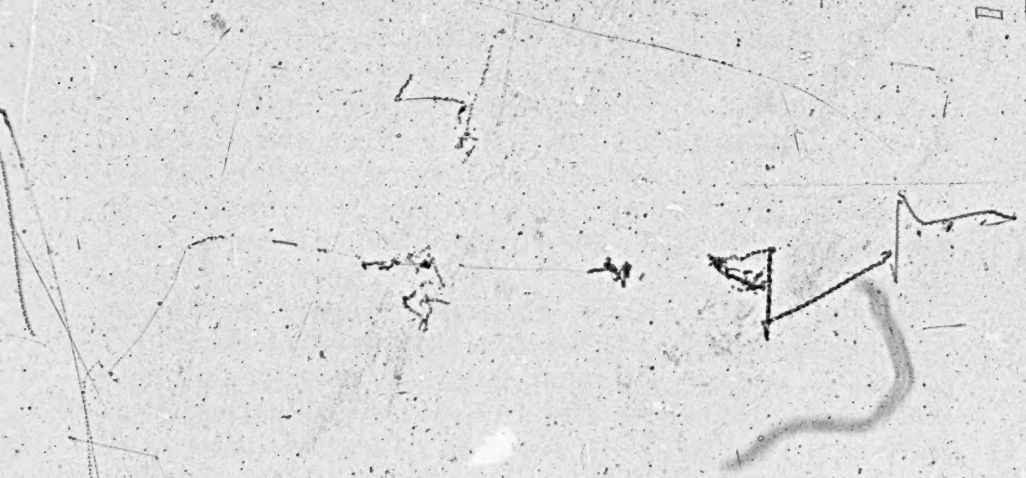
14. The Timken Roller Bearing Company grants to foreign subsidiary and associate companies of the International Harvester Company a license, co-extensive with that herein granted by The Timken Roller Bearing Company to the International Harvester Company under any foreign patents which said The Timken Roller Bearing Company may own, and likewise authority to purchase machines and parts co-extensive with that herein given to the International Harvester Company.

15. Each of the United States licenses hereby granted shall be personal to the license and shall not be transferable

except with the entire business and good will of the respective parties hereto, and said licenses shall not include any right to grant sub-licenses. Each of said licenses shall be for the full life of the respective patents.

In Testimony Whereof, the parties hereto have set their hands and seals respectively on the dates below given.

(Here follow 2 Photolithographs, side folios 4013-4014)



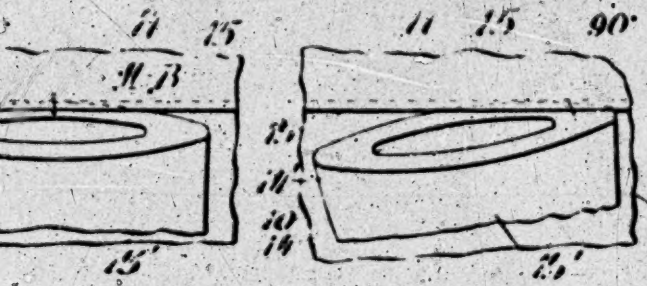


Fig. 5.

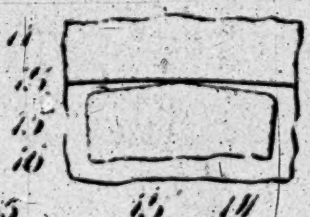
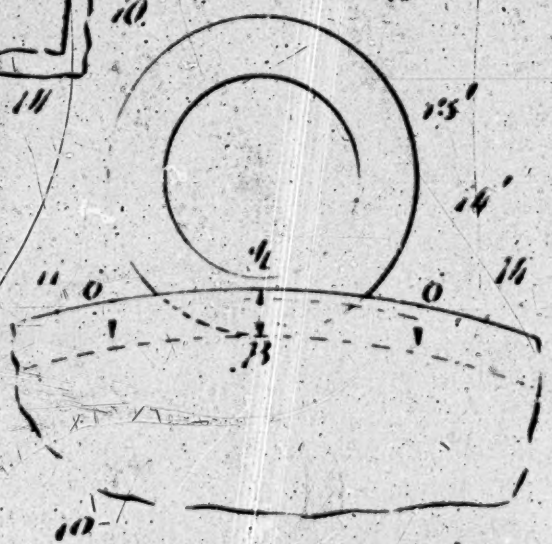


Fig. 6.

Fig. 3

Fig. 4.



Inventor
Edward A. Johnston
By A. P. Seaton
Atty

Exhibit H

1340B

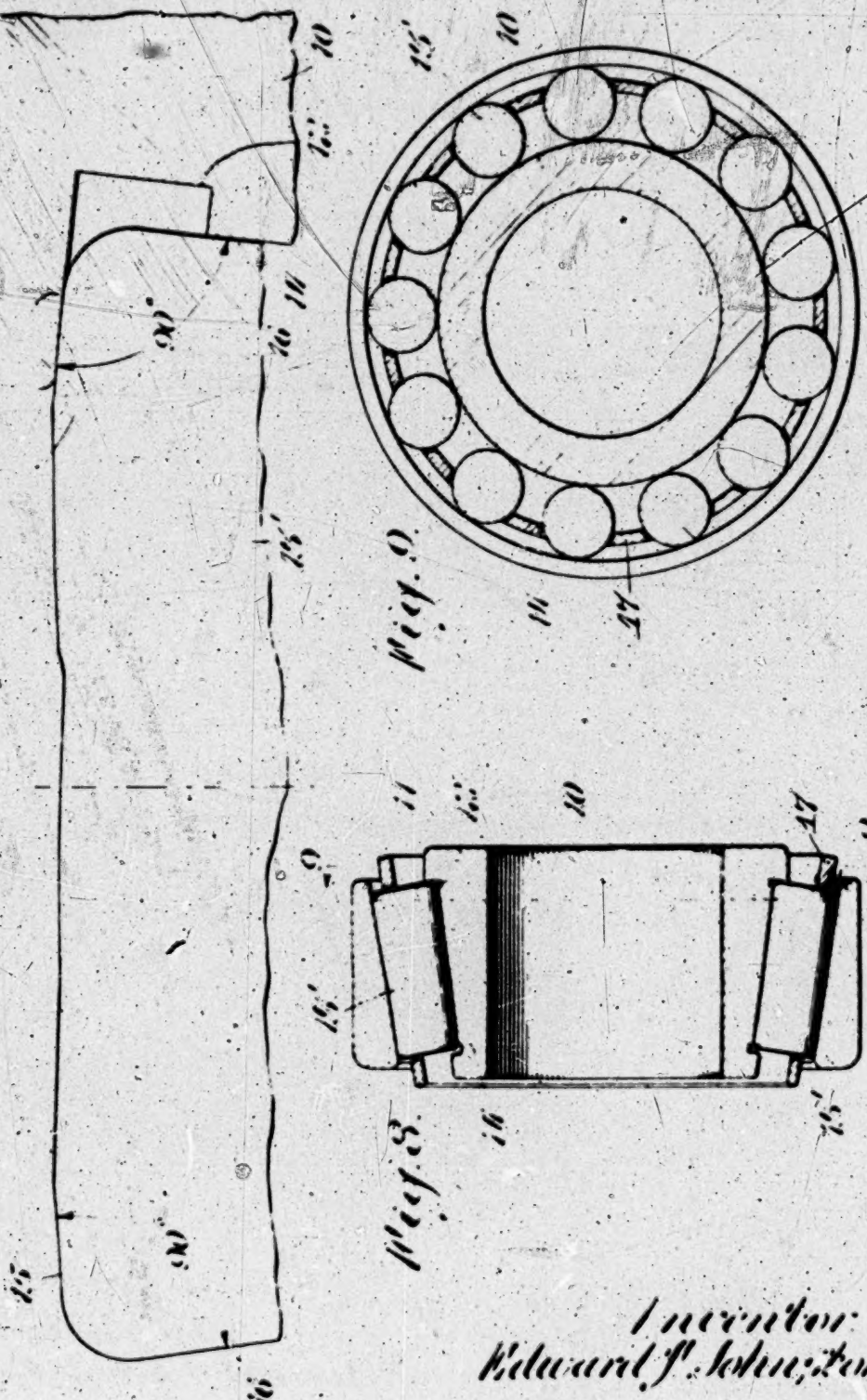


Fig. 2.

Fig. 3.

Inventor:
Edward F. Johnson, Jun.
By
Exhibit H. 4014 Atty

[fol. 4015] Interpretative Memorandum of Understanding as to Agreement Dated the 31st day of December, 1927

This Memorandum of Agreemen' made this thirty-first day of December, 1927, by and between The Timken Roller Bearing Company, a corporation of Ohio, located at Canton, Ohio, and the International Harvester Company, a corporation of New Jersey, located at Chicago, Illinois, in interpretation of the understanding of the parties as to certain manufacturing details covered by the prior agreement entered into between the parties and dated the 31st day of December, 1927, Witnesseth:

It is hereby agreed for and in consideration of the premises and undertakings set forth in said prior agreement that in the manufacture of bearings under said prior agreement of the 31st day of December, 1927, International Harvester Company in complying with the provisions of paragraph 2 of said agreement shall conform in good faith and so far as possible in standard production to the exact angle between the cone rib and the bearing surface of the cone as shown in said Exhibit A attached to said agreement, namely, an angle of ninety degrees (90°), but that accidental variations in the construction of said bearings due to errors of manufacture which may produce an angle of less than ninety degrees (90°) shall not be considered as cause for the institution of infringement suits based upon any patents of The Timken Roller Bearing Company provided that the total number of bearings made and used by the International Harvester Company thus having an angle less than ninety degrees (90°) shall not exceed ten per cent (10%) of the output of bearings of any one size or part number, and provided further that in such number of bearings having an angle less than ninety degrees (90°), the tolerance of variance thus permitted shall not exceed one degree (1°) less than ninety degrees (90°).

It is further agreed that The Timken Roller Bearing Company shall have the right to such reasonable inspection in the plant or plants of the International Harvester Company of the bearings produced by said—

[fol. 4016] The Timken Roller Bearing Company, by M. T. Lothrop, V. P.

Attest: J. F. S. Strough, Secretary.

STATE OF OHIO,
County of Stark, ss:

Personally appeared before me, a Notary Public, this 17th day of January 1927, M. T. Lothrop, to me personally known and known to me to be the Vice Pres. of The Timken Roller Bearing Company, and acknowledged that he executed the foregoing agreement as his free act and deed for the purposes therein stated, and in his official capacity as ————of The Timken Roller Bearing Company, and that he was duly authorized thereunto by the Board of Directors of said Company.

M. Brooks, Notary Public, Stark Co., Ohio. My Commission expires August 16, 1929.

Approved: M. J. Graham.
International Harbester Co., by H. B. Utley.

Attest: William M. Gale, Secretary.

STATE OF ILLINOIS,
County of Cook, ss:

Personally appeared before me, a Notary Public, this 29th day of December, 1927, H. B. Utley, to me personally known and known to me to be the Vice President of the International Harvester Company, and ackowledged that he executed the foregoing agreement as his free act and deed for the purposes therein stated, and in his official capacity as Vice President of the International Harvester Company, and that he was duly authorized thereunto by the Board of Directors of said Company.

Fred W. Hoffmeister, Notary Public.

[fol. 4017] P-13A

International Harvester Company

Chicago, U. S. A.

May 14, 1936.

Mr. W. F. Umstattd, The Timken Roller Bearing Company, Canton, Ohio.

Dear Sir:

This will confirm agreement in meeting this morning, at which were present your Messrs. W. E. Umstattd and L. M. Klinedinst and our Messrs. John Morrow, Jr., W. B. Swift, R. M. McCulloch, E. P. Renstrom and R. A. Fischer, as follows:

We are to have free license to use the spiral feed method and apparatus for grinding tapered rollers under Smith Patent 1,970,777 owned by your company. You are to make one of these attachments for us at cost and at our expense and also if desired by us send one of your operators, at our expense, to our West Pullman Works for a week or ten days to instruct our people in the proper method of grinding rollers with said attachment.

In consideration of the foregoing, we are to buy from your company a proportion of our requirements of steel used in the production of our ball and taper roller bearings substantially equal to what we have been buying from you in the past and also all tapered roller bearings which we require in our production and which we do not produce ourselves. It is contemplated that your price will at all times be competitive with the general market and if not, we have your permission to procure our requirements elsewhere. Further, it is understood that our Wisconsin Steel Works are carrying on some development work on bearing steels and we reserve the right to use their product at any time.

The above agreement is subject to cancellation at the discretion of the International Harvester Company on sixty (60) days' notice in writing to the Timken Roller Bearing Company.

Sometime ago Mr. Graham also stated to you personally that he would like to use the method and apparatus which your company uses in connection with the grinding of the angles on the ends of the tapered rollers and we understand

that you have no objection to our use of this method and apparatus.

Since this agreement modifies the agreement dated December 31, 1927 between your company and our company restricting our use of the spiral feed, it is understood that paragraphs 4 and 5 of said agreement are superseded in all respects by the present understanding.

[fols. 4018-4035] This agreement is drawn in duplicate. Please sign and return one copy signifying your acceptance.

Yours very truly, International Harvester Company,
John Morrow, Vice President.

Accepted by: The Timken Roller Bearing Company by W. E. Umstattd, President. RAF/MEH.
Copy.

[fol. 4036] PLAINTIFF'S EXHIBIT 18

Deutsche Timken

June 1, 1931.

The Timken Roller Bearing Company, Canton Ohio.

GENTLEMEN:

We return herewith one signed printed copy of Agreement dated January 1, 1928 between British Timken and Deutsche Timken together with correspondence thereto attached.

Yours very truly, Lynch, Day, Pontius & Lynch by
J. K. L.

J. K. L.

[fol. 4037] 18a

Date 11-11-29.

DEAR SIRS:

We enclose two copies of the Agreement between the British Company and the German Company. The Agreements have not been signed because they would attract a rather heavy stamp duty in Germany. In order to avoid this: letters have been passed which we are informed will

give the Agreement effect in the same way as if it had been signed. We have annexed copies of these letters to the copy Agreements.

Yours faithfully, Stibbard, Gibson & Co.

The Timken Roller Bearing Company.
J. K. L. has copies.

[fol. 4038] 18b

Copy of Letter

23rd Septr. 1929.

From: Deutsche Timken Gesellschaft m. b. H., Germania Strasse 86/87, Tempelhof, Berlin.

Dear Sirs:

We have your letter dated the 9th September and the draft Agreement. We are at one with you in approving the document and agreeing that it may be regarded as a completed bargain.

Yours faithfully, Deutsche Timken Gesellschaft m. b. H. (Sgd.) W. R. B. A.

Messrs. British Timken Limited, Cheston Road, Aston, Birmingham.

[fol. 4039] 18c

Secretary

21st October, 1929.

Messrs. Deutsche Timken G. m. b. H., Germania Strasse 86/87, Tempelhof, Berlin.

Dear Sirs:

With respect to the draft agreement which has been approved by our respective Lawyers, I have now submitted this to the Board who have approved the agreement and have authorised me to inform you to that effect. I enclose a copy of the document and shall be pleased to

hear that it meets with your approval, we can then give it effect as a completed bargain.

Yours faithfully, for British Timken Limited,
(signed) R. O. Squire, Secretary.

Encl: Agreement.

[fols. 4040-4050] 18d

Copy of Letter

24th Octr. 1929.

Ref: Mor./M.

From: Deutsche Timken Gesellschaft m. b. H., Germania Strasse 86/87, Tempelhof, Berlin.

The Secretary, British Timken Limited, Cheston Road, Aston, Birmingham.

Dear Sirs:

We are in receipt of your letter of the 21st inst. enclosing copy of draft agreement between our two companies and advising us that the same has been approved by your Board for which we thank you.

In reply we confirm our letter of the 23rd of September in which we advised that the agreement is also approved by the Board of this Company and may be regarded as a completed bargain.

Yours faithfully, Deutsche Timken Gesellschaft. m. b. H., (Sgd.) W. R. B. A.

[fol. 4051] Plaintiff's Exhibit 20

This Agreement is made the twenty-ninth day of December, One thousand nine hundred and thirty four by and between The Timken Roller Bearing Company, a Corporation organized under the laws of the State of Ohio and having its principal office in the City of Canton, Ohio in the United States of America (hereinafter for convenience called "The American Company") and British Timken Limited a joint stock Company incorporated under the laws of the United Kingdom of Great Britain and Ireland

and having its registered office at Birmingham in the Kingdom of England (hereinafter for convenience called "The British Company")

Whereas:

(a) The American Company manufactures in the United States of America anti-friction tapered roller bearings and steel used in the manufacture of all kinds of anti-friction bearings and has a very special experience in such manufactures.

(b) The expression "bearings" for the purposes of this agreement means anti-friction bearings of all kinds.

(c) The American Company is or may be or become the owner of Patents in the United Kingdom of Great Britain and Northern Ireland and in various other parts of the world covering inventions relating to bearings and improvements therein:

Now the parties hereto agree as follows:

1. For the purposes of this agreement the United Kingdom of Great Britain and Northern Ireland and all other countries of Europe and all Dominions Colonies or Dependencies of the said United Kingdom and European countries except in or adjacent to North or South America shall be deemed to be the territory of the British Company and the rest of the world shall be deemed to be the territory of the American Company.

2. (a) Each of the parties hereto will as fully and freely as its patent and contractual rights and obligations permit and free of expense to the other party except as to out-of-[fol. 4052] pocket expenses inform the other party as to all inventions discoveries improvements and practices useful in connection with the manufacture of bearings whether patented or not

(b) The American Company will so far as its patent and contractual rights and obligations permit and free of expense to the British Company except as to out-of-pocket expenses license the British Company to operate manufacture and sell bearings in the territory of the British Company during the life of this agreement under any Letters Patent or other patent rights now or hereafter from time to time owned by the American Company and pertain-

ing to the manufacture or sale of bearings in the territory of the British Company

(c) The British Company will so far as its patent and contractual rights and obligations permit and free of expense to the American Company except as to out-of-pocket expenses assign absolutely and for all time to the American Company all Letters Patent or other patent rights now or hereafter from time to time owned by the British Company and pertaining to the manufacture or sale of bearings in the territory of the American Company

(d) Provided however that nothing in this Agreement contained shall obligate either party to acquire or enlarge its interest in any Letters Patent or other patent rights

3. (a) Each of the parties hereto will use its best endeavours to maintain the distinctive character of the trade mark "Timken" and refrain from any act calculated to prejdice the rights of the parties hereto in respect thereof as now existing

(b) The British Company if and when requested by the American Company will join with the American Company in an application for concurrent registration of the trade mark "Timken" in accordance with the rights aforesaid

(c) The British Company upon the termination of this Agreement if and so far as it may be requested in writing by the American Company will cause the name "Timken" to be eliminated from its corporate name and from the name of any person, firm or company controlled by it and will refrain and will cause any person, firm or company controlled by it to refrain from using the name "Timken" [fol. 4053] as part of or in connection with his, their or its name or as a trade mark or trade name or otherwise and from any act calculated to prevent or delay any concurrent right which the American Company may then possess in respect of the said name from becoming a sole and exclusive right and so far as practicable will assign or cause any person, firm or company controlled by it to assign to the American Company or as it may direct any trade mark or other rights in respect of the said name

4. (a) The American Company will from time to time advise and instruct the British Company in the manufacture of any kind of bearings which the American Company may be manufacturing and particularly in connection with the quality of the steel used and its composition and analysis

the method of case hardening the machinery and processes for grinding gauging sizing quenching die working forging up-setting forming sorting plating, and other operations and in connection with any special tools and machinery

(b) The British Company will carefully and faithfully follow such advice and instructions so far as the same shall be economically practicable under the circumstances of the business of the British Company

(c) The British Company's manufacturing operations shall at all reasonable times be open to inspection by the American Company or its representatives

5. (a) The British Company by itself or its sublicensees approved by the American Company will manufacture bearings in such quantities and in such States within the British Company's territory and will exercise all such rights in connection with the manufacture of bearings as shall be required to maintain all Letters Patent from time to time owned by the American Company in any State or States within the British Company's territory

(b) If the British Company desires to be relieved from the obligation contained in paragraph "a" of this clause with respect to any State it shall be entitled to give notice in writing to the American Company that it excludes such State from the British Company's territory and thereupon such State shall be withdrawn from the British Company's [fol. 4054] territory and shall be added to the American Company's territory

(c) For the purposes of this clause a State shall mean a territorial area in which there is a separate jurisdiction for patent purposes

6. Except with the consent of the American Company the British Company shall not manufacture sell or deal in bearings of any kind except under and in accordance with the terms and provisions of this Agreement and under the Trade Mark "Timken"

7. During the life of this agreement the American Company shall not directly or indirectly make or sell or license others to make or sell bearings in the British Company's territory or in the American Company's territory knowing them to be for shipment into the British Company's territory save and except as follows to wit:

(a) The American Company may make or sell or license others to make or sell in the territory bearings for delivery

or shipment into the British Company's territory as assembled component parts of completed articles of manufacture manufactured in the American Company's territory or as assembled component parts of completed units of manufacture manufactured in the American Company's territory for incorporation into such completed articles of manufacture

(b) The American Company in its territory may accept and execute orders for bearings for ultimate destination in the British Company's territory for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorise sales to or known to be destined for manufacturers in the British Company's territory or sales at prices in conflict with the wishes of the British Company and the American Company from time to time will notify the British Company of the details of the sales authorised under this paragraph and will pay to the British Company an amount equal to five per cent (5%) of the net sale price thereof

(c) The American Company may authorise not more than four manufacturers or producers of vehicles in the United States of America to import into the British Com- [fol. 4055] pany's territory bearings manufactured by the said producers in the American Company's territory for incorporation in new products or for bearing replacement purposes for products previously manufactured or assembled by the said manufacturers or producers or their subsidiaries in the British Company's territory Provided that they are not stamped with or identified by the name Timken

(d) For the purposes of this clause a holding Company as for instance General Motors Corporation and its constituent and subsidiary Companies shall be deemed to be one manufacturer or producer

(e) The parties hereto recognize and approve the mutual licensing agreement entered into between the American Company and International Harvesters Company dated the Thirty first day of December One thousand nine hundred and twenty seven of which a copy has been supplied by the American Company to the British Company

8. During the life of this Agreement the British Company shall not directly or indirectly make or sell or license others to make or sell bearings in the American Company's territory or in the British Company's territory knowing them

to be for shipment into the American Company's territory save and except as follows to wit:

(a) The British Company may make or sell or license others to make or sell in the British Company's territory bearings for delivery or shipment into the American Company's territory as assembled component parts of completed articles of manufacture manufactured in the British Company's territory or as assembled component parts of completed units of manufacture manufactured in the British Company's territory for incorporation into such completed articles of manufacture

(b) The British Company in the British Company's territory may accept and execute orders for bearings for ultimate destination in the American Company's territory for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorise sales to or known to be destined for manufacturers in the [fol. 4056] American Company's territory or sales at prices in conflict with the wishes of the American Company and the British Company will from time to time notify the American Company of the details of the sales authorised under this paragraph and will pay to the American Company an amount equal to five per cent (5%) of the net sale price thereof

9. Notwithstanding anything in this agreement the American Company shall be at liberty to grant Licences to manufacturers to make and sell in the territory of the British Company steel and/or tubes under Patents or according to methods and processes belonging to the American Company Provided always that the American Company will make arrangements so that any royalty or charge which may be payable by any such Licensee in respect of steel and/or tubes supplied to the British Company shall be credited to the British Company.

10. (a) The provisions of this clause shall take effect notwithstanding anything to the contrary contained in this agreement and the other provisions of this agreement shall be deemed to be modified accordingly

(b) During the life of this agreement and so long as the French Company named Societe Francaise Timken (hereinafter called "the French Company") or any other French Company formed to acquire and carry on the business now carried on by the French Company shall carry on the said business the French Company which from time to time is

carrying on the said business shall be at liberty in France and the Dominions Colonies and Dependencies of France to make and sell bearings in and for use in the French territories aforesaid under any French Patents from time to time belonging to the American Company or the British Company and to make use of the name Timken in connection with its business without payment of any royalty or other charge and the British Company subject to the approval of the American Company shall enter into any agreement or agreements with any French Company which may be necessary for this purpose

(c) During the life of this agreement each of them the American Company and the British Company shall be at liberty to sell bearings for delivery and use in Russia without reference to the other of them but they shall keep each other advised with full details of all enquiries negotiations [fol. 4057] and orders and generally consult with one another in regard to Russian business whether with the Government authorities in Moscow or with or through any of the Russian Agencies or Trading Companies and if either of the parties hereto shall secure any orders for or in connection with bearings for delivery and use in Russia a commission of two per cent upon the net monies received in respect of such orders shall be paid by the party executing the orders to the other party and all expenses incurred by either party in negotiating or securing orders for or in connection with bearings for delivery and use in Russia with the approval of the other party shall be borne and paid by the parties hereto in equal shares and no royalty or other charge under the other provisions of this agreement shall be payable in respect of bearings in respect of which the said commission of two per cent is payable. The details above mentioned shall include blue prints statistical reports and other data. The prices and terms at or upon which offers are made and orders are accepted shall so far as practicable be mutually agreed from time to time but nevertheless either of the parties hereto shall be at liberty to quote and accept orders at low prices and extended times for payment without the consent of the other party after having first submitted the prices and other terms to the other party for its consideration and remarks provided that any such quotation or acceptance shall not involve under cutting some quotation already made by the other party

11. (a) Subject to the approval in writing of the American Company as to both terms and personnel to be given at its absolute discretion but not otherwise the British Company may from time to time grant sub-licenses to others to make use and vend bearings in the British Company's territory and may communicate to such sub-licensees any information with respect to inventions discoveries improvements and practices whether patented or not received from the American Company

(b) Every such sub-license shall be deemed to be a license granted by the American Company and all royalties payable thereunder in respect of Tapered Roller Bearings shall belong to the American Company and shall be made payable direct to the American Company accordingly.

[fol. 4058] (c) All the terms and conditions establishing the business and other relations between the British Company and any sub-licensee within the British Company's territory shall be submitted to and approved in writing by the American Company before the same are agreed to by the British Company and no alteration shall be made therein without the like approval

(d) If the British Company shall acquire any stock shares securities or other interest in any Company or Association manufacturing or selling bearings in the British Company's territory the British Company shall not sell or dispose of such stocks shares securities or interest without the consent in writing of the American Company

12. (a) During the life of this Agreement the British Company shall pay to the American Company a royalty equal to one half of one per cent (½%) of the net invoice prices after deduction of all discounts of all Tapered Roller bearings manufactured or sold by the British Company less amounts equal to one half (½) of the royalties actually received directly by the American Company from sub-licensees pursuant to the last previous clause hereof

(b) Provided however that no royalties shall be paid hereunder by the British Company in respect of (1) completed Tapered Roller bearings purchased by the British Company from the American Company or (2) Tapered Roller bearings manufactured by the British Company and sold by it to sub-licensees appointed under the authority of the last previous clause hereof or (3) Tapered Roller bearings upon which royalties are paid directly to the American

Company by sub-licensees pursuant to the last previous clause hereof

(c) In the case of bad accounts written off by the British Company the American Company shall refund to the British Company royalties paid in respect to bearings giving rise to such accounts

13. The said royalties shall be paid on the First days of January April July and October of each year or within thirty days thereafter for the bearings sold during the quarter year prior to the said respective dates.

[fol. 4059] 14. (a) The remittance of the said royalties shall be accompanied by statements showing in detail:

(1) The number of bearings made during the preceding quarter year

(2) The number of bearings sold during the preceding quarter year

(b) The statements in respect thereto furnished during January of each year shall also be accompanied by a certified statement prepared by the Auditors of the British Company or its sub-licensees as the case may be based upon an actual examination of the books and records of the British Company or its sub-licensees giving the same data as above provided in respect of sales made during the year prior to the said month of January and the said January s atements if required by the American Company shall be further verified by Statutory Declaration of the Secretary for the time being of the British Company or its sub-licensees

(c) The American Company may once in each year at its own expense employ a Chartered Accountant who shall have the privilege of examining the books records and plant of the British Company and its sub-licensees with a view to determining how many Tapered Roller bearings the British Company and its sub-licensees shall have made and sold up to the time of such examination and to whom and when and for what prices

15. (a) The British Company shall pay all renewal fees required to maintain and keep on foot all Letters Patent with respect to bearings in the British Company's territory owned by the American Company of which particulars from time to time have been supplied to the British Company by the American Company

(b) Provided however that if the British Company shall desire to discontinue or refrain from maintaining any such Letters Patent it shall be at liberty to give not less than four (4) months' written notice to the American Company and upon the expiration of the said period of four months the Letters Patent to which such notice relates shall belong [fol. 4060] to and be at the disposal of the American Company free from any rights of the British Company under this agreement and the British Company shall be under no obligation to maintain and keep on foot such Letters Patent

(c) The British Company at its own cost will defend every action or proceeding instituted for the purpose of revoking any Letters Patent with respect to bearings in the British Company's Territory owned by the American Company so long as such Letters Patent is being maintained and kept on foot by the British Company under the provisions of this agreement

(d) If any of the said Letters Patent shall be revoked solely on some ground which would not have been available if the British Company had duly performed its obligations under this Agreement then and in any such case the American Company in addition to any other rights which it might have against the British Company shall be entitled to recover from the British Company all costs charges and expenses reasonably incurred by it in defending the action or proceeding in which such Letters Patent is revoked.

16. Upon the termination of this Agreement whether under any of the provisions hereof or otherwise howsoever the British Company for a period of six (6) months thereafter shall have the privilege of completing and selling its stock of bearings on hand at the date of such termination upon the terms which would have ruled if this Agreement had not been so terminated and subject to the payment of royalties as herein provided

17. (a) In the event of liquidation of the British Company or the appointment of a receiver of its undertaking (except for the purpose of capital reorganization) this Agreement shall immediately terminate and cease

(b) The rights and privileges of the British Company hereunder shall be assignable only with the consent in writing of the American Company

18. (a) This Agreement shall come into operation and effect as provided in an agreement dated the twenty-ninth

[fol. 4061] day of December One thousand nine hundred and thirty four and made between the American Company (1) the British Company (2) and Michael Bruce Urquhart Dewar (3) and unless otherwise terminated as herein provided shall continue in full force and effect for a period of sixteen years from the first day of January One thousand nine hundred and thirty five

(b) The agreement between the parties hereto executed as of the first day of January One thousand nine hundred and twenty eight is hereby cancelled as on the date of this agreement coming into operation and effect except as to any monies payable under that agreement in respect of the period down to that date but subject to the provisions of the agreement mentioned in paragraph (a) of this clause

In witness whereof the Timken Roller Bearing Company by the Authority of its Board of Directors has caused these presents to be executed in duplicate by its Secretary and its corporate seal to be hereto affixed and British Timken Limited under the authority of its Board of Directors has caused its Common Seal to be affixed hereto in duplicate as of the day and year first above written

The Timken Roller Bearing Company. By: W. E. Umstattd, President

Signed and Sealed by or on behalf of The Timken Roller Bearing Company in the presence of:

R. C. Brower, Secretary.

Sealed by or on behalf of British Timken Limited in the presence of:

W. B. U. Dewar, F. A. Pascue, Directors; R. O. Squire, Secretary.

[fols. 4062-4063] Dated December twenty-ninth 1934.

The Timken Roller Bearing Company and British Timken Limited,

Agreement as to Business.

[fol. 4064] PLAINTIFF'S EXHIBIT 21

January 8, 1935.

These memoranda read by Mr. Umstattd on 1/12/35.
DPH 1/15/35.

Note

Attached herewith are various memoranda covering briefly, salient features of our new agreements necessary between British Timken, French Timken and American Timken, growing out of the changeover of British Timken from a private company to a public company, and the placing of British Timken shares upon the market.

D. P. Hess.

[fol. 4065] Memorandum 1

Agreement #1

Title—Sale of Shares

This agreement between American Timken, British Timken and M. B. U. Dewar covers the varibus steps necessary to place British Timken shares upon the market.

In the recital part of this agreement is set forth the following points:

(1) The various Articles of Association and By-Laws under which the British Timken Company has been operating.

(2) Resolutions of the Directors pertaining to the employment of Mr. Dallow as manager and Mr. Pascoe as Financial Adviser of the British company.

(3) Agreement between the British Company and Mr. Dewar covering the latter's appointment as Managing Director.

(4) Agreement between the American Company and the British Company establishing business relations (hereinafter referred to as the Business Agreement), agreement between the British Company, French Timken Company and the American Timken Company establishing business relations.

(5) Resolution of the Directors of the British Company increasing the capitalization to £250,000.

(6) Statement in regard to the shareholders of British Timken offering for sale 125,000 shares of British Timken stock, being 50% of the total issued capital.

(7) Provision for reduced royalty payments to take effect in the year 1934 prior to the actual sale of shares to the public.

(8) Provision to restore royalty to 4% if actual sale of shares to the public has not been made.

There is also set forth under the distinct heading of agreement as separate from the heading of recitals, the following:

(1) Provision permitting the British Company, at any time before August 1, 1935, to cancel the existing Articles of Association or adopting new Articles of Association in accordance with the status of the British Company as a public company.

(2) Statement to the effect that the new business agreement will go into operation only if shares have been sold on the market.

[fol. 4066] (3) Clause to the effect that no claim will be made upon the French Company by either the British Company or the American Company for royalties up to the time the new French agreement goes into effect.

(4) Provisions for making new service agreements with Mr. Dewar, Mr. Dallow and Mr. Pascoe. (Details covered in separate agreements Nos. 3, 4a and 4b.

(5) Provisions for new business agreement between the British Company and the French Company to be effective upon completion of sale of shares to the public.

(6) Statement providing that if shares are not sold to the public prior to August 1, 1935, all deeds, agreements and instruments shall be restored to the original status of the British Company as a private company.

D. P. Hess.

[fol. 4067] PLAINTIFF'S EXHIBIT 21-A

January 9, 1935.

Memorandum II

Agreement #2

Title—Business Agreement

This new agreement supersedes the original business agreement dated January 1, 1928 and under which American Timken and British Timken have been operating up to the present time. It is proposed to date the new agreement as of December 31, 1934 so that the two companies will be operating under the new plan before sale of the shares has been made. It is proposed in this memorandum, for brevity sake, to only set forth the difference between the old and the new agreements, and also to mention the fact whether or not these various changes were covered generally in the Heads of Agreement, which were drawn during Mr. Dewar's and Mr. Pascoe's visit to this country last May, and which have been approved by both companies under date of September 24, 1934.

(A) Under paragraph 4 sub-division (a), it was provided that the American Company would instruct the British Company in the manufacture of bearings. This clause has been changed in the new agreement to read "that the American Company will from time advise and instruct the British Company in the manufacture *of any kind of bearings which the American Company may be manufacturing*". The italic part of the preceding sentence is new, and due to the fact that the American Company logically can only advise at the present time on tapered roller bearings rather than on the general classification of bearings, which would pertain to ball bearings, straight roller bearings, etc.

(B) Under paragraph 7 (b) and 8 (b) the old agreements call for the payment of a 10% commission by each company covering sales of bearings into the others territory, and no mention whatever was made as to the prices at which these sales took place. During the past seven years it has been found that with the reduced prices in effect in recent years the original commission was too high, and it has therefore been

reduced to 5% in the new agreements. (This was covered generally in the Heads of Agreement signed September 24, 1934). Certain difficulties were also encountered due to no fixed agreement between the respective companies as to prices at which these bearings could be sold, and therefore the new agreement provides that neither company is permitted to sell into the other's territory except at prices approved by the company into whose territory the bearings are sold.

(C) Paragraph 9 is an entirely new section added to this agreement and covers the fact that the American Company is at liberty to grant licenses covering the manufacture of its steel in the territory of the British Company. The American Company agrees, however, that any royalties payable under such a license will be credited to the British Company covering steels or tubes sold to the British Company by the licensee. This new clause was inserted to eliminate any possible misunderstanding that might arise through the developments abroad of some of our specialized steel products.

[fol. 4068] (D) Paragraph 10, Sub-section A and B are new and provide for the fact that the French Timken Company pays no royalty to either the British Company or the American Comapny.

(E) Paragraph 10 (c) is an entirely new paragraph covering the establishment of Russia as so-called free territory. Under the old agreement Russia was British Timken territory and the American company had no rights to sell bearings into it, except through the payment of a 10% commission to British Timken. Under the new arrangement Russia is considered the territory of both the American Company and the British Company, and the expenses of developing sales in this territory will be equally divided between the two companies. In addition a commission of 2% will be paid by the company receiving Russian orders to the other company, and it is provided that all data pertaining to the procurement of Russian business, such as quotations, drawings, etc., will be exchanged between the two companies. There is also a provision to the effect that prices will be mutually agreed upon but that either company is permitted to accept orders

at low prices and extended terms without the consent of the other party, after having first submitted the prices and terms to the other party. It is also agreed that neither party will underquote the prices of the other party, but at the present writing we are in communication with Mr. Dewar to clarify this phase of the Russian situation, particularly in view of the statement heretofore mentioned about either party being permitted to accept orders at low prices and long terms. (This subject was generally covered in Heads of Agreement dated September 24, 1934).

(F) Paragraph 12, sub-section (A) and (B) specifies the new royalty of ½ of 1% as compared with the 4% royalty in the old agreements. (This feature was covered in the Heads of Agreement).

Sub-section (B) covers detailed deductions of the British Company when making royalty payments, and in the past they were permitted to deduct from the total British sales the amount actually paid American Timken for rollers and cages purchased from us. Under the new agreement this deduction has been eliminated.

(G) Under paragraph 15 the old agreement provided that the American Company would pay all patent costs of every description pertaining to the filing of patent applications, working of patents, taxes on patents, litigation, etc. This is impossible under the reduced royalty in effect in the new agreements, and therefore provision has been made that all of these expenses will be paid by the British Company covering patents in their territories. It is also provided that the British Company is not permitted to drop the maintenance of any patent except by giving four months notice to the American Company.

(H) Under paragraph 18 is set forth the fact that the new business agreement runs for a period of 16 years from January 1, 1935 up to December 31, 1950. The old business agreement under the existing provisions would expire December 31, 1943. (This was covered under heads of agreement dated September 24, 1934).

D. P. Hess.

[fol. 4069] January 8, 1935.

Memorandum III

Agreement #3

Title: Agreement as to Managing Directorship

(A) Paragraph 4 of this agreement provides that Mr. Dewar is to be the Managing Director of the British Timken Company for a period of 5 years from December 31, 1934 and thereafter until his appointment is terminated on six months notice. Under the old arrangement it was provided that "Mr. Dewar shall hold office as Managing Director during his life or until he shall resign such office by not less than six months notice in writing to the Company."

(b) Under paragraph 6 Mr. Dewar's appointment as Managing Director shall cease and determine under the following conditions:

(1) If Mr. Dewar vacates office as a Director of the Company.

(2) If the Company in General Meeting by Ordinary resolution decides that Mr. Dewar's appointment as Managing Director shall cease and determine.

Mr. Dewar's salary remains the same as in the past several years.

D. P. Hess.

[fol. 4070] January 8, 1935.

Memorandum IV(a)

Agreement #4a

Title: Agreement as to General Manager

This is an entirely new agreement and covers the employment of Mr. Dallow as General Manager of the Company for a period of 5 years from December 31, 1934 at a salary of £1500 ($7500.00) per year plus a commission on the net profits of the company for each year, equal to 1% of such profits up to £50,000 ($250,000.00) and 1½% of such profits in excess of £50,000 ($250,000.00) before any deduction for income tax. Mr. Dallow has been the Manager at Birmingham since 1927 at a salary of £1,000 ($5,000.00) per year, with the same commission on profits as outlined above. This increase in salary is merited by his work and is not

excessive for similar positions as now existing in England. It was felt necessary by Mr. Duncan, our attorney, that the executives of the company should be under service agreements before the shares are offered to the public, and we have therefore approved this employment agreement, as well as one for Mr. Pascoe described in Agreement 4b.

We raised the question with Mr. Duncan as to the status of Mr. Dallow's and Mr. Pascoe's employment agreements should the British Company fail to earn the required amount (£15,000) for the Dewar group to retain control of British Timken Ltd. (thus placing American Timken in control), and we suggested that Mr. Dallow and Mr. Pascoe agree to write a letter of resignation should such a condition take place. Mr. Duncan advised us that such a procedure was not legal in England, but that both Mr. Dallow and Mr. Pascoe had agreed verbally with him to resign under the circumstances outlined above, and Mr. Dewar further agreed to the same thing. We have accepted this as satisfactory and are exchanging letters with Mr. Duncan to this effect. It should be understood that Mr. Duncan is American Timken's representative on the Board of British Timken Limited, as well as Timken Holdings Limited.

D. P. Hess.

[fol. 4071] January 8, 1935.

Memorandum IV(b)

Agreement #4b

Title: Agreement as to Financial Adviser

This covers the employment of Mr. Pascoe as Financial Adviser of the British Timken Company for a period of 5 years from December 31, 1934, at a salary of £800 ($4,000.00) per year plus a commission on the net profits of the Company for each year equal to 6/10ths of 1 percent of such profits up to £50,000 ($250,000.00) and 1½% of such profits in excess of £50,000 ($250,000.00) before any deduction for income tax. This is the same salary and commission that Mr. Pascoe has been receiving for the past several years, and the circumstances covering his service agreement are exactly the same as outlined previously with regard to Mr. Dallow's service agreement.

D. P. Hess.

[fol. 4072] January 8, 1935.

Memorandum V

Agreement #5

Title: Consent Agreement

This agreement merely covers the members of the Company consenting to the passing of resolutions cancelling the existing Articles of Association and By-Laws and the substituting of new Articles of Association.

D. P. Hess.

[fol. 4073] January 8, 1935.

Memorandum VI

Agreement #6

Title: Nomination in favor of M. B. U. Dewar or Nominees

This particular agreement covers the issuance of the new stock created by the increase in capitalization of both A and B shares to Mr. Dewar or his nominees, so that such stock is in his possession for sale to the public. It is further provided that this authority shall only continue in force until August 1, 1935. In discussing this matter with Mr. Higgins the latter stated that this is the British practice in handling such affairs.

D. P. Hess.

[fol. 4074] January 8, 1935.

Memorandum VII

Agreement #7

Title: Authority with respect to Sale of Shares

This is entirely a new agreement and gives authority to M. B. U. Dewar to sell 125,000 shares of British Timken Limited so that the net return received after deduction of all expenses shall not be less than £1.4.0. per share (approximately $750,000.). This agreement also provides for issuing the increased number of shares to Mr. Dewar and ourselves in exactly the same ratio as shares now held. (This was covered in the Heads of Agreement dated September 24, 1934). It also provides for changing the shares of British Timken Limited from A and B shares to one class of shares before the stock is put upon the market.

In this agreement the new Holding Company set-up is arranged and, briefly, is as follows: The new Holding Company shall be named Timken Holdings Limited, with Articles of Association and By-Laws substantially the same that exists with British Timken Limited *as a private company*. The share capital of the new Holding Company is to be £125 divided in 2500 shares composed of 1250 A shares and 1250 B shares, and in addition there are 2500 registered participating rights which are attached to the heretofore mentioned A and B shares and cannot be separated from these shares. These particular rights represent all of the new shares held by American Timken and the Dewar group in new British Timken Limited as a public company, the total of such shares being 125,000 and which shares are deposited with the Holding Company. This new Holding Company, briefly, will operate the same as British Timken Limited did as a private company, to the extent that the Dewar group will exercise control of the Holding Company (and in this way will exercise a 50% control of new British Timken Limited as a public company) on the basis that British Timken Ltd. earnings shall be not less than £15,000 per annum and dividends of not less than £12,500 per annum are paid.

Provision is made in the Holding Company setting forth the fact that should one of the parties wish to sell a part of his interest in new British Timken Limited, the shares involved by such sale must first be redeemed through the [fol. 4075] Holding Company and offered to the other party for purchase. It is also provided that if either party sells 5% or more of its shares in the Holding Company, which in turn, of course, means its interest in new British Timken Limited, then the provisions through which control of the Holding Company is exercised (and new British Timken Limited as a result) are changed from the present status. In other words, if the Dewar group wish to sell 5% or more of their stock and American Timken buy it, then the Dewar group no longer control British Timken, and on a similar basis if American Timken choose to sell 5% or more of its holdings in new British Timken Limited, then the operation whereby we obtain control if the earnings fall below £15,000, etc., is also at an end.

It is also provided in this agreement that the 125,000 shares are to be sold at one and the same price and at the

same time, and that the amount received is to be divided between American Timken and the Dewar group on the basis of the number of shares held by each group, and, furthermore, a time limit for completion of the sale of these shares is set as August 31, 1935.

Provision is also made that this particular authority covering the sale of shares must be signed by each and every shareholder of the present British Timken Company as a private company.

We have also added a provision whereby the holder of 800 participating rights in the Holding Company can nominate a director of British Timken Limited as a public company and that the Holding Company will vote its interest in British Timken Limited to effect the election of such nominee.

D. P. Hess.

[fol. 4076] January 8, 1935.

Memorandum VIII

Agreement #8

Title: Shares and Interests in Timken Holdings Limited

This is a new agreement and covers in considerable detail the following major points:

(1) The sale of all shares in the Holding Company to each other, and all necessary acts by either party in connection therewith.

(2) Provision upon the death of Mr. Dewar for the American Company to have an option for a period of six months upon his shares at their fair value, and in case of disagreement the question of price is to be arbitrated by two London Chartered Accountants and an umpire to be appointed by such arbitrators in accordance with the English Arbitration Act of 1899.

(This agreement is practically the same as the one now in force and dated April 20, 1928, covering the American Timken interest and the Dewar interests in British Timken Limited as a private company.)

D. P. Hess.

[fol. 4077] Jan. 9, 1935.

Memorandum IX

Agreement #9

Title: Agreement covering re-distribution of various interests in different companies

This is a new agreement through which the American Company and its various subsidiaries, such as ICI and IBI, and Mr. Dewar, through his Luxembourg Holding Company, agree on the new division and operation of the French Timken Company and the German Timken Company. Briefly, the following points are set forth:

(1) Upon completion of the sale of British Timken shares to the public, Mr. Dewar is to purchase from American Timken a one half interest in French Timken and German Timken, and the price for this purchase is to be $400,000, of which $250,000 is to be paid in cash and a promissory note for $150,000 without interest and secured by Mr. Dewar's share of the assets of French Timken and German Timken. The promissory note will be that of Mr. Dewar's Luxembourg Holding Company and payment of such note will be made as follows: All monies paid by the French Company in respect of Mr. Dewar's French assets, in excess of $7,500 per annum, will be applied as a payment on the heretofore mentioned note. It is also specified that in case of liquidation or sale of the French or German companies, Mr. Dewar's share of such liquidation or sale shall be applied to the payment of the said promissory note.

(2) Mr. Dewar will have control of the French Company as long as the latter company pays a dividend of $24,000 per year. In this latter respect it is provided that such payment shall be made from "undistributed profits", and this clause is interpreted to mean the surplus of profits over and above losses earned after December 31, 1933. Should he fail to pay such an amount covering the operations of any year starting January 1, 1936, such default will mean that he loses control of the French Company, and such control passes into the hands of American Timken. (This was covered in Heads of Agreement dated September 24, 1934).

[fol. 4078] (3) Provision is made so that each party must offer his shares for sale to the other party before presenting them for sale to outside interests, and prices for such shares are to be determined, should the various parties fail to agree, by an arbitration board in accordance with the English Arbitration Act of 1899.

(4) The various transactions necessary upon the books of the American Timken Company to effect this new arrangement of the American Timken Company's foreign interests are to be handled by Messrs. Weiss and Hall of Ernst & Ernst. The plan is to consolidate all of our present foreign holdings into one subsidiary company, and this new company is to be known as Continental Bearings Ltd.. In this way it will be possible to charge off the anticipated losses we will take on our investment in the French and German companies against the anticipated profit we will have through the sale of British Timken Limited shares to the public.

(5) Under this agreement as received, no provision has been made whereby Mr. Dewar agrees to get our consent on the salaries of French Timken directors, similar to the method in force in British Timken Limited as a private company. We have cabled him and Mr. Duncan to have such a clause inserted.

D. P. Hess.

[fol. 4079]

Jan. 9, 1935.

Memorandum X

Agreement #10

Title: Business Agreement between British Timken Limited and S. A. Francaise Timken

This is purely a revision of the old agreement dated June 16, 1928 and covers the actual operation of the French Company as a subsidiary of British Timken Limited. This agreement is very similar to the business agreement between American Timken and British Timken Limited. The following are some of the major features covered:

(1) The French Company maintains at its own expense all patents owned by either the British Company or the American Company in the French Company's territory; i.e., France and its colonies

(2) The French Company pays no royalty to either the British Company or the American Company (covered by Heads of Agreement dated September 24, 1934).

(3) The French Company is permitted to sell into the territory of both the British and American companies at prices satisfactory to the latter companies, but must pay the usual commission of 5%. This same condition holds good for sales by the American or British Companies into French territories.

(4) Provision is made to the effect that both the American Company and the British Company can appoint its own auditors to go over the books of the French Company, but at the expense of the American or British Companies.

(5) This new agreement is to continue in force for the same length of time as the agreement between the American Company and the British Company; i.e., until December 31, 1950.

D. P. Hess.

[fol. 4080] PLAINTIFF'S EXHIBIT 22

Memorandum

Collateral with an Agreement dated Twenty ninth December, One thousand nine hundred and thirty four and made between The Timken Roller Bearing Company of Canton, Ohio, U.S.A. (1) and British Timken Limited of Birmingham, England (2) as to business between the said American Company and the said British Company.

To The Timken Roller Bearing Company, Canton Ohio, U.S.A.

It is hereby agreed that if and so long as the royalty of one half of One per cent (½%) payable under Clause 12 (a) of the above Agreement in respect of tapered roller bearings manufactured or sold by us shall not be payable by us to you in respect of tapered roller bearings manufactured by us and sold by us to Societe Anonyme Francaise Timken or Deutsche Timken Gesellschaft mit beschrankter Haftung we in quoting or selling tapered roller bearings manufactured by us to the said French Company or the said

German Company will give to the purchasing Company the benefit of the royalty which is not payable in respect of the bearings sold by way of an equivalent discount or other allowance from the price to be paid for such bearings.

Dated this Twenty ninth day of December, One thousand nine hundred and thirty four.

For British Timken Limited, M. B. U. Dewar, Managing Director, British Timken Limited, Birmingham, England.

[fol. 4081] PLAINTIFF'S EXHIBIT 23

Agreement

Dated Twenty Eighth May, One thousand nine hundred and thirty five.

Parties

1. The Timken Roller Bearing Company, Canton, Ohio, United States of America (the American Company).

2. British Timken Limited, Cheston Road, Birmingham, England (the British Company).

Supplemental to an Agreement contained in an Agreement and a Supplemental Memorandum both made between the parties to this Agreement and dated the Twenty ninth December, One thousand nine hundred and thirty four, constituting a Business Agreement between the American Company and the British Company.

Whereas

(a) It is provided in the said Business Agreement that it will become unconditional and come into full operation and effect as provided in another Agreement dated the Twenty ninth December, One thousand nine hundred and thirty four and made between the American Company (1) the British Company (2) and Michael Bruce Urquhart Dewar (3).

(b) The said other Agreement has been modified by an Agreement bearing even date herewith and made between the same parties as were parties to the said other Agreement (inter alia) so as to provide that the said Business Agreement shall be modified so as to come into full operation and effect forthwith.

Agreement

The said Agreement and Supplemental Memorandum constituting the said Business Agreement between the par-
[fol. 4082] ties hereto shall come into full operation and effect forthwith.

In witness whereof these presents have been executed by or on behalf of the parties hereto.

Signed sealed and delivered by Andrew Jameson Matthews Duncan as Attorney for and on behalf of the above named Timken Roller Bearing Company in the presence of: R. O. Squire, 65 Cheston Road, Aston, Birmingham.

A. J. M. Duncan, Attorney for or on behalf of The Timken Roller Bearing Company.

The Common Seal of British Timken Limited was hereunto affixed in the presence of: M. B. U. Dewar, F. A. Pascoe, Directors; R. O. Squire, Secretary.

[fol. 4083] PLAINTIFF'S EXHIBIT No. 24

Agreement

Dated Sixth day of June, One thousand nine hundred and thirty five.

Parties

(1) The Timken Roller Bearing Company, Canton Ohio, United States of America (the American Company).

(2) British Timken Limited, Cheston Road, Aston Birmingham, England (the British Company).

Supplemental to an Agreement dated the Twenty ninth day of December, One thousand nine hundred and thirty four, between the American Company and the British Company a Supplemental Memorandum of the same date and addressed by the British Company to the American Company and a Supplemental Agreement made between the British Company and the American Company dated the Twenty eighth day of May, One thousand nine hundred and thirty five the said Agreements and Memorandum consti-

tuting a Business Agreement between the American Company and the British Company.

Whereas:

A. By Clause 18 of the said Agreement dated the Twenty ninth day of December, One thousand nine hundred and thirty four, it was provided that the said agreement should come into operation and effect as therein mentioned and unless otherwise terminated as therein provided should continue in full force and effect for a period of Sixteen years from the First day of January, One thousand nine hundred and thirty five.

B. It has been agreed between the American Company and the British Company that the said period of Sixteen years from the First day of January, One thousand nine hundred and thirty five shall be extended to a period of [fol. 4084] Thirty years from the same date.

Agreement

1. The period of Sixteen years from the First day of January, One thousand nine hundred and thirty five mentioned in Clause 18 of the said Agreement dated the Twenty ninth day of December, One thousand nine hundred and thirty four shall be extended to a period of Thirty years from the First day of January, One thousand nine hundred and thirty five and as from the date of these presents the said Agreement shall be deemed to be altered accordingly.

2. The said Business Agreement constituted by the said Agreements dated the Twenty ninth day of December, One thousand nine hundred and thirty four and the Twenty eighth day of May, One thousand nine hundred and thirty five and the said Memorandum dated the Twenty ninth day of December, One thousand nine hundred and thirty four shall be read and take effect as if the period of Sixteen years from the First day of January, One thousand nine hundred and thirty five mentioned in the said Agreement dated the Twenty ninth day of December, One thousand nine hundred and thirty four had been a period of Thirty years from the First day of January, One thousand nine hundred and thirty five.

In witness whereof these presents have been executed by or on behalf of the parties hereto.

Signed, Sealed and Delivered by Andrew Jameson Matthews Duncan, as Attorney for and on behalf of the Timken Roller Bearing Company above named in the presence of: ——— ———, 10 Mayfair Place, W1, Private Secretary.

For and on behalf of The Timken Roller Bearing Company, A. J. M. Duncan, Attorney.

[fol. 4085] The Common Seal of British Timken Limited was hereunto affixed in the presence of: M. B. U. Dewar, Director; F. A. Pascoe, Director. Pvt. Secretary, — ———.

[fol. 4086] PLAINTIFF'S EXHIBIT No. 25

Agreement made the Fifteenth day of July, One thousand nine hundred and thirty five between British Timken Limited a Joint Stock Company incorporated under the Laws of the United Kingdom of Great Britain and Ireland and having its principal office in the City of Birmingham England (hereinafter for convenience called "the British Company") and Societe Francaise Timken a Societe Anonyme incorporated under the Laws of France and having its principal office in the Town of Asnieres in the Department of Seine France (hereinafter for convenience called "the French Company").

Whereas:

(a) The British Company manufactures anti-friction bearings (hereinafter called "bearings") in England and has great experience in the manufacture of bearings

(b) The French Company is the registered owner of the trade mark "Timken" in France

(c) The British Company or the French Company is or may be or become the owner of patents or patent rights in various parts of the world covering inventions relating to bearings and improvements therein

(d) The Timken Roller Bearing Company of Canton Ohio United States of America is hereinafter for convenience called "the American Company".

Now the parties hereto agree as follows:

1. For the purposes of this Agreement:

(a) The territory of the French Company shall mean the territories of the Republic of France on the Continent of

Europe and her Dominions colonies dependencies and mandatory territories in any part of the world except in or [fol. 4087] adjacent to North or South America

(b) The territory of the British Company shall mean the United Kingdom of Great Britain and Northern Ireland and all other countries of Europe and all Dominions colonies dependencies and mandatory territories of the United Kingdom and other European countries except in or adjacent to North or South America but shall not include the territory of the French Company

(c) The territory of the American Company shall mean the rest of the world outside the territories of the French Company and the British Company

(d) The British-American territory shall mean the territories of the British Company and the American Company in combination; and

(e) These territories and the corresponding meanings shall be subject to alteration from time to time by agreement between the parties hereto by letter or other writing.

2. (a) Each of the parties hereto as fully and freely as its patent and contractual rights and obligations permit and free of expense to the other party except as to out of pocket expenses will inform the other party as to all inventions discoveries improvements and practices useful in connection with the manufacture of bearings whether patented or not.

(b) The British Company so far as its patent and contractual rights and obligations permit and free of expense to the French Company except as to out of pocket expenses will license the French Company to operate manufacture and sell bearings in the territory of the French Company during the life of this Agreement under any Letters Patent or other patent rights now or hereafter from time to time owned by the British Company and pertaining to the manufacture or sale of bearings in the territory of the French Company.

[fol. 4088] (c) The French Company so far as its patent and contractual rights and obligations permit and free of expense to the British Company except as to out of pocket expenses will assign absolutely and for all time to the British Company or its nominees all Letters Patent or other patent rights now or hereafter from time to time owned by the French Company and pertaining to the manufacture or sale of bearings in the British American territory.

(d) The French Company if and when requested by and at the expense of the British Company will execute and do or cause to be executed and done all deeds acts and things which the British Company may consider necessary or desirable in order that any inventions discoveries improvements or practices useful in connection with the manufacture of bearings which may come to the knowledge of the French Company and which the French Company shall be entitled to communicate to the British Company for this purpose may be protected by Letters Patent or other patent rights in such parts of the British American territory and in such names as the British Company shall specify with a view to such patent rights being assigned to or otherwise vested in the British Company or its nominees in accordance with the provisions hereinbefore contained.

(e) The French Company hereby irrevocably appoints the British Company with power of substitution to be its Attorney for and in its name and on its behalf but at the expense of the British Company to execute and do all deeds acts and things which the British Company or its substitutes from time to time may consider necessary or desirable for the purpose of giving effect to the agreements on the part of the French Company contained in this clause.

(f) Provided however that nothing in this Agreement contained shall obligate either party to acquire or enlarge [fol. 4089] its interest in any Letters Patent or other patent rights.

3. (a) Each of the parties hereto will use its best endeavours to maintain the distinctive character of the trade mark "Timken" and refrain from any act calculated to prejudice the rights of the parties hereto or the American Company in respect thereof as now existing.

(b) The French Company if and when requested by the British Company will join with the British Company or the American Company in an application for concurrent registration of the trade mark "Timken" if and so far as such registration is possible in the territory of the French Company.

(c) The French Company upon the termination of this Agreement if and so far as it may be requested in writing by the British Company or the American Company will cause the name "Timken" to be eliminated from its corporate name and from the name of any person firm or com-

pany controlled by it and will refrain and will cause any person firm or company controlled by it to refrain from using the name "Timken" as part of or in connection with his their or its name or as a trade mark or trade name or otherwise and from any act calculated to obstruct or delay the British Company or the American Company in any steps which it may take with a view to establishing the exclusive right of the British Company or the American Company to the said name in the territory of the French Company and so far as practicable the French Company will assign or cause any person firm or company controlled by it to assign to the British Company or as it may direct any trade mark or other rights in respect of the said name in its ownership or control.

4. (a) So long as the French Company shall be actually engaged in the manufacture of bearings the British Company will from time to time give advice to the French Company with respect to the manufacture of bearings and particularly in connection with the quality of the steel used [fol. 4090] and its composition and analysis the method of case hardening the machinery and processes for grinding gauging sizing quenching die working forging upsetting forming sorting plating and other operations and in connection with any special tools and machinery and the French Company will follow such advice so far as the same shall be economically practicable under the circumstances of the business of the French Company.

(b) The French Company's manufacturing operations shall at all reasonable times be open to inspection by the British Company and the American Company or their representatives.

5. (a) The French Company by itself or its sub-licensees approved by the British Company if and when required by the British Company or the American Company will manufacture bearings in such quantities and in such States within the territory of the French Company and will exercise all such rights in connection with the manufacture of bearings as shall be required to maintain all Letters Patent from time to time owned by the British Company or the American Company in any State or States within the territory of the French Company.

(b) If the French Company desires to be relieved of the obligation contained in paragraph (a) of this clause

with respect to any State it shall be entitled to give notice in writing to the British Company that it excludes such State from the territory of the French Company and thereupon such State shall be withdrawn from the territory of the French Company and shall be added to the British American territory.

(c) For the purposes of this clause a State shall mean a territorial area in which there is separate jurisdiction for patent purposes.

6. Except with the consent in writing of the British Company and the American Company the French Company [fol. 4091] shall not manufacture sell or deal in any bearings except under and in accordance with the terms and provisions of this Agreement and under the trade mark "Timken" and except with the consent in writing of the British Company and the American Company the French Company will not commence to manufacture sell or deal in any other products.

7. The British Company undertakes that during the life of this Agreement the American Company and the British Company shall not directly or indirectly make or sell or license others to make or sell bearings in the territory of the French Company or in the British American Territory knowing them to be for shipment into the territory of the French Company save and except as follows to wit:

(a) The British Company and the American Company may make or sell or license others to make or sell in the British American territory bearings for delivery or shipment into the territory of the French Company as assembled component parts of completed articles of manufacture manufactured in the British American territory or assembled component parts of completed units of manufacture manufactured in the British American territory for incorporation into such completed articles of manufacture

(b) The British Company and the American Company in the British American territory may accept and execute orders for bearings for ultimate destination in the territory of the French Company for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorize sales to or known to be destined for manufacturers in the territory of the French Company or sales at prices in conflct with the wishes of the

[fol. 4092] French Company and the British Company from time to time will notify the French Company of the details of the sales authorized under this paragraph and will pay to the French Company an amount equal to five per centum (5%) of the net sale price received under any sales so authorized not being sales made through or at the request of the French Company

(c) The American Company may authorize not more than four manufacturers or producers of vehicles in the United States of America to import into the territory of the French Company bearings manufactured by the said producers in the American Company's territory for incorporation in new products or for bearing replacement purposes for products previously manufactured or assembled by the said manufacturers or producers or their subsidiaries in the territory of the French Company Provided that they are not stamped with or identified by the name Timken

(d) For the purposes of this clause a holding Company as for instance General Motors Corporation and its constituent and subsidiary Companies shall be deemed to be one manufacturer or producer

(e) The parties hereto recognize and approve the mutual licensing Agreement entered into between the American Company and International Harvesters Company dated the Thirty first day of December One thousand nine hundred and twenty seven and the British Company when requested by the French Company will supply to the French Company a copy of the said Agreement.

8. During the life of this Agreement the French Company shall not directly or indirectly make or sell or license others to make or sell bearings in the British American territory or [fol. 4093] in the territory of the French Company knowing them to be for shipment into the British American territory save and except as follows to wit:

(a) The French Company may make or sell or license others to make or sell in the territory of the French Company bearings for delivery or shipment into the British American territory as assembled component parts of completed articles of manufacture manufactured in the territory of the French Company or as assembled component parts of completed units of manufacture manufactured in the territory of the French Company for incorporation into such completed articles of manufacture

(b) The French Company in the French Company's territory may accept and execute orders for bearings for ultimate destination in the British American territory for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorize sales to or known to be destined for manufacturers in the British American territory or sales at prices in conflict with the wishes of the British Company and the French Company shall from time to time notify the British Company of the details of the sales authorized under this paragraph and shall pay to the British Company an amount equal to Five per centum (5%) of the net sale price received upon any sales so authorized not being sales made through or at the request of the British Company.

9. Notwithstanding anything in this agreement the American Company shall be at liberty to grant licenses to manufacturers to make and sell in the territory of the French [fol. 4094] Company Steel and/or tubes under Patents or according to methods and processes belonging to the American Company provided always that the American Company will make arrangements so that any royalty or charge which may be payable by any such licensee in respect of steel and/or tubes supplied to the French Company shall be credited to the French Company

10. (a) Subject to the approval in writi g of the British Company as to both terms and person-el to be exercised at its absolute discretion but not otherwise the French Company may from time to time grant sub-licenses to others to make use and vend bearings in the territory of the French Company and may communicate to such sub-licensees any information with respect to inventions, discoveries, improvements and practices whether patented or not received from the British Company

(b) Every such sub-license shall be deemed to be a license granted by the American Company and shall contain a provision to that effect similar to the provision in that behalf contained in this Agreement

(c) All the terms and conditions establishing the business and other relations between the French Company and any sub-licensee within the territory of the French Company shall be submitted to and approved in writing by the British Company before the same are agreed to by the French Company and no alteration shall be made therein without the like approval

(d) If the French Company shall acquire any stocks, shares, securities or other interest in any company or association manufacturing or selling bearings in the territory of the French Company the French Company shall not sell or dispose of such stocks, shares, securities or interest without the consent in writing of the British Company

11. Each of them the British and the American Company [fol. 4095] shall be entitled once in each year at its own expense to employ a Chartered Accountant who shall have the privilege of examining the books of account and records of the French Company and any sub-licensees of the French Company and taking notes or extracts therefrom.

12. (a) The French Company shall pay all renewal fees required to maintain and keep on foot all Letters Patent in respect to bearings in the territory of the French Company owned by the British Company or the American Company of which particulars from time to time have been supplied to the French Company by the British Company

(b) Provided however that if the French Company shall desire to discontinue or refrain from maintaining any such Letters Patent the French Company shall be at liberty to give not less than three (3) months written notice to the British Company and upon the expiration of the said period of three months the Letters Patent to which such notice relates shall belong to and be at the disposal of the British Company free from any rights of the French Company under this agreement and the French Company shall be under no obligation to maintain and keep on foot such Letters Patent

(c) The French Company at its own cost will defend every action or proceeding instituted for the purpose of revoking any Letters Patent with respect to bearings in the territory of the French Company owned by the British Company or the American Company so long as such Letters Patent is being maintained and kept on foot by the French Company under the provisions of this agreement.

(d) If any of the said Letters Patent shall be revoked solely on some ground which would not have been available if the French Company had duly performed its obligations [fol. 4096] under this Agreement then and in any such case the British Company in addition to any other rights which it might have against the French Company shall be entitled to recover from the French Company all costs,

charges and expenses reasonably incurred by it in defending the action or proceeding in which such Letters Patent is revoked.

13. Upon the termination of this Agreement whether under any of the provisions hereof or otherwise howsoever the French Company for a period of six (6) months thereafter shall have the privilege of completing and selling its stock of bearings on hand at the date of the said termination upon the terms which would have ruled if this Agreement had not been so terminated.

14. (a) In the event of liquidation of the French Company (except for the purpose of capital reorganization) or the appointment of a receiver of its undertaking this Agreement shall immediately terminate and cease

(b) The rights and privileges of the French Company hereunder shall be assignable only with the consent in writing of the British Company.

15. This Agreement unless otherwise terminated as herein provided shall continue in full force and effect for a period of thirty (30) years from the First day of January One thousand nine hundred and thirty five.

16. This Agreement is and shall be deemed to be entered into by the British Company on its own account and also for and on behalf of the American Company as a separate party so far as regards any rights benefits or obligations expressly granted, reserved or undertaken by or to the American Company and so far as regards such rights, benefits and obligations the American Company shall be entitled to claim the benefit and be subject to the burden of this [fol. 4097] Agreement accordingly.

17. The agreement between the parties hereto made as at the Sixteenth day of June One thousand nine hundred and twenty eight is hereby cancelled and the British Company for itself and the American Company hereby releases and discharges the French Company from all liability to pay for royalties which are now payable under that agreement by the French Company to the British Company or the American Company but this release shall not extend to any monies due on loan account or current account or otherwise than in respect of such royalties.

18. This Agreement is entered into in England and shall be construed and take effect according to English law.

In Witness whereof British Timken Limited has caused its Common Seal to be affixed and these presents in duplicate and Societe Francaise Timken under the authority of its Board of Directors has caused these presents to be signed by the Managing Director of the French Company in duplicate the day and year first above written.

The Common Seal of British Timken Limited was hereunto affixed in the presence of:

—. Dallow, A. J. M. Duncan, Directors; R. O. Squire, Secretary.

M. B. U. Dewar, Administrateur Delegué, S. A. Francaise Timken.

[fol. 4098] Witness to the signature of M. B. U. Dewar for and on behalf of Societe Francaise Timken

Beauvivier, Directeur de S. F. Timken, 5 & 7 Quai Aulagnier, Asnieres.

[fols. 4099-4113] Dated 15th July 1935.

British Timken Limited and Societe Francaise Timken.

Copy: Agreement.

Stibbard Gibson & Co., 21, Leadenhall St., London E. C. 3.

[fols. 4114-4115] PLAINTIFF'S EXHIBIT 28

List of Countries, Dominions, Colonies, Dependencies and Mandatory Territories in Each Sales Territory

American Timken Sales Territory	*British Timken Sales Territory*	*French Timken Sales Territory*
Afghanistan	Albania	Algeria
Alaska	Anglo-Egyptian Sudan	Cameroons
Argentina	Angola	France
Bolivia	Australia	French Equat. Africa
Brazil	Basutoland	French Indochina
British Honduras	Belgian Congo	French Somaliland
Bhutan	Belgium	French West Africa
Canada	Borneo	Madagascar
Canal Zone	British Isles	Morocco
Chile	British Somaliland	Tunisia
China	Bulgaria	Corsica
Chosen	Burma	New Caledonia
Colombia	Denmark	
Costa Rica	East Indies	
Ecuador	Egypt	
Greenland	Estonia	
Guatemala	Finland	
British Guiana	Germany	
Netherlands Guiana	Gold Coast	
French Guiana	Greece	
Hawaii	Hungary	
Honduras	India	
Iceland	Ireland	
Iran	Italian East Africa	
Iraq	Italy	
Japan	Kenya	
Karafuto	Latvia	
Labrador	Liberia	
Manchukuo	Libya	
Maritime Provinces	Liechtenstein	
Mexico	Lithuania	
Mongolia, Outer	Luxembourg	
Nepal	Malay States	
Newfoundland	Monaco	
Nicaragua	Mozambique	
Nova Scotia	Netherlands	

American Timken Sales Territory	*British Timken Sales Territory*	*French Timken Sales Territory*
Panama	Netherlands Indies	
Paraguay	New Guinea (Neth.)	
Peru	New Zealand	
Philippine Islands	Nigeria	
Prince Edward Island	Norway	
Puerto Rico	Palestine	
Russia	Poland	
Salvador	Portugal	
Sand. Arabia	Rio de Oro	
Siam	Rhodesia, Northern	
Taiwan	Rhodesia, Southern	
Tanna Tuva	Romania	
United States	Russia	
Uruguay	San Marino	
Venezuela	Sardinia	
Virgin Islands	Southwest Africa	
West Indies	Spain	
	Spanish Morocco	
	Swaziland	
	Sweden	
	Switzerland	
	Syria	
	Tanganyika	
	Tanna Tuva	
	Tasmania	
	Transjordan	
	Turkey	
	Uganda	
	Union of South Africa	
	Yugoslavia	

[fol. 4116] French Timken Territory

Republic of France on Continent of Europe. Dominions, Colonies, Dependencies and Mandatory Territory in any part of the world except North and South America.

British Timken Territory

United Kingdom of Great Britain, Northern Ireland, Eire and all countries other than France on the Continent of Europe. All Dominions, Dependencies and Mandatory territories any part of the world except North and South America but does not include any part of the territory of the French company.

[fol. 4117] List of Countries, Dominions, Colonies, Dependencies and Mandatory Territories in each Sales Territory.

Par. No. 1.

[fol. 4118] Plaintiff's Exhibit 34

British Timken & Fischer Plants as Described by Dewar

1. Main Birmingham plant and main office. This is the original plant expanded since the war by purchase of property across the street. Present employment is about 2,000 people. This plant they hope to dispose of after the war if they can buy the Northampton plant. The latter while 20% smaller is better laid out and should have the same capacity as the Birmingham plant.

2. Northampton Plant. This is what is called an "assisted plant" in that building and equipment were erected by the government and tooling was provided by British Timken. They believe they will be able to buy it at a fair price after the war, at the same time selling the Birmingham plant, and concentrate tapered bearing manufacture at Northampton Plant which is located at Duston, a small village near Northampton and about 50 miles southeast of Birmingham. About 850 are now employed.

3. Fischer Plant. This is located at Wolverhampton about 30 miles northwest of Birmingham. About 1,500 employees at present time. It is planned that this plant will make all the straight roller and ball bearings in the post-war period.

4. Other small plants now operated but in which British Timken has no financial interest and no idea of running in peace-time are:

1. East Works at Coalville near Leicester about 30 miles east of Birmingham. This is an old freight car plant employing 800. British Timken furnished tooling.

2. Heat-treating plant about halfway between Birmingham and Wolverhampton employing 40 people and operated as a safety measure.

3. Headnessford Plant operated by Fischer about 15 miles from Birmingham and employing about 350.

At present Dewar estimates British Timken and Fischer combined produce about 90% of British tapered roller bearings and about 10% of straight roller and ball bearings. S.K.F. produced balance of tapered roller bearings [fols. 4119-4137] and shares balance of straight roller and ball bearings with Ransome and Marles and Norma-Hoffman. He estimates all four companies as about equal and employing 6,000 each. British Timken growth has been much greater than that of the other bearing companies arousing some jealousy. Of British anti-friction bearing production he estimates 25% tapered and 75% straight roller and ball.

Latest sales estimates for British Timken and Fischer are 2,000,000 £ for the former with 120,000 £ profit before tax and 700,000 £ for the latter with 40,000 £ profit before tax.

Plants are now generally operating 53 hour shifts of 5½ days on a two shift basis. Take home pay has practically doubled with men now averaging 250 £ per year and girls 150 £.

Bearing prices are all over the map as a result of wage changes and of successive use of Swedish, American and British tubing at .06, .12 and .25 cents per pound respectively.

W. Robert Timken.

[fol. 4138] PLAINTIFF'S EXHIBIT 38

October 13, 1927

MR. LOTHROP:

Following is a brief outline of the items discussed with Mr. Dewar on his recent *vitis*:

General

Question of royalty was settled on a 4 percent basis, except in cases where British Timken sell to either of our contemplated continental subsidiaries. In these cases we shall receive 2 percent and British Timken shall receive 2 percent from these subsidiaries. The general details of the new contract between ourselves and British Timken are practically the same as the present contract, except that we are given the right on service bearings to fill orders received in New York or other shipping points for bearings going into British Timken territory. We shall continue in such cases to remit to British Timken 10 percent of the net selling price. This agreement is made reciprocal in the sense that British Timken can execute orders received in their territory for service bearings on a similar basis.

British Timken take upon themselves the necessity of registering the name "TIMKEN" in all of their territory I impressed Mr. Dewar with the fact that this should be done at once.

Yours very truly, —— ——.

DPH-HGW

[fol. 4139] PLAINTIFF'S EXHIBIT 39

13th January, 1928.

D. P. Hess, Esq., Messrs The Timken Roller Bearing Co., Canton, Ohio, U.S.A.

DEAR MR. HESS:

As we are actively servicing Timken bearings throughout the whole of Europe, we naturally come up against difficulties from time to time, but a somewhat serious one has just come to our notice which we want to put before you.

In Budapest, Hungary, Timken bearings are serviced by

Mr. Michael Pal, and he has been doing remarkably good business for us during the last year. In the same city there is a house called Messrs Denes & Friedmann, who are the representatives of the Timken-Detroit Axle Company through their British connection. As you know, we have established service prices for bearings identical with your own and operate with the same discounts, but we are much alarmed to find that Messrs Denes & Friedmann can sell Timken Axle sizes considerably cheaper than our own distributor. You can imagine that our own representative to whom we have granted the distributorship of Hungary is naturally upset and feels that the Timken organization as a whole are not doing the right thing.

It seems to us that the Timken-Detroit Axle Co. are taking advantage of their position inasmuch that they buy from you at low prices and ship them over to our territory [fol. 4140] on a small margin of profit, and this does interfere with our service prices. We realise that it is a very difficult problem, but if an opportunity presents itself for mentioning it to your friends in Detroit perhaps you will do so.

Yours faithfully, For British Timken Limited, W. E. Hobley, Sales Manager.

[fol. 4141] PLAINTIFF'S EXHIBIT 40

February 17, 1928

Mr. W. E. Hobley, Sales Manager, British Timken Limited, Birmingham, England

DEAR MR. HOBLEY:

We have finally concluded arrangements with Timken Detroit Axle Company with reference to the sale of our bearings through their distributors in Europe, and particularly in Budapest, Hungary.

Mr. Emmett, of the Automotive Products Company, London, is in touch with this situation, and I believe it would be wise for you to call upon him. He will receive instructions from Timken Detroit to the effect that he should not undersell us or you on service bearings. After you have

seen Mr. Emmett, I would be delighted to hear from you in this regard.

Yours very truly, The Timken Roller Bearing Company, —— ——, Assistant to the President.

DPH-HGW

[fol. 4142] PLAINTIFF'S EXHIBIT 41

6th March, 1928.

Mr. D. P. Hess, Messrs The Timken Roller Bearing Co., Canton, Ohio, U.S.A.

DEAR MR. HESS:

I am very much obliged to you for yours of the 17th February saying that arrangements have been finally completed with the Timken Detroit Axle Co., whereby they shall not in future undercut our various distributors who are situated throughout Europe.

The writer knows Mr. Emmott very well and will take an early opportunity of seeing him and collaborating with him in the sale of service bearings, as presumably they will still be interested in those sizes which are used in the various Detroit Axle models.

Your letter arrived just at the time when we had a visit from Mr. Michael Pal of Budapest, and there is no doubt that the situation which has arisen there is very embarrassing to him. He has made a great deal of propaganda in the country of Hungary, which has resulted in him enjoying quite a good turnover, and it is very disconcerting that the Timken Detroit Axle Co.'s representative is able to offer bearings for replacement at ridiculously low prices.

Yours faithfully, For British Timken Limited, W. E. Hobley.

[fol. 4143] PLAINTIFF'S EXHIBIT 42

Birmingham, 22nd March, 1928.

D. P. Hess Esq., Messrs The Timken Roller Bearing Co., Canton, Ohio, U. S. A.

DEAR MR. HESS:

In your letter of the 17th February you mentioned that arrangements had been concluded with the Timken-Detroit Axle Co. apropos the sale of their service bearings throughout Europe. We have not had an opportunity up till now of seeing the Automotive Products Co. in London, who are the British representatives for the T.D.A. Co., but hope to do so very shortly.

Our reason for writing now is to ask if this arrangement which you have made with Detroit will embrace Australia also. Col. Murray White, who is touring Australia and investigating our distributing arrangements very closely, reports that the firm of Messrs Motor Traders are the agents for the T.D.A. Co. in Australia, but whether their agreement is with the T.D.A. Co. direct or through their London house, we cannot say. The fact is, that they are importing bearings from Detroit and distributing them throughout the trade at lower prices than our own authorized distributors can. As you know, we have established list prices identical with your own, and it is unfair for the Timken-Detroit Axle Co. to service their bearings throughout our territory at lower prices just because they are in a position to do so.

We should like you to take this matter up with them as soon as ever you can make it convenient.

Yours faithfully, For British Timken Limited, W. E. Hobley.

[fol. 4144] PLAINTIFF'S EXHIBIT 43

April 18, 1928.

Mr. W. E. Hobley, Sales Manager, British Timken Limited, Birmingham, England.

DEAR MR. HOBLEY:

Relative to our discussion with Timken Detroit Axle as to the resale of Timken Bearings in Europe, we cannot at

this time give you any information whatever on Australia. I believe frankly, that nothing further can be done until you have a talk with Mr. Emmott, of the Automotive Products Company, on his return to London. We have ascertained from Timken Detroit Axle Company that they have been giving Mr. Emmott a discount of 50 and 10 off list, and possibly a 5 percent discount for cash. It naturally follows that on such a basis various representatives in Europe cannot, as we see it, undersell your representatives except in some minor instances. However, you must bear in mind that while we have certain influence with the Timken Detroit Axle Company, we do not at the moment know of any pressure we could bring to bear on other axle companies who may be doing identically the same thing through European representatives that the Automotive Products Company have undertaken. Naturally, once the trademark of Timken is registered in England, this situation can be entirely cleared up, and Mr. Strough advises me that Mr. Duncan is to bring this subject to Timken Detroit Axle Company's legal representative in your country for attention. Our own suggestion would be that you keep us informed of what troubles you encounter in this regard, partly after you have seen Mr. Emmott, and we shall continue to do everything we can to assist you in this matter.

Yours very truly, The Timken Roller Bearing Company. —— ——, Assistant to the President.

DPH-HGW

[fols. 4145-4146]. Copy

PLAINTIFF'S EXHIBIT 44

July 13, 1929.

British Timken Limited, Birmingham, England.

GENTLEMEN:

Confirming our various cablegrams to you, we are making the following shipments of tractor bearings during July:

500 sets	78216-78551	
500 "	69354-69630	July 17th
500 "	484-474-A	
Same		July 24th
1,000 sets	78216-78551	
1,000 "	69354-69630	July 31st
1,000 "	484-474-A	

In accordance with your latest cablegram we are planning to ship you the following bearings during August:

1,000 sets	78216-78551	
1,000 "	69354-69630	Aug. 7th
1,000 "	484-474-A	
Same		Aug. 14th
Same		Aug. 21st

This is causing us, frankly, a great deal of changing in our plan of operations, as it meant putting all of this type of machinery to making these large bearings, on double shift and operating them seven days per week; but we feel that you need this help very badly at the present [fols. 4147-4148] time, and our joint efforts must be made to keep competition out of this Ford situation.

You may be interested to know that the Ford Motor Company, Detroit, upon receiving advices that your deliveries were not satisfactory, from their English and Cork representatives, immediately placed an order with us for approximately 5,000 sets of bearings, and of course they would have to pay our prices for them. We felt this would be a very serious handicap to your future sales, as they would constantly hold up the fact to you and possibly to us, that you could not handle their production after we

had used our efforts, as you know, successfully, to have them turn over this entire production to you.

We discussed it among ourselves here, and decided the best thing to do would be to make up as many bearings as you needed, and guarantee Ford Motor, Detroit, that you would meet whatever deliveries they required, and we in turn would back you up a full 100 percent. This seemed to satisfy Ford Motor, Detroit, and we are leaving it entirely in your hands as to keeping both the Cork and Manchester authorities thoroughly sold on Timken Bearings from all standpoints, and especially that right now, of delivery.

We are shipping these bearings to Ford, Cork, Ireland, freight prepaid, and are going to bill you your selling prices to Ford. In other words, the following prices:

78216-78551—$5.89
69354-69630— 2.38
484-474-A— 1.51

As you understand, these prices for the differential bearings in particular, are very materially below the prices that we sell Ford, and these quotations to you must be held in strictest confidence, as we certainly would be asked to explain the difference in prices we bill to Ford and the prices to you; and our explanation of this would be that we are billing you such prices on account of the close relationship between the two corporations, and that the British Timken [fols. 4149-4150] Company is standing whatever losses may be incurred.

We are very much interested in knowing your definite plans as to handling future Ford production requirements, and if you are likely to need any additional help from us please write us in detail along this line, so that we can make whatever arrangements are necessary here, to provide ourselves with material, tools, etc. in sufficent time to take care of your requirements.

Yours very truly, The Timken Roller Bearing Company. —— ——, Assistant to the President.

DPH-HGW

P.S.—Have decided to make up an additional 1,000 sets of bearings over and above your orders, while our machinery is set up and in operation. D.P.H.

88—352

[fol. 4151] PLAINTIFF'S EXHIBIT 45

Postal Telegraph

R2CH PO 70 VIA RCA

WELWYN Aug 3 1929

NLT HESS
Care Timken Canton, Ohio

Citroen inform us that they have bought one hundred thousand bearings direct from you stop Can you use best endeavors discourage them doing this in future and refer them to Frantimken as the ability to purchase in New York is causing delay in arriving at arrangements in Paris stop Please cable me % Frantimken Paris shall be there Tuesday congratulations on half year results

Dewar
917A

[fol. 4152] PLAINTIFF'S EXHIBIT 46

Cablegram

August 3 1929
Dewar
Frantimken
Paris, France

We have sold Citroen thirty thousand sets 2788-2720 and thirty thousand sets 1779-1729 and twenty thousand sets 14132-14274 and twenty thousand sets 1755-1729 bearings to be used with Salisbury Axle Company and Columbia Axle Company front axles stop Citroen purchased ten thousand Salisbury rear axles and fifteen thousand Columbia rear axles stop We advised Citroen to communicate with Frantimken explaining our price plus duty must be higher than yours stop Axle sizes much too heavy for Citroen car as we know it stop We assume axles and bearings are for a light truck stop Will appreciate advice

Spray
10301

[fol. 4153] PLAINTIFF'S EXHIBIT 47

Western Union

RXHB355 Cable-B London 88 1/58
LCO Hess Timken-Canton, Ohio

Citroen requirements next year as follows sixty thousand bearings monthly February March seventyfive thousand bearings monthly April May June one hundred thousand bearings monthly July August September requirements up to February covered by orders alread- placed with you or Frantimken negotiations now proceeding on questions of delivery and price will keep you informed stop Please do not quote Citroen New York any prices without communicating with Frantimken stop Am hoping arrange contract at prices which will permit of bearings being made Paris Canton or Birmingham

Dewar.
10321

Received October 12
Telephone No. P Line
Telephoned to I. M.
Time Received 119 P. M.
By F. A. B. Mld.
Attempts to Deliver W. C. fad 118 Copy Made

[fol. 4154] PLAINTIFF'S EXHIBIT 48

Cablegram

October 11 1929

Dewar
Britimken
Birmingham
England

We will make no quotations to Citroen.

Hess
10322

[fol. 4155] PLAINTIFF'S EXHIBIT No. 49

10, Mayfair Place
London, W.1.
6th June 1932.

D. P. Hess, Esq. Timken Roller Bearing Co. Canton, Ohio.

MY DEAR DON:

. . . . . .

3: PRICE ARRANGEMENT WITHIN THE COUNTRY: In this direction, you will be interested to hear that largely at the instigation of the R.I.V. Company, we have attended meetings of all the manufacturers in France with a view to finding means not only to prevent further price cutting, but to raise our prices.

The fact that all the companies operating in France are very anxious to prevent the continued competition and consequent falling in prices, is an interesting commentary on the present position.

As I have indicated above, it has been most unfortunate that the commencement of operations with French Timken coincided with the severe fall in prices throughout the world and a consequent shrinkage in trade. I think we should endeavour to regard French Timken as an entity on its own and that its finance should be so arranged that it will have an opportunity of establishing itself on a firm basis.

Further, it would appear more economical to make these cuts in interest particularly, rather than to pay the interest out having it subjected to tax and having French Timken in a position where it needs assistance as to Loans.

Yours very sincerely, s/ M.B.U. Dewar

P.S. I am returning to Paris next week when I hope that we may be able to conclude a price agreement between all the companies operating in France.

[fol. 4156] PLAINTIFF'S EXHIBIT 51

22nd June, 1932.

D. P. Hess Esq., Timken Roller Bearing Co., Canton, Ohio.

MY DEAR DON:

After a lot of discussion the French manufacturers, SKF, RIV, SRO, M. & B. and Timken, have decided to try an arrangement which may prevent the senseless price cutting which is going on to-day.

The basis of this arrangement, which has been provisionally concluded to start as from the 1st July and to continue for eighteen months, is that each company should have a percentage of the total of the anti-friction bearing business in France, and that they shall not exceed this quota.

At present, we have not decided on the firm of Accountants who shall be appointed to examine figures to see whether the percentages are being kept, nor have we been able to arrive as yet at any penalties for firms which exceed their quota; but still, a beginning has been made.

As our position in France is that we only manufacture Tapered Roller Bearings, we have been accorded special treatment as we cannot take any part of our quota in Ball Bearings. As it has been difficult to arrive at a total figure for the French market without careful independent investigations, all the percentages have been calculated on the average SKF plus RIV turnover for the years 1929, 1930 and 1931.

I am informed by SKF privately that they have concluded in France and in most parts of the world, a 20 years' agreement with RIV. In France, the average total SKF-RIV turnover for three years was given us as 136 mi" on francs; ($5,400,000.00) of this figure we understand RIV is 15%.

[fol. 4157] Our average turnover, worked out on the same basis, came to 6.75% of SKF plus RIV. We claimed that our business was a steadily increasing one at the expense of Ball Bearings and our quota was increased to 7%.

The SRO figure is 17½%; the M. & B. figure I do not know but it is somewhere between 5% and 8%.

These percentages have all been arrived at by independent negotiations between SKF and the firm concerned.

As mentioned above, we are compelled, as we do not make Ball Bearings, to take the whole of our quota in Tapered Roller Bearings, and so far we have had a continually expanding market. For this reason, I objected very strongly to our quota being 7%. The result has been that we came to an agreement for our turnover for this current year to be 10 million francs, ($400,000.00) which will allow us 5 million francs ($200,000.00) for the second half year. In order to arrive at our next year's figures, it was agreed that we should take our turnover this year extended at the list prices of the Bearings.

For example, supposing we sell 10 million francs, $400,000.00) this year, the list prices of Bearings being 70 million francs, then SKF have undertaken that our turnover next year at list prices shall not be less than 56 million francs, i.e. 80% of this year.

This figure, you will understand, is a minimum guarantee, our maximum being the 7% of whatever the SKF-RIV turnover may be next year.

It is hoped that the trade may be able to increase their prices by at least 20%. This price increase, even with a restricted turnover combined with the proposed cuts in our Overheads, about which I have already written to you, should put us on as favourable a position as the other French manufacturers who are more firmly established but who, nevertheless, have been living on their reserves.

[fol. 4158] It will interest you also to know that during these negotiations, SKF showed to us their agreement with Citroen by which Citroen is compelled legally to place all his orders with them for all Tapered Roller Bearings. On the other hand, Citroen is now negotiating with us and I think we shall ultimately arrive at an understanding with SKF that we shall be entitled to have a proportion of the Citroen business at reasonable prices.

Altogether, I am reasonably satisfied with these negotiations and I feel sure that they will be beneficial to our interests in France.

It is possible that as a result of these negotiations, further talks will take place in England with a view to SKF and ourselves coming to some understanding, but I do not think anything in this direction will be done before the middle of July.

Yours very sincerely, Michael B. U. Dewar

[fol. 4159] PLAINTIFF'S EXHIBIT 52

22nd June, 1932.

D. P. Hess Esq., Messrs. Timken Roller Bearing Co., Canton, Ohio.

MY DEAR DON:

Many thanks for your letter of the 10th June.

With regard to the SKF standards, we have, of course, a separate standard in England; and France, too, have a different standard. The SKF standard has been adopted for the other countries.

I saw de Benedetti in France last week, but apart from their general suggestion that we should join forces with them in France, they have not got any nearer making a direct proposal. As, however, our new arrangement in France will entail all the firms working more closely together, it is quite possible a proposal will come from them in the near future. As regards Russia, I have asked Mr. Pascoe to write to you in full on this matter.

Yours very sincerely, M. B. U. Dewar.

[fol. 4160] PLAINTIFF'S EXHIBIT 53

July 7, 1932.

Mr. M. B. U. Dewar, 10 Mayfair Place, London, W. 1., England.

DEAR MICHAEL:

Just received your very interesting letter with reference to the French arrangement covering bearing production for the next 18 months. Naturally, we were somewhat disappointed at the small percentage we were able to get, and I am wondering just how this will affect us in the phase of our development program of replacing ball bearings in motor truck design. I judge from your letter that our turn over is to be held to 10 million Francs, and that the replacement of ball bearings by tapered bearings has no effect on increasing this amount.

I am just a little bit puzzled as to the reason for using list prices in computing our turn over for next year. Am I correct in assuming that this is to be the standard

method of arriving at the quota for the various bearing manufacturers or was this a special concession in our favor along the line of making sure that our turn over for next year would not decline more than 20%? Personally, I am not very optimistic as to the possibility of increasing prices 20%. You understand, of course, that my reasoning is largely based on a similar condition in this country and I fully appreciate that particularly on the Continent things are done considerably different than here.

Your statement with regard to Citroen is exceedingly interesting, and at your convenience will you advise us on what basis Citroen is legally compelled to place his orders with S.K.F. Pending your further advice, I am assuming that this was part of the deal for his financing but on the other hand it was our impression that the financing was done by Swedish bankers rather than by S.K.F. directly.

With kindest personal regards, I am

Very truly yours. Assistant to the President.

DPH:MC

[fol. 4161] PLAINTIFF'S EXHIBIT 54

19th July, 1932.

D. P. Hess, Esq., The Timken Roller Bearing Company, Canton, Ohio, U. S. A.

MY DEAR DON:

Many thanks for your letter of the 7th instant. I am sorry that you feel disappointed at the smallness of the percentage allotted to S.A.F.T. I enclose you a copy of my letter to the Chairman of the French SKF Company which sets out my views clearly. As a matter of practical politics I do not think that the percentage will affect us next year. It certainly will not affect us this year.

I am sorry that I did not make it clear in my letter as to why list prices were taken in arriving at the turnover to be guaranteed us next year. In the minds of SKF and RIV is fixed the idea that all turnovers in anti-friction bearings will probably decrease 20%. Supposing that prices remain next year on the same basis that they have been for

the first six months of this year, SKF are not prepared to guarantee us for next year more than 80% of our turnover for this year. As however they are hoping to bring about a considerable rise in selling prices, the only way of giving effect to such an idea was to take the list prices of our sales for this year and next year in order to arrive at 80% of the 1932 turnover to be guaranteed us for 1933. Personally I think we have got an exceptionally favoured position in obtaining this guarantee if you consider the big percentage which Renault and Citroen are and have been of our total turnover. If we were to lose them both our [fol. 4162] turnover would be very considerably reduced, and certainly a very long way below 80% of our current year's turnover. In this regard SKF and RIV and everyone with whom I have spoken, including our own staff, are unanimous in their opinion that Renault will make more of their own bearings, particularly if we endeavour to increase the selling prices. SKF told us that Renault had informed them that by the middle of next year they expected to be manufacturing all their own tapered roller bearings with the exception of four symbols. We do not think ourselves that Renault will get quite as far as this.

SKF showed us also their agreement with Citroen, of which I will tell you more later. This agreement, if SKF cared to enforce it in law, compels Citroen to place all orders for tapered roller bearings with SKF.

I think after considering these two points regarding Renault and Citroen you will agree that 80% guarantee for next year is considerably in our favour.

I note you are doubtful about the possibility of raising prices 20%. I am too, but the French prices have been so long uneconomical that I do not think there is likely to be quite the objection that there would be in some other countries. It has already been agreed to advance our service prices 10%. We cannot go further then this as Fischer could then import bearings from Germany.

I do not think that our new agreement is likely to affect the replacement of ball bearings by tapered roller bearings. Also we are in a position to give reasonable delivery of the larger size tapered roller bearings, and I have definite understanding with Mr. Bratt of SKF that we shall be at liberty to supply bearings beyond our quota in instances where anyone else is unable to supply. Certainly in the event of Renault making more of their own bearings we

shall have plenty of room within our quota to supply truck bearings, which business, by the way, is getting on really quite well.

The SKF-Citroen agreement is a signed and sealed legal document in which Citroen undertake to place all orders for tapered roller bearings required by them with SKF at [fol. 4163] cost price plus 10%. There is a formula included for arriving at the cost price and the figures are subject to audit. Although this is an entirely independant agreement between Citroen and SKF on paper, it undoubtedly formed part of a series of agreements—(1) for finance, (2) for instructing Citroen in ball bearing manufacture, and (3) for supplying special steel to Citroen.

Yours very sincerely, M. B. U. Dewar.

Enclosure.

[fol. 4164] 23rd June, 1932.

M. Bratt, Compagnie d'Applications Mecanique, 15, Avenue de la Grande Armee, Paris.

Dear Mr. Bratt:

I have to thank you for your courtesy and patience in the discussions which have proceeded between your Company and S. A. Francaise Timken in Paris recently.

I am glad that a temporary agreement has been reached. Like you, I hope that during the continuance of this temporary arrangement a basis may be found for some more permanent and lasting agreement.

As I advised you verbally at the end of our meetings in Paris, we, of S. A. Francaise Timken, have accepted the present agreement, particularly that part of it embodying the percentage of the CAM-RIV turnover of 7%, because we feel sacrifices must be made all round to come to an agreement.

When the discussions, which must take place in the near future for a more permanent arrangement, are being held, we are anxious that you will not reproach us if we endeavour to arrive for the future at a higher percentage than that at present allotted to us.

Our main reason will be the continued expansion of the Tapered Roller Bearing business which has occurred and

is bound to continue at the expense of the Ball and parallel roller business.

With kindest regards,

Believe me, Yours very sincerely, —— ——.

[fols. 4165-4166] PLAINTIFF'S EXHIBIT 55

July 29, 1932.

Mr. M. B. U. Dewar, 10 Mayfair Place, London, W. I., England.

DEAR MICHAEL:

Your letter of June 22nd regarding the French anti-friction bearing agreement has been given considerable thought by us, and while we feel that a limitation on volume in France during depression times will have its advantages, there are still a few points that are not entirely clear to us.

Your letter of July 19th, just received, clarifies the situation to some extent, but we are wondering how we can expand our French turnover to such an extent that it will be profitable as our past records indicate, that even with the economics you are putting into effect, we cannot break even with sales less than $400,000.00 ton $450,000.00 annually. Furthermore, as we understand it, our percentage is based on the combined SKF-RIV volume, and as we replace ball bearings with taper bearings, are we not automatically reducing our volume by cutting SKF-RIV sales due to the fact that they furnish the greater part of anti-friction bearing requirements in France.

Of course, the fact that we are permitted to supply over our quota where no one else is in a position to supply, may help temporarily, but if French SKF follow England SKF, they will certainly put themselves into a competitive position with us on taper bearings for commercial vehicle use.

Are we correct in assuming that the combined turnover figures given in your letter of June 22nd as 136,000,000 francs represent SKF and RIV sales of all kinds of anti-friction bearings, and no SKF steel is included?

With kindest regards, Very truly yours, The Timken Roller Bearing Co., —— ——, Assistant to the President.

DPH:MC.

[fol. 4167] PLAINTIFF'S EXHIBIT 56

Aug. 4, 1932.

Mr. M. B. U. Dewar, 10 Mayfair Place, London, W. I, England.

DEAR MICHAEL:

As instructed by our Board of Directors, I wrote you recently with reference to the French Timken situation. Judd Spray was advised by Bill Batt of SKF that he had received information from Sweden to the effect that RIV and SKF had made an agreement whereby SKF would handle the sale of RIV bearings all over the world with the exception of Italy. This ties in somewhat with your statement about these two companies making a 20 year agreement, but I cannot conceive just why any such sales agreement covering distribution would be made when both companies make the same line of product. If you get an opportunity will you try and check this statement or give us any other information you can along this line.

We are trying very hard to obtain the Ford Canadian business for you, and it now looks like we are going to be successful. SKF is quoting against us but we have a very good idea of what their prices are and are arranging our quotations accordingly. Unfortunately, Ford at the present time is having considerable trouble with his eight cylinder car and is planning on changing the axle design, which, of course, will affect our bearings, and the Canadian plant has held up all purchases for the time being. We will keep you posted in this matter.

With kindest regards, I am Very truly yours, The Timken Roller Bearing Co., —— ——, Assistant to the President.

DPH:MC.

[fol. 4168] PLAINTIFF'S EXHIBIT 57

23rd August, 1932.

D. P. Hess, Esq., Timken Roller Bearing Co., Canton, Ohio.

MY DEAR DON:

I have to acknowledge receipt of your letter of August 4th.

I find it exceedingly difficult to reply to your letter of the 29th July on the subject of our agreement with SKF-RIV in France. There appears to be such a different view put in your letter from what I know your view would be if you were here that it is difficult to put all the points in a letter. I am, however, drafting a reply which I hope will convey to your Board the position.

The information that Spray has received from Batt is quite correct. I have recently had the pleasure of meeting the Chairman of the R. I. V. at their French factory at Chambery which, by the way, is a wonderful factory, although at least twice as large as anything they require. He told me that they have made an agreement with SKF to the effect that SKF will handle all the sales of RIV Bearings all over the world with the exception of Italy and Russia; in Italy 85% of the Bearings used will be RIV and 15% SKF. Russia is free territory and the subject of no agreement as yet.

The SKF-RIV agreement is, as you say, for 20 years.

The reason I think the agreement has come about is as follows:

The RIV plant in Italy is now probably as big as the SKF plant in Gothenburg. Roughly 80% of the capacity of [fol. 4169] the RIV plant is being sold to Russia. How long this will go on it will be difficult to say, but there is no doubt that supposing the Russian market were to dry up, RIV would be forced to find markets for this enormous output which would certainly have the effect of cutting price levels all over the world.

I am informed on very good authority that of the present SKF output in Gothenburg, 60% at least is now for Russia.

The SKF-RIV agreement makes the Timken situation

outside the United States really worse than it was before, as RIV have a very large production of inch size Bearings, in fact almost as complete a range as our own, and I have no doubt we shall soon begin to feel cuts in Service prices, and I expect that you will also in the territories outside the United States.

The RIV factory in France is brand new and of 15,000 square metres floor space on one level, with north light roof. They have tied themselves up now to SKF to a turnover of not more than 20 million france per annum for this factory, and they have made the suggestion to us that instead of our moving into a new factory, we should share their factory at Chambery with them.

You will probably have noticed that Prytz has just been made Chairman of the International Re-organisation Committee of the Swedish Match Company, so that it is possible somebody else may take control of the policy of SKF. It they do, I think it quite possible that negotiations may be set on foot again to try to find some arrangement between us.

With kindest regards, Yours very sincerely, M. B. U. Dewar.

[fol. 4170] PLAINTIFF'S EXHIBIT 58

30th August 1932.

Mr. D. P. Hess, The Timken Roller Bearing Company, Canton, Ohio.

MY DEAR DON:

I have to acknowledge receipt of your letter of 29th July on the subject of the French anti-friction bearing agreement. The points raised in your letter as as follows:

1. A limitation of production in France during times of depression will be advantageous.
2. We are prevented from expanding our turnover.
3. If we cannot expand our turnover how is it going to be possible to make a profit?
4. Owing to our percentage being based on S.K.F. sales if we reduce S.K.F. sales we automatically reduce our percentage.

The whole basis of an agreement with S.K.F.-R.I.V. is to make it possible to increase prices. Since the formation of S.A.F.T. we have been forcing our way into the French market by replacing ball bearings with taper bearings. S.K.F. have replied to this by manufacturing taper bearings here and selling them at prices which as you know have become unprofitable. Any increase in prices will help our position and if no increase in price is effected then the agreement will undoubtedly lapse. Your letter seems to me to overlook the fact that the agreement must have a beneficial effect on us this year and does not extend beyond the end of 1933.

Referring to the points raised in your letter of 29th July, as I have outlined them above, with regard to (1), I [fol. 4171] do not understand why there is to be a limitation of production. The proposal is to keep the relative output as existing between the different manufacturers on the same basis as it is to-day for eighteen months and to avoid unnecessary price cutting. If the total volume of business decreases then output will decrease. If the total volume of business increases then output will increase.

With regard to (2), we have to some extent tied our hands for a very short time, but against this we have received for next year a guarantee of anyhow 80% of the business we have obtained this year. If S.K.F.'s contention that business will fall off next year to the extent of 20% is realised then we are put into a good position by such a guarantee.

If we assume that our turnover during the current year is Frs. 10,000,000 ($400,000.00), 4.3 millions ($172,000.00), will probably be for Renault and 1 million ($40,000.00) for Citroen. S.K.F. have only to enforce their written agreements with Citroen to take this million from us. If, as S.K.F. contend, Renault will in the coming year make a bigger proportion of his taper bearings then our output will automatically be reduced by a reduction in our Renault turnover.

From this you will realise that the expansion of our business, if Renault make all their bearings themselves and S.K.F. make all the Citroen bearings, must come from heavy vehicle sources which will certainly take us over 18 months to exploit and in any event there is nothing to prevent us taking commercial vehicle bearings as part a-

our quota at fair prices and letting the Renault business be done by Renault himself at his own loss.

With regard to (3), in spite of making all possible economies that we can here in every way, we are more likely to achieve our desire to make a profit by an increase of anti-[fol. 4172] friction bearing prices rather than by reducing prices to a still lower level than they had reached six months ago.

With regard to (4), as the agreement is only to the end of 1933 this point does not seem to be of any great importance. Further our calculations go to show that the S.K.F.-R.I.V. turnover for 1930 was in the region of Frs. 170,000,000 ($6,800,000.00), and for 1929 even higher. This has been confirmed by their Managing Director.

With regard to the third paragraph of your letter about French S.K.F. following England S.K.F., I regret that I cannot understand the meaning of the paragraph.

With regard to the last paragraph, you are correct in assuming that Frs. 136,000,000 ($5,440,000.00), represents the S.K.F.-R.I.V. sales of anti-friction bearings excluding railway bearings and excluding steel.

In 1931 it is estimated that the production of taper roller bearings was approximately as follows:

Timken	12.5	million francs	$500,000.00
S.K.F.	4.0	" "	$160,000.00
R.I.V.	1.0	" "	$40,000.00
			$700,000.00

For 1932 the same figures will be approximately:

Timken	10.0	million francs	$400,000.00
S.K.F. & R.I.V.	3.5	" "	$140,000.00
			$540,000.00

Of this total of 13.5 million francs ($540,000.00), the Citroen and Renault orders to us will be in the region of 5.5 millions, ($220,000.00), this leaves a balanee of all taper roller bearing orders of Citroen and the other manufacturers o 8 millions ($320,000.00), so that under our agreement we have received a guarantee from S.K.F. of all the taper roller [fol. 4173] bearing orders placed this year with the exception of Renault and 1 million of the Citroen business.

I trust that this letter will make it a little more clear to you that we regard this deal as entirely satisfactory and likely to lead to a very much better state of affairs.

Yours sincerely, Michael Dewar.

I wish you were here. 5 minutes would suffice to enable you to appreciate that which takes weeks by letter.

Just off to Brittany for 10 days holiday.

Dewar.

[fol. 4174] PLAINTIFF'S EXHIBIT 59

Postal Telegraph

1932 Nov 3 AM 7.

HA1 90 Cable-Paris 2 NFT, NLT Timken—Canton, Ohio—

Have made rearrangements Fratimken operations so that we can come very close breaking even on guaranteed minimum sales next year under Blare (SKF) agreement approximately three hundred twenty thousand dollars stop have just obtained fair volume Citroen business to June next year also working on deal to obtain one third Citroen business stop relations with Blare (SKF) excellent here and working on arrangement in England details of this on my return stop going Birmingham until ninth ther return ing Paris stop has Griffith written Strauss Krupp regarding my visit—

Hess.

[fol. 4175] PLAINTIFF'S EXHIBIT 60

4th November, 1932.

Mr. H. H. Timken, Timken Roller Bearing Company, Canton, Ohio.

DEAR MR. TIMKEN:

Just returned from Paris and a further study of the French situation.

As you recall, I wired you we were exceeding our so-called quota, sales being (of all Anti-Friction Bearings) 11% instead of 7% and September figures now show our

business represents 13%. This, of course, indicates just one thing, and that is the growing popularity of our product, and this is bound to be a source of further discussion as to our quota. We also find that the whole operation of the so-called cartel, like all other such plans, is giving its originator and operator SKF considerable trouble.

As you know, SRO (a Swiss Ball Bearing maker with a French plant) were allotted 17%, but they are now up to 20% and SKF can't get their customers to accept RIV Ball Bearings in place of SKF—the customers ordering SRO instead—so this makes matters still more involved. On top of our 13%, we just received two-thirds of the Citroen commercial vehicle requirements to June of next year. This should be about $20,000.00 or about one-third of all the Citroen business we have done so far in 1932, and Bratt, head of French S.K.F., said he would try to arrange during 1932 to give us one third of the total Citroen business.

One thing is very encouraging about the operation of the cartel. Between SKF and ourselves we have raised [fol. 4176] prices about 5% and come to a definite agreement as to service prices in France.

Incidentally, we were told definitely by SKF that they had loaned Citroen personally considerable money and he was tied up to use SKF Bearings and steel. You know we thought he might have received this money from the Swedish bankers, possibly Kreuger & Toll, but we now know just where he got it, and we were further told that the Citroen notes, coming due this year, would be renewed.

The Michelin Tyre people also helped Citroen at the same time.

Dewar and I have been discussing what to do in case they try to reduce our volume to the quota figure and after considering various plans, we have come to the conclusion to try and hold our present volume (about $400,000.00 sales annually) and in exchange for this higher quota, offer SKF one half of our steel tonnage in France. This seems like a good move and will possibly be quite acceptable to SKF as their steel production in Sweden must be very low at this time.

Dewar and Bratt, head of SKF in France, are very friendly. Prytz is coming to England in December as head of a Swedish trade delegation, and we have lined up a

tentative programme to discuss with him regarding England.

I wired Bill to send four chucking machines to France. Our truck business in the larger sizes is growing very fast and we are working two shifts trying to fill the orders, and even then can't quite meet deliveries.

We have definitely decided to renew our present lease for another year, and feel certain we can get a reduced rental.

I told you in my wire we had worked out economies so that with even a reduced sales volume of $320,000.00 annually (our guaranteed minimum) we could very nearly break even. Will describe this in detail on my return, but have told the French-Timken operating staff that is a definite programme, as we cannot continue taking any [fol. 4177] further losses.

Dewar is keenly alive to the entire situation and is spending at least half his time in France.

Higgins is here and it looks like we finally have the financial structure definitely set up in simple form, unless we again run afoul of these rotten French taxes and laws. The experts in Paris are now on it and we should have their decision next week.

With best regards to you all, Sincerely yours, Don P. Hess.

[fol. 4178] PLAINTIFF'S EXHIBIT 61

5th December, 1932.

J. D. Spray, Esq., Timken Roller Bearing Co., Canton, Ohio.

MY DEAR JUDD:

This letter is just to confirm the cables which have passed between us, which are as follows:

Your cable 1.12.32:

"Trying to Improve Conditions in Canadian Market Stop Do You Approve Comparing Your Quotations Which We Have Here with Blare for Canada and Dagenham."

My cable 1.12.32.

"L.70 Yours not Understood Our Prices for Ford Canada Are Slightly Higher Than Ford Dagenham Stop We Are

at Present Negotiating with Blare England Regarding Dagenham Stop We Understand that Blare Parent Factory Supplies Canada Stop Understand that Blares Chairman in London Shortly".

Your cable 2.12.32.

"L70 Pending Your Meeting with Blare Chairman Will Discuss Canadian Prices Only with Blare New York".

I do hope you are writing as even after your last cable I am still rather in the dark.

I take it that you are trying to improve the price level in the Canadian market. Is it your suggestion that you and ourselves should try to arrive at a general arrangement with SKF regarding quotations to Ford in Canada and at [fol. 4179] Dagenham, or for other manufacturers in Canada as well as Ford? As I believe you are aware, we have not as yet had to reduce our f. o r. prices for Canada as low as we have had our prices driven down for Ford Dagenham.

During Mr. Hess's visit, he told us of certain events on your side of the water. The result of this information has been that we are engaged at present in negotiating an arrangement with SKF to cover orders placed by Ford Dagenham. As the SKF position is at present, their English Company is only interested in Dagenham. Their Swedish Company is interested in the Canadian market and in all other places where they assemble cars.

As you probably know, we have at present practically the whole of the Ford European business with the exception of a percentage in England and with the exception entirely of their German orders. Our proposed agreement for Dagenhan will be on the basis of us having 70% and SKF having 30% of the work.

I would add, in addition, that we hope to come to an arrangement on Service work for all Bearings in England as part of the same arrangement.

I shall naturally be most interested to hear how your negotiations regarding Canada go. If, as seems extremely probable, sterling depreciates in terms of gold still more than it has done, we should still be in a position to compete with SKF in Canada provided we have the benefit of your selling organisation to help us.*

With kindest regards, Yours very sincerely, Michael B. U. Dewar.

* & of course if you will write!!

[fol. 4180] PLAINTIFF'S EXHIBIT 62

13th December, 1932.

Mr. D. P. Hess, The Timken Roller Bearing Company, Canton, Ohio. U. S. A.

MY DEAR DON:

On Friday, the 9th December, a meeting, which we had expected for some considerable time, actually took place. The meeting was more or less at the request of Mr. Agnelli, who, as you know, is very anxious to join up with us in France so that our plant could be transferred to his half-empty factory at Chambery. His argument is that the combined outputs of RIV and Timken in one factory would have the effect of cheapening production.

The Meeting consisted of the following:

Mgr. Director	Agnelli	R. I. V.
Sales Mgr.	de Benedetti	
	Forsberg	SKF Gothenburg
	Batt	SKF New York
Mgr. Director	Bratt	SKF France
	M. B. U. Dewar	British Timken, England.
	F. J. Pascoe	

Prytz was unable to be present, but Forsberg took his place.

[fol. 4181] Agnelli opened the discussion by asking what could be done about the French situation. We replied that before any such thing as joint manufacturing between Timken and RIV (who are so closely associated with SKF) could take place, it would be essential to have the very closest co-operation and probably even manufacturing agreements between SKF Gothenburg and the Timken Roller Bearing Co. at Canton. We pointed out that if they wanted such a close association it would be essential for them (SKF) to take the matter up with T.R.B. as it would be impossible for Timken and RIV to manufacture side by side in one factory in France without all the technical information, both regarding processes of manufacture and applications, being common knowledge.

Agnelli suggested that SKF would probably be willing to waive their right of entrance into the French RIV fac-

tory so that no-one other than RIV would know of our methods of manufacture, application, and so on.

Forsberg then stated that SKF could not possibly agree to this as it was entirely one-sided, RIV having access to the whole of the SKF knowledge regarding Ball Bearings, which would consequently come to Timken, and SKF being barred from any knowledge which they might acquire from the RIV association with Timken.

After Forsberg's remarks I said that even if SKF had no access to the RIV factory in France, RIV themselves were very serious competitors in Tapered Roller Bearings manufactured in Turin. After that I re-iterated that in my opinion—and it was an opinion only as I had no right in any sense whatever to speak for the T.R.B., Canton, and I had no knowledge of what was in their thoughts—I felt that the key to such very close co-operation, as joint manufacturing, lay between SKF, Gothenburg, and the T.R.B. in Canton.

Mr. Batt then informed us that he had had some discussion of an informal nature with T.R.B. regarding the possibility of stabilising prices in the Canadian market. This brought from Mr. Fosberg a statement to the effect that SKF, Gothenburg, had asked SRO in Switzerland, to ap- [fol. 4182] proach Fischer in Germany with a view to a possible price arrangement of a world-wide nature between SKF, Fischer and SRO.

Mr. Forsberg pointed out that as long as Fischer was outside it was extremely difficult to make any price arrangements even in Tapered Roller Bearings alone in countries which had low tariffs. He informed us that he was advised that Fischer was now making a range of Tapered Roller Bearings up to really large sizes.

My feelings, as a result of all this discussion, are that everybody is anxious to come to some arrangement to prevent the increase in capacity for the production of Anti-Friction Bearings and also to prevent further price cutting. As you are aware, there is at present an arrangement over Anti-Friction Bearings in France between all the manufacturers who count. In England, Timken have just concluded an arrangement with SKF on prices to be quoted to Ford, Dagenham, and on Service Bearings in England.

RIV have concluded a twenty years' agreement with SKF

over all the world except Russia. The next step is, undoubtedly, for SKF to try and bring Fischer into line. When they have done that, I think there will be every prospect of arriving at a price agreement on Tapered Roller Bearings on the Continent and in all countries where such action is legal.

You will notice in the above discussions that England was not considered at all from the general Anti-Friction bearing point of view. I am, however, able to tell you that SKF, England, have invited us to discuss with them some arrangement on Ball Bearing prices for Industrial purposes.

As you are aware, their Industrial business in England is the business from which they obtain most of the profit for their English Company.

I am glad to be able to tell you this, as we have long felt [fols. 4183-4184] here that the threat of attacking the SKF industrial business in England and in other lucrative markets would cause SKF to seek to protect themselves by mutual agreements on Anti-Friction Bearing business.

Yours very sincerely, (signed) Michael Dewar.

* I have received another letter stating our German manager Wrba had been approached by SKF relative to agree on Rolling Mill prices in Germany—Duncan is writing me in detail on this last move—

Don H
12/24

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* denotes handwritten note.

[fol. 4185] PLAINTIFF'S EXHIBIT 63

European Trip

D. P. Hess

August & September 1933

[fol. 4186] September 28, 1933.

BRITISH TIMKEN LIMITED

British Timken sales so far this year are $1,000,000.00, being 25% above last year's sales, and profits, before taxes, are approximately $48,000.00 for the first seven months as compared to $36,500.00 for the same period last year. The increase in sales volume is largely in the automotive division but where prices are very low. In fact, automotive sales are double last year's sales, and a good portion of this can be traced to Ford's success with his 8 HP car—the competitor of Morris' and Austin's small popular priced models. We have had 90% of the Ford business and as he had reached a volume of 200 cars daily on his 8 HP, one can easily realize the result on our sales volume. However, all British automotive production is up approximately 20% over last year and we have shared in this business. Commercial vehicle sales are up about 8% and service sales about 15%. Russian business has amounted to 12% of our total sales volume. (The entire Russian subject will be discussed later in this report).

During the current year, real progress has been made in cooperation with SKF to not only stabilize sales prices but to raise them generally, and contracts for the last half, do in many cases, call for a 5% increase in prices. The need for this is vital when we consider the fact that automotive and commercial vehicle sales prices have declined about 30% since 1929. This is due almost entirely to SKF competition but our present relations with them in England are quite cordial and we feel that for the next year we face no further price cuts. This relationship with SKF started with our offering to split the Ford business on a 70-30 basis during my visit last fall, but it is interesting to know that we continue to receive 90% of Ford business, due in all probability to the fact that we are considered 100% British, and of even more importance, we give Ford

excellent service and have assigned one man to spend practically all of his time at Dagenham. Another point of interest in our Dagenham Ford relations is that Ford refuses to follow the same practice as Detroit in fitting pinion bearings, insisting, in cooperation with British Timken engineers, that Detroit is fitting entirely too tight and that at Dagenham they have much better results with a "looser" fit. In other words, the pinion gear turns freely and not like the tight method used at Detroit. I explained the entire Ford Detroit situation to our Mr. Hill of British Timken, so that he would be prepared for any complaints, but he assured me that Dagenham is entirely satisfied with present results and refuses to follow Detroit unless they get into trouble. Incidentally, the success of the Ford 8 HP model has greatly stirred British automotive circles and there is a definite trend to bring new models out more in conformance with American design, and we feel that this will cause both Morris and Austin to redesign their axles and possibly give us an opportunity to replace the present ball bearings, at least in the front wheels.

The British Bock Company of Glasgow has finally decided to liquidate and the entire stock of bearings on hand has been taken over by us and SKF and divided equally. In the contract which is in the name of British Timken, it is specified that all tools and gauges and special machinery is to be destroyed, and the writer agreed to cancel our present license to British Bock and transfer it to British Timken. No further manufacture of Bock bearings is contemplated so the license is merely to protect the name of Bock. The plan was to divide the present Bock customers between SKF and ourselves, but at the time of my visit this was not working out very well as most of Bock customers were demanding Timken bearings, but we are [fol. 4187] giving SKF a copy of every inquiry so that they can quote on the business. We decided this was the fair and wisest thing to do, and if they cannot get the business, it is entirely their own fault.

Industrial sales continue to grow and indastry generally in England is on the upgrade. I was told that the steel business is better than any time since 1929 and in the Sheffield district every open hearth furnace is in operation. We are getting a goood many inquiries for bearings in this industry. The new tariff is helping the manufacture of machine tools and this in turn will help us.

No new agreement between England and Russia has been reached, and while negotiations are still in progress no one knows what will happen. There is no question, however, but that the present time is very serious for Russia. It is no longer a secret that they have asked and received extensions from Germany on this Year's payments of bills, and possibly from Italy. They are placing very little business anywhere and then only on very long terms with no down payment. Recently an order was placed in Germany for a large tonnage of steel bars and rails at 48 months terms. I questioned the truth of this but our Dr. Wrba told me he knew one of the Germans making the deal. He further told me that 30-36 months was not out of the ordinary. Later in London, I ascertained that the new Russian-Italian agreement just signed called for terms ranging from 28 to 44 months with a government guarantee of 70%. It is getting increasingly difficult to get anything like accurate information as to conditions in Russia, but there is a very definite food shortage in many districts and the so-called 5 year plan of food production is a flat failure. We are further told both in Germany and England that industrial production is falling far behind due to the ruination of machinery by unskilled Russian labor. Just before I left France, I learned that there is a real possibility that the Soviet regime will try to make some settlement of the old Czarist Russian debts, hoping in this way to get some kind of long term credit. This is most likely if they fail to get U. S. A. recognition in the very near future, as the Soviet has exhausted all the old blandishments of placing big orders with European nations. It is, however, considered a typically Russian trick and no one takes it seriously. Just how much the present Hitler regime in Germany will effect Russian trade relations is, of course, not known, but the feeling in Germany is very definitely pro-Hitler, which must mean anti-Russian with its communistic trait. This, of course, would force Russia to go elsewhere for machinery, etc., and most naturally to England or the U. S. A. It is very doubtful, however, if England will give long terms and if we in the U. S. A. do likewise, the Russians are very much "up against it". Most Englishmen feel that we Americans will fall for the Russians and their promises, particularly if our government guarantees a part of the invoice value, but at the same time

they admit they themselves would like the business but on British terms.

There is no real sales improvement so far in our railroad business at British Timken, but several encouraging developments have taken place. The largest railroad in England, London, Midland & Scottish, has definitely undertaken modernizing their equipment and also buying new equipment. They are greatly pleased with the performance of our bearings and tell us we shall get more orders eventually. Our record on the Metropolitan Railway has attracted nation wide attention and we are getting good publicity from it. All the underground lines, bus systems and trolley cars in the London metropolitan district have been merged into one big corporation and two of the five men in responsible positions are very good friends of ours. Mr. Halley, formerly Traffic Manager at Metropolitan, is now Chief [fol. 4188] Operating Manager in charge of all traffic for the new combine, and Mr. Groffbaker, a personal friend of our Mr. Pascoe, is Assistant Chief Mechanical Engineer and is slated to be Chief Mechanical Engineer very shortly. With these two men favorable to us, we should get a large volume of this kind of business in the coming years. During my visit, we decided to have Mr. Spear, who handles British Timken railroad sales, come at once to America and he will spend some time with us. Attached to this report is a record of British Timken railroad sales to date, as well as present inquiries.

Manufacturing

British Timken has made real progress in improving their manufacturing practice during the past year. The weakest point has always been in the Screw Machine Department, but from July of 1932 to the present time, they have increased the output of this department from 50 to 70% and improved the quality in a like manner. They give most of the credit for this to the two linemen we sent them some time ago, and the writer is satisfied that they have overcome this serious obstacle. In fact, practically all the machines are timed exactly like Canton's, and while they do not equal our production, they do very well considering the small quantities they have to make. The entire cup and cone grinding department, except OD cup grinders, is operated by female labor and all machines operate on Canton units.

The new ball bearings are starting to come through and they expect to be producing 16,000 per month by the end of September. As far as I could tell, they are producing an excellent job and tests they showed me indicated performance was better than their competition. Two of the largest manufacturers, Leland and Standard, have told Mr. Dewar we can have half of their ball bearing business whenever we are ready to produce. I urged them to go very slow in this development and found Mr. Dewar entirely in accord. They are selling straight roller bearings in the industrial field, mostly for electric motors, but here again, we are following the policy of "making haste slowly".

Several changes are being made in the British Timken executive staff which will be described verbally by the writer.

Financial

British Timken's position continues to be very sound as is evidenced by their balance sheet, and it is a question in the writer's mind if they are not entirely too conservative from the standpoint of possible mergers alone. This point I discussed very carefully with Mr. Pascoe and will go into all details with Mr. Ernst and Mr. Brower. To emphasize this point I asked Mr. Pascoe to prepare a statement showing the true values at the present time, of our investment in British Timken, and this is attached to this report and marked Exhibit "C". Personally, I would like to see us put British Timken stock in the open market, when the right time comes, as I feel we should be in a position to take something back out of this company. I discussed this subject with Mr. Dewar and Mr. Pascoe and they will give it some thought and discuss it with us on their visit to America next Spring.

No further discussion with Ransome & Marles regarding a merger has taken place. Both Mr. Dewar and Mr. Pascoe feel that such a combination is almost impossible as long as Col. Higgs dominates Ransome. We rather feel that our improved relations with SKF will evidently bring on discussions among all antifriction bearing manufacturers and thus possibly pave a way for future mergers. SFK are greatly disturbed about our entry into the ball bearing [fol. 4189] field and have already asked us to agree on industrial prices. Mr. Dewar stated we would discuss this

after we got under way to some extent and also after we see how we can work together on taper prices.

Both Mr. Dewar and Mrs. Pascoe are watching the R.I.V. (Italian) situation very carefully and Mr. Dewar is keeping in constant friendly contact with Angellis, head of R.I.V. Our latest information is that the R.I.V. plant is very slack due to the letdown in Russian orders, and our British associates feel that they will use every means to sell this output at low prices, all over the world. This, of course, might affect us materially in South America and Canada where we have maintained good service prices, but it is the writer's opinion we shall have no great difficulty in the U.S.A. as long as the present tariff is maintained and with the depreciated dollar.

General

Business conditions in England are improving almost daily and I have never seen so much optimism expressed by all Englishmen with whom I came in contact. As heretofore mentioned, both the steel industry and automotive industry are improving materially and all railroad lines report increased traffic and earnings. Consumer buying is given as being 50% above the past three years average, and several of the writer's friends in England selling direct to the ultimate consumer say they are having difficulty supplying the trade. I spent a few hours discussing present conditions with a certain Mr. Glenday attached to the British Federated Industries Board (similar to our U. S. Chamber of Commerce). He is reputed to be one of the best British economists and he feels Britain is headed for several years of real prosperity but as he remarked "no boom times like you have in the U. S. A.". His remarks on our present activities in America were very interesting and I will report them verbally. Another Englishman whom I found exceptionally well posted was Mr. Wallace, head of the Chase Bank. He was more conservative than Mr. Glenday regarding British affairs but definitely stated that going "off gold" was Britain's salvation and that in his opinion England was finished forever as a "free trade country". With only one exception, I found that British industrialists and bankers feel certain we will have inflation in the U. S. A. and possibly of a drastic character. Their observations of our labor situation is quite interest-

ing but too lengthy for this report and I will give it verbally to anyone interested.

Mr. Dewar and Mr. Pascoe plan to come to America next Spring as soon as Mr. Timken has returned.

D. P, Hess.

DPH:MC.

[fol. 4190]

EXHIBIT "C"

British Timken Limited

To December 31, 1932

British Timken was purchased in September 1926, the first Accounts under the new conditions being made up to 31st December, 1927. The statement below shows the profit of each year and the amounts paid in dividends; the amounts carried to Reserve Funds, all figures being after deduction of Income Tax.

Period to 31st December				
Year 1927	Profit	$331,149	To Reserve	$243,343
Year 1928	Profit	297,697	To Reserve	170,340
			To Special Reserve	73,003
Year 1929	Profit	293,316	To Reserve	170,340
			To Special Reserve	24,334
			To Dividend net	77,870
Year 1930	Profit	205,808	To Reserve	146,006
			To Dividend	47,145
Year 1931	Profit	275,881	To Reserve	146,006
			To Dividend	73,003
Year 1932	Profit	75,228	To Reserve	97,337
			To Dividend	45,626
In Six Years—Total Profit		$1,479,043	Total to Reserve	$973,375
			Total Special Reserve	$97,337
			Total Paid in Dividends	$243,647
Balance carried forward to 1933				$164,721
In Six Years Net Assets of British Timken have increased by				$973,375
Plus				$164,721
				$1,138,096

The above is calculated after depreciation has been written off all Plant at the normal rate of 7½% and after setting aside a Special Reserve for obsolescence of $97,337.

To arrive at real increase of Net Assets allowance should be made for hidden reserves created in the amounts at which Tools and Gauges stand in Balance Sheet and the bidden reserve in the Stock figure.

[fol. 4191]

Tools and Gauges. In June 1931 a valuation was made by Heatley, Kirk & Price which showed a valuation for Tools of $196,972 against a Balance Sheet figures of $22,699, giving as Hidden Reserve $174,273—and as Tools in September 1926 were worth approximately $43,801 (valuation not Balance Sheet figure).

	$174,273
	$ 43,801
	$130,472

Stock

October 1926. Wages in Stock and W.I.P.	$42,964
Charges 165%. Charges on Wages in Stock 56%. Hidden Reserve 109% of $42,964	$46,833
December 31, 1932. Wages in Stock and W.I.P.	$73,669
Charges 416%. Charges on Wages in Stock 56%. Hidden Reserve 360% of $73,669	$625,210
Increase in Hidden Reserve in Stock from 1926 to 1932	$625,210
Less	$46,833
	$218,377

It follows that true increase in Net Assets of British Timken is:

$1,138,094	—Reserve and carry forward
$ 130,472	—Hidden Reserve in Tools
$ 218,377	—Hidden Reserve in Stock
$1,486,943	

Net Assets of British Timken are worth—$1,973,631.

Further, our present Lend Buildings bought for $97,337 were valued in 1931 by W. K. P. at $355,281; giving a further Hidden Reserve of $257,944.

So Net Assets of British Timken may now be shown as	$1,973,631
Plus	$ 257,944
	$2,231,575.

[fol. 4192]

The Timken Roller Bearing Company originally invested $255,510 in British Timken. On this investment we have received in dividends $127,914.

We have also received in royalties, since the above investment was made $260,194.

In the same period we have received orders for materials and equipment, amounting to $524,342.

Our true present investment in British Timken based on December 31, 1932 figures is $1,171,573.

being 52½% of the amount shown heretofore as $2,231,575.

Note: All figures given based on par exchange $4.86—1£. Present exchange rate is $4.78—1£.

DPH:MC

D. P. Hess.

[fol. 4193]

British Timken Limited
Aston, Birmingham

Ref. No. R. S. 1.11.
Date: 25th July, 1933.

Railway Axleboxes and Bearings

Details of Supplies by British Timken Limited

Railway	No. of Vehicles	Details	Drawing No.	Bearing Series	No. of Brgs.	Date	Remarks
Egyptian State Railways	7	Coaches "H" Type Bogies.	IND. 889	95,000	56	Aug. 1928	Bearings satisfactory. Excessive wear experienced in horn guides, Liners suggested to overcome this.
Langlaarte Estate S.A.	1	16 ton Hopper Truck.	IND. 991	745	2	Aug. 1928	Single Bearings employed. One axle only fitted.
London Electric Railway (Underground Group)	1	Elec. Motor Coach, Power Bogie.	D. 1050	95,000	4	Oct. 1929	Have run 124,000 miles without trouble. Axleboxes fitted on car of District Rly. for tyre wear trial Jan. 1933.
		Trailer Bogie.	D. 1051	945	4	Oct. 1929	
German State Railway		Experimental purposes.	D. 1200	202,000	1	Oct. 1929	Never fitted to rolling Stock.
Randfontein Mine S.A.	4	40 ton Hopper Wagons.	IND. 949	95,000	32	Jan. 1930	
Peruvian Corporation	1	Elec. Loco. 0-4-4-0 Class.	D. 1209	95,000	8	July, 1930	Completed 15,000 Kilometres in March 1932, with every satisfaction.
Notre Rly. Spain	1	Coach.	D. 1233	95,000	8	July, 1930	Inspected June 1933 and quite satisfactory.

[fol. 4194]

Railway	Per	Details	No.	Bearing Size	Remarks
Main Line Railway in this Country.	Charles Roberts & Co.	Fast Freight Wagons.	4 or 11	153,000	Price now submitted.
L. M. S. Railway.	Harland & Wolff.	Diesel Shunting Tractor.	1	—	Transmission only. Scheme set, etc., complete:
S. Australian Rly.	—	Locomotive Tenders.	2	95,000	Scheme and price submitted.
Bombay Tramway Co.	Henry Williams India (1931) Ltd.	Tramcars.	25	775	do.
Beira Alta Rly., Spain.	J. Stone & Co.	Coaches.	20/50/100 Boxes	95,000	do.
Railway Company in this Country.	Cravens Ltd.	Battery Rail Car.	1	935 & 835	do.
Chosen Railway.	—	Diesel Rail Cars.	—	560/552A	Scheme and price submitted.
Keijo-Denki K. K., Korea.	—	Tramcars.	—	786A/773	do.
Norwegian State Rly.	—	Coaches.	—	95,000	do.
Tata Iron & Steel Co. Ltd. India.	Henry Williams India (1931) Ltd., India.	Ingot Cars.	50	941/932	do.
		Blast Furnace Cars.	15	153,000	do.

[fol. 4195]

British Timken Limited.
Aston, Birmingham.

Reference:
Date: 12th Aug. 1933

Railway Enquiries Outstanding

Railway	Per	Details	No.	Bearing Size	Remarks
L. M. S. Railway	—	4–6–2 Locomotive. All axles.	1	—	Design in hand.
Do.	—	Main Line Coach.	1	—	Bearings mounted in wheel hubs. Awaiting details.
Netherlands State Rlys.	J. Stone & Co.	Articulated Diesel Electric Train.	1	—	Order promised—awaiting revised details.
Belgian State Rlys.		Electric Motor Coaches.	24	270,000	Scheme and price submitted. Severe S.K.F. competition.
Indian State Rlys.	Wright, Pinhorn & Partners, India.	Class XC 4–6–2 Locomotives.	—	—	Leading bogie, hind truck and tender. Details and price now submitted. Expect supply trial set.
Madras & Southern —hratta Railway.	Henry Williams India (1931) Ltd., India.	Class XB Locomotives.	—	—	As above. } Prices submitted.
		Class W5 Locomotives.	—	—	
Bengal Magpur Rly.	—	Class M Locomotives.	—	—	Leading bogie only. Scheme and price submitted.
Hungarian State Rly.	Deak, Budapest.	Diesel Rail Cars.	—	935	Scheme and price submitted.
Nigerian State Rlys.	—	3rd Class Coaches.	12	855	Price now submitted to Nigeria.

[fol. 4196]

Railway	No. of Vehicles	Details	Drawing No.	Bearing Series	No. of Brgs.	Date	Remarks
Netherlands State Rlys.	1	Elec. Trailer Coach.	D. 2243	95,000	8	Feb. 1933	Now in service.
Buenos Aires Western Railway.	1	Coach.	D. 2273	95,000	8	Feb. 1933	Replacing Double type boxes—proved unsatisfactory.
L. M. S. Railway.	2	Locomotive Tenders.	RF. 3233	450,000	12	Mar. 1933	Bearings only supplied. One tender for "Royal Scot" Loco., other for experimental 4–6–2 Loco.
Associated Equipment Co. Ltd., England.	1	Diesel Rail Car.	D. 2023	865	6	Mar. 1933	2 Power Axles fitted with Timken boxes at one end only. Trailer Bogie completely Timken equipped. Rail car now undergoing trials.
South Australian Rlys.	—	Rail Cars (?)	—	74,000	120	Mar. 1933	Single Bearings only supplied. Believed for replacement purposes.
Clogher Valley Railway, Ireland.	1	Diesel Rail Car, Power Bogie.	—	855	4	June 1933	Repeat order. See above.
Leyland Motors Ltd., England.	7	Diesel Rail Cars.	RM. 3338	755	56	July 1933	Single bearings only supplied. 4 wheeled Rail cars. 3 for L.M.S. Rly.
[fol. 1497]							
Metropolitan Railway, London.	4	Elec. Motor Coaches.	IND. 1033	153,000	32	July, 1930	Completed Approx. 160,000 miles each vehicle at Dec.
	10	Elec. Trailer Coaches.	IND. 1066	95,000	80	July, 1930	1932, with complete success.
Chemin de Fer de L'Est, France.	4	Passenger Coaches.	D. 1103	153,000	32	Nov. 1930	60,000 Kilometres each completed Dec. 1932. Railway authorities very satisfied with performance.
Gt. Western Railway, England.	1	Coach, 1 Bogie only fitted.	D. 1214	945	4	Nov. 1930	Bearings perfectly satisfactory and still in service on suburban work.
Egyptian State Rlys.	12	"Clayton" Articulated Steam Rail Cars.	IND. 1035	865	100	Dec. 1930	Trailing Bogies at each end only fitted. No trouble experienced with Brgs.

Railway	No. of Vehicles	Details	Drawing No.	Bearing Series	No. of Brgs.	Date	Remarks
Entre Rios Rly. South America	1	Articulated Steam Rail Car.	D. 1388 D. 1428	95,000 865	4 4	Mar. 1931 Mar. 1931	Centre and one end bogie ONLY fitted.—not power bogie. Completed 45,000 Kilometres Oct. 1932. No trouble.
Metropolitan Railway, London.	18	Elec. Motor Coaches.	D. 1534	153,000	144	July, 1931	30 trailer coaches had completed 40,000 miles each at Dec. 1932. All vehicles now in service.
[fol. 1498]	45	Elec. Trailer Coaches.	D. 1535	95,000	376	July, 1931	
Arcos Ltd. Russia.	3	Coaches.	D. 1247	153,000	25	Oct. 1931	
Java State Rly.	1	Dining Coach.	D. 1732	95,000	10	Oct. 1931	Reported to be giving excellent service.
Birmingham Corporation Tramsways, England.	1	Tramcar. (Experimental).		565 755	8 8	Dec. 1931	Running satisfactorily.
U.S.S.R. Tramways, Technoscharsnab.	5	Tramcars.	D. 1317	935	21	Feb. 1932	
Korean Railway.	4	Tramcars.	D. 1834	935	16	Feb. 1932	
	10	Coaches.	D. 2083	945	80	Mar. 1932	Bearings only supplied. Boxes made in Japan.
U.S.S.R. Tramways, Technoscharsnab.	2	Tramcars.	D. 1464	865	8	Apr. 1932	
Ottoman Railway.	1	Coach (Inspectors).	D. 2023	865	8	May 1932	
Clogher Valley Railway, Ireland.	1	Diesel Rail Car. Power Bogie.	—	855	4 (Single).	July 1932	Power bogie on cannon boxes with final drive incorporated in one. Completed 22,000 miles by April 1933, with complete success.
Belgium State Railway.	1	Steam Rail Car. Trailer Bogie. Power Bogie.	D. 2023 D. 2261	865 173,000	4 4 (Single).	Dec. 1932 Dec. 1932	Power bogie mounted on cannon boxes. Completed trials and now in service.
L. M. S. Railways.	5	Elec. Motor Coaches.	D. 1904/2	153,000	44	Feb. 1933	All trains now in service.
	10	Elec. Trailer Coaches.	D. 2572	945	80	Feb. 1933	

Railway	No. of Vehicles	Details	Drawing No.	Bearing Series	No. of

September 26, 1933.

French Timken

[fol. 4199] French Timken at the present time is having its best year and figures now available for the first six months show a profit for the first half of $30,000.00 as compared with a loss for the same period last year amounting to $48,000.00. It should be realized, however, that this year's operations are relieved from the payment of interest on indebtedness and royalty, but even so, the results are decidedly better than in the past five years. Assuming the same royalty and interest conditions as were in effect last year, then this half year's profit would be reduced to $13,000.00.

The improvements in the current year's operations are due mainly to two important factors, namely, better diversification of sales and improved manufacturing methods. It will be recalled that prior to this year a large part of our sales, in fact 59%, was concentrated on two major customers, Citroen and Renault, and prices received from these customers were very low. As a result of this situation, during the past two years, French Timken has been concentrating on the other major sales lines, such as commercial vehicles, industrial bearings and service, and thus our sales this year to Renault and Citroen only represent 31% of our total sales.

Our success in the French commercial vehicle field has been very marked and at present Timken bearings are used in some positions on practically all such vehicles built in France. This is indicated in comparing sales for the past two years, as follows:

1932 sales for commercial vehicles	$6,400.00
1933 sales for commercial vehicles	$25,000.00 (based on first six months)

Percentage of increase 305%.

We are, of course, continuing vigorous sales efforts to place our bearings in still wider use in this branch of the automotive industry.

One of the basic reasons in selling Citroen and Renault in the automotive field has been the hope of increasing our service business. While both of these companies manufacture their own bearings, we have, nevertheless, been in-

strumental in their use of taper bearings instead of ball bearings, and are beginning to share the service business with them. This is largely the reason that current service sales compare with 1932 sales as follows:

1932 Service sales $24,000.00
1933 Service sales $35,000.00 (based on first 6 months)
Percentage of increase 40%

We feel that this business will continue to grow because we shall soon feel the effect of our sales in the commercial vehicle field, and furthermore the development of bus transportation with its replacement business, is progressing at a rapid rate all over France but particularly in the South. Added to these facts we have the continued domination of the French automotive market by Citroen and Renault, with the resulting wider use of taper bearings.
[fol. 4200] In the industrial field our growth has also been very encouraging, as evidenced by the following figures:

1932 Industrial sales $9,100.00
1933 Industrial sales 18,400.00 (based on first 6 months)
Percentage of increase 102%

As is generally known, France is not primarily an industrial country like Germany and England, so this branch of our business will never reach a large growth. However, there is a definite development in the steel industry both in erecting new plants and modernizing old ones, and we are watching this development very closely. In addition, the purchase of American made machine tools has been stimulated with the decline of the dollar in its relation to the franc, and this should enhance our industrial sales eventually.

The development of Timken Bearings in railroad use has been slow. We have had a trial installation on three cars of the Est Railway for the past 18 months and these bearings have been entirely successful. Largely as a result of our performance in this test we have just received an order from the Est Railway covering 240 bearings and boxes. This is our first real railroad order in France and we feel it shows a definite recognition of our product in this particular field, and by one of the largest companies as well.

We are making considerable headway in the so-called Diesel railcar field in France. This branch of the railroad industry is bound to have real growth particular in Northern France, where so many summer resorts and channel ports are located. We have had our bearings on a Bugatti railcar running from Paris to Deauville for the past six months. This is a distance of about 120 miles, which is made in two hours. Just within the past few days Bugatti has received an order for ten more such cars on which our bearings will be mounted. In addition Renault has also obtained an order for 20 cars and we in turn have received the bearing order.

As is generally known, we are members of the French antifriction bearing cartel. This cartel was started in July 1932 and expires at the end of this year. Under its provisions, our share of the French anti-friction bearing business was set at 7% of the combined business of SKF and RIV, with a guaranteed minimum of $320,000.00 yearly. However, as closely as can be ascertained, we are operating at about 10% instead of 7%, and discussions are now in progress regarding a new arrangement to start in 1934. Our programme, tentatively settled during the writer's visit, is to insist on abandoning the idea of us having a percentage of the anti-friction bearing business, as obviously not being ball bearing manufacturers, we cannot compete in this field. We shall try to obtain an agreement that we should have 75% of the taper bearing business, but exclude both Citroen and Renault from the calculations as no one can know how many of their own bearings they will manufacture themselves. At present we estimate our share of the taper business, excluding Renault and Citroen, at about 65%. SKF object strenuously to the minimum guarantee we now have, and we have decided if we can reach an agreement satisfactory to us on other points, that we will waive this guaranty as we are confident our present position in France is well established and can be maintained.

One of the greatest difficulties in the cartel arrangement has been the allotment of ball bearing business to the Italian concern, R.I.V. During the past year a large part of the French industry has refused to use these bearings as no advantage in prices was obtainable (which, of course, was [fol. 4201] impossible under the cartel agreement). As a

result SKF, managing the cartel, has told us the ball bearing situation was almost intolerable. S.R.O. (Swiss manufacturer with a French plant) was getting more than their share from disgruntled R.I.V. customers. During my stay in Paris, we were informed unofficially, but very reliably, that SKF had taken over the R.I.V. factory and sales at Chambery, France, and from now on R.I.V. activities in France were at an end. This should be quite beneficial to a new arrangement, as it only leaves three major manufacturers in France, namely, SKF, making all kinds of bearings, S.R.O., making largely ball and a few straight roller bearings, and Timken, making only taper bearings. Another point which is coming up for discussion is SKF's insistance that they market their so-called "standard" taper bearing. It will be recalled at the international anti-friction and standards meeting held in Milan, Italy, two years ago, our Mr. Wooler, representing the U.S.A. and its taper bearing standard (100% Timken), was unsuccessful in persuading the meeting to accept our standard with the result that all of the countries represented (England was not represented officially) except France and the U. S. A. accepted an SKF standard for taper bearings (largely interchangeable with ball bearings). It was only through our Mr. de Beauvivier's position in the French anti-friction bearing industry that we held France in line so that even now French opinion seems subject to strong pressure from SKF. As a result of this condition, SKF in France are pressing the sale of their standard taper product at discounts of about 10% under the present Timken type bearing prices, uring the user to change over to their type, thus making the mountings interchangeable with ball bearings. We shall, of course, fight this strenuously but our position is none too strong, regardless of the excellent performance of our product, as SKF is dominant in France, and the average French automotive builder will do anything to get a 10% reduction in prices, particularly when SKF guarantee performance.

The financial situation is distinctly better at French Timken from the standpoint that all current expenses are being met and we have cash on hand. There are no further plant expenditures to be made of any sizable nature, so that if sales can be maintained at current levels,

we should continue present profitable operations. Even a small decline in sales will not affect us greatly as we have not yet felt the full effect of manufacturing economies originated last fall and early this year. Several changes in the set up of our French balance sheet are to be made but the writer will discuss this in detail with Mr. Brower and Mr. Ernst.

General

Business conditions in France are better than a year ago, with unemployment down to about 200,000 persons, and the general industrial production figure being 108 as against 96 for the same period in 1932. The steel industry for June and July was 25% higher in output than for the same months last year.

The automotive industry is reported about 15% ahead of last year with Renault making considerable headway due largely to Citroen's strike during April and May. The latter is also handicapped due to the production of a bad model two years ago, and in turn Renault has brought his recent models very much "up to date". The French market is still very favorable to the four cylinder type and I am told that Renault's 4-cylinder model is much superior to Citroen's, who put his faith into a six cylinder a few years ago and who has gone back to large scale production of a four cylinder type.

[fol. 4202] Everyone in France is much disturbed about conditions in the U. S. A., and I found an almost universal feeling that the world is leagued against France. While it should be realized this condition is almost hereditary, I never met it so strongly as during this visit. The French politicians are using it constantly, citing our leaving the gold standard, our tariff walls, etc., as all aimed at France. Apparently this same line of reasoning is predominent in the fact that all published figures show that France's budget deficit is about 6,000,000,000 francs, whereas I was told by one of our American bankers in France that the actual figure was three times that amount but the French people cannot be told, as even now they are refusing to buy French government bonds. In addition French exports are constantly falling and the tourist trade this summer in France is almost negligible due largely to the high cost of living in a country still on the gold basis, and

the resentment on the part of Americans due to the French failure to pay their war debts even in a small degree.

D. P. Hess.

DPH:MC.

[fol. 4203] September 27, 1933.

GERMAN TIMKEN

While sales for German Timken for this current year are more than double last year, being $31,000.00 as compared with $13,000.00, for the first six months, conditions in Germany are such that during my visit we seriously considered shutting down tight at our Berlin plant. At the time of my arrival in Germany, government restrictions were such that no money in excess of $50.00 could be taken from Germany and when it is realized Deutimken depends on either British Timken or French Timken for bearings, we can easily see that it would mean putting more and more money in the form of goods into Germany and hoping to get paid for it at some time. These restrictions had been in force for about four months and during this time we had sold rolling mill bearings, made in England, to several German firms. We had been allowed to use from 8 to 12% of the invoice value for the purchase of British pounds, and both Mr. Dewar and Mr. Pascoe had decided to use some of the "blocked" marks in the purchase of German securities. I investigated this procedure quite thoroughly and agree with it, as should Germany go off the gold standard with the resulting depreciation of the Reichmark it would make the possibility of German Timken ultimately paying British Timken almost out of the question.

However, during the first week in September, the German government relaxed its currency restrictions and as a result it appears British Timken can get a large part of its funds transferred. The situation, however, is one of a day to day nature as these restrictions are put on without notice. At our meeting in London, however, we definitely decided to continue on with German Timken for at least six months and review the situation at that time.

Business generally in Germany is about the same as last year except that new orders from Russia are very small. The whole country is greatly upset by political turmoil and

this is having its effect on business. It is rather interesting to know that the textile business, however, is enjoying almost boom times due to the demand for brown shirts and swastika flags. There is no question however but that the Hitler movement is gaining a strong foothold in Germany. Of course, this is probably due in some measure to the rigid dictator type of administration now in force which seems to suit the large percentage of German people but at the same time the Hitler idea of so-called world domination by Germanic ideas is rapidly building up antagonism all over Europe and in England. It must be remembered that that German people have had this doctrine preached to them since Bismarck's time and that the sad lessons of the war are t ng forgotten by Hitler's Nazi followers, the large majority of whom are under 30 years of age, with little, if any, war experience. This group, unable to make a livelihood by the usual methods due to the large unemployment in Germany, naturally have plenty of time and desire to listen to almost any kind of teaching or propaganda with the result that any idea capable of stirring up either national idealism or hatred is reasonably sure of success. What the outcome will be no one seems to know, but the writer received many statements outside of Germany which I will report verbally.

D. P. Hess.

DPH:MC.

[fol. 4204] PLAINTIFF'S EXHIBIT 64

December 2, 1933.

Mr. M. B. U. Dewar, 10 Mayfair Place, London, W.1, England.

DEAR MICHAEL:

Delighted to receive your letter of the 10th ult. outlining the situation with regard to SKF standard bearings in France, and we are glad to know that SKF seem to be pushing the use of tapered roller bearings.

We are anxiously awaiting the results of your conference with Mr. Bratt and Mr. Gorsberg and hope that you will

be successful in coming to an arrangement for the French market.

Very truly yours, The Timken Roller Bearing Co.,
Assistant to the President.

DPH:MC.

[fol. 4205] PLAINTIFF'S EXHIBIT 65

22nd December, 1933.

Mr. D. P. Hess, Timken Roller Bearing Co., Canton, Ohio.

MY DEAR DON:

I enclose herewith draft of the proposed agreement between Francaise Timken and CAM.

As you know, we have been working on this for some months. The idea of this arrangement is to divide the Tapered Roller Bearing market between ourselves and CAM in a manner which is not constant but which depends on the total anti-friction bearing turnover of CAM. As CAM produce approximately 80% of the Ball Bearings produced in France, any great increase in the use of Tapered Roller Bearings must come from CAM's Ball Bearing sales unless the total anti-friction bearing sales increase.

Taking the agreement clause by clause, I should like to make the following comments:

Introduction: "CAM" will cover "SKF" and all its associated companies wherever situated.

Article 2: Prohibits during the term of the agreement Timken making in France or importing Ball Bearings.

Article 3: You will notice that Axle Boxes and Rolling Mill Bearings are excluded from the arrangement. Several examples of the Timken quota are given under varying conditions. After a good deal of thought, we have come to the conclusion that the conditions most likely to be obtained during the next two years will lie between a total anti-friction bearing sale by CAM and Timken of from 110 to [fol. 4206] 130 million francs per annum and a total sale of Tapered Roller Bearings from 19 to perhaps 30 millions per annum, although in view of the continual decrease in the production of motor cars in France, I regard this figure as rather optimistic.

In the division of the market between ourselves and CAM, the following figures, which I believed Mr. de Beauvivier gave you, are of interest:

(Figures in Millions of frances)

Taper Roller Bearing Sales

	1929	1930	1931	1932	1933
Timken Sales:	5.36	7.9	12.6	10.1	10.2
CAM Sales	1	2	3.5	5.4	8.5
	6.36	9.9	16.1	15.6	18.7

During this period we have lost sales due to the Citroen financial agreement with SKF of 5.0 millions per annum which CAM have gained, and Renault have increased their own manufacture of Taper Bearings from one million per annum to six million per annum.

Article 4: Agrees to a fine of 25% if either side exceeds their quota. The method of paying and agreeing these fines month by month is the suggestion of CAM.

Article 7: As I have informed you before, we have already been forced into the position of manufacturing SKF sizes of Tapered Roller Bearings and we are beginning to supply these to Berliet during next month. As the SKF standards are now the accepted standards for all millimetre manufacturing countries, with the exception of France, it is only a question of time before they become standard in France also.

[fol. 4207] It appears obviously to be in both our interests to manufacture one series of Bearings rather than to manufacture two. In other words, if we standardise on the SKF series, we may have to manufacture 80 sizes of bearings whereas if we manufacture both Timken and SKF, we shall have to manufacture probably 180 sizes of Bearings for several years to come.

Article 8: It is proposed that the agreement should be for a minimum period of two years.

We have been able to obtain from SKF some details regarding the dimensions of their Bearings which will be of assistance in enabling us to manufacture Bearings identical to theirs. They have asked us in return to let

them have details of the dimensions of those bearings which we have manufactured. I have taken this out of the agreement as I do not know what feeling you have on the matter. As SKF and RIV are already manufacturing Bearings which are to all intents and purposes interchangeable to ours, I see no objection to letting them have the information for those sizes of Bearings which they and we are already manufacturing in France; particularly as it will be a considerable saving of trouble to us to have the complete details of their Bearings in return.

I am very anxious to get this agreement settled during the first fortnight in January. I propose to go over to Paris on the 8th and should like to have your agreement by then.

In view of the great strength of SKF on the Continent and our weakness, I feel very satisfied with the proposed arrangement.

With best wishes for Xmas and the New Year,

Yours very sincerely,

Michael B. U. Dewar.

[fol. 4208] PLAINTIFF'S EXHIBIT 65A

Between,

The Societe Anonyme FRANCAISE TIMKEN with a capital of 10,000,000.—hereafter described as "TIMKEN" having its registered office at Asnieres (Seine) 5 Quai Aulagnier, being the only organisation for the sale of Timken bearings in France, French Colonies and Protectorates, on the one part,

and:

The Compagnie d' Applications Mecaniques, with a capital of Frs. 27,000,000.—hereafter described as "CAM" having its registered office at Paris, 15 Avenue de la Grande Armee, being the only organisation for the sale of S.K.F. Bearings in France, French Colonies and Protectorates, on the other part,

the following has been agreed:

ARTICLE I

The agreement concluded between TIMKEN and CAM on the 17th June 1932 and which expires on the 31st December

1933 will be replaced as and from the 1st January 1934 by the present contract which will have the same object as the aforementioned, namely the consolidation of the market and the development of the sale of tapered roller bearings.

ARTICLE II

TIMKEN agrees not to manufacture or sell, either directly or indirectly, in France, or in the French Colonies [fol. 4209] or Protectorates, bearings or thrust washers other than tapered roller bearings and tapered roller thrust washers and their components.

ARTICLE III

The market in tapered roller bearings controlled by TIMKEN and CAM in France and in the French Colonies and Protectorates will be divided between the two Firms in taking into account, firstly the "total" and secondly the "special" markets of the two Firms. The "Total" market will be composed of the total annual sales of TIMKEN and of any organisation controlled by the latter, of tapered roller bearings and tapered roller thrust washers, and their components, with the exceptions specified hereunder, and the total annual sales of CAM and of any organisation controlled by the latter, of bearings and thrust washers of all types and their components, with the exceptions specified hereunder.

The "Special" market will be composed of the total annual sales of TIMKEN as enumerated above and of the total annual sales of CAM of tapered roller bearings and tapered roller thrust washers, and their components, with the exceptions specified hereunder.

In calculating the "total" and the "special" markets, the following will be excluded:

a) The sales of the two contracting parties consisting of:

1. Bearings destined for use with axle boxes or wheels of Railways or Tramways;
[fol. 4210] 2. Castings for Plumber Blocks, etc.
3. Tapered rollers sold alone.
4. Bearings employed on Rolling Mills.

b) 1. Sales made between the two contracting firms, as well as those between organisations of which they have control.

2. Sales made outside France, French Colonies and Protectorates.

3. Sales of Timken and S.K.F. bearings made abroad and imported in France, either in the form of parts comprised in machines or cars, or in the form of purchases made by Competitors of stocks taken over from Firms in liquidation or Bankruptcy.

In calculating the "total" market, exception will be made in addition, of balls and cylindrical rolls sold alone, as well as any other article which is not a true bearing, or thrust washer, or component of a bearing or thrust washer.

In calculating the "special" market, exception will in addition be made of any article which is not a true tapered roller bearing or tapered roller thrust washer or a component of a tapered roller bearing or tapered roller thrust washer.

To determine the percentage reserved for Timken, the part of the annual "special" market above Frs. 10,000,000.—will be divided into several sections and Timken will be entitled to a percentage on the amount of each section, according to the following table:

[fol. 4211]

Sections	Percentage reserved for Timken on the amount of each section
Above Frs. 10,000,000- and up to and including 20,000,000.-	53% (fifty three)
Above Frs. 20,000,000.-and up to and including 30,000,000.-	38% (thirty eight)
Above Frs. 30,000,000.-and up to and including 40,000,000.-	28% (twenty eight)
Above Frs. 40,000,000.-	20% (twenty)

To the Timken qutoa thus determined, must be added for the "special" market above Frs. 10,000,000.—a sum representing 5% of the "total" market.

In the improbable case of the "special" market being less than Frs. 10,000,000.—it is understood that the parties should agree to fix other percentages.

Example	(1)	(2)	(3)	(4)
Total Market	110,000,000	123,000,000	132,000,000	138,000,000
Special Market	19,000,000	28,000,000	35,000,000	42,000,000
Timken percentage for each section:				
Above Frs. 10,000,000 and up to and including 20,000,000	53%	53%	53%	53%
Above Frs. 20,000,000 and up to and including Frs. 30,000,000		38%	38%	38%
Above Frs. 30,000,000 and up to and including Frs. 40,000,000			28%	28%
Above Frs. 40,000				20%

[fol. 4212]

	(1)	(2)	(3)	(4)
Timken Percentage on Total Market	5%	5%	5%	5%
Corresponding Timken quota for each section.				
Above Frs. 10,000,000 and up to and including Frs. 20,000,000.	4,770,000	5,300,000	5,300,000	5,300,000
Above Frs. 20,000,000 and up to and including Frs. 30,000,000.		3,040,000	3,800,000	3,800,000
Above Frs. 30,000,000 and up to and including Frs. 40,000,000			1,400,000	2,800,000
Above Frs. 40,000,000				400,000
Corresponding Timken quota on Special Market	5,500,000	6,150,000	6,600,000	6,900,000
	10,270,000	14,490,000	17,100,000	19,200,000

Article IV

If Timken does not attain the quota CAM agrees to pay to Timken a sum amounting to 25% of the deficiency, and if Timken exceeds the quota, the latter agrees to pay to CAM 25% of the excess.

1. Timken quota ..... 11,000,000 Frs.
   Total Timken sales ..... 10,600,000 Frs.
   CAM will pay Timken 25% ..... (11,000,000–10,600,000)=100,000 Frs.
2. Timken quota ..... 12,000,000 Frs.
   Total Timken sales ..... 12,700,000 Frs.
   Timken will pay CAM 25% ..... (12,700,000–12,000,000)=175,000 Frs.

[fol. 4213] ARTICLE V

A payment will be made as soon as possible, and any case not later than sixty days after the end of every month for the part of the year already expired, according to the following examples:

Figures at 31st January:	Total market 1/1- to 31/1	Frs. 10.000.000
	Special market 1/1- to 31/1	Frs. 1.900.000
	Total Timken sales	Frs. 950.000

The total market corresponds to a total market for one year of:

$\frac{12}{1} \times 10.000.000$ ..... Frs. 120.000.000

The Special market corresponds to a total market for one year of:

$\frac{12}{1} \times 1.900.000$ ..... Frs. 22.800.000

	Timken quota for one year	Frs. 12.364.000
	Timken quota for one month	Frs. 1.030.333
CAM will pay Timken 25% (1.030.333,33-950.000)-		Frs. 20.083.333
Figures at 28th February:	Total market 1/1 to 28/2	Frs. 19.000.000
	Special market 1/1 to 28/2	Frs. 3.900.000
	Total Timken sales	Frs. 2.000.000

The Total market corresponds to a total market for one year of:

$\frac{12}{2} \times 19.000.000$ ..... Frs. 114.000.000

The special market corresponds to a total market for one year of:

$\frac{12}{2} \times 3.900.000$ ..... Frs. 23.400.000

	Timken quota for one year	Frs. 12.292.000
	Timken quota for two months	Frs. 2.048.666.67
CAM owes Timken 25% (2.048.666,67-2.000.000)		Frs. 12.166.67
	Amount already paid	Frs. 20.083.33
Timken will pay back to CAM		Frs. 7.916.66

etc., so that the account between the two Firms for each year will be entirely liquidated fater the December pay-
[fol. 4214] ment.

ARTICLE VI

The two contracting parties are in agreement to delegate to a well known Firm of Chartered Accountants the task of calculating the quota and to determine the sum to be paid at the end of each month.

ARTICLE VII

In order to arrive at the allocation of the market as provided in as precise a manner as possible, an intimate commercial collaboration will be established between the two

contracting parties, which will have to determine by agreement the tariff prices and discounts for the retail market, the prices and delivery dates quoted for all large orders, or for important customers. Timken and CAM will reciprocally communicate at least every month, and the examination of the approximate amount of orders received or other useful figures will indicate by comparison which of the two Firms must in collaboration with the other endeavour to take a larger share of the orders.

The two contracting parties engage to favour the standardisation of tapered roller bearings to the dimensions and with the bore tolerances mentioned in appendices 4 and 6 of the report of the Milan 1932 Ball and Roller Bearing Meeting (I S A IV) and with the outside diameter tolerances fixed for ball and roller bearings by the meeting at Paris in 1929.

[fol. 4215] As far as their means of manufacture will permit Timken and CAM will recommend the bearings conforming to the above to their Customers in preference to tapered roller bearings with dimensions and tolerances other than those specified every time that the opportunity presents itself and the standard bearings will be favoured as much as possible in the price policy of the two contracting firms.

ARTICLE VII

The present agreement is made for a period of —— and will subsequently be automatically renewed annually unless three months advice of withdrawal is given by one Party to the other and at the same time to the Firm of Chartered Accountants designated (by registered letter).

ARTICLE IX

It is agreed that all the articles of this contract can be modified at any time by common consent of the two parties.

ARTICLE X

If one of the contracting parties amalgamates or concludes any new agreement with any other firm concerning the division between them of the sales of bearings in France, this present agreement will be altered so that the interests of neither of the two parties will be prejudiced.

ARTICLE XI

The parties expressly agree that all differences concerning the interpretation of the application or the execution of the present agreement will be submitted before one or more arbitrators appointed by the President of the Inter-
[fol. 4216] national Chamber of Commerce or any other similar institution and whose decision will be binding for the two parties.

The parties agree in consequence not to have recourse to a Court of Law.

[fol. 4217] PLAINTIFF'S EXHIBIT 66

WESTERN UNION

1933 Dec. 30 PM 2 02

HB163 Radio via CD London 47 30
NLT Hess Timken
Canton Ohio

L,100 my letter to you twenty second re French Blare Agreement page two Blare SKF sales should read 1929 one million 1930 two million 1931 three point five million 1932 five point five million 1933 eight point five million much regret error please correct

DEWAR.

11125-A.

[fol. 4218] PLAINTIFF'S EXHIBIT 67

4th March 1935.

Mr. D. P. Hess,
Timken Roller Bearing Co.,
Canton, Ohio.

My dear Don:

I have to thank you for your letter of the 21st ultimo regarding the Citroen situation and our arrangement with SKF and France.

It will probably interest you to know that we have come to a temporary agreement with SKF which will limit any payments from S.A.F.T. to SKF to a maximum of Frcs.

20,000 a month for the first three months of this year. These three months I feel, are the critical period as Citroen is improving in production and there is also a certainty now that Peugeot are going to adopt Taper Bearings for at least one of their models.

I will write you further on this matter when I am in Paris which will probably be next week.

Yours sincerely, M. B. U. Dewar.

[fol. 4219] PLAINTIFF'S EXHIBIT 68

January 18, 1934.

Mr. A. C. Ernst,
Ernst & Ernst,
Union Trust Bldg.,
Cleveland, Ohio.

Dear Mr. Ernst:

I have just been called to New York where I have to be present at a meeting tomorrow morning, which eliminates my proposed visit with you to discuss the French SKF agreement. I am, however, enclosing a copy of this agreement and in view of the fact that Mr. Dewar would like to have an answer by January 23rd, I am sending it with John Sander so that it will get into your hands tomorrow (Friday) morning. If necessary, I could, of course, come up and discuss it with you Saturday or Sunday.

This agreement is largely the outgrowth of a discussion which Mr. Dewar and I had during the past summer regarding our French arrangement. As you know, we had been operating at a loss in France up to this year, when we expect to make about $30,000.00 and it is vitally necessary to our operations in French that prices be maintained at the present level. This latter feature is absolutely in the hands of SKF due to their dominating position in France, so that almost any agreement we would enter into would have to be such that a very friendly attitude between the two companies regarding prices would become a large part of it. The other important factor we discussed was the possibility that SKF might attempt to kill the taper roller bearing business in France by marking taper prices down

so low that it would be impossible for us to compete. You will probably recall that this was their attitude in England and was one of the reasons that we decided to go into the ball bearing business, and incidentally, in England since we have gone into the ball bearing business we have reached an arrangement with SKF to gradually increase the prices of taper bearings.

The agreement as proposed is disappointing to me from the standpoint that as the sales of roller bearings increase, our percentage of these sales decrease. Naturally, I would like to have seen us continue to have 53% of the business regardless of whether the so-called special market was 19,000,000 francs per year or 42,000,000 francs per year, and I am sure that Mr. Dewar tried to get such an arrangement because it is one of the points that we discussed during my visit. However, on the other hand, I think the idea of Timken having 5% of the total anti-friction business is a splendid move and goes a long way toward keeping SKF from [fol. 4220] killing the sales of taper bearings. Then, again, the idea of having a penalty for exceeding the quota is reasonably satisfactory from our standpoint, as it is the first time in the history of European transactions that I know of where SKF was willing to pay, in any kind of money, for a violation of a contract on their part.

You will note that this agreement obliges us to go along with SKF in their standardization of taper bearing sizes in France, whereas our attitude here in the U. S. A. has been very much against this standardization. However, I know that SKF can put across their scheme in France if they wish, and all that we can do is to complain and be forced to make the bearings that our customers desire, regardless of whether they are the SKF standards or the so-called Timken type of taper bearing. In other words, we are not strong enough in France to tell any of our customers that we refuse to make the SKF standard bearing, and have no recourse except of loss of that particular sale or the possibility of materially lowering our prices to quote below the prices set up for the SKF standard. Frankly, it is not a comfortable position to be in, but I am in accord with Mr. Dewar in the thought that it is probably the only thing that we can do in France.

I think it would be wise to sign this agreement for two years only, and expect to advise Mr. Dewar to this effect.

I am attaching a memorandum of my own showing the total sales of Timken and SKF under the proposed agreement and covering the various amounts set up in the agreement. You will note from this memoranda that on the assumption that total antifriction bearing sales increase from 110,000,000 to 138,000,000 francs, our increase in sales volume would be approximately 87% whereas SKF would increase approximately 19%.

With kindest regards, Very truly yours, DPH, Assistant to the President.

DPH:MC

[fol. 4221] PLAINTIFF'S EXHIBIT 69

THE TIMKEN ROLLER BEARING COMPANY

Canton, Ohio February 12, 1934.

Mr. H. H. Timken, 708 Electric Bldg., San Diego, Cal.

DEAR MR. TIMKEN:

Thank you kindly for your wire to Senator Johnson which helped me considerably during my visit in Washington 10 days ago. I had a very satisfactory discussion with Senator Johnson, who in turn had discussed my trip with our Russian Ambassador Bullitt who was then in Washington, and at the latter's request it was decided that immediately upon my arrival in Moscow I get in touch with him and he personally will sponsor me during my visit in Russia.. I also spent quite a little time with Harry Payer, who, as you probably recall, is the Cleveland attorney who is acting as Assistant Secretary of State, representing the RFC in the Russian financial transactions. Mr. Payer told me that in his opinion the financial arrangements for handling Russian business would be settled very quickly and that the Russians had definitely stated they would place orders for one hundred million dollars worth of U.S.A. goods upon the completion of such arrangements. Frankly, this sounds a little too ambitious to me, but Mr. Payer seemed to think that it was an accomplished fact. I am simply giving this to you for what it is worth.

I also saw Mr. George N. Peek at the request of Col.

Cooper of New York. Mr. Peek has a commission reporting directly to President Roosevelt in the study of our Foreign Trade Development, and I spent over an hour with him discussing the general European situation, and particularly my Russian trip. He is very much interested in it and has requested that upon my return I call upon him in Washington and give him the reaction that we got not only in Russia but also in Europe. Incidentally, he says he used to know you quite well, and a letter from you thanking him for his attention to me would, I believe, be quite beneficial. Mr. Peek impressed me very much as having his feet thoroughly on the ground and I have been informed in several places in Washington that he is one of the strongest men in the present administration. His address is: George N. Peek, 211 Administration Bldg., Department of Agriculture, Washington, D. C.

Prior to my visit in Washington I took Charlie Balough with me to see Col. H. L. Cooper, whom I have known for several years, and who has been very successful in his transactions with U.S.S.R. He spent quite a little time with Charlie and me advising us various ways of procedure [fol. 4222] when in Moscow, and, needless to say, they were very helpful. He is giving me a letter to a certain Mr. Rosenglotz, who is Commissar of Foreign Trade for the U.S.S.R. and I was told by Mr. Cooper that he is one of the most powerful men in Russia today. Incidentally this is the only letter of introduction Mr. Cooper has ever given to this man, and he explained it by saying that he felt sure the Timken Company relations would be very honorable with the Russians and that he wanted to help me personally all he could.

Charlie and I also saw Mr. Bogdanov, who is giving us usual introductory letters to his associates in Moscow, and I asked him particularly for a letter of introduction to some one in Moscow who is familiar with the plans for railroad development. I am having considerable trouble getting my passport visa for Russia, even in view of the fact that I had a letter from Mr. Bogdanov to the Russian Consul now stationed in Washington. It seems that regardless of such a letter they have to go to Moscow for final approval but up to this time I have not yet received it and it may be that I will have to sail without it. In such an instance I will have to get it either in London or Berlin,

but apparently the routine for handling such affairs is not yet working satisfactorily in Washington.

Foreign Developments

I have just been advised by Mr. Dewar that we recently had the largest payroll in our history at British Timken and he is encouraged by the prospects for the immediate future. Our ball bearing business is starting to move along in pretty fair style and there is no question but that during the last half of this year this should be a factor in our British sales. According to preliminary figures we will earn about the same as last year, i.e., $80,000 or $90,000 net, and with the SKF-British Timken arrangement on prices holding good for the current year, we should be in an even better position than in the early part of last year.

Incidentally, last week I was at Ford Motor Co., Detroit, and met Mr. Pat Hennesy, Director of Purchases for Ford Motor Co. Ltd., Dagenham, England. We spent about an hour together and developed a nice contact which will be invaluable to Mr. Dewar in England. I also met, while at Ford, Mr. Mueller, who, I understand, is the manager of the Swedish plant. I was told by Mr. Loughran, the Ford Motor man who handles all their foreign affairs, that they are looking forward, particularly in England, to a very good year, and that their small 8 HP car was going across very nicely all over Europe. I was also informed by this gentleman that the manufacturing arrangements in France were going to be changed and that the Ford Co. was going to build their own axles and transmissions in France rather than importing them from either England or America, and that we should be ready at our French plant to supply them with their bearing requirements.

I am enclosing copy of our new SKF-French Timken agreement together with a letter I wrote Mr. Ernst at the time I forwarded it to him for his comments. I might say, incidentally, that later in discussing it with Mr. Ernst he was of the opinion that we should do nothing on it other than postpone signing it for six months or longer. I ex- [fol. 4223] plained to him that this, in my opinion, was not possible as it had been under negotiation for quite some little time, but that if he felt definitely on it I would discuss the matter with Mr. Dewar. This I did, and both Mr. Dewar and Mr. Pascoe stated that in their opinion it would be a

serious blunder not to sign this agreement, as SKF at Gottenborg were very much opposed to it on the ground that the French SKF manager had given us entirely too much and there was no reason in the world why SKF was obliged to guarantee us such a high percentage as 5% of their sales. Personally, I agree with Gottenborg, and feel that this percentage is a very strong point in this agreement. All of us here discussed the matter quite in detail and felt that we should follow Mr. Dewar's judgment, and Mr. Ernst also stated that if Mr. Dewar did not feel we should postpone signing, he would withdraw his objections.

French Timken has just received an order for supplying the bearings for the four-high mill being built by Renault in Paris. These bearings will be manufactured in England and shipped through French Timken to Renault. This mill, you will remember, is the one I told you about as being designed by United Engineering & Foundry Co. and it has been hanging fire for about six months. We were up against competition from Bantam in the U.S.A., but French Timken and Mr. Dewar had prevailed upon SKF to withdraw from quoting on this particular mill, so that it was either a question of Renault making the bearings themselves or buying them here in America from Bantam or from French Timken. Frankly, I was more or less concerned that they would try and make them themselves, but apparently they gave up this idea.

The German situation is about the same as when you left, and I have just been advised through Hercules that the Bosch interests at Stuttgart, with the permission of the German government, will allow the use of blocked marks to the extent of 25% of the purchase price of an article. However, this is tied up with a good many restrictions and I have decided that the only thing for me to do is to try and solve the situation together with Charlie Balough while in Germany.

Pumps

I am enclosing copy of memorandum written after my last visit to International Harvester, and also with regard to my conversation with Mr. Woodworth, President of Ex-Cell-O Aircraft & Tool Corporation, while in Cleveland last week. I think both of these are self explanatory, and you have already heard from Charlie Balough that the

Ex-Cell-O pump is working out quite nicely. I just talked to Mr. Treiber on the telephone and he tells me that at high speeds (above 1200 RPM) it is his opinion that the Ex-Cell-O pump is superior to anything he has tried, but at lower speeds it does not function as well as Bosch. I have studied the design of this pump quite considerably, and while it should be somewhat cheaper to manufacture than either the Bosch or Deckel type, it has in my mind, one fundamental feature of design that may be either a detriment or a decided advantage. It is as follows: The so-called magazine of this pump, which is circular and about [fol. 4224] 4" in diameter, is made of one piece and this one piece housing or magazine, contains all six plungers operating in the cylinders themselves, which are bored in this housing. In other words, the slightest wear on one of these six cylinders may spoil the entire housing and it has to go back to the factory, and according to the Ex-Cell-O plan, it will then be repaired and new plungers fit into it and returned to the field. Now this may be a good thing, but almost everywhere I have gone in this country I found this is the major complaint against Bosch, i.e., that no field adjustment can be made and that if anything happens to the pump it must be sent back to the factory. This so-called factory service is exactly the principle on which Ex-Cell-O are working, and Mr. Alden, their engineer, tells me that they are satisfied that for the next several years this is by far the best way to handle fuel injection problems on Diesels, as there are no mechanics skilled enough in the art to make the necessary adjustments in the field. He further tells me that these pumps are all tested and the adjustments made at the factory so that when mounted on a motor or serviced in the field the few connections to be made are extremely simple and practical. I agree with him in this latter fact, but whether it is desirable to have a unit on which practically no adjustments can be made in service is, in my opinion, the real question to decide.

Incidentally, this man Alden of Ex-Cell-O, has impressed Balough and me very much with his knowledge of pumps, and I have just completed arra...gements with Mr. Woodworth, President of Ex-Cell-O, to "borrow" Mr. Alden's services for six weeks, and as a result he will be attached to the staff of the Timken Roller Bearing Co. as a

pump engineer for the above mentioned period. I have agreed to pay his expenses to Europe and return but Ex-Cell-O will pay his salary. Bill Umstattd and I discussed this phase from every angle, and we feel the opportunity of getting the temporary services of a man who has spent 5 years on fuel injection problems as relating to Diesel engines is certainly worth the expenses of his trip to Europe. Incidentally, he seems to be a very well grounded engineer, and I understand for 3 years he was the Dean of Engineering at Ohio Northern University and was also the head of the Engineering School at the Detroit Technical Institute. I trust this meets with your approval.

Summarizing the whole pump situation, we are now prepared to meet various pump people, like Deckel, etc., with Alden's very definite knowledge of fuel injection systems, as well as Charlie Balough's knowledge of Diesel motor design proper. As you know, we all feel that if we go into this pump game we are going to have a very heavy expenditure, and I personally want to be absolutely sure that we are starting on the right grounds, if we start at all, and that we should take advantage of every possible source of knowledge that we can get.

Sorry to have written you such a long letter, but for the next 8 weeks you will have to put up with my own handwriting and rather short notes from Europe. In the meantime, if you wish to write me please send all mail to London at the address noted below, from where it will be reforwarded to me wherever I am located.

With best regards,

Very truly yours, D. P. Hess.

DPH:MC.

[fol. 4225] P.S. I am also enclosing an article read before the Institution of Locomotive Engineers in England last Fall by Mr. P. A. Hyde. This is the only copy I have and I would appreciate your returning it to Canton when you are finished. The notations therein in pencil are those of Mr. Sanders.

London address: Mr. D. P. Hess, % British Timken Limited, 10 Mayfair Place, London, W.I., England.

Also enclosing some data on French vs. N. Y. & London food prices; also article by Keignes (London Times) on the New Deal.

[fol. 4226] PLAINTIFF'S EXHIBIT 70

WESTERN UNION

January 22, 1934.

Dewar-L -fin-Piccy-London

Upon further consideration we feel it advisable you postpone your trip until later preferably summer stop. Timken now in California and am told his trip Florida in March uncertain and we feel it absolutely necessary he take part our discussions stop We consider both world and domestic monetary and business situation still very uncertain and we feel dollar must be stabilized next six months after which we can make definite arrangements with you regarding our mutual world affairs stop In meantime I am authorized discuss all details with you regarding your views and ours revising present agreements on my coming trip stop As result will move up my sailing date from middle March to middle February Stop Regarding Blare French Agreement if you can maintain status quo with Blare for another six months pending more definite settlement world affairs we consider advisable but if you feel this impossible we go along with you in your judgment but suggest two year agreement stop Writing

Hess.

[fol. 4227] PLAINTIFF'S EXHIBIT 71

London, England,
February 16, 1932.

RUSSIAN SITUATION

As cabled, the RIV have quoted 85% off list and given two years time payments to the Russians. The entire amount of the invoices was guaranteed by the Italian Government. During 1931 they received approximately $500,000.00 of tapered bearing business in addition to their ballbearing and straight roller bearing business which amounted to $200,000.00. I questioned these figures, but Pascoe spent three weeks in Russia and they were verified by Beneditti, Managing Director of RIV to Dewar. Beneditti

also stated the last order they received was in October for 50,000 cones and cups 78216/78551. No orders have been placed since that time and he and Dewar have agreement on bottom prices at 85 with interchange of information on quotations, etc.

Pascoe through political alliance, is putting pressure to bear on the local Russian agency to divide this business. They agree and so has Moscow if British Timken will guarantee prices based on sterling at about its present value ($3.50). This is obviously impossible but negotiations are continuing.

Pascoe feels the Russians have a fair chance of meeting 1932 payments provided no countries definitely shut out Russian exports. We just received news in London that they defaulted on some German payments, but current opinion is that this is a smart move to take advantage of the stringent German financial situation, as the Government would have to make good 70% of the default which they cannot now do. Russia has offered full payment if Germany will accept Russian products such as oil, timber, manganese, etc., in lieu of reisch-marks.

Incidentally, they fasten an extra set of front wheel bearings to every tractor shipped. Tractor production, verified by Pascoe, is as follows:

Leningrad	100 Fordsons daily
Stalingrad	100 Harvesters daily
Kharhov	30 Harvesters daily.

A bearing plant is being built to handle 70,000 daily (under 8″), will employ 16,000 men working two seven hour shifts, will use bars and forging machines. Technical data and layout is being made by RIV.

D. P. Hess.

DPH:PHK.

[fol. 4228] PLAINTIFF'S EXHIBIT 72

Sept. 3rd, 1929.

MY DEAR DON:

Dallow has sent me on your letter of Aug. 20th and his reply to see before it leaves.

I don't think that there is anything to add at the moment. I am quite satisfied in most things and our costs of production are still coming down and will continue to do so as our grinding improves which is being shown in all our later figures now.

Our figures will bring home to you the reason for my pressing you on the question of heading rolls and so on, as Bock and SKF are continually forcing our prices down.

We have made a temporary arrangement with the former which will prevent them cutting prices to our best customers.

I am hoping to see Sloane again soon to help us further in our work.

Kindest regards,

Yours ——.

[fol. 4229] PLAINTIFF'S EXHIBIT 73

10th November, 1930.

D. P. Hess, Esq., The Timken Roller Bearing Company, Canton, Ohio, U. S. A.

MY DEAR DON:

Many thanks for your letter of the 30th October. I am glad that Shuler has got back and hope that he was satisfied with his visit.

With regard to Fegan, I am afraid Shuler is entirely wrong. I delayed Fegan's coming because his Wife had to have an operation for Appendicitis. Where he got the other idea from I do not know. Incidentally, I am afraid Fegan is no use whatever on organization, but he has got a "mechanical" brain and I should very much like him to get right down to your Shop practice which is really where we have to learn.

I am sorry that Wooler has found fault with our Engineering Journal, and I hope that he is writing to Wood about it. I will certainly send you our proofs in future, but I was under the impression that our Engineering Journal was practically the same as yours with a few of the expressions altered so as to make them more understandable by the average English Engineer. With regard to the article in "The Automobile Engineer" entitled "Double Purpose Bearings" it even made me smile.

Things are keeping much about the same here and we are still running a little overtime, but I do not see very much chance of things picking up now until the New Year. I think it is almost certain that we shall have a General Election here, either in January or February, and that the result will be an Emergency Tariff. What the effect of a Tariff is going to be ultimately on England it is very difficult to say, but at the beginning anyhow it will certainly provide a stimulus to an improvement in trade which is at present lacking.

[fol. 4230] I do hope that you will be able to come to a decision soon regarding S.K.F. I am on the verge of a real row with them in this Country. I agreed that pending all these discussions—which have now been going on for a year—we would let them have Motor Cycle Bearings to make provided they would not interfere with our large Bearing business. They have, however, recently concluded an arrangement with Dennis to supply them with Ball Bearings at a very cut price and certain sizes of Taper Bearings at slightly below our figures. They have further offered Dennis a rebate of 10% provided their total business for the Year on all Bearings exceeds £10,000. Unfortunately I did not find this out until Prytz had left the Country but I have written the Commercial Manager at Luton a pretty stiff letter on the subject and sent a copy to Prytz. I have no intention whatever of letting them get in to our business under the pretext of a friendly arrangement. I shall consequently be very glad when you have decided whether we are going to do a deal or not.

Prytz has sent me a copy of the letter that he addressed to you on the 8th instant, which I suppose you will receive by the same mail as you receive this. It bears out entirely the cable that I sent to Grover Higgins. In this connection, would you let me know whether you would prefer me to

cable to Grover Higgins or to you, or to anyone else in regard to these negotiations. I have cabled to Grover Higgins recently as not very long ago Fred Strough took me severely to task for mentioning S.K.F in an open cable addressed to Canton, so I thought I had better be on the safe side.

I am going over to Paris in about a fortnight's time and I will see Fegan then and make arrangements for him to come as soon as his Wife is fit to travel.

With kindest regards,

Yours ever, Michael B. U. Dewar.

[fol. 4231] PLAINTIFF'S EXHIBIT 74

24th November, 1930.

D. P. Hess, Esq., Timken Roller Bearing Co., Canton, Ohio.

My dear DON:

Many thanks for your cable. As I told you in my cable, SKF here, in spite of the arrangement I had with their late Managing Director, began to cut definitely into our business by promising rebates and other forms of price cuttings. I immediately reduced our prices to well below theirs and told them I would have nothing more to do with them. I was rather afraid that a real row might result, but I am glad to say it has not, and it has brought them to heel. They have now undertaken definitely to cover us in future on all Commercial Vehicle work pending the completion of the negotiations in America.

I think you are wise to take the step of putting in hand those two small machines, as in the event of a deal with SKF you will get your money back for them, and in the event of not having a deal, we shall certainly be able to get the Ford orders and a good many others which, at the present moment, Wrba cannot make at a reasonable price owing to the cost of his Race and Rib grinding, as he has only very old and very slow machines to do it with.

I am going to Paris on Saturday or Sunday, and will write you again when I have been there.

Yours very sincerely, Michael Dewar.

[fol. 4232] PLAINTIFF'S EXHIBIT No. 75

December 27, 1929.

Mr. M. B. U. Dewar, c/o British Timken Limited.

Dear MICHAEL:

Our industrial business in Canada is increasing quite perceptibly, and there is no question in our minds but that Canada in General has rather bright prospects in the use of anti-friction bearings. Our problem here is that we are up against approximately a 30% tariff and the situation is further complicated by the fact that we have agreed with the Canadian Government that our subsidiary company in Canada will purchase bearings from us at only one price, namely, our No. 18 price.

With this situation confronting us we are going to be bothered by rather serious competition from S K F, and the thought has occurred to us that it may be possible for you to supply bearings for our industrial requirements in Canada. According to our records there is a 15% duty on English products as compared with our 30% and, if you can sell bearings at low enough base prices, there is no question but that we can hold—or I should rather say get—a big bulk of this industrial bearing business in Canada.

With this in mind I am enclosing a list of bearings that are very likely to be used in this industrial development and we would like to know the best pric British Timken can quote on them. We are showing in this list of bearings our present selling price as well as our No. 18 price which is the selling price to our subsidiary Canadian company. Incidentally, these bearings will be used in fair quantities and I am advised they are usually ordered on the basis of approximately 500 pieces quarterly of each size.

Will you kindly give this matter your consideration and advise us at your convenience.

Very truly yours, The Timken Roller Bearing Company, —— ——, Assistant to the President.

DPH:PHK

[fol. 4233] Illegible Evidence.

[fol. 4234]

Bearing No. Mine Cars		Present Selling Price #18	Our Price for Duty into Canada #18 Price
2788-2720		$ .94	Same
3578-3520		1.28	"
3780-3720		1.45	"
390-3920		1.58	"
3982-3920		1.76	"
Link-Belt M & G.		#20	
349T-332		1.02	1.02
368T-362		1.20	1.20
388T-382		1.35	1.35
399T-3920		1.58	1.58
488T-472	All Tapered	2.13	2.13
588T-572	Bores	3.15	3.15
599T-592		3.66	3.66
71463T-71750		9.27	9.27
74530T-74850		12.83	12.83
82586T-82950		19.80	19.80
Dodge Mfg. Corp.		#18-2½	
11162-11315		.96	.99
366-363		1.17	1.20
365-363		1.17	1.20
385-383		1.31	1.35
395-3920		1.54	1.58
482-473		2.08	2.13
575-572		3.07	3.15
580-572		3.07	3.15
593-592		3.56	3.66
594-592		3.56	3.66
71450-71750		10.27	10.53
938-932		13.69	14.04
82550-82950		31.59	32.40

[fol. 4235] Illegible Evidence.

[fol. 4236] PLAINTIFF'S EXHIBIT 76

8th January 1930.

D. P. Hess, Esq., Timken Roller Bearing Co., Canton, Ohio.

My dear DON:

Many thanks for your letter of the 27th December regarding industrial business in Canada.

We will, of course, do anything we can to help you, and we are going into this matter. I will write you again when I am at the works on Monday. I have had so much to do here that I have not been over to Paris yet, but I have now definitely decided to go over on the 20th January.

I should love to help you compete with S.K.F. in Canada. I heard quite casually the other day from a representative

of the American motor industry, (who was in London and whom I met but whose firm I do not know) that for their assembly factory in Canada they have placed an order with S.K.F. for bearings which will be manufactured in Luton, as they were able to buy these *taper roller* bearings made by S.K.F. Luton more cheaply in Canada than they can buy yours.

I am sorry I have no more detail. Perhaps you can make an enquiry and find out if that is correct. If so, and we can help you in this matter again, please command us. I do want to take every possible step we can to keep S.K.F. out of the taper roller bearing business anywhere.

Yours very sincerely, M. B. U. Dewar.

[fol. 4237] PLAINTIFF'S EXHIBIT 77

December 16, 1932.

Mr. M. B. U. Dewar, 10 Mayfair Place, London, W. 1., England.

DEAR MICHAEL:

Now that I have been home about a week and as the temperature this morning was 40° F. below zero, I think I should write and tell you a few of the conditions that I find existing here, etc.

My crossing on the "Paris" was simply delightful to the extent that we had perfect weather all the way across. The service on the ship as well as the food was marvelous but at the same time in my humble opinion the "Paris" itself is a long ways from the "Acquitania's" class, and I certainly would hate to be riding on it on any kind of a rough or choppy sea. Incidentally, when it comes to docking a boat the French are almost impossible and I now understand why they like to go to Plymouth so that they have to use tenders. It took almost two hours to dock in New York with absolutely no fog or any more difficulties than you would normally expect in such an operation.

I have gone over the entire situation in Europe with Mr. Timken several times, as well as all the members of our staff with the exception of Mr. Ernst, and I am convinced that everything is entirely satisfactory to all of us. I ex-

plained in detail, and particularly to Mr. Timken, the French situation, and I think he now understands what you were up against last July in making the SKF agreement. He, of course, feels, as you know I do, that we should try to get a more favorable deal and I have explained to him that you are working on this phase of the situation at the present time but no definite action will be taken until the end of the first quarter of 1933, if then.

Your move in France eliminating Mr. Seward has also met with approval, as you know we Americans are quite impatient with statistics, etc., which are constantly unreliable. We have not as yet definitely set on sending a man over as Charlie Brower claims he is so short handed that it will seriously cripple him to send one of his best men, and I am of course insisting that the best is none too good, so we are going to discuss this matter in detail with Mr. Ernst in the next week or 10 days.

[fol. 4238] Conditions here are materially better than when I left, due primarily to Chrysler bringing out new models and their apparently good reception in the trade. We are now working 20 days per month 7 hours per day and employing 1100 men, and at this writing it looks like January will be about 15 percent better than the past two months. We are, or course, still operating at a loss and this is far from pleasing to some of us as you can realize. Our steel business is almost flat, and while we have done some good missionary work in this regard it still remains an event of the future as to how it will turn out in actual dollars and cents.

I cabled you recently about the Canadian situation and have just had a chance to review your last letter to Judd. Briefly, the situation is as follows:

SKF using bearings shipped from Sweden have underquoted us in Canada to quite a marked degree and have obtained quite a good bit of the Ford Canadian business as well as some of the other automotive manufacturers. Judd and I have been discussing it and he left for Detroit early this week convinced, as I am, that the only way to handle the situation is with British made product, which we intend to do. I, therefore, cabled for the maximum discount you could allow from your No. 317 list and I have just received an answer that this will be 87½ percent. I think this will be quite satisfactory, other than we will probably put it into easily calculated figures like 88, and

possibly have you make your bills direct to our Canadian company but ship the product to Ford, Chrysler, or whomever we designate. This will give us an opportunity to add on something for selling expenses which we will, of course, have in Canada. However, this latter feature I will discuss with Judd and write you further at a later date. In any regards, it will be up to British Timken to probably supply the entire Canadian market, both automotive and industrial, as we do not intend to let SKF have this business under any consideration.

I have been having considerable discussion with Steve Moreland since my return, and am sorry to advise you that I am pretty well disgusted with him. I explained very carefully to him that you could no longer pay a salary of $300.00 per month in American dollars and that you proposed to pay half in dollars and half in pounds. After about an hour's argument he flatly refused to accept such a proposition, although his present salary in America is $250.00 per month, as I insisted that he take all salary reductions that have gone into effect since he left. His major complaint seems to be that he cannot get living conditions comparable or any where near comparable with what he has been having in America along the line that he cannot get a house with heating conditions which will make Mrs. Moreland and the children comfortable. He tells me that he had to pay 7 pounds a week for the house he lived in and it was very unsatisfactory from this standpoint. This seems to be his major complaint as he likes the work and with minor exceptions likes his associates in England very much. I [fol. 4239] have told him that this is entirely a matter for your decision and that I personally would not approve his continued payment in American dollars exclusively unless you felt that this was the thing to do.

In the meantime, Michael, I expect to see next week in Pittsburgh a man I described to you, Fred Waldorf,—and while he is not as good as Steve Moreland, he is an excellent steel mill equipment engineer who I feel sure will be capable of teaching your staff all the details of this job. He speaks German but does not speak Russian. It might be well for you upon receipt of this letter to advise me your wishes as to our sending a man over, because if we rehire Waldorf I will have to bring him here to Canton for 30 days time in order to get him up to-date. On the other hand I believe Moreland will be very willing to come back if Dallow could

find him a house with central heating, as I feel if he had this problem settled he would be more than willing to accept different remuneration than $300.00 per month in dollars (or money as someone once said).

I certainly did enjoy Asquith's account of the World War, etc., and my only problem is to keep from loaning these books to my friends, as they are without doubt the best works along this line I have ever seen. Incidentally, I have promised to loan them to H.H.T.

Hope by this time our good friend Tabby is in good health again and that his cocktail parties do not ruin him.

With kindest regards to you and all of your associates, I am

Very truly yours, ——— ———,

DPH:MC.

[fol. 4240] PLAINTIFF'S EXHIBIT 78

Mr. D. P. Hess, Timken Roller Bearing Co., Canton, Ohio.

MY DEAR DON:

Thank you so much for your letter of the 16th December. I have just written to Mr. Timken in reply to his letter of the same date.

I was terribly sorry to hear that there is an epidemic of influenza in Ohio and that the schools have been shut. I don't know how true it is, but it was given as a piece of news on the radio a few nights ago.

With regard to your talks with Mr. Timken and Mr. Ernst, I am glad they appreciate the agreement which I made with SKF last July. I now have no doubt that we shall not be able to keep to the agreement and I have arranged a meeting with Mr. Bratt in Paris to discuss some further arrangements with him. There is no doubt we must have more liberty of action.

With regard to your sending over somebody to instal a Standard Costs System, I have engaged a Mr. Hamilton, who has been in the offices of Mr. Mearns—of Whinney Smith Whinney & Co. He is twenty-seven years of age and has been very highly recommended indeed to us by Mr. Mearns. In fact we found great difficulty in persuading Mr. Mearns to let him go.

He is going to work at British Timken on our Standard

Costs System for five or six weeks, and then I propose to send him to Paris.

I am very glad you feel conditions are improving, and [fol. 4241] I hope that the demand for cars will really increase, as surely a large proportion now of the cars in use must need replacement.

I have just written you another letter in connection with the competition with SKF Gothenburg. I merely would add here that we will, of course, do everything in our power to enable Timken to hold the Canadian market.

With regard to Moreland, I shall be glad to see him, and perhaps we may be able to come to an agreement with him.

The general prospects in this country seem to be brighter at the moment; but nevertheless, there is a long way to go before we shall see any real improvement.

It will interest you to know that I am now absolutely certain that the Ring Rolling Machine will be entirely satisfactory, anyhow for Cups. We shall have our big furnace for it finished this week; but the result of making some rings on our Forging Machine for one of the 400 series Cups and then rolling them has shown us that we can, without a doubt, do what we anticipated we could. We can keep the eccentricity within four thousandths of an inch and do with one small operation of chamfering only, before carburising.

With regard to Ellis's half cold and half hot method of making smaller Cups, we shall have this under way also during this week and I will send you full particulars of it as soon as we are satisfied with it.

At the moment, all I can say is that it looks very promising.

With regard to Ball Bearings, we are really beginning to make some headway now. We have been relying, possibly too much, on making outer races on the Ring Rolling Machine, and we now know what we can do in that regard [fol. 4242] which will make it possible to get ahead more rapidly.

With kindest regards,

Yours very sincerely, Michael Dewar.

[fol. 4243] PLAINTIFF'S EXHIBIT 79.

December 14, 1932.

Mr. M. B. U. Dewar, 10 Mayfair Place, London, W.1., England.

DEAR MICHAEL:

Upon my return to this famous country I find a cable from Birmingham with reference to a statement made by Ford Dagenham that we have granted Ford America a license to manufacture Timken bearings according to our patents, and it puzzled me just a little bit because this is the situation I described to you when I explained that we had dropped the Bower suit and had given Ford such a license as they describe. We, however, explained to them that we could give them no such license for England or any European plant as British Timken was our exclusive licensee and that anything in this regard which they desired would have to be discussed with you.

I think I have explained to you verbally our position with Ford and, of course, your action in England is entirely in your own hands. For your further information, we are mailing a copy of this Ford agreement and trust you will retain it in London as we do not care to have it generally known.

Very truly yours, The Timken Roller Bearing Co.,
———, Assistant to the President.

DPH:MC

[fol. 4244] PLAINTIFF'S EXHIBIT 80

29th December, 1932.

Mr. D. P. Hess, Timken Roller Bearing Co., Canton, Ohio.

MY DEAR DON:

Many thanks for your letter of the 14th December regarding your arrangement with Ford.

The Co-Ordination Department of the Ford Company in London had apparently been advised by Detroit of your arrangement and wished to obtain the same concession

from us. There is no doubt at all that Ford have decided here, as a policy, to have two sources of supply and they have certainly favoured SKF in the last month or two in placing orders. However, our arrangement with SKF will prevent this going too far.

We have had to give way to Ford as naturally it seems impossible for Timken in one country to treat Ford differently from Timken in another country.

I am very glad to hear you have shipped the three Acmes for Birmingham, and I shall be most interested to have them to see what it is in the re-building which makes them so much stronger than the ordinary Acmes. As I told you, your Acme expert told us that we could never possibly get anything like the production you get from our Acmes,—however much we spent on repairs—without rebuilding them.

I shall be in Paris again the week after next, and shall look forward to your letter regarding the modifications to the Aube Electric Furnace.

With kindest regards, Yours very sincerely, Michael Dewar.

[fol. 4245] COPY

PLAINTIFF'S EXHIBIT 81

February 2, 1933.

Ford Motor Company, 3674 Schaefer Road, Dearborn, Mich.

Attention Mr. C. F. Unruh, Purchasing Department

GENTLEMEN:

This replies to your letter dated January 26th, addressed to Mr. J. W. Spray, regarding letter sent to you dated September 19, 1932, addressed to your Company, attention Mr. D. J. Jend, as follows:

Canton, Ohio, August 31, 1932.

Date changed to September 19, 1932.

The Ford Motor Company, Dearborn, Mich.

Attention: Mr. D. J. Jend

GENTLEMEN:

In connection with our patent license agreement dated August 31, 1932, herewith attached, we want it understood that we do not have the right to grant licenses to the Ford Motor Company, Ltd., of England, as we have previously granted exclusive license to the British-Timken Ltd. under any British patents which we own or control.

Very truly yours, The Timken Roller Bearing Company. (Signed) J. W. Spray, Vice President.

Since the date of the license agreement was changed from August 31, 1932, to September 19, 1932, our letter quoted above should be changed so as to show the date of the license agreement correctly, as follows:

"In connection with our patent license agreement dated September 19, 1932, herewith attached, we want it understood that we do not have the right to grant licenses to the Ford Motor Company, Ltd., of England, as we have previously granted exclusive license to the

British-Timken Ltd. under any British patents which we own or control."

Unfortunately Mr. Spray is in the Cleveland Clinic Hospital, undergoing an operation; hence, my writing this letter, rather than defer a reply which would carry Mr. Spray's signature.

Very truly yours, The Timken Roller Bearing Company. (Signed) R. C. Brower, Secretary & Treasurer.

R C Brower:S

[fols. 4246-4247] Copy

PLAINTIFF'S EXHIBIT 81A

FORD MOTOR COMPANY
Factory & General Offices
3674 Schaefer Road
Dearborn, Mich.

January 26, 1933.

Timken Roller Bearing Co., Canton, Ohio.

Attn: Mr. J. W. Spray

GENTLEMEN:

Again referring to your letter of Dec. 29th, 1932 with reference to agreement on British patents we note that while your letter is dated the same day as the agreement the body of the letter refers to agreement dated Aug. 31st, 1932. This we do not believe is correct and would ask that you write us a new letter mentioning the correct date of the agreement in body of the letter which would be September 19, 1932.

Ford Motor Company. (Signed) C. F. Unruh, Purchasing Department.

WFM RT
P-25

[fol. 4248] Copy

PLAINTIFF'S EXHIBIT 81B

August 31, 1932.

Date changed to September 19, 1932. JWS.

The Ford Motor Company, Dearborn, Mich.

Attention Mr. D. J. Jend

GENTLEMEN:

In connection with our patent license agreement dated August 31, 1932, herewith attached, we want it understood that we do not have the right to grant licenses to the Ford Motor Con pany, Ltd., of England, as we have previously granted exclusive license to the British-Timken Ltd. under any British patents which we own or control.

Very truly yours, The Timken Roller Bearing Co.,
——— ———, Vice-President.

J:W.Spray:MC

[fol. 4249] Copy

PLAINTIFF'S EXHIBIT 81C

Canton, Ohio,
September 19, 1932.

Ford Motor Company, Dearborn, Michigan.

GENTLEMEN:

In consideration of the placing with us of your purchase order No. H-5094, dated Sept. 19th, 1932, for 87,500 Bearing Cones and Cups, we hereby grant to the Ford Motor Company, a Delaware corporation, of Dearborn, Mich., the Ford Motor Company of Canada, Ltd., the Ford Motor Company, Ltd., England, and their subsidiaries and associated companies, a permanent, irrevocable and non-exclusive license both in the United States and in such foreign countries as we have such patents, to manufacture, have manufactured, use and sell bearings including those known as tapered roller bearings under any and all patents and

patent applications or inventions owned or controlled by us or under which we may have the right to grant licenses during the time in which we furnish you with bearings.

This license shall also extend to include any bearings which you may have previously manufactured, had manufactured, used or sold.

This license shall likewise extend to equipment and apparatus for the manufacture of bearings of this type, and to methods and processes of making same.

This license shall extend only to bearings for use in or in connection with products manufactured or sold by the licensees hereinabove named, and to equipment, apparatus, methods and processes for use in the manufacture of bearings to be sold for such use.

By placing the above purchase order, or by accepting this license, it is understood that the Ford Motor Company of Dearborn, Michigan, the Ford Motor Company of Canada, Ltd., the Ford Motor Company, Ltd., England, [fol. 4250] and their subsidiaries and associated companies neither expressly nor impliedly admit the validity or infringement of any patents under which they are herein licensed, nor do they bind themselves to purchase any definite or specified number of Bearing cones and/or Cups except as set forth in purchase order No. H-5094.

The licensor represents it has good title to the following patents and the lawful right to grant this license on same:

Neal Patent No. 1258634 dated March 5, 1918.
Miller Patent No. 1392019 dated September 27, 1921.

Very truly yours, The Timker Roller Bearing Company; by (Signed) J. W. Spray, Vice President.

Accepted: Ford Motor Company, by (Signed) B. J. Craig, Secretary.

[fol. 4251] PLAINTIFF'S EXHIBIT 82

London, England,
February 16, 1932.

Prices on Service Bearings into Our Territory

Arrangements completed to effect that British Timken will not quote on any inquiry coming in and state product

MICRO
TRADE

CARD
MARK ®

W BENDER & COMPANY
MB
52

627

should be obtained from us. There are two exceptions to this:

1. When customer demands British product.
2. When SKF or F. S. are in competition.

Both the latter are quoting 70 off on the continent and we are having our trouble.

Hong Kong will be American territory starting at once.

D. P. Hess.

DPH:PHK.

[fols. 4252-4253] PLAINTIFF'S EXHIBIT 83

British Timken, Limited
Cheston Road, Aston, Birmingham, 7

WEH/LC

26th January 1934.
Recd. 2-5-34.

Mr. D. P. Hess, The Timken Roller Bearing Co., Canton, Ohio, U. S. A.

DEAR MR. HESS:

Mr. Walsh has favoured us with another Order, No. 21542, for 1500 Bearings No. 09074/09194 which are to be shipped to your Toronto office, and I am a little worried about the price of this particular bearing. As you know we have sold this to you in the past at list price, which 10/- this being subject to a discount of 87½%, giving a net figure of 1/3d. We are not making the bearing at anything li[ke] this figure to-day, and I am wondering if you cannot pay a little more for this having regard to the fact that your Toronto people can land this into Canada with a much lower duty charge than if the bearing is sent over from Canton. To cover our costs we should ask list price less 82½%, or what you would call a 17½ List.

I am sure you do not want to see us shoulder a loss on a job like this, and I would appreciate your meeting us.

I am also much obliged to you for Order No. 21543 covering a supply of Timken Straight Roller Bearings. Dis-

counts so far have not been mentioned for this type of bearing, although Mr. Dewar has referred to 80% in the case of ball bearings. What I propose to do at the moment on this initial order is to invoice at list prices less 75%, so that Mr. Partridge can get an idea as to what his landed costs will be and the competition that he has to meet.

Yours faithfully, For British Timken Limited, W. E. Hobley (signed).

[fol. 4254] PLAINTIFF'S EXHIBIT 84

WEH/LC. Auto Section.
27th April 1934.
Recd 5-9-34.

Mr. D. P. Hess, The Timken Roller Bearing Co., Canton.

DEAR MR. HESS:

A letter just reaches us from Mr. Webster of the Service & Sales Division dated 13th instant, in which he asks us to send over to Toronto 30 A. C. No. LY. 70 and 20 Cups No. LY.62A. The order is being put on the books and despatch will be made fairly promptly, but I must remind you that with the rising cost of raw material it is impossible for us to bill these to you at list prices less 87½% discount, which was arranged some years ago. The best we can do on a bearing of this type is 80%, so that the invoice will read:

A. C. No. LY.70	List Price £2.10.0.
Cup No. LY.62A	List Price £1.10.0.
	Less 80%

As these bearings are for replacement in British made commercial trucks, I am sure your Toronto office will be able to land them and well them profitably.

Yours faithfully, For British Timken Limited, W. E. Hobley, Sales Department.

[fol. 4255] PLAINTIFF'S EXHIBIT 85

11th September, 1934.

My dear Don:

I have your letter of the 15th August with regard to the sale of 570 tons of Ball Bearing Tubing to Moscow.

The question of your selling steel to Russia was never mentioned to me either during your visit to England or during our visit to Canton. The only question of the sale of steel that was discussed was the question of selling your steel in England or making an arrangement for some firm in England or elsewhere to make your special steels.

The position is one of considerable difficulty because I do not feel inclined to agree to give you carte blanche to sell tubing in our territory; it might conceivably react to our disadvantage if your tubing were sold to our competitors.

Yours sincerely, M. B. U. Dewar.

Mr. D. P. Hess, Timken Roller Bearing Company, Canton, Ohio.

[fol. 4256] PLAINTIFF'S EXHIBIT 86

September 20, 1934.

Mr. M. B. U. Dewar,
10 Mayfair Place,

London, W. 1., England.

Dear Michael:

Regarding your letter of the 11th as to our selling tubing to Russia, please understand that under no circumstances would we sell our tubing to any one in the world who might as a result harm British Timken, French Timken or American Timken. We have not yet reached this necessity in merchandising our Steel and Tube product.

Very truly yours, The Timken Roller Bearing Co.,
—— ——, Assistant to the President.

DPH:MC

[fol. 4257] PLAINTIFF'S EXHIBIT 95

Postal Telegraph

May 16, 1938.

Dewar-Britimken-London, England.

Ford wishes Timken give technical advice to Steyer Austria connection with manufacture tapered roller bearings stop claim they cannot get sufficient quantities from present source stop want second source supply stop explained to Ford that Britimken controls such matters stop pointed to danger in such situation but agreed to consult you stop please telephone me Canton office three to five Canton time Tuesday.

Umstattd

Chg: Timken Roller Bearing Company, May 116, 1938. 11:30 A M. Detroit, Michigan.

[fol. 4258] PLAINTIFF'S EXHIBIT 96

Western Union

1938 May 20 PM 8 20

HA323 via RCA-CD London 41 20
NLT Umstattd-

Timken Roller Bearing Coy Canton (Ohio)-

Very much regret unable assist because have been informed on highest authority that action on our part as suggested would in present circumstances be viewed with gravest disapproval by authorities in this country-

Pascoe

[fol. 4259] PLAINTIFF'S EXHIBIT 97

The Timken Roller Bearing Company

Inter-Organization Correspondence

Date May 23, 1938.

Attention of: Mr. W. E. Umstattd—Canton
Subject: Ford Motor Company

Following my conversation with you on the Stey'r German plant situation, I interviewed Mr. Wibel and Mr. Loughran at Ford and this is merely a confirmation of that visit.

Mr. Wibel accepted without question the explanation that British Timken under the present political situation in Europe would not be permitted to aid a German Plant as had been suggested. He evidently by thinking out loud satisfied himself that this was very logical and he also accepted without any need for substantiation your statement of last week that our interests in British Timken and our contract with them prevented our doing anything.

Since our visit of last week I personally was concerned over the possibility of Bower doing something and I was anxious at this interview to find out if anything had been done by them. Before seeing Mr. Wibel, in a conversation with Mr. Loughran I mentioned that Bower had made a deal with Hoffman in England which petered out because the Hoffman Plant selected for tapered roller bearings had been commandeered by the government as a "Shadow" Plant.

When our interview was practically over I asked Mr. Wibel if there was something he could suggest we do and then I proposed that we might supply him with a flow or work sheet from the raw material used through to the finished product showing machines, production, et cetera, and I suggested that we use a wheel bearing. I think we possibly better supply this information on B-1216 & B-1217. However, if you want to use some other part number we are not committed on this particular bearing.

I feel that as the situation stands today that Bower will not be asked to supply anything because Mr. Wibel instructed Mr. Loughran to get information on a straight roller bearing from Green Island, their own plant, and on a ball bearing from the Hoover Company, and his words

were, "When you get this altogether and the information from Timken we will send it over there and tell them that is all we can do."

Mr. Loughran says there are 900 of the "Shadow" plants in England.

Harry J. Porter.

[fol. 4260] PLAINTIFF'S EXHIBIT 98

April 25, 1939

British Timken Limited
Cheston Road, Aston
Birmingham, England

Gentlemen:

Your Reference: WEH/LC

This will acknowledge your letter of March 15 to L. M. Klinedinst regarding SKF prices into Canada. We do not understand where you got your figure of 27½% duty applying on SKF bearings entering Canada from Sweden. The duty is 17½% and applies only on Industrial and Service bearings, Automotive bearings being admitted duty free.

We are conversant with your relations with SKF in England and understand how you are able to stabilize prices there. It is indeed unfortunate that this does not apply to the world generally.

Very truly yours, The Timken Roller Bearing Co.

W. Robert Timken
REF:BAS

[fol. 4261] PLAINTIFFS EXHIBIT 99

August 25, 1939.

Mr. M. B. U. Dewar, British Timken Limited, 10, Mayfair Place, London, W. 1, England.

Dear Mr. DEWAR:

We are having our troubles with the SKF Company not only in this country but in Canada as well and in many foreign countries such as Japan, South America, and else-

where due to their making price reductions very far below those that we have ever extended to anyone in their respective field.

We had a situation in Canada where the SKF Company is bringing in their tapered roller bearings and selling them for new installations, not only industrial but automotive as well. They have cut the price from 10% to 12% at Ford and General Motors in Canada and also at McKinnon Industries, an axle manufacturer, but they have not yet been able to secure any of the International Harvester or the Chrysler business. We feel with this tremendous price handicap they may do this.

However, the thought that we have in mind is that we should make a study of the Canadian situation with the thought in mind that perhaps some arrangement might be set up whereby we could be appointed exclusive Canadian distributors for British Timken handling tapered rollers, balls, and straight rollers, not only for service requirements but for new installations as well in all of the various industries. There would be some advantages in this and perhaps many disadvantages. We can see, however, that industrial and service bearings shipped by SKF from Sweden into Canada take a duty of 17½% while they are free from England. This would give us that advantage.

While this arrangement might not be feasible it is certainly worth while thinking about, and it appears to me a good club to put over the SKF Company's head. Maybe you have some thoughts on it and we would be glad to have your reaction.

[fol. 4262] We presume that under circumstances such as these you would sell The Timken Roller Bearing Company, Limited, of Canada, at your lowest prices on the various types of bearings, and you might give us these prices so that we could set up some figures to determine whether or not it would be possible to compete with SKF in Canada on such a basis.

Very truly yours, —— ——, Vice President.

L. W. Klinedinst: BAS

[fol. 4263] PLAINTIFF'S EXHIBIT 100

11th September, 1939.

Mr. L. Klinedinst, Timken Roller Bearing Company, Canton, Ohio.

Dear Mr. KLINEDINST:

Many thanks for your letter of the 25th August, regarding the trouble you are having with SKF in Canada.

We will give this matter our most careful consideration, but at the present time it is rather unlikely that we shall be able to help you very much. If, however, we can help you by persuading SKF not to fight you, that would appear to be the best way.

Please note that we have shut our London office, as all our work will, for the duration be with Government Departments, and these will not be located in London. Consequently, Mr. Pascoe and I expect to transfer ourselves to our head office in Birmingham.

Yours sincerely, Michael Dewar.

[fol. 4264] PLAINTIFF'S EXHIBIT 101

September 27, 1939.

Mr. M. B. U. Dewar, British Timken Limited, Cheston Road, Aston, Birmingham, 7, England.

Dear MICHAEL:

In discussing among ourselves the present confusion about trade with England and France occasioned by the war, a number of points have arisen which we would like to clear up if possible. We realize, of course, that there has been a good deal of uncertainty due to upset conditions.

I will list these questions in order that we may discuss them more clearly.

1. What is the preser atus of shipments of bearings and steel to British and r ench Timken? Our understanding is that British and French import licenses must be obtained in each case before an order is shipped. However, we have had several cables requesting immediate shipment

although as far as we knew no specific licenses had been obtained. It is possible that we may have difficulty in arranging shipping space unless we know definitely that a license is in your hands. I would suggest, therefore, that on future orders you indicate that you have secured an import license in each case.

2. What methods of payment do you propose to set up? It is our impression that in order to conserve foreign exchange the British and French governments require that sufficient dollars be earmarked to cover each order. It is quite probable that the United States will make similar conditions in the new Neutrality Bill which is now under consideration. We should, therefore, establish a definite method of payments as soon as possible. The matter of accounts receivable already on the books must also receive consideration.

3. Your inquiry on machinery raises the problem of payments for purchases if made. It is possible that some of the machinery firms would prefer to have us assume responsibility for these purchases and bill you direct. I can see no objection provided adequate foreign exchange is made available. What is your thought on this? In this connection we would prefer that you take title to any machines purchased before they left the country.

[fol. 4265] 4. Methods of shipment—as you no doubt are aware all freight charges must be prepaid before shipments will be accepted. I assume the simplest method would be for us to prepay these charges and add them to the invoice. The question of lines to be used also must be settled. Rates and insurance on neutral lines are lower than on British or French lines. In addition no definite sailing dates are published for the latter with the result that postponements may entail storage charges at New York. However, "cash and carry" provisions of the new Neutrality Bill may make use of American ships impossible.

5. There is the possibility that you will wish us to supply bearings to territories of British and French Timken which you cannot serve if your plants are working at capacity on orders for domestic use.

6. Can anything be done by us to salvage our Reichsmark account in Germany? Or has the entire amount been seized by the German Government?

7. What is the present status of the Westminster account?

8. Can you give us any idea of the type of orders for steel and bearings which we may expect to receive from British and French Timken? This is especially important in the case of steel as our mill is operating at capacity.

9. What are the British and French regulations as regards blueprints and advertising matter which we may wish to send you?

10. We are, of course, particularly interested in the question of your present orders with us, expecting that some of them may be cancelled under the new conditions. We are very cramped for storage space and would appreciate knowing as soon as possible what disposition should be made of them.

11. We understand some friction has arisen between Russian and British firms which had been bidding on Russian orders. Can you give us any information on this subject?

12. We are also interested in hearing what, if anything, has happened to the trademark proceedings.

Before closing I would like to assure you that we have no intention of increasing prices either to you or to our domestic customers unless we are absolutely forced to by general wage increases or abnormal rises in raw material costs.

From the above you will see we have made no attempt to analyze these problems nor have we offered any suggested solutions. Some of them may be answered in a few days by the legislation of our own Government. However, we have merely listed the questions that are in our minds today and would appreciate your writing us in as much detail as possible giving us your thoughts on each one.

Sincerely yours, W. Robert Timken.

WRT:BAS

[fol. 4266] PLAINTIFF'S EXHIBIT 102

British Timken Limited

MBUD/KP, 26th October, 1939.

Mr. W. Robert Timken, The Timken Roller Bearing Company, Canton, Ohio, U. S. A.

MY DEAR ROBERT:

I am sorry that I have not replied to your letter of September 27th but the various Government regulations were in such a fluid state that it was extremely difficult for us to give clear replies. Even now, some of the regulations have been altered within the last twenty-four hours.

Referring to your questions by number, the following is our latest information:

1. Import Licences are required for any bearings for vehicles that run on roads. This, at the moment, apparently includes tanks. No Import Licence is necessary for bearings required for industrial machinery. As regards steel, no Import License is necessary. For machine tools, up till almost the moment of writing Import Licences were not required, but the regulations have been amended within the last twenty-four hours requiring such Licenses and we are taking steps to obtain them for all machines on order.

Whether we have to get an Import Licence or not, when we order from you, we can, even under present circumstances, and always do, buy forward the dollars required for payment, but when the question of payment arises we have to get special permission to use those dollars for the purposes for which they were bought. We do not anticipate any difficulty in obtaining permission to use any dollars we have bought. When we order anything from you in future you may take it that where we have cabled you asking for shipment, we either have the Import Licence or no [fol. 4267] Import License is required. In future we will always tell you either by cable, if the material is ordered by cable, or by letter, if ordered by that means, whether or not an Import Licence is necessary and, if necessary, that we have it or are obtaining it.

2. Methods of payment are referred to above in that we have stated that we always buy the dollars forward immediately we place an order with you, so you may take it

that we always have the dollars as soon as you have the order. Payment can be made by bank transfer, cable or letter, just as you prefer. As regards accounts receivable already on your books, here again we have in our possession dollars to cover every order open with you, and as payment becomes due, so we apply for permission to use the dollars. For instance, we paid you on the 9th and 11th October $1002 for your May account.

3. We would prefer you to assume responsibility for purchases of machinery and bill us direct as it facilitates our application for dollars here when we only have to quote the name of one firm. As mentioned above, adequate foreign exchange will always be available and we do not foresee any difficulty in obtaining permission to use the foreign exchange. We quite agree to take title to any purchases before they leave America, and we shall carry out insurance, marine and war, ourselves, as indeed we do now through our Insurance Broker by means of an open cover. Again, if we take delivery at your factory, this again is what in fact we do in many cases, we wish you to pay freight charges, debit us both rail and boat to England, insurance being dealt with as above.

4. Methods of shipment. All freight charges now having to be prepaid, you should pay them and add them to the invoices. So far as we can see, in future we should prefer shipments to be made on British boats.

5. As regards the supply of bearings from British and French Timken to overseas customers, we anticipate that we should be able to serve all our territories, except enemy ones, as great efforts are being made by the British Government for all export trade to be maintained. Should, however, we find it impossible, we shall send you a cabled or mailed request to supply any territories where our delivery is endangered, in which case payment arrangements will be made between you and the customers in the territories concerned. We shall tell you the prices and ask you to credit us with the difference between your normal price to us and the prices we ask you to invoice to customers.

[fol. 4268] 6. With regard to the Reichmark Account in Germany, the Auditors, Price Waterhouse & Co., have closed their office; Miss Doering is presumably still there.

7. With regard to the Westminster Account, it is quite clear that this is not in the hands of any British subject and

therefore is not subject to our control requirements that the dollars should be sold to the British Government.

8. You have received steel orders from British Timken and bearing orders. We will endeavour to give you as long a notice as possible as to our requirements, but at present it is impossible to say more than we have said by sending you orders.

9. As regards blue prints and advertising matter, we cannot export without permission, neither can we import without permission, but we have applied for a general permit.

10. Present orders. We shall not ask you to cancel any orders except possibly those for bearings for passenger car replacements, which are very small indeed. We are at present attempting to obtain permission to import those already ordered from you for such replacements.

11. We know of no friction between British firms and Russia.

12. Regarding trade mark proceedings, the matter is proceeding slowly and at the moment is waiting for certain declarations which we have to submit to the authorities from certain of our customers in this country and other organisations who are interested in the field covered by our products.

In the event of modifications to the above, we will immediately inform you.

With regard to French Government requirements, you may take it that in general these are the same as in the case of the British Government. However, the position in France is rather more fluid and I am afraid at the moment that on many points it is difficult to write precisely. When in Paris last week we prepared a letter to send to you but we are holding it up for a day or two in order that we may refer to some of the points you raise in more detail than we can at this moment.

Travelling over to France is not a pleasant occupation in these days, taking as it did about seventeen hours each [fol. 4269] way. The boats are small but fast and compelled to zigzag and the passengers are forced by the authorities to wear life belts during the crossing.

For your amusement, I enclose you two photographs of Mr. Pascoe and myself in our office in Birmingham. I only hope that when the United States comes within easy bomb-

ing range of Europe, which I suppose will occur within the next ten years, you will have more comfortable things to wear.

Yours sincerely, Michael Dewar.

[fol. 4270] PLAINTIFF'S EXHIBIT 103

British Timken Limited

MBUD/KP, 14th November, 1939.

Mr. W. Robert Timken, The Timken Roller Bearing Company, Canton, Ohio, U. S. A.

MY DEAR ROBERT:

Further to my letter of the 26th October, which is in reply to yours of September 27th, in a matter of various points arising under War conditions which you wish to have made as clear as possible, the regulations regarding France I told you then were much the same as in the case of the British Government, but I think that, in order that there might be no confusion, I had better reply to your letter again from the point of view of Francaise Timken:

1. Import Licences are required for obtaining delivery of all imports, including bearings, steel and machine tools. When we send you an order, we at the same time make an application for an Import Licence, and, up to the present, these have always been granted. We understand that in the case of a Licence being refused, we should be advised within a week of our application, so that if our order had been sent to you by ordinary mail, we should have sufficient time to notify you of a cancellation by cable. In the case of orders given by cable, you may take it that we have previously obtained an Import Licence or have ascertained that this will be granted.

2. Methods of Payment. In France, all purchases and sales of foreign exchange are controlled by the "Office des Changes". Generally speaking, foreign exchange can only be obtained for the following purposes:

[fol. 4271] (a) Payment of debts incurred prior to the 9th September last.

(b) For travelling expenses.

(c) Payment for goods for which an Import Licence has been obtained.

When we obtain an Import Licence, we receive at the same time authority to purchase the necessary foreign exchange from the Office des Changes. The formalities take a certain time, but we expect that you will receive payment approximately two weeks after we have received delivery of the goods. This method will mean that we shall be making payment to you on receipt of each invoice, although later we may be able to group several invoices and make one payment in respect of these.

As regards Accounts Receivable already on your books, we obtain the necessary foreign exchange from the Office des Changes as and when payment is due on production of your invoices.

In this way we have already remitted to you the sums due on the 20th September and 20th October for our May and June accounts. These and future payments will be sent to you by the National City Bank, Paris, or by the Westminster Bank, Paris, by mail transfer as heretofore. At present it is impossible to make forward contracts in foreign exchange, but in view of the system enumerated above and the fact that we hold approximately $40,000, this should be ample cover to meet any possible exchange losses.

3. We would prefer you to assume responsibility for the purchases of machinery and bill to us direct.

The details given above (Paragraph 2) on the question of foreign exchange apply equally to payments for machinery.

We quite agree to take title for any purchases before they leave America and we shall carry out insurance, "marine and war", ourselves through the "Ministry of Merchant Marine". We wish you to pay all freight charges.

4. Methods of shipment. All freight charges now having to be prepaid, you should pay them and add them to the invoices. Unless you hear to the contrary, we should prefer shipments to be made on French boats or, failing this, British boats.

[fol. 4272] 5. As regards the supply of bearings to our overseas customers, we anticipate that we shall be able to serve all our territories except enemy ones as the French

Government are, like the British Government, alive to the necessity of maintaining exports. Should, however, we find it impossible, we shall send you a cabled or mailed request to supply any territories where our delivery is endangered, in which case payment arrangements will be made between you and the customers in the territories concerned. We shall tell you the prices and ask you to credit us with the difference between your normal price to us and the prices we ask you to invoice to customers. We have applied for permits to export but we have not received many as the system is not yet working smoothly in France, but we anticipate that it will be very shortly.

6. .....

7. .....

8. You have received steel and bearing orders from Francaise Timken. We will endeavour to give you as long notice as possible as to our requirements but at present it is impossible to give you any information other than that already in your possession.

9. Up to the present time we have received both blue prints and advertising matter from you without difficulty. Of course, as you are aware, there is a censorship.

10. Present orders. We have already written to you and cabled you instructions regarding this matter and as you will have noticed, we have only cancelled certain small orders for service bearings.

11. .....

12. .....

I have now, I think, answered all the points you raise in your letter. Should any modifications be made, as doubtless they will, I will of course inform you as soon as I possibly can.

Yours sincerely, (Signed) Michael Dewar.

[fol. 4273] PLAINTIFF'S EXHIBIT 104

British Timken Limited

JES/LC 23rd October, 1939.

Mr. W. Robert Timken,
The Timken Roller Bearing Co.,
Canton, Ohio, U. S. A.

Dear Sir,

Percy Grant & Co. Ltd., Buenos Aires.

We now have pleasure in sending you herewith a draft memorandum of the Agreement which we propose should be concluded between Messrs. Percy Grant & Co. Ltd. and ourselves to cover our railway distributorship in the Argentine and Uruguay.

You will notice that the Agreement is made out as between British Timken Limited and Percy Grant & Co. Ltd., without joining in yourselves as a party to the Agreement. Our lawyers point out that neither we nor Percy Grant & Co. Ltd. is entitled to enter into the Agreement without the consent of yourselves. It is suggested that to cover this point a letter of consent should be sent by you to both Percy Grant & Co. Ltd. and ourselves, and that Percy Grant & Co. Ltd. and we should acknowledge the letter and undertake not to make any alteration in the Agreement without your consent. The 2 forms of letter proposed for this purpose are enclosed, and it is considered by our lawyers that this method of binding up the matter will prove simpler to operate and more satisfactory than any joint Agreement.

We trust that you will approve generally of both the proposed Agreement and the form of consent, and we shall be glad to hear from you in this connection at an early date as we are anxious to conclude this Agreement.

Yours faithfully, For British Timken Limited, J. —.
——, Sales Manager, Engineering Division.

Encl.

[fol. 4274] PLAINTIFF'S EXHIBIT 105

The Timken Roller Bearing Company
Canton, Ohio

December 28, 1939.

British Timken Limited
Cheston Road, Aston
Birmingham 7, England.

Gentlemen:

Your Reference: JES/LC

We have gone over the draft of a proposed Agreement between yourselves and Messrs. Percy Grant & Company inclosed in your letter of October 23, 1939. While we were in substantial agreement with the terms included, our Counsel felt that some changes were advisable from our viewpoint. I have underlined in red these changes on an extra copy and would appreciate your comment on them. If, however, they are acceptable to both parties as I think, please arrange to have them signed by the two parties to the Agreement.

The only major change is the one which provided that we sign our consent to the Agreement at the foot thereof rather than by means of the three letters of acceptance which you inclosed. We and our Counsel felt that this method was much clearer and yet met the point raised by your Counsel of not including ourselves as party to the Agreement.

Further, in relating this Agreement to the Business Agreement of November 29, 1938, we believe that we should reach a clear understanding as to the types of sales which may be made and the commissions payable.

Naturally, in the case of sales made by you to railroad equipment builders in your territory, no commission would be payable under #6 P. (A) of the Business Agreement.

However, sales made into Argentina or Uruguay for use for bearing replacement purposes would fall under #6 P. (B) of the Business Agreement. These would, therefore, have to be made at prices agreeable to ourselves and would carry the 5% commission.

[fol. 4275] We would, further, not expect you to make sales to Argentina or Uruguay to manufacturers as per #6 P. B of the Business Agreement.

If these three paragraphs are in accord with your understanding, please so state in your reply to this letter and the matter will then be clearly understood by us both.

Sincerely yours, W. Robert Timken.

WRT:BAS
Inc.

[fol. 4276] PLAINTIFF'S EXHIBIT 106

Memorandum of Agreement by and between British Timken Limited and Percy Grant & Company Limited

This agreement is made as on the first day of September One Thousand Nine Hundred and Thirty-nine by and between British Timken Limited, a joint stock company incorporated in England and having its Registered Office in the City of Birmingham England of the one part and Percy Grant & Company Limited, of Edificio Britanico Reconquista 314, in the City of Buenos Aires Argentina a joint Stock Company incorporated in —— of the other part.

Whereas

(a) The following words and expressions have the following meanings in this Agreement where the context admits.

"The Company" means British Timken Limited.

"The Canton Company" means The Timken Roller Bearing Company of Canton, Ohio, United States of America.

"The Representative" means Percy Grant and Company Limited.

"Argentina" and "Uruguay" mean respectively the territories of the Argentine Republic and the Republic of Uruguay.

"Railway Rolling Stock" means and includes Locomotives, Coaches, trucks, and other rolling stock in use on Railway Lines and does not include such vehicles or any other machinery plant or stock not in use on Railway Lines.

"Railway Bearings" means and includes anti-friction bearings, axle boxes and housings and parts thereof for use in Railway Rolling Stock.

"The Company's products" means products manufactured or supplied by the Company.

"The Canton Company's products" means products manufactured or supplied by the Canton Company.

"The Representative's territory" means Argentina and Uruguay.

"The Company's Territory" means the United Kingdom of Great Britain and Northern Ireland Eire and all Coun- [fol. 4277] tries other than France on the Continent of Europe and all Dominions Colonies Dependencies and Mandatory Territories of the United Kingdom aforesaid and other European Countries except France in any part of the World except in or adjacent to North or South America.

"Railway customers" means and includes the Proprietors of the Steam and Electric Railways in the Representative's Territory and builders of Railway Rolling Stock for use on Railways in the Representative's Territory, who are resident or carry on business in the Company's territory or the Representative's Territory.

(b) The Canton Company and The Company are associated Companies and work in close association in all matters connected with the manufacture of anti-friction bearings and each of them makes use of the name "Timken" as its trade mark, The Company doing so under contract with The Canton Company.

(c) The Canton Company has entered into an Agreement with the Representative dated the first day of March One Thousand nine hundred and Thirty-nine with a view to promoting the sale of Railway bearings being the Canton Company's products to the proprietors of Railways in the representative's territory either direct or through builders of Railway Rolling Stock in the Canton Company's territory or the Representative's territory.

(d) It is probable that some of these Railway proprietors may wish to make their purchases of Railway Bearings in the Company's territory in which the Company has the exclusive selling rights under the trade mark "Timken."

Now it is hereby declared and agreed by and between the parties hereto

1. Territory, Products, Uses.

(a) The Company hereby grants to the Representative, subject to the terms and conditions hereinafter stipulated, the exclusive right in the Representative's territory to can-

vass and invite offers and enquiries from Railway customers in that Territory for Railway Bearings being the [fol. 4278] Company's products which are intended to be purchased in the Company's Territory by the Railway customers for use in Railway Rolling Stock in the Representative's Territory.

(b) The Representative's rights under this Agreement are limited as to territory products customers and uses as above specified, and the products to which these rights apply will be the Company's products.

(c) The Company's products to which this Agreement applies shall be of the Company's standard design, material and workmanship.

(d) In particular the Representative's rights under this Agreement do not include the right to sell bearings, axle boxes or housings or parts thereof (whether for original installation or for replacement) for automotive or industrial application or for use otherwise than in Railway Rolling Stock on Railway lines, notwithstanding that such products may be ordered or used by railway customers.

2. Enquiries. The Company will refer to the Representative all enquiries for the Company's products received from Railway customers in the Representative's Territory except where conditions appear to the Company to indicate the advisability of quoting direct to such customers and the Company reserves the right to handle and sell direct to Railway customers on orders received direct by the Company, paying to the Representative a commission as hereinafter provided.

3. Selling Prices and Terms.

(a) In view of the nature of the business every transaction under this Agreement shall be subject to special quotation by the Company as to prices and all other terms and conditions, and the Company's products sold under this Agreement will be sold by the Company to Railway customers in the Company's Territory or as may be agreed upon in each case, subject to all limitations of this Agreement.

(b) No order received by the Representative or received by the Company from Railway customers in the Representative's Territory or in the Company's territory, shall be binding on the Company unless and until it is accepted in writing by the Company in Birmingham.

[fol. 4279] (c) All selling prices of the Company's products quoted to the Representative or to Railway customers shall be as detailed in the Company's written quotations and all such prices and all invoices shall be payable in Sterling to the Company in Birmingham unless otherwise agreed by the Company in writing.

4. Commissions.

(a) The Company will pay to the Representative a commission of ten per cent (10%) on the value of the Company's products shipped into the Representative's Territory upon orders received by the Company from Railway customers in the Company's territory, provided that prior to the Company's quotation to a customer resulting in an order it was known to the Company that the products were intended for shipment into the Representative's Territory.

(b) When the Representative succeeds in having the Company's products specified for new equipment which is to be purchased and constructed in the Company's Territory and shipped into the Representative's Territory the Representative will notify the Company in order that a commission for the Representative may be included in any quotation which the Company may submit in connection with such equipment.

(c) All commissions shall be reckoned upon the net invoice price or value of the Company's products unpacked ex Works, Birmingham regardless of the basis of delivery on which the quotation is made and the order is accepted.

(d) In order successfully to meet price competition in special cases, the Representative may agree to its commission being reduced to less than 10%, but such a reduction shall only be made by the Company after the Representative's Agreement thereto has been received in writing or by cable.

(e) All commissions payable by the Company shall be paid by draft or cheque in Sterling drawn on the Company's Bank Account in England and mailed to the Representative by the Company or will be credited to his account in any Bank in England designated by the Representative.

[fol. 4280] (f) Commissions under this Agreement shall be payable to the Representative only after full payment for the products upon which the Commission is payable has been received by the Company and no commission shall

be paid on sales for which the Company is unable to collect payment in full.

(g) All Commissions payable under this Agreement will be paid on the 20th day of the month following the month in which the Company receives full payment for the Company's products in respect of which the commission is payable or so soon thereafter as practicable.

5. Price Changes. Prices may be changed by the Company from time to time by giving to the Representative notice either in writing or by cablegram but no increase in price shall be effective with respect to orders being negotiated by the Representative on quotations issued by the Company prior to the time when it shall have received notice of such increase in price, provided that such orders are received by the Company within 45 days after mailing to the Representative notice of such increase, or within 25 days after the Company has cabled such notice to the Representative.

6. Diligence, Competition.

(a) The Representative during the term of this Agreement will exert its best efforts diligently to promote the use of Railway bearings for new or existing Railway Rolling Stock within the Representative's Territory which the Railway customers wish to purchase in the Company's territory.

(b) The Representative during the term of this Agreement will not sell or be interested in sales of nor solicit orders in the Representative territory directly or indirectly for any products that compete with the Company's products or the Canton Company's products.

(c) This Agreement and said agreement of the first of March 1939 shall be in force and effect concurrently subject to the termination provisions of this Agreement hereinafter provided in paragraphs 20, 21 and 22.

7. Communications.

(a) The Representative will conduct all business dealings [fol. 4281] and correspondence with the Company at its office in Birmingham England.

(b) The Company will pay 50% of the cable charges incurred by the Representative in connection with the work involved in carrying out the terms of this Agreement.

(c) The Representative's invoices for such cable charges shall be fully detailed as to the way the charges have been incurred, and shall be submitted to the Company every three months.

8. Access. The Representative will give to the Company or its agents at all reasonable times access to all information relating to the Company's products in the Representative's territory.

9. Shipments.

(a) Time specified for shipment by the Company shall be computed from receipt by the Company in Birmingham of the definitive order with complete specifications mutually approved.

(b) In the event of Acts of God, prevention by domestic or foreign law, fires, strikes, lockouts, or other differences with Workmen, accidents, shortage of transport facilities, delay of carriers, riots, acts of Civil or Military authorities, non-delivery of parts or materials by the Company's suppliers, or any other unavoidable causes or contingencies beyond the control of the Company affecting manufacture delivery or shipment then the delivery and shipment may be delayed by the Company without the Company being held responsible by the Representative or any customer therefor.

10. Penalty Clauses. The Representative shall not negotiate any order which involves a delivery penalty clause, unless the Company expressly consents thereto in writing.

11. Adjustments. All adjustments of claims for defective material and workmanship in the Company products shall be made by the Representative in accordance with the Company's instructions.

12. Representative's Authority.

(a) The Representative is in no way the legal representative or agent of the Company, and its authority as Representative is limited as expressly stated in this Agreement, and the Representative has no right or authority to assume or create any obligations of any kind, expressed or [fol. 4282] implied, on behalf of the Company or to bind it in any manner, whatsoever.

(b) The Representative shall not make any use of the name Timken or any variation thereof in connection with

its firm name, style, or title during the term of this Agreement, or at any subsequent time without the express written consent and authority of both the Company and the Canton Company.

(c) Without restricting the foregoing general provisions the Representative is specifically prohibited from using "Timken" in its corporate name without the express written authority of both the Company and the Canton Company.

13. Fees and Taxes. If the conduct of business by the Representative under this Agreement should subject the Company to the payment of any license, registration or other fee or tax of any nature under the laws of Argentina or Uruguay, then the Representative at its expense shall pay the same, and in any event the Representative shall indemnify and save harmless the Company from any license, registration or other fee or tax of any nature under Argentine or Uruguay laws which might be assessed or attempted to be assessed upon the Company or deducted from any money which the Company is entitled to receive under this Agreement, or any transaction effected thereunder.

14. Designs and Drawings.

(a) The Representative will secure and submit full engineering information concerning proposed Railway applications for approval by the Company.

(b) The Company will make application drawings and designs and will furnish blue prints and Van Dyke prints to the Railway customers in the Representative's territory or in the Company's territory at the request of the Representative.

(c) The Company reserves the right to make only general drawings except in the case of an actual order, in which case the Company will make complete detailed application drawings and data as to methods of application and furnish them to the Representative or to prospective Railway customers but the said drawings, etc. shall remain the exclusive and confidential property of the Company.

[fol. 4283] 15. *Inspection and Service.* The Representative at its expense will at all times render reasonable service to Railway customers and operators of the Company's products in the Representative's Territory with a

view to ensuring that the Company products are applied and maintained under proper operating conditions.

16. *Advertising.* The Company will furnish to the Representative free of charge, catalogues and pamphlets describing the Company's products in such quantities as the Company may deem necessary to assist the Representative in the development of the business and such catalogues and pamphlets will be posted to the Representative or in accordance with its instructions in small quantities as ordinary printed matter.

17. *Samples.* Samples and models may be supplied free of charge by the Company at its option and shall remain the property of the Company.

18. *Laws Governing Agreement.* This Agreement shall be interpreted and construed according to the laws of England.

19. *Illegal Provisions.* If any provision of this Agreement conflicts with any law or regulation in the Representative's Territory then such provision shall be considered as omitted from this Agreement and in such case the Company shall have the right to substitute a valid provision as nearly as practicable, equivalent thereto.

20. *Continuance of Agreement.* This Agreement shall remain in force until the first day of March 1942 and thereafter shall continue from year to year provided however that this Agreement may be terminated by either party on the first day of March 1942 or on the first day of any month thereafter by six months' prior notice in writing to the other party; provided further that this Agreement may be terminated by the Canton Company on the first day of March 1942 or on the first day of any month thereafter by six months' prior request in writing by the Canton Company to the Company and to the Representative; provided always that this Agreement shall be automatically terminated in the event of the termination of the Agreement made the first day of March 1939 between the Canton Company and the Representative.

[fol. 4284] 21. *Termination for Cause.* If the Representative fails to pay any moneys to the Company when the same become due and payable or fails to perform any of the conditions or provisions of this Agreement on its part to be performed, then the Company shall have the right to terminate this Agreement immediately by notice in writing addressed to the Representative at its last known address.

22. (a) This Agreement shall not be assignable or transferable directly or indirectly by the Representative or by operation of law and if the Representative becomes insolvent, if a petition in bankruptcy is filed by or against the Representative, if the Representative makes a composition with or assignment for the benefit of its creditors, if a receiver, liquidator or trustee is appointed for the Representative, if the Representative goes into liquidation or dissolution or attempts directly or indirectly to assign the benefit of this Agreement, then this Agreement shall terminate forthwith.

(b) The Representative will immediately notify the Company of any change in the legal constitution or control of the Representative.

(c) In the event of the termination of this Agreement the appointment by the Company of another Representative (which appointment shall require the consent in writing of the Canton Company) such new appointment shall be without prejudice to any claim the Company may have against the Representative and the Company will execute all unfilled orders accepted prior to termination.

23. *Entire Agreement, Modification.*

(a) This Agreement constitutes the sole and only Agreement existing between the parties hereto.

(b) All other agreements contracts and undertakings between the parties hereto are hereby terminated and no subsequent agreement or alteration of this Agreement by and between the parties hereto shall be valid or of any force or effect unless such agreement or alteration is made in writing and duly signed by or on behalf of both parties and made a part of this Agreement in express terms and unless such subsequent agreement or alteration also shall [fol. 4285] receive the written consent and approval of the Canton Company.

(c) Notwithstanding the fact that another Agreement may exist between the Representative and the Canton Company relating to the Representative Territory the parties to this Agreement shall have no liability to each other except as defined in this Agreement.

In Witness Whereof this Agreement has been signed on behalf of the parties hereto.

Whereas as recited in preamble (c) of the foregoing Agreement dated as of the first of September 1939 The Timken Roller Bearing Company entered into an Agreement with Percy Grant and Company Ltd. dated the first of March 1939 and British Timken Ltd. is also familiar with the terms of said agreement; Now Therefore pursuant to the provisions of paragraph 6 of said agreement of the first of March 1939 The Timken Roller Bearing Company does hereby consent that British Timken Ltd. and Percy Grant and Company Ltd. may enter in to and operate under the foregoing agreement dated as of the first of September 1939 subject to its terms and conditions provided however that by signing this consent The Timken Roller Bearing Company does not become a party to the foregoing Agreement and does not otherwise relinquish or waive any of its rights in said Agreement of the first of March 1939 or in any existing agreements between The Timken Roller Bearing Company and British Timken Ltd.

The Timken Roller Bearing Company. By ——— ———, President. Attest ——— ———, Secretary.

Signed and sealed by or on behalf of The Timken Roller Bearing Company December —, 1939, in the presence of ——— ———.

[fol. 4286] PLAINTIFF'S EXHIBIT 107

12-5-39.

D. W. Goodwin

Please prepare the following general letter for the Industrial District Managers, the Branch Managers of the Service-Sales Division, and the following members of the Automotive Division and Railway Division:

E. W. Austin
S. C. Merrill
T. F. Schrag
D. A. Bessemer
F. W. Lynch
Reed Alexander

Our Arrangements With British Timken Limited, Birmingham, England

Since the turmoil in Europe certain situations are arising that make it necessary for each and every one of our key

men to thoroughly understand the setup between British Timken Limited, Birmingham, England, and The Timken Roller Bearing Company, Canton, Ohio.

Their territory consists of the United Kingdom of Great Britain and Northern Ireland and all other countries of Europe and all Dominions, Colonies, Protectorates, and Dependencies of the United Kingdom and the European countries with the exception of those in or adjacent to North and South America which puts Canada in the American territory.

The contract provides that we shall not ship or knowingly permit our customers to ship bearings into their territory for use in the manufacture of any equipment whatsoever. Where customers wish us to make shipments into their territory for manufacturing purposes, we are to advise them of our arrangement with British Timken Limited and you are to immediately advise us of such conversations, negotiations, etc., so that we can in turn contact the British Timken Company.

Undoubtedly many of our manufacturing customers buy bearings from us for service purposes and occasionally for manufacturing purposes and in turn re-ship them into British Timken's territory. That, of course, we have no knowledge of and we cannot stop.

There is a provision in the contract which permits us to execute orders whose ultimate destination is in British Timken's territory for service purposes only to be used in equipment originally built in this country and equipped with Timken bearings, but there is considerable detailed work connected with this, and, therefore, such shipments must be made by us here in Canton or authorized by us to be shipped through one of our branches.

[fol. 4287] There are a number of American manufacturers using Timken bearings who operate plants in British Timken's territory. Some of these plants have used both SKF tapered roller bearings and Timken bearings. Inasmuch as it is becoming more and more difficult to secure anti-friction bearings from the Swedish companies, these American manufacturers who own these foreign plants will probably call on us to make deliveries of bearings from here. Please note that such deliveries are in direct violation of the British Timken contract, and where such requests are made refer them to us as we may want to effect some arrangement with British Timke. to fill such require-

ments rather than have the American company buy one of the competing makes of tapered roller bearings and have them shipped into British Timken's territory. In such an event, both companies would lose.

L. M. Klinedinst.

[fol. 4288] PLAINTIFF'S EXHIBIT 108

Canton, 12-6-39.

J. R. Comber
W. B. Moore
W. H. Richardson
W. C. Sanders

It is quite evident from past practice in handling export orders that there are some of our men not fully familiar with our contractual arrangements with British Timken regarding territories and the shipment of bearings into each other's sales territory.

So that our men may be fully familiar, we are quoting below from our business agreement with British Timken. The following paragraph covers British Timken's territory as well as our own.

"For the purposes of this agreement the United Kingdom of Great Britain and Northern Ireland and all other countries of Europe and all Dominions, Colonies, or Dependencies of the said United Kingdom and European countries except in or adjacent to North or South America shall be deemed to be the territory of the British Company and the rest of the world shall be deemed to be the territory of the American Company."

The following paragraphs cover the shipment of our bearings into their territory, and we are not quoting the paragraphs covering British Timken's shipping bearings into our territory inasmuch as they are identical:

"During the life of this agreement the American Company shall not directly or indirectly make or sell or license others to make or sell bearings in the British Company's territory or in the American Company's territory knowing

them to be for shipment into the British Company's territory save and except as follows to wit:

(A) The American Company may make or sell or license others to make or sell in the territory bearings for delivery or shipment into the British Company's territory as assembled component parts of completed articles of manufacture manufactured in the American Company's territory or as assembled component parts of completed units of manufacture manufactured in the American Company's territory for incorporation into such completed articles of manufacture.

(B) The American Company in its territory may accept and execute orders for bearings for ultimate destination in the British Company's territory for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorize sales to or known to be destined for manufacturers in the British Company's territory or sales at prices in conflict with the wishes of the British Company and the American Company from time to time will notify the British Company of the details of the sales authorized under this paragraph and will pay to the British Company an amount equal to five per cent (5%) of the net sale price thereof".

It is our interpretation of these arrangements that we are not permitted to sell or ship bearings into or known to be destined to British Timken's territory without paying them a 5% commission, and even under such circumstances our prices must be acceptable to them. We have a mutual understanding with British Timken that on unsolicited inquiries for bearings going into each other's territory that [fol. 4289] we are at liberty at all times to quote prices representing a 50% discount from American list on standard bearings and pay a 5% commission on the net sale thereof. We insist that all of our men respect our agreement with British Timken and on any unusual cases to consult the Home Office for further instructions.

L. M. Klinedinst.

LMK:BAS

[fol. 4290] PLAINTIFF'S EXHIBIT 109

The Timken Roller Bearing Company

Inter-organization Correspondence

Attention of: W. Robert Timken.
Subject: Mr. L. M. Klinedinst's General Letter No. 11-13 of 12-6-39. (F-3).

From 24-4 Canton.
Date 1-29-40.

In view of the confused conditions of international trade and the increased demands of the British and French governments for bearings for war purposes, it is probable that we will receive more and larger inquiries for bearings destined for the territories of our British and French associates. We have also had reports that companies using SKF bearings are having difficulties in getting deliveries, and this, too, may be a factor in our receiving inquiries for delivery in the territories of our associates.

Our agreement provides that we are not to sell bearings into Europe or possessions of European countries, excluding Russia and North and South America, except for service, and in the case of service, only under certain price conditions. Our agreement does *not* permit us to sell original equipment bearings directly or to domestic manufacturers knowing them to be destined for shipment into British or French Timken territories. However, this does not include bearings assembled into completed articles of manufacture or component parts of completed articles of manufacture subsequently shipped into their territory.

When inquiries are made for bearings which may be shipped into our associates' territories, please report the matter immediately to Canton giving full information as to number, size, quantity, specification, and the exact use of the bearings. In addition, you should use your best efforts to persuade the customer that our British and French associates are both able and eager to supply their foreign requirements and that they manufacture a product comparable in every way to our own.

When emergency shipment of small orders is demanded, we have the permission of our associates to fill such orders. We do not, however, wish to take advantage of this permis-

sion except where it is unavoidable. These cases must be taken up with Canton as outlined above for it is necessary that complete information be given to the associate involved. Should the Canton office see fit to fill any such orders that does not mean we will continue to accept them, and the customer should be urged to place all future orders with British or French Timken as the case may be.

W. R. Timken.

WRT:REF:BAS.

[fol. 4291] PLAINTIFF'S EXHIBIT 10

20th September, 1940.

R. E. Forsythe, Esq., The Timken Roller Bearing Co., Canton, Ohio, U. S. A.

DEAR BOB:

Further to my letter dated 27th August, I have to advise you that Mr. W. R. Dickenson has joined the Royal Australian Air Force, and is, therefore, cancelling his trip. His place will be taken by Mr. J. A. Harrison of Bearing Service Co. of Aust. Pty. Ltd., who you will find a very nice chap. He will be travelling on the s. s. "Monterey" which is due in Los Angeles on Monday October 7th, and if you could arrange for someone from your Los Angeles office to meet him, it would be very much appreciated, especially as he has not visited America before. According to his proposed itinerary he will arrive in Canton by train early on Friday morning, the 11th October, and will leave on Saturday 12th October for New York. He also proposes to call at Canton again on his way back to Australia.

I fully expect that Mr. Harrison will take up very strongly with you, the service which his Company is getting from British Timken, Ltd., and in my opinion, there is no doubt that there is very good cause for complaint. That the war has increased their worries and troubles is undoubted, but at the same time, their handling of matters, especially the changeover of bearings from Birmingham to Canton, has been badly bungled as far as we can see. It seems impossible to rely on Birmingham to efficiently handle orders and of course, neither I nor our Distributors are officially

allowed to correspond with you direct. Mr. Harrison will, I expect, give you details of lots of other matters which have been held up unduly, but I pointed out to him that possibly you may not be able to help him much, as this territory is controlled by British Timken, Ltd.

Mr. Harrison will also mention to you the possibility of the British Purchasing Commission buying bearings direct in America. In this case, the Bearing Service Co. of Aust. Pty. Ltd., would, of course, like to have some cover, although not a large one. This also brings up the question of how [fol. 4292] British Timken Ltd., would get on in these circumstances, but no doubt you will make suitable arrangements if the situation arises.

The main object of Mr. Harrison's visit to America is in connection with obtaining adequate supplies of bearings other than tapered roller bearings. As you know, the Bearing Service Co. of Aust. Pty. Ltd., is a very solid supporter of Timken, but at the same time, of course, it is essential that they have a complete range of bearings to offer. In this connection, any help and advice that you can give Mr. Harrison with regard to other bearing Companies, would be appreciated; he has my fullest confidence, and you can rest assured that Timken interests will be carefully guarded.

I am expecting Cyril Fall, one of our Service Engineers to join me here within the next few weeks. He will be permanently resident in Australia, and of course will operate under Stuart, should the latter decide to rejoin the Company after the war. Stuart is still extremely busy, and unfortunately he is stationed so far away from me that I do not expect to see him for some time.

A few days ago, the Bearing Service Co. of Aust. Pty. Ltd., received a cabled request from you for a Letter of Credit for $50,000 so presumably you have started to make some heavy shipments to us out here. I am still very much handicapped by lack of information, but am hoping to get some of this from you at any time now.

I recently had a tentative enquiry for a Timken lubricant testing machine, and would be grateful if you would let me know the approximate cost ex. Canton without motor, but otherwise complete.

As you probably know, Buck Spear is now General Manager of Fischer Bearings Co. Ltd., and I had a long

letter from him recently. We seem to be much more fortunate with supplies from them as from Birmingham. Do you think there is any possibility of supplies of American Timken bearings being curtailed to Australia, owing to expanded war effort in the United States? To guard against this, it is highly probable that a security stock will be ordered from you by our Distributors under Commonwealth regulation. I have not heard any more lately of the possibility of General Motors manufacturing out here, about which I have already written to you.

I am afraid that recently I have been asking you for a lot of information, and I sincerely hope that this is not a trouble. On the other hand, you will appreciate the rather absurd position existing at the present moment, inasmuch [fol. 4293] that we are getting practically all our supplies from you, and yet it is almost impossible to get any information from Birmingham. Why not take over Australia and New Zealand for the duration of the war? I hope that you have been asked by Birmingham to quote for the complete equipment of 20 alternatively 35 locomotives and tenders for the New Zealand Railways. This is a case where the customer is extremely anxious to place the order with us, but for some extraordinary reason, we do not seem to be able to produce a price.

With kindest regards, and once again apologising for any trouble that I may be putting you to,

Yours sincerely, Colin S. Gibson.

P. S. Could you please arrange to have me put on your mailing list again for pulls of advertisements, also for lists of new production accounts, provided my name does not appear on the top.

[fol. 4294] PLAINTIFF'S EXHIBIT No. 111

Bearing Service
Melbourne, Australia

Twenty three, Ten, Forty.

Mr. R. Forsythe, The Timken Roller Bearing Co., Canton, Ohio, U. S. A.

Dear Mr. FORSYTHE:

Colin Gibson assures me that I need not wait for any introduction before commencing to write to you.

Our cable to Mr. Harrison may have been a little difficult for you to understand but we are engaged at the moment in replying to a cable from Mr. Pascoe and we are very concerned to make sure that Mr. Harrison does not ask you specially to request that our orders go direct to Canton and then for us, in our enclosed letter, to ask Timken to do the opposite. In other words, we do not want you to think for one moment that we would ever let you down in the slightest particular.

Your cabled objection to Birmingham together with our letter, we hope will bring some result.

It is, of course, much better for us if we can send our orders direct to Canton but we feel that there is no chance of obtaining this officially and if we can obtain permission to send all enquiries, etc., freely to you, we will also provide you with a copy of all orders, which amounts to much the same thing.

Colin is afraid that they will reply stating that England will supply more in the future and that we will be worse off than ever.

Owing to the delay in getting orders across to you, Sydney are in a very sad state for many stock sizes and Weber has already booked indent orders for Mr. Pratt, but now that you have the matter in hand, it should not be long before they are O.K. again.

We are very concerned about the 2% discount, not so much for the money involved, although that amounts to something, but it seems like the 'last straw' coming on top of the business outlined in our enclosed copy letter.

[fol. 4295] We have cabled Birmingham to-day asking them to arrange for you to allow the cash discount.

I am asking Mr. Harrison to try and meet Mr. Dewar and casually give him a copy as per our enclosure stating to him that he might wish to make some enquiries while he is in America.

If you think this is unwise, would you tell Mr. Harrison the best course to proceed.

With kind regards,

Yours faithfully, Bearing Service Co. of Aust. Pty. Ltd., R. R. Thomas, Deputy Chairman of Directors.

[fol. 4296] PLAITIFF'S EXHIBIT No. 111A

Bearing Service

Twenty-three, Ten, Forty.

Letter No. B-163

C. S. Gibson, Esq., % Messrs. Tozer, Kemsley & Millbourne (Aust.) Ltd., 109 Russell Street, Melbourne, C. 1.

Dear SIR:

We have your favour of the 21st inst. together, at our request, of a copy of a cable reading:

> "Canton report confusion caused by receiving requests for deliveries and prices direct from Australia presumably Bearing Service Company Stop This is directly opposite to our instructions Stop How does it occur? Stop Please take immediate steps to rectify" (Sgd.) Pascoe

We believe that Mr. Pascoe is very properly concerned that the 'confusion' may be detrimental to the goodwill of Timken in this country and, therefore, we are led to assume that Mr. Pascoe is unaware of the following facts which we would like you to bring under his notice.

(a) That the Timken tapered stock sizes received by us from both Birmingham and Canton during the last six months have been insufficient for us to meet the normal demands of our customers.

(b) That the information and replies to our queries received from Birmingham have not been sufficiently prompt

or informative to enable us to prevent the very considerable damage that has now been done to the good name of Timken in this country.

(c) That competitive factory representatives have become aware of the exasperated state of mind of many hitherto satisfied Timken users and have already booked orders for tapered roller bearings. Pratt has already booked indent orders and we have been informed that Bower bearings are on the way to Australia.

[fol. 4297] Only for the vital confusion that exists in the tapered roller bearing field here, as a result of the foregoing, we consider that we could have prevented both of these rivals from becoming seriously interested in this market.

We are confident that had we received the active cooperation of British Timken, Ltd. that these unfortunate setbacks to Timken prestige in this country would not have occurred.

Under date of 21/9/1939 over the signature of the writer, we forwarded for the consideration of British Timken Ltd. a considered method of organizing to meet this anticipated emergency and we submit that subsequent events have proved that, had this organization been arranged in advance as suggested by us, the whole of this setback would have been avoided.

Further, an unusual opportunity was offered to Timken in this country when the supply of Swedish ball bearings was abruptly cut off at a time that Canton was not in full production.

Not only was that opportunity missed but after more than twelve months of war, after large quantities of ball bearings have become available in this country, we still await our first considerable shipment from Canton and we still, in some unfortunate cases convert Timken users back to ball bearings.

The distribution of ball and roller bearings in this country is coming more and more under the control of the Ministry of Munitions and if Timken is to obtain its fair share of the large orders required in the national war effort, we must obtain and hold the confidence of responsible officials.

Time is the essence of the contract in the local war effort and we are expected to have information at our fingertips to give instant reply to the Defence officials about delivery

dates and prices or they are dissatisfied and look for prompt service elsewhere.

A reply to our overseas cable is expected within two or three days and this service we are usually able to give from any factory except British Timken Ltd.

As yet British Timken have not forwarded us a Timken American price-list and we are working for the present from one that we received from America over two years ago.

The number of cables that we requested you to send to have a discount schedule established may be discovered by [fol. 4298] an examination of the cable files of British Timken, but we still await information in regard to prices of American bearings marked with an asterisk in the Timken Roller Bearing Company Price-list.

Should Mr. Pascoe care to examine the cable files of British Timken Ltd., he will find ample evidence of the impossibility of us giving prompt service to the Defence authorities.

Numbers of cables will be seen that have taken between fourteen days and a month to receive any reply and, in some cases, no reply was received at all so far as we are aware.

At this time of writing we have before us several instances of potential orders lost to us because the Defence authorities were dissatisfied with our available information in regard to Timken tapered roller bearings.

We do not propose in this communication to recapitulate in detail the evidence which is already available in the files of British Timken Ltd. suffice it to say that at last we decided that this impossible state of affairs could not be permitted to continue and we cabled British Timken as follows:

June 1940.

"If possible ship all outstanding orders dated March and earlier except balance . . . ex Canton owing to stock shortage ship . . . ."

We have reason to believe that in consequence we will receive shortly a large shipment of bearings from Canton and when it arrives we shall be in a position to advise our customers what bearings are included.

In some urgent cases we have been reminded by the Ministry of Munitions that we were retarding the Defence program by not supplying information promptly and we were asked whether we were prepared to do something about it

or whether they would communicate direct with the British Purchasing Commission.

In such cases we incurred the extra cost of cabling Canton and we were able thereby to assist to preserve the goodwill of Timken to some degree.

In our opening remarks we stated that we believed Mr. Pascoe to be properly concerned about the effect on the Timken goodwill and we, therefore, asked you to forward Mr. Pascoe a copy of this letter so he may be informed that in our considered opinion — goodwill of Timken bearings in Australia can be maintained only by establishing [fol. 4299] real co-operation between British Timken and ourselves in solving the present problem.

We give our unqualified assurance that we have no thought except to give prompt service and information and we have no doubt that Mr. Pascoe will readily agree that Timken goodwill has not been adequately protected in this country since the outbreak of war for reasons that could have been avoided.

With all respect, we request Mr. Pascoe to accept this following recommendation which we make in the light of many years experience of this market.

(a) That all our orders be forwarded to British Timken Ltd.

(b) That in all other matters connected with shipments of goods, we be encouraged to communicate freely with Canton, at the same time sending a copy to Birmingham.

Your recent advices to us indicate that production in England is overtaking the tremendous demands that have been made on the Birmingham factory since the outbreak of war.

We wish you to advise your Principals that we protest most emphatically against the retransfer of orders to England again before some enquiry is made into the effect this action will have upon the Australian market and until we have assurance that our recent experience will not be repeated.

Yours faithfully, Bearing Service Co. of Aust. Pty. Ltd., R. R. Thomas, Deputy Chairman of Directors.

RRT:DF

[fol. 4300] PLAINTIFF'S EXHIBIT 112

L. M. Klinedinst

Sales Into British Timken's Territory

Canton
12-3-40

In September of 1939 British Timken approached us regarding our shipping direct for them bearings to their overseas markets. They advised us that they would give us their orders for these bearings but that we must ship and invoice their customers from whom we would receive payment. This was due to the fact that they could not secure currency permit to pay for material which they did not receive. It had not been our practice in the past when we shipped bearings for British Timken directly to their export customers to give them a discount from our standard established prices such as we gave them when the bearings went to Birmingham, but they asked that we now do so due to prevailing circumstances. In other words, when we made shipments to their customers direct, they would advise us the prices at which the material should be charged and then we were to credit British Timken's account with the difference between the amount received from the customer and the price we would ordinarily have charged British Timken had the bearings gone to Birmingham.

We agreed to do the above on a temporary basis, reserving the right to rescind the price concession at our discretion, and in this connection British Timken was to guarantee the credit of their agents so long as we followed their instructions regarding terms of shipment.

Since the time that hostilities broke out in earnest in Europe we have continuously received inquiries emanating from British Timken's sales territory requesting catalogs and prices on our bearings. In many cases we were advised that they had formerly been supplied their Timken bearings from Birmingham, but they now desired to establish an American source of supply in case they could no longer secure bearings from England, and in some cases these inquiries came from British Timken distributors and French Timken agents. We have either referred the inquiries to Birmingham, or if it were a specific inquiry covering a definite lot of bearings we quoted our protective discount of

50% off American list. We have received definite orders from their sales territories which upon being referred to British Timken were turned down at their instructions.

As you are aware, Mr. Harrison of The Bearing Service Company of Australia, Melbourne office, who is their Liason Officer, is now in the United States and spent several days at Canton. Mr. Harrison stated he was making this trip in order to contact American suppliers of other bearing manufacturers whom they represent and to see if we were doing all possible to expedite the shipment of bearings which they had placed with British Timken and had been transferred to us. Incidentally, British Timken in approximately August of this year transferred to us a large quantity of orders for miscellaneous quantities and sizes of bearings to be shipped to Australia. We were informed by Mr. Hobley that they would like us to handle the requirements of bearings for Australia and South Africa on such sizes that we manufacture. Judging from Bearing Service order numbers shown on British Timken's orders they were quite old when we received them, and they covered over 100 different sizes and the quantities ranged from two pieces [fol. 4301] of a size to two thousand pieces. Mr. Harrison told us that they were quite alarmed concerning their supply of bearings especially in view of the fact that they had the defense contract for the Australian Government and asked that we push these orders all possible which we have been attempting to do. Naturally, under our present operating conditions here, these orders are more difficult to get through than regular orders due to the wide variety of sizes. There is also the fact to consider that there is only one sailing a month of passenger boats out of San Francisco to Australia, and it can be appreciated that it takes quite sometime after orders are placed from Australia, until they go to Birmingham, are sent here, and then arrive back in Australia.

At about the time of Mr. Harrison's visit here we started receiving from the British Purchasing Commission in New York, the Australian Division, inquiries concerning the delivery of certain items which Bearing Service Company had on order for the Australian Defense Board. In practically every case we could not identify the orders due to differences in quantity or for the fact that we had no order at all for such a part number, and we have been unable at any

time to give them an intelligent reply to an inquiry concerning delivery. I would like to point out a case where Mr. Harrison asked me if we had an order for certain sizes of bearings which I told him we did not have, but told him I had just received a call from Mr. P. J. Winspur of the British Purchasing Commission stating that such an order had been placed by Bearing Service Company and requesting us to advise delivery. It so happens that the particular order in question, #71525, was received from British Timken November 30 although this order was dated by them October 12. According to Mr. Harrison, this order had been placed by Bearing Service Company early in October and was urgently required for defense purposes.

Mr. Winspur [of the British Purchasing Commission] advised me more or less confidentially that he had learned that all orders from Bearing Service Company in Australia had to be placed through Birmingham due to contractual relations and stated that he felt it would be necessary for the Australian Government to probably take over these orders and place them through the British Purchasing Commission. In discussing this with Mr. Harrison a few days before he left Canton, he asked if we would cover them in the amount of 5% on such sales inasmuch as they had the defense contract, but we made him absolutely no promises of any kind.

It became necessary when we received such large quantities of orders for Australia to have Letters of Credit established, and Mr. Harrison when he was here requested a 2% cash discount which, he stated, was the customary discount received by them. However, upon referring the matter to British Timken, we were told they were not entitled to any such discount. Naturally, according to Mr. Harrison, who had given us a long story on the troubles they were having with British Timken, the matter of refusing the cash discount and the trouble they were having with delivery only [fol. 4302] served to increase their dislike of the method employed by British Timken in handling their requirements.

We have picked up from several sources in the United States the story that The Bower Roller Bearing Company is making every effort to take advantage of present conditions in order to establish themselves in world markets, and such conditions as described above only serve to give them

an entree into these fields. We have also heard that SKF is buying Bower bearings and are either re-packaging them or having their name stamped on the bearings and selling them to their regular customers in export markets. Naturally, we feel that present conditions do not add to the prestige of the Timken name and also that Bower who is a dangerous competitor is now being given an opportunity to secure a foothold from which it may be very hard to dislodge them after the war is over.

We feel that the name Timken could better be protected as well as giving Timken customers the service to which they are entitled if British Timken would establish prices for us in their territory and allow their customers, agents, or distributors, to place orders direct with us with a covering copy to Birmingham. This matter was covered by cable to Birmingham, and we were absolutely turned down flat, and various letters on the matter have gone unanswered. We do not feel that British Timken would necessarily lose control of their export markets, but rather are of the opinion that we would serve a definite purpose at the present time in holding this market for them until such time as they are able to handle the market themselves.

R. E. Forsythe.

REF:BAS.

[fol. 4303] PLAINTIFF'S EXHIBIT No. 113

December 4, 1940.

Mr. M. B. U. Dewar
Carlton Hotel
Washington, D. C.

DEAR MR. DEWAR:

We were advised by the British Purchasing Commission that they will very likely take over all of the purchases of anti-friction bearings for Australia. This will present a problem, the solving of which we must ask your help.

Undoubtedly as these inquiries come to the British Purchasing Commission they will ask all tapered roller bearing manufacturers in this country to quote prices, and following the same assumption further, they will give the business to the lowest bidder. That is one phase of it. On the other hand, should your Australian distributors specify on their

orders that they must definitely be supplied Timken bearings, then, we presume, they would come to only Timken for quotations, or would they take it upon themselves to buy from the cheapest source?

Regardless of how this works out, we have the problem of what prices to quote and how to distinguish between bearings that are to be used essentially for service and those to be used in production. There is another angle that may enter into this—the Purchasing Commission may go, for instance, to the General Motors Export Corporation for prices on bearings for General Motors equipment and, naturally, there should be uniformity in prices. Surely we feel it is necessary to have two distinct prices if this is possible—one covering bearings for service and the other for production.

We have in mind a number of American manufacturers who have assembly plants in Australia, and if the British Purchasing Commission takes over that phase of the business those bearing purchases would come through them rather than through the International Harvester Company, or General Motors, or whoever may have plants in Australia.

[fol. 4304] We have in mind a situation that developed several months ago. When we quoted the British Purchasing Commission on a large quantity of bearings at the established government buying agency price—#30—our competitor, The Bower Roller Bearing Company, quoted on this same inquiry at about a #17 price and The Bower Company got the business.

We do not want to see The Bower Company or any other American manufacturer of tapered roller bearings find a foothold in Australia or in any other territories covered by you, but we feel this will happen on a straight competitive bidding proposition because it is not possible to definitely control the price at which other tapered roller bearing people will sell their products for foreign consumption.

The simplest way out of this, as we see it, is for British Timken to instruct all of their foreign service connections to very definitely and positively specify Timken tapered roller bearings. That will give the British Purchasing Commission no leeway. If that can be done, the problem is virtually solved.

In case it works out this way, what prices should we quote the Purchasing Commission on bearings:

A. for production purposes where known, and
B. strictly for service purposes?

We feel, Mr. Dewar, that the awkward situation now presenting itself might have been avoided had British Timken permitted us to handle their outside orders direct.

Mr. Harrison of The Bearing Service Company of Melbourne spent quite some time with us recently and was very bitter in his criticism of our deliveries. We found in many cases we had never received an order from British Timken for the sizes so badly needed.

The policy followed by your Australian people was to send the order to British Timken, they would fill such parts of it as they could, and the balance of it was transferred to us. That meant a very great delay and that was why we suggested sometime ago that you have such parts ordered and shipped direct from Canton.

We are primarily interested, of course, in keeping Timken bearings to the front during this trying period and the further desire to help you in every way possible since we know how difficult it is to eradicate a competitor in foreign fields after he once gets a start.

I think this is a matter that you and I should discuss sometime in the very near future, and I would like to know what the chances are of seeing you for an hour or two at an early date.

Very truly yours, —— ——, Vice President.

L. M. Klinedinst: BAS.

[fols. 4305-4306]

Telephone: Central 7217
Cables & Telegram
"Britimken", Melbourne

% Kemsley & Co. Pty. Ltd.,
(Joint Australasian Representatives),
109 Russell Street,
P. O. Box 1862 Q Melbourne, C. I.

18th December, 1940.

C. S. Gibson,
Technical Representative.
S. C. Campbell,
Resident Service Engineer.
A. C. Fall,
Resident Service Engineer.
Of British Timken Ltd.,
Birmingham, England, Proprietors of Fischer Bearings Company Limited.

Personal

Via Clipper Mail leaving,
Melbourne 18/12/40.

R. E. Forsythe Esq., Timken Roller Bearing Co., Canton, Ohio, U. S. A.

Dear Bob:

On the 11th December, the following cablegram was received by Bearing Service Co. of Aust. Pty. Ltd. Melbourne from Mr. Harrison. This was sent from Los Angles on the 10th December:

> "Canton Advise Dewar Agreed ~~Yesterday~~ Their Handling Australia Direct He Cabled Pascoe This Effect Now Awaiting Confirmation Birmingham"

As you can imagine this is some of the best news I have had in years. So far I have not received any advice from Birmingham about it. I feel that Birmingham will do their best to avoid this arrangement, although if Mr. Dewar has agreed to it, half the battle is won. I can think of quite a number of reasons as to why Mr. Dewar would agree, and no doubt I will hear this story from you in due course.

Birmingham still appears to be in a hopelessly chaotic

state on the sales and ordering sides, despite a cable from Mr. Pascoe giving me his personal assurance that no further delays would take place from that end. The latest example is regarding an order for a few precision #3 bearings, ordered by Bearing Service Co. Sydney in March this year. The order was accepted by Birmingham who cabled that delivery would be made in 14 weeks. Some days ago, I cabled for delivery information and the reply received is that they are unable to supply, obtain cancellation. It is difficult to understand this reply, and why this order has not been sent on to you. As you can imagine our Distributors in Sydney are most annoyed about it, and Mr. Hodgkinson informed me that he would cable you direct asking you to fulfil the order, despite the instructions he has received from Birmingham that no cables must be sent to Canton. Every day and all day, I am receiving requests from Distributors and customers for information which I am unable to give; Birmingham never tell me very much and generally, the position is just as chaotic as [fol. 4307] ever. It seems incredible to me that Birmingham cannot hand this territory over to you to handle direct, otherwise they are in great danger of losing our goodwill out here. In the hope that this will happen, I give hereunder, some notes about the handling of the territory which may be useful:

Ford Motor Co. of Aust. Pty. Ltd. Geelong. For some years we have been obtaining the bulk of the tapered roller bearing business from the Ford Motor Co. Geelong, which of course, is mainly required for replacement purposes. These requirements have been very heavy recently, owing to spares being required for army vehicles. The procedure is that the Ford Motor Co. send their orders in to me personally, and I send these on to Birmingham after checking.

I do not know if you will be taking over this part of the business, and am of the opinion that it is quite possible that Birmingham will want to retain it. Should you be taking it over, it will of course, be necessary for you to compete with prices ex Ford factories in Canada, and you will know what the position is with them. You may prefer to retain the business in this way, but as you can imagine, I am naturally anxious to have it direct.

You will, no doubt, have a copy of Birmingham's Ford Export pricelist No. 376. Our discount off this list to the

Ford Motor Co. Geelong selling direct is 75% plus 10% for all tapered roller bearings. Under present circumstances, the approximate landing charges for British bearings including Exchange, Freight, Insurance, Duty (nil), Primage (5%) etc., is 42½%. The approximate landed charges from America amount to 65% which includes 15% duty and 10% primage, together of course with exchange. This should enable you to determine the present day landed costs and the prices which you would have to quote to be competitive.

Relative Cost of Landing Bearings Into Australia. Bearings of British origin come into Australia duty free, but there is a primage of 5%. Bearings from America are subject to 15% duty and 10% primage. In addition to duty and primage, landing charges include Exchange, Insurance, Freight, Wharfage, Dues etc.,

A good rough estimate of Australian landed cost is to take the nett dollar price and call a Cent a Penny. For example, if a bearing ex Canton is sold at $1.20 nett, the approximate landed cost in Australia is 120 Pence of 10/-d. Australian Currency.

Protection of Distributors. Although British Timken have always reserved the right to sell direct to any customer, it can be taken as a general rule that this has not been done except in a few isolated cases. In such cases, the price charged is very high and the total amount of business executed in this manner is not worth mentioning. The only customer in Australia to whom we sell direct is Ford Motor Co. Geelong, and in this case, a commission of 2½% is paid to the Bearing Service Co.

[fol. 4308] The scheme of fully protecting our Distributors is, I believe, a very wise one, as they can depend on our whole-hearted backing and co-operation. Other bearing Companies such as Hoffman Mfg. Co. England in many cases, sell direct to customers in Australia with the result that they do not receive the same co-operation from Australian Distributors as we do.

If an enquiry is received in Birmingham which they know is for this territory, usually an endeavour is made to have the bearings purchased through our local distributors. If this is not possible, the price charged is such that our distributors could supply the same customer and make a reasonable profit.

Competition. Our main competition in the past has been from the S.K.F. Ball Bearing Co. which is strongly established out here. It has offices in Melbourne, Sydney, Brisbane, also in Wellington, New Zealand and Auckland, New Zealand. They have always adopted the policy of carrying large stocks of tapered roller bearings, and we have been at a considerable disadvantage owing to this. S.K.F. carry these stocks on consignment, whereas our distributors, of course, always pay cash for bearings. This has meant that the local stock of bearings has been limited by the financial capacity of our distributors. I have on a number of occasions, strongly recommended to Birmingham that we keep a consignment stock in Australia, but this has been turned down. I fully appreciate that a consignment stock is not an ideal arrangement, but if it is the means of obtaining substantial business, I think it is worth while.

Despite the above, we have consistently obtained the majority of the tapered roller bearing business offering, and of course, the total business has been increased owing to efforts made in the Industrial field. Since 1934 when I came out, our tapered roller bearing business has increased more than 4 times. S.K.F. competition is a very real and serious problem because as you know, S.K.F. is a very efficient and live organization. S.K.F. were on this market many years before us, and have established a very firm footing which has taken a lot of hard work to move. Now, however, Timken is an acceptable bearing to all industry out here; it is well-known and is becoming much more widely used.

We can now expect a certain amount of competition from American tapered roller bearing Manufacturers such as Bower, Bantam, and Pratt. Bower and Pratt have obtained a few orders for this territory, but so far their activities have been very limited. Provided that we can obtain adequate stocks out here, I feel that there is very little to fear from other American Factories. I understand from one of Mr. Harrison's letters, that S.K.F. are obtaining tapered roller bearings from America from Bower and having these stamped S.K.F. If this is true, it will mean much more serious competition, and if there is anything that you can do to stop this, which of course, I doubt, it would help considerably.

At the present time, there is an excellent opportunity for getting tapered roller bearings more firmly established

in this market. Unfortunately, this opportunity has been [fol. 4309] to a certain extent, lost owing to the fact that stocks are not available. This has been due to Birmingham's inability to supply, coupled with their apparent apathy in placing orders with you.

Prices: As you know, the following schedule of prices is now in force in connection with No. 100 list—

Industrial bearings	discount 80%
Automotive bearings	discount 65%
Ford bearings	discount 60%

The 2% discount for cash has not been allowed, but this may be rectified should you completely control this market.

With regard to prices from Birmingham for this market, I am giving hereunder, a general summary of the position. I presume that you have a copy of Birmingham's Export list No. 356 complete with Supplement No. 1 and if by any chance you could possibly find your way around this list, the following discounts apply:

Table I.

Replacement	1" sizes	discount 50% plus 10%
	mm sizes	discount 75% plus 10%
Industrial	1" sizes	discount 70% plus 10%
	mm sizes	discount 75% plus 10%

Tables III and XVIII.

Replacement and Industrial	discount 75% plus 10%

Tables IV and VI.

Replacement Only	discount 50% plus 10%

Tables V, VII and VIII.

Replacement	discount 50% plus 10%
Industrial	discount 70% plus 10%

Table XIX.

Replacement and Industrial	discount 60% plus 10%

Conveyor Bearing. A special discount of 77½% plus 10% is applicable to conveyor bearings irrespective of quantity.

A number of other special long discounts are also applicable in special cases. These cases mainly apply to large

buyers or where competition is severe. With regard to prices, I am allowed to use my own judgment and can on the spot, give special discounts up to 80% off list where I think it is necessary.
[fol. 4310] As you can imagine it is advisable for me to have as much price information as possible. This avoids the cost and time taken to cable you for special prices, and I would suggest that you let me have your opinion about it. Prices are particularly needed for the following, which of course, will be in addition to your 100 list, a copy of which I do not possess as yet:

Prices for Precision bearings.
Special prices which you may be prepared to give for conveyor bearings.
Prices for large bearings where available, which are not shown in the 100 list.
Price for the Timken Lubricant Testing machine.

Technical Data. Should you be taking over this territory entirely, it will of course, be quite in order for you to send to me all technical data available. If such is the case, would you please have me put on your mailing list for such information, and also on your mailing list for general sales information.

Distributors: I have already sent you a list of Distributors, but in case this has become mislaid, I attach hereto a further list.

By far the most important of our Distributors in this territory are Bearing Service Co. Melbourne and Bearing Service Co. Sydney. In addition to their large Automotive turnover, the main industrial business in Australia is concentrated in Melbourne and Sydney.

The Bearing Service Group consists of Bearing Service Co. Melbourne, Bearing Service Co. Sydney and Duncan & Co. Ltd. Adelaide. These three Companies are financially and commercially connected, but of course, should be treated as separate organizations when being dealt with by you. The Bearing Service Co. Brisbane is entirely separate from this Group, although it is closely associated with them. In New Zealand, our main Distributor is Jas. J. Niven & Co. Ltd. who are our sole Industrial agents for that territory. As you know, Sparks Pittock is with Jas. J. Niven & Co. Ltd.

Range of Sizes. As you know Birmingham make a range of sizes of tapered roller bearings including the I.S.A. series, the LY. series and other specials which are not manufactured in America. It will be necessary for us to continue to order such sizes from Birmingham where they are required.

Thrust Bearings. I am somewhat confused as to the complete range of thrust bearings manufactured by you, and will be grateful if you would let me have details. As far as I know, your complete range is not included in any publication of yours which I have.

Plummer Blocks. If possible, would you please arrange to send me an export pricelist, together with discounts, for transmission equipment either from Dodge or Medart or both. As an alternative to this, it may be preferable for [fol. 4311] our Distributors to have housings, tapered sleeves, lock nuts etc., manufactured locally, and for this I require prices of double cone tapered bearings.

Shims, Lock Nuts etc. Will you please let me have prices for shims, lock nuts, washers, nuts, cotter pins etc.,

Rubber Mounting: Would you please advise me of your experience with mounting Timken bearings in rubber. Any general information on this subject would be appreciated.

The stock position out here is worse than ever, and we are anxiously waiting to receive substantial shipments from you. Many customers are held up, and unless a good quantity of bearings arrives within the next few weeks, we will be in a serious mess. From the information received from both Birmingham and Mr. Harrison it would appear that there should be heavy shipments on the water.

Just recently some shipments arrived for Brisbane and Sydney on the Kanangoora", but unfortunately no shipping papers were available to clear them. I have already written to you asking if it would be possible for you to send papers by air mail.

This letter should arrive in Canton just about Christmas time, so please accept my very best wishes. Perhaps after all you may decide to have a trip down here one of these days.

With very kind regards, and hoping that you will take over this market.

Yours sincerely, (S.) Colin S. Gibson.

[fol. 4312] 18th December, 1940.

List of Industrial and Automotive Distributors

Industrial and Automotive.

Bearing Service Co. of Aust. (Pty) Ltd. Brisbane
Bearing Service Co. of Aust. Pty. Ltd. Sydney.
Bearing Service Co. of Aust. Pty. Ltd. Melbourne
Duncan & Co. Ltd., Adelaide.

Industrial Only.

Flower, Davies & Johnson Ltd. Perth.
Jas. J. Niven & Co. Ltd., Wellington.

Automotive Only.

Atkins (W. A.) Ltd. Perth.
Coventry Motor Replacement Ltd. Perth.
Motor Specialties Ltd. Auckland.
John Chambers & Son Ltd. Wellington and Branches.
Teagle Smith & Sons Ltd. Wellington.

[fol. 4313] PLAINTIFF'S EXHIBIT 115

Postal Telegraph

1940 Dec 24 AM 8:24

H8 54 Cable Via Comml=Birmingham 23 NLT Robert Timken=Timken Roller Bearing Canton Ohio=

B78 A586 In View Conclusions Arrived at by You and Michael Have Cabled Gibson as Follows Quote Dewar and Canton Agree in Best Timken Interests Distributors Order Direct from Canton in Future During War Period Stop Please Acknowledge This Cable Me and Canton and Inform Kemsleys=

Pascoe.

[fol. 4314] PLAINTIFF'S EXHIBIT 116

Western Union

1940 Dec 28 AM 7:13

HM62 Via RCA=CD Melbourne 38 27 1400 LC Timken Roller Bearing Co=Canton Ohio==

C1 Have Received Cable from Pascoe Stating You and Dewar Agree in Best Timken Interests Distributors Order Direct from You in Future During War Period Stop Am Making These Arrangements Accordingly=

Gibson.

C1 Pascoe.

[fol. 4315] PLAINTIFF'S EXHIBIT 117

31st December 1940.

R. E. Forsythe Esq., Messrs. Timken Roller Bearing Company, Canton, Ohio, U. S. A.

DEAR BOB:

You will have received my cablegram re the one which I had from Mr. Pascoe; I could not quite understand why he wanted me to acknowledge his cable to Canton but no doubt he had his reasons for it. As you can imagine, everyone out here including the Ministry of Munitions is delighted as we feel that we can now get some service and reasonable deliveries.

Jack Harrison is arriving in Melbourne by plane this afternoon and I will be going down to see him and will get some firsthand news of you. I am hoping to have letters from you soon, particularly as I do not know what has been behind the whole move, nor do I know exactly how I am to operate in future. In any case I would appreciate your arranging to have sent to me copies of all correspondence which you have with this territory so that I will be completely familar with what is happening. There are very many questions which will arise but at the moment I do not think it is worthwhile taking them up with you until I get some more definite instructions from Birmingham. I

sincerely hope that you are to take over this territory entirely.

I will be officially confirming my cablegram to Canton shortly but am just getting this short note away by today's Clipper Mail to tell you how very pleased I am with the new arrangement and I sincerely trust that you are also.

With very kindest regards, Yours sincerely, Colin S. Gibson.

[fol. 4316] P. S. Private: For many years in Australia and New Zealand B. T. Ltd. has employed the services of Kemsley & Co. to act as sort of factory representatives. For the past seven years—to my knowledge—they have been completely useless. In fact they do literally nothing for us except provide me with office space plus the part time services of an inferior junior typiste,—raking off in return a large commission. This has amounted to over £2000 sterling per annum in the last year or so.

In 1936 I put in a report to my Directors strongly recommending that we do without the services of Kemsley & Co., as we could run our own office out here very easily and on much less than their annual commission. This would have made for more efficiency and given the Company more prestige. Mainly owing to the efforts of Kemsley's London Directors, who apparently made a good job of entertaining our Directors, the whole thing was scotched, and so the disgraceful state of affairs continues.

Kemsleys have an office in New York called The Fenchurch Export Corporation, and it is more than likely that this company will approach you with a view to furthering their own interests.

The main business of Kemsleys is to ship on behalf of customers for which they obtain a 2½% buying commission. They are in no way qualified to handle Timken products, and how long they will get away with their present racket I just don't know.

[fol. 4317] PLAINTIFF'S EXHIBIT 118

CC M. B. U. Dewar, L. M. Klinedinst, F. J. Pascoe, H. H. Timken, Jr., W. Robert Timken.

Mr. Gutteridge, an engineer who has been sent to this country by the Australian Government to negotiate for the establishment of manufacturing plants in Australia, visited us at 3 P. M. with Mr. Chamberlain who is at present Technical Engineer with the British Minister of Munitions in Washington. Mr. Chamberlain's Australian connection was as an engineer with the Australian Ball Bearing Company. He explained that the name of his company is a misnomer insomuch as they are a general engineering firm which grew out of a company established 20-odd years ago to regrind and repair ball bearings for the Australian trade.

Gutteridge and Chamberlain called on us to see if we would be interested in establishing a bearing plant in Australia to manufacture all types of anti-friction bearings. They said that the anti-friction bearing business in Australia has amounted to about $1,000,000 per year for the past several years, but within the past twelve months this figure has increased approximately 100%. Mr. Gutteridge said that the Australian Government was insisting that a plant be built in Australia and that adequate tariff protection would be given to such an industry.

I explained to Gutteridge and Chamberlain that Australia was controlled by British Timken and that under no circumstances would we consider building a plant in Australia. I pointed out to them that it would be almost impossible to get delivery on any machine tools suitable for the manufacture of anti-friction bearings and that no bearing manufacturer in this country had excess machinery which could be shipped to Australia. Mr. Gutteridge wanted to know if we would be interested in establishing a plant in Australia if he could secure priorities for the necessary equipment. I told him that I did not think he could secure such priorities, but if he did we would not be interested as I had previously pointed out that British Timken controlled the sale of Timken bearings in Australia.

Mr. Chamberlain seemed to grasp the situation much more readily than Gutteridge. He explained that he was in this country to work with Michael Dewar on tanks and was trying to adapt the American and British tank designs to con-

form with machinery in existence in Australia. I told the gentlemen that it might be wise for them to get in touch with Mr. Dewar about this matter, and that if after they had talked with him it seemed desirable Bob Timken and I will come to Washington to see Dewar. Both of the gentlemen said that Australia is in dire straits because they cannot secure bearings from SKF and British Timken and that there is such a multitude of sizes in general use in Australia that it is extremely difficult to keep their equipment running.

Wm. E. Umstattd.

WEU:BAS.

[fol. 4318] PLAINTIFF'S EXHIBIT 119

15 Broad Street, New York Telephone Hanover 2-2460
British Purchasing Commission, Australian Division

26th February, 1941.

Mr. W. E. Umstattd, President, The Timken Roller Bearing Company, Canton, Ohio.

DEAR SIR:

At the present time, as you are probably aware, the Australian Government is having considerable difficulty in securing the necessary supplies of ball and roller bearings sufficient to meet their requirements for munition production, and rather than improving it would appear as though this situation will become aggressively more serious. Whilst it is realized that from an economic standpoint of view the time may not yet be opportune for the consideration of local manufacture of ball bearings in Australia, at the same time from a national emergency point of view this is a matter which really does require very careful consideration.

It is my understanding that Messrs. Chamberlain and Gutheridge, who at the present time are over here investigating matters on behalf of the Commonwealth Government, have had a general discussion with you regarding this question, and I am writing this letter to you to find out whether, in the event that some satisfactory arrangement could be arrived at, your Company would be interested in local manufacture in Australia and what your policy might be in regard to same.

Believe me, Yours very truly, (Signed) F. B. Clapp.

[fol. 4319] PLAINTIFF'S EXHIBIT 120

March 1, 1941

Mr. F. B. Clapp
British Purchasing Commission
Australian Division
15 Broad Street, New York City

Dear Mr. Clapp,

Your letter of February 26th has been received.

When Messrs. Chamberlain and Gutheridge visited us about ten days ago we told them that under no circumstances would The Timken Roller Bearing Company establish a plant for the manufacture of bearings in Australia. We have a contract with British Timken Limited which precludes our establishment of a manufacturing plant in Australia. Such a plant would have to be built by British Timken Limited.

Sincerely yours, — — —, President.

Wm. E. Umstattd.S

[fol. 4320] PLAINTIFF'S EXHIBIT 121

Western Union

February 18, 1941

British Timken
Birmingham, England

A621 Regard export situation F:r Fast find San Francisco Branch quoted and received order Auto En Rijwielhandel Olimo $4,000 seventy off list Stop See their letter January 22nd to you Stop Accepting this order but will return to previous policy hereafter Stop But numerous inquiries of this sort indicate probability serious deterioration trade position unless some arrangement made for us help out temporarily by accepting direct orders Stop Please give serious and immediate study to this question Stop Detailed letter follows

Robert Timken

CC M. B. U. Dewar

[fol. 4321] PLAINTIFF'S EXHIBIT 122

February 18, 1941

British Timken Limited
Cheston Road, Aston
Birmingham, 7, England

Gentlemen:

Confirming our cable of today with regard to the supply conditions in the East Indies, etc., we urge that you consider some arrangement that would permit us to handle direct orders received from these regions. It seems very likely that unless some method similar to that established for Australia is agreed upon, the trade position of Timken will be endangered and additional competition brought into the picture. We have written you several letters in the past few months but no decision has been forthcoming.

We realize, of course, that the situation is not entirely in your control but feel that the export push must be relaxed in order to avoid crippling lack of supplies. Indications that Skefco will get the propeller bearing application which you developed because of your lack of sufficient plant capacity strengthens the case for concentrating on English needs and allowing us to protect your position in the export trade during the present emergency. We will keep Michael informed on this and hope that we can persuade both of you to our point of view.

As regards the Auto Olimo order, we are going to fill this one since it had already been accepted and will make the usual arrangement for payment to you but will await your decision before accepting any others.

Very truly yours, The Timken Roller Bearing Co.,
—— ——, Assistant to the President

W. Robert Timken:BAS

CC Mr. M. B. U. Dewar,
Carlton Hotel
Washington, D. C.

[fol. 4322] PLAINTIFF'S EXHIBIT 123

February 24, 1941

Mr. M. B. U. Dewar
Carlton Hotel
Washington, D. C.

Dear Michael:

I am attaching a copy of a letter just addressed to Mr. Pascoe again dealing with the subject of service requirements. We doubt if Mr. Pascoe thoroughly understands this whole picture.

It took many years, as you will recall, to get foreign dealers of American made cars to buy their service bearing requirements through British Timken. The habit has been formed, and up until recently the American car manufacturers supplied very few bearings to the foreign agencies for service. They depended upon British Timken to do that. Conditions, however, have changed very materially since the war and even already many of the car builders in this country are asking us to pack bearings and ship them into your territory for service replacements claiming that they are unable to get the service their users have a right to expect. We have in several cases been forced to do this by the car builders, but in every instance we have first consulted the Birmingham office. However, to do that in each individual case requires a lot of time, cabling, telephoning, etc., and it seems to us that your Birmingham office should lay down a straight out-and-out policy that would permit us to handle all of these inquiries and orders for the duration of the war at a price that will get the business for you and at the same time make a nice profit for the British Timken Company which in round numbers is approximately 20%.

We wonder if you could point out to Mr. Pascoe the urgency of this matter.

Very truly yours, L. M. Klinedinst.

LMK:BAS

[fol. 4323] PLAINTIFF'S EXHIBIT 124

February 24, 1941

Mr. F. J. Pascoe
British Timken Limited
Cheston Road, Aston
Birmingham, 7, England

Dear Mr. Pascoe:

Our cable A-626, February 20, 1941,
Your reply this morning reading as follows:
"Please quote protective discount and refer
Spence to Guest Keen Williams Calcutta"

We fear that you do not quite sense the situation existing in foreign territories today.

Obviously, we are not the only tapered roller bearing manufacturer in the United States who receives similar requests for quotations. The Bower Company now makes all the sizes used currently in passenger cars, farm machinery, and practically all of the sizes used in trucks and industrial equipment. The Hoover Company manufactures practically all of the passenger car sizes. The Tyson Company does not manufacture the smaller passenger car sizes but they do make practically all of the larger truck sizes, 3" and above. The Bantam Company manufactures many of the larger truck sizes. Then there are several smaller companies such as Pratt, Orange, etc., who manufacture bearings only for the service but have quite a comprehensive list of sizes.

A quotation of 50% off, known as the protective discount, will not get this business. There is, however, sort of a general understanding among the manufacturers here that 70% off is the general service export discount. When these inquiries come through if any one of the above companies should quote 70% off as against our 50%, the business will go to those companies and neither one of us will know anything about it and we both lose.

[fol. 4324] Then another thing can happen. Suppose we quote the 50% discount and we hear no more of it. The other fellows quote 70%; they get the business and also the inquiries for future requirements, and we will have no knowledge of it and neither will you. This would enable any one of these competitors to build up unknown to you or

us a nice volume of foreign business which they are very anxious to do not only because there is a much better profit in it than if they sold the same bearings for production purposes in this country but, more important, it gets them established in foreign fields.

We do not want these things to happen because after the war it is going to be extremely difficult to get them out even though you should decide then to quote competitive prices. They will know about these competitive bearings and will at least place part of their business elsewhere.

Please don't misunderstand us; this is very difficult business for us to handle. The volume is not very large and shipping and packing, etc., is rather complicated compared to our regular flow of domestic business. Our only point in urging you to change your policy in this respect is to hold the business for you when the war is over.

There is another angle to this and a very important one. Most of the bearings that are being ordered by these various agencies throughout the world are for use in American-made vehicles, and should it come to the point where the users and dealers of these vehicles cannot secure their bearings through the customary channels they will change their policy and buy them through the motor car builder. If that should happen and should it become standard practice, you would find yourself in the position at the end of the war with little or no replacement business on American built cars.

Now won't you please analyze this matter again from this point of view, and if you agree that you want us to protect this business for you during the period of the war, cable us.

Very truly yours, The Timken Roller Bearing Co.,
——— ———, Vice President.

L. M. Klinedinst:BAS

[fol. 4325] PLAINTIFF'S EXHIBIT 125

British Timken Limited

W. Robert Timken:BAS
By Air Mail

14th March 1941.

The Timken Roller Bearing Company,
Canton,
Ohio,
U.S.A.

DEAR SIRS:

We have your letter of the 18th February confirming your cable regarding the Far Eastern situation.

We have considered this matter and confirm having cabled you as follows:

> B187 A621 Have no objection to your accepting direct orders our territory provided our agents are adequately covered stop Please also do your utmost to cover us stop In all cases therefore please consult our agents before quoting and endeavour to mak quotation through agents stop We are advising all agents except Australia regarding this arrangement and are mailing you copy advice and list of agents

This, we believe, is self-explanatory.

We would add, however, that as our agents have been chosen for their knowledge of the markets, we consider that their services should be used in maintaining them at the highest possible level. If third parties take advantage of the war situation by endeavouring to deal direct with you, nothing but harm can result, but if you are able to deal through our agents in those cases where we cannot give good delivery, nothing but good can come of it.

Attached is a copy of a letter which we have sent to our overseas agents in the territories involved. A list of those [fol. 4326] territories is also given.

We realise that in certain cases you might find yourselves up against severe competition but we must rely upon cooperation with our agents to overcome this, and if it is found that very low prices are necessary, which we sincerely hope they are not, then the amount by which you

are able to cover us in respect of this direct business must be decided at the time.

We trust that this makes our position quite clear.

Yours faithfully, F. I. Pascoe, Director, British Timken Limited.

[fol. 4327] 14th March, 1941.

Copy of Letter to British Timken Overseas Distributors whose names appear on the attached list.

Dear Sirs:

It has come to our notice that certain firms in some of our overseas distributors' territories are approaching our associates in America direct for supplies of tapered roller bearings. We regard this as a serious endeavour on their part to nudermine the market which you have worked so hard to build up.

We have therefore arranged with our associates in America that, should they receive any enquiries direct from your territory, they will immediately advise you by cable in order to get your agreement to the prices which they will quote, or, alternatively, and preferably, they will make an offer to yourselves which you in turn can pass to the enquirer.

This is a temporary wartime measure which we are taking in order to protect your and our interests.

Yours faithfully, For British Timken Limited, — —, Sales Manager, Engineering Division.

[fol. 4328] C. Santos Lda., Avenida da Liberdade 29-41, Lisbon, Portugal.

W. Morphy & Son, 71, Socrates Street, Athens, Greece.

Farchy Ltd., Jevremova 1, P. O. Box 378, Belgrade, Yugoslavia.

Kemal Hailil Tanir Mehmet Rifat Yalman & Co., Tatko Company, Opposite the Taxim Garden, Istanbul, Turkey.

Tamraz Freres, 75 Avenue Reine Nazli, Cairo, Egypt.

Joe Scicluna, 19C, Via Congresso Eucaristico, Musta, Malta.

N. D. Solomonides & Co., P. O. Box 210, Limassol, Cyprus.

S.Gousman, P. O. Box 1730, 10 Jaffa-Tel-Aviv Road, Tel-Aviv, Palestine.

Guest, Keen, Williams Ltd., 7, Council House Street, Post Box 609, Calcutta, India.

Guest, Keen, Williams Ltd., P. B. No. 17, New Delhi, India.

Guest, Keen, Williams Ltd., Construction House, Ballard Estate, Bombay, India.

Guest, Keen, Williams Ltd., Mount Road, Madras.

Leisser & Co., Negris Building, York Street, P. O. Box 390, Fort, Colombo, Ceylon.

Robert Le Maire Ltd., Port Louis, Maritius.

Carr Lawson & Co., Sixth Avenue, P. O. Box 203, Nairobi, Kenya, East Africa.

Gailey & Roberts Ltd., P. O. Box 667, Nairobi, Kenya Colony, East Africa.

Joe Allen & Co. Ltd., P. O. Box 542, Broad Street, Lagos, Nigeria.

W. Bartholomew & Co. Ltd., Station Road, P. O. Box 468, Accra, Gold Coast.

Muller & Phipps (Malaya) Ltd., Laidlaw Bldg., Singapore, Straits Settlements.

Malayan Motors Ltd., 14/20, Orchard Road, Singapore, Straits Settlements.

United Engineers Ltd., P. O. Box 694, Singapore.

[fol. 4329] Muller & Phipps (Malaya) Ltd., 30, Suisbrugstraat, Batavia, Java.

Koopman & Co., 11, Tamblongweg, Bandoeng, Java.

Kemsley & Co. Pty Ltd., 100, Dixon Street, P. O. Box 1510, Wellington, New Zealand.

Jas. J. Niven & Co. Ltd., 65/7, Taranaki Street, P. O. Box 1668, Wellington, New Zealand.

John Chambers & Son Ltd., P. O. Box 463, Wellington, New Zealand.

Motor Specialties Ltd., 80/82, Anzac Avenue, Box 1393, Auckland, New Zealand.

Teagle, Smith & Sons Ltd., 276 Wakefield Street, Wellington, C.3., New Zealand.

[fols. 4330-4331] PLAINTIFF'S EXHIBIT 126

April 15, 1941.

Mr. F. J. Pascoe, Cheston Road, Aston, Birmingham 7, England

DEAR MR. PASCOE:

Thank you for your letter of March 14, your reference FJP/KP/U41, regarding our selling bearings into your territory. We believe that this will go a long way towards clearing up the difficulties we have been having but feel that if you had gone a little further it would have materially benefitted all concerned.

In this respect we want to call your attention to an inquiry which we just received from Auto Hall-Saigon, French Indo-China who wished to be quoted on approximately $1348 worth of bearings based on our 100 list. We referred to your list of distributors and found that undoubtedly French Indo-China would come under the Straits Settlements and that you are represented there by three distributors, namely: Muller & Phipps (Malaya) Ltd., Malayan Motors Ltd., and United Engineers Ltd. We did not know which of the three to approach, nor did we have any idea as to what prices should be quoted which would not jeopardize your position in that market. However, we did know that it was necessary for us to quote 70% off our 100 list in order to meet our domestic competition. We therefore disregarded all of your distributors and cabled this company direct; a quotation based on a number 30 price or 70% off our list. In order to have handled this in the fashion you suggested, it would have been necessary for us to know the prices at which you had been selling in this market, the territorial jurisdiction of your distributors, if any; or, if it were open territory, which of the distributors we should approach and whether or not we should immediately have quoted them our best price of 70% off or some higher price.

[fols. 4332-4333] Would it not be possible for you to give us the necessary information as regards your distributors and their territories, and then allow us to contact them immediately and give them a copy of our Engineering Journal showing the sizes which we manufacture, and also a copy

of our 100 price list with the information that we will allow them a 70% discount? Then when further inquiries are received from these markets, we can immediately refer the matter to your distributor and they will be in a position to quote them on such sizes as we manufacture with a minimum of time and cable expense.

To believe the foregoing is a cleancut method of handling this matter and would help to preclude the possibility of other distributors effecting contractual relations with our competition with resultant hardships on your distributors and yourself.

May we have your comments.

Very truly yours, The Timken Roller Bearing Co.,
C. Robert Timken, Ass't. to the President.

WH

[fol. 4334] PLAINTIFF'S EXHIBIT 127

6th May, 1941.

Mr. W. Robert Timken, The Timken Roller Bearing Company, Canton, Ohio, U. S. A.

DEAR MR. TIMKEN:

We have yours of the 15th April replying to our letter U 41.

We note what you say. At the same time, we feel that in order to protect our markets it is essential to have all tapered roller bearing business in each of the territories involved going through our agent. If third parties know that they can approach yourselves or us direct and by so doing, imagine that they can get better service, the whole organisation of our distributors may be upset. As you know, all our distributors have been carefully selected by personal visits to the territories by members of our staff, and we feel that the correct way of dealing with the matter, is to make it known in each territory that our distributors there are automatically distributors for yourselves inasmuch as we are so closely associated.

Now that you have so kindly relieved us of a great deal of our obligations in respect of Australia, we are well able to take care of the export business to other territories but at the same time, we shall not hesitate to make use of your

greater capacity, should we feel that there is a danger of tapered roller bearing business being placed with competitors due to our inability to offer delivery in a reasonable time.

[fol. 4335] We suggest therefore, that our way of dealing with the matter, namely to refer each enquiry back to our distributors, be given a trial for a further period.

I am sorry that with the list of distributors that we gave you, we did not make it quite clear what class of business each dealt with. An amended list is attached hereto giving this information. This unfortunately, would not have assisted you in the matter of Auto Hall-Saigon, as of course, this territory came under the jurisdiction of Francaise Timken and we have not yet appointed a new distributor.

Yours faithfully, F. J. Pascoe, Director, British Timken Limited.

[fol. 4336] 6th May, 1941.

Class of Business

All—C. Santos Lda., Avenida da Liberdade 29-41, Lisbon, Portugal.

All—Kemal Halil Tanir Mehmet Rifat Yalman & Co., Tatko Company, Opposite the Taxim Garden, Istanbul, Turkey.

All—Tamraz Freres, 75 Avenue Reine Nazli, Cairo, Egypt.

Automotive Replacement—Joe Scicluna, 19C, Via Congresso Eucaristico, Musta, Malta.

All—N. D. Solomonides & Co., P. O. Box 210, Limassol, Cyprus.

All—S. Gousman, P. O. Box 1730, 10, Jaffa-Tel-Aviv Road, Tel-Aviv, Palestine.

All—Guest, Keen, Williams Ltd., 7, Council House Street, Post Box 609, Calcutta, India.

All—Guest, Keen, Williams Ltd., P. B. No. 17, New Delhi, India.

All—Guest, Keen, Williams Ltd., Constructions House, Ballard Estate, Bombay, India.

All—Guest, Keen, Williams Ltd., Mount Road, Madras.

All—Leisser & Co., Negris Building, York Street, P. O. Box 390, Fort, Colombo, Ceylon.

Automotive Replacement—Robert Le Maire Ltd., Port Louis, Marritius.

All—Carr Lawson & Co., Sixth Avenue, P. O. Box 203, Nairobi, Kenya, East Africa.

Automotive Replacement—Gailey & Roberts Ltd., P. O. Box 667, Nairobi, Kenya Colony, East Africa.

All—Joe Allen & Co. Ltd., P. O. Box 542, Broad Street, Lagos, Nigeria.

All—W. Bartholomew & Co. Ltd., Station Road, P. O. Box 468, Accra, Gold Coast.

Automotive Replacement—Muller & Phipps (Malaya) Ltd., Laidlaw Bldg., Singapore, Straits Settlements.

Automotive Replacement—Malayan Motors Ltd., 14/20, Orchard Road, Singapore, Straits Settlements.

Industrial—United Engineers Ltd., P. O. Box 694, Singapore.

[fol. 4337] Automotive Replacement—Muller & Phipps (Malaya Ltd., 30, Suisbrugstraat. Batavia, Java.

Industrial—Koopman & Co., 11, Tamblongweg, Bandoeng, Java.

All—Kemsley & Co. Pty Ltd., 100, Dixon Street, P. O. Box 1510, Wellington, New Zealand.

All—James J. Niven & Co. Ltd., ~~65/7~~, Taranaki Street, P. O. Box 1668, Wellington, New Zealand.

* Automotive Replacement—John Chambers & Son, Ltd., P. O. Box 463, Wellington, New Zealand.

* Automotive Replacement—Motor Specialties Ltd., 80/82, Anzac Avenue, Box 1393, Auckland, New Zealand.

* Automotive Replacement—Teagle, Smith & Sons Ltd., 276, Wakefield Street, Wellington, C. 3., New Zealand.

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* Stub to Master Distributors Jas. J. Niven & Co. Ltd.

[fol. 4338] CC: R. E. Forsythe

Plaintiff's Exhibit 128

Canton, Ohio, June 12, 1941.

Mr. W. G. Turner—San Francisco

Sales to British Timken Controlled Territory

With reference to our recent exchange of correspondence concerning disposition of several orders placed with us directly by "Etablisseme[illegible]ts Bainier d'Indo-Chine", the latest being Yale Hills' le[illegible] to you of April 28th, we are now in receipt of a commu[illegible]tion from British Timken granting us permission to deal directly with accounts located in their territory provided we do so with the consent of their agency connections in each country.

To familiarize you with all of the details leading up to this final reaction from British Timken we attach copy of our complete correspondence file beginning with W. Robert Timken's letter to British Timken of February 18th and ending with their Mr. Pascoe's letter of May 6th. We are not in entire accord with their proposed method of disposing of these unsolicited inquiries and firm orders emanating from accounts located in markets coming under their jurisdiction. However, we must necessarily be guided by their judgment and decision in the matter and we, therefore, ask that you be guided by the following procedure in the future in disposing of all such unsolicited inquiries and firm orders which you receive from accounts located in British Timken territory:

Do not extend any discounts greater than 50% without specific authorization from Canton regardless of the fact that you have previously been authorized to extend our extreme export discounts in some few instances. All such previous authorizations to extend discounts greater than 50% are hereby withdrawn.

Referring to Canton before quoting only those inquiries and orders involving substantial quantities to which, in your opinion, consideration of a discount greater than 50% should be given. Miscellaneous small orders and inquiries may be predisposed of immediately by extending 50% discount.

Upon receiving these inquiries and orders here at Canton, we will make direct acknowledgment to the customer explaining our position and promptly communicate with British Timken's agents as requested by Mr. Pascoe. From time to time, however, our management may deem it advisable or necessary to extend discounts greater than 50% without first approaching either British Timken or their agents.

Robert P. Kelly.

vd., enc.

[fol. 4339] PLAINTIFF'S EXHIBIT 129

Commission Contract with British Timken Ltd.

Under a business agreement between The Timken Roller Bearing Co. of Canton, Ohio and British Timken Ltd. of Birmingham, England, sales territories have been assigned to both companies with exclusive control vested in the company handling a given territory.

There is a provision in this contract that provides for a payment of a 5% commission on sales into each other's territories on service bearings but only then when the prices charged were agreeable to the controlling company. In order to eliminate needless cabling or delays occassioned by correspondence, we have the past agreed upon a price to be charged on unsolicited orders we receive. We then pay a 5% commission on this amount. The foregoing is intended only to cover service business and there is no provision made to handle original equipment business. There is no provision in the contract to cover such business except that full control is vested in the company handling a given territory, and we never had a general agreement with British Timken to cover such circumstances prior to the present war. We did have instances on special jobs when we worked out a special agreement with them to handle a certain order paying them an agreed amount, but as stated before we had no general agreement in effect.

When England entered the war British Timken was confronted with two conditions which made it impossible to handle their export sales as in the past. These were:

1. Their entire production was required in England and they also had to limit their range of production.

2. Financial regulations by their government precluded their past practice of buying bearings from us and having them shipped direct to their export customers, they paying us direct and collecting from their customers.

British Timken therefore started placing orders with us for direct shipment to their customers with the request that we bill and collect from the customer at a given price and then credit their account with the difference between the charged price and the price we would normally charge British Timken for the parts involved. It should be understood, of course, that we granted British Timken special low prices inasmuch as they had all selling, engineering and service expense to bear. In order to calculate the amounts payable to British Timken, we found it would be necessary to calculate or extend each invoice on two different price bases. This was considered too laborious and involved. Therefore, we offered in settlement for 1940 to pay them a flat percentage representing, as close as we could determine, the difference between the two prices. Although we would not possibly have had to pay the amount we paid, being around 22+%, we felt that since British [fol. 4340] Timken had the expense of sales and service representatives in these markets and no source of revenue we should not attempt to take advantage of the situation. In fact British Timken lost money by such an arrangement when you consider they lost their ordinary manufacturing profit.

In 1941 we cut the percentage from 22+% to an even 20% as we encountered considerably more difficulty in handling these orders. We made no agreement prior to the end of the year as to the exact percentage we intended to pay inasmuch as we wished to hold this open until we saw how conditions developed during the year.

We should make special reference to one order handled for British Timken during 1941. This was an order placed by Richard Thomas Co. of Ebbw Vale, England, with British Timken for $329,560.00 worth of mill bearings. Our standard price to British Timken, or, in this case, to any manufacturer in this country, was $284,191.00. We, therefore, agreed to credit British Timken with the difference

of $45,369.00 less f.a.s. New York charges of $1,951.98, inasmuch as we billed and collected direct from Richard Thomas.

R. E. Forsythe.

MN

[fol. 4341] PLAINTIFF'S EXHIBIT 130

GENERAL DISCUSSION WITH DEWAR

February 23, 1944.

A discussion was held between Messrs. Dewar, Umstattd, Henry Timken, and Robert Timken relative to postwar problems.

* * * * * * *

The other point which bothered Dewar was England's need, pressed by governmental circles, of increased exports after the war. He felt British Timken might be hurt by British feeling that they would not be permitted to export to Argentina, Brazil, and other countries which were building up big sterling balances. He felt this might prejudice government circles into supporting Norma-Hoffman and Ransome & Marles as wholly British owned firms in the export of tapered bearings. British S.K.F. does no export business as this is handled from Sweden. He would like to consider some joint selling programs throughout the world whereby each company would supply the bearings it could make most cheaply. Umstattd pointed out the difficulties of finding someone without prejudice toward either British or American Timken to administer such a program. Considerable discussion around this point resulted in no concrete plan but raised a number of points which needed consideration. All were agreed that the general aim was to take aggressive advantage of the strengthening of the Timken trade position throughout the world resulting from the war. It was realized that this might result in serious price cutting as a combative measure but both parties were agreed that this could be met without fear. Both parties are to study the problems with the idea of evolving the best possible program toward carrying out [fol. 4342] this purpose.

We informed Dewar that present feeling in America

against international cartels was growing as a natural extension of prohibition of such stultifying arrangements in the domestic economy. This feeling was shared by Timken Roller Bearing management who felt that it might become advisable to suspend the business agreements with British Timken although it was felt that primary importance should be given to aggressive competition on a world wide scale.

We discussed briefly Duncan's position as American representative on the British Timken board of directors and the probability that his age (74) would make it necessary before long to find a successor. Dewar agreed although he felt Duncan was still an able and respected member of the board.

(S.) W. Robert Timken.

[fol. 4343] PLAINTIFF'S EXHIBIT 131

Canton, June 10, 1944

Mr. R. A. Baal—New York
Muller & Phipps (Asia) Ltd.

Joe Cornell handed me your letter of June 2 which resulted in my discussing this with Mr. Klinedinst. I think before we definitely commit ourselves to quoting 70% on general sizes and 60% on Ford on the orders to which you refer, we better find out just exactly what is involved—bearing sizes, quantities, etc. Perhaps you could tell us a little bit more about Cymot, Ltd., for it is well that we are given what information is available on any of these companies that we give consideration to quoting our export prices in British Timken markets.

You brought up an age-old subject, namely, the policy that we should employ in quoting on inquiries emanating from British Timken territory. I pointed out to Mr. Klinedinst the weakness in our pricing policy in the British Timken market, emphasizing the fact that buyers for the B-T market are becoming familiar with the fact that we are protecting British Timken and by so doing, do not have a price that is anywhere near competitive to Bower. As a result, it now develops that we don't even get inquiries for a lot of requirements. They are automatically referred to our competitors. Naturally it cannot be expected that

Bower will establish an export policy comparable to ours in territories that we cover and another pricing policy to be in line with us in British Timken territories.

Mr. Klinedinst has agreed to write British Timken with a definite recommendation that for the duration of the war we be allowed to quote our export prices in all markets which will include, of course, British Timken. He wants me to write him a letter that will be sufficiently informative and in detail to cover this competitive situation, pointing out the reasons for our recommendation, and he will enclose a copy of it with his letter.

I think it would be better, Bob, if you would write me this story so that I can turn it over to Mr. Klinedinst verbatim or submit it to him over my signature as you are a little bit more familiar with the details than I am. In this letter emphasize particularly Bower and their export policy. I believe that Ahlberg has appointed somebody in New York as their official export agent to cover the world. In this letter you should be definite as to the discounts we recommend employing in our quotations.

If you will get this for me quickly, we will get a dispatch off to British Timken.

Referring now to Muller and Phipps, and the Cymot, Limited, if you will give me the information on this, we will make a decision here in Canton and probably won't wait for British Timken's answer in this case.

E. H. Austin.

vd

[fol. 4344] PLAINTIFF'S EXHIBIT 132

The Timken Roller Bearing Company
Inter-Organization Correspondence

From New York
Date 6/15/44

Attention of: E. H. Austin—Canton
Subject: Muller & Phipps (Asia) Ltd.

This answers your letter of June 10th, which after its receipt I had some further conversation with Ed Broderick of Muller & Phipps concerning the orders which they are

holding for Cymot Ltd., and the requirement which they have at the present time is as follows:

60 #799076
37 #28156
60 #15118
2 #2581
2 #2729
8 #3120
12 #799056
10 #2523
3 #3120
24 #799085

Frankly, the above order isn't much to talk about, but according to Ed Broderick, in reviewing the files of the Ira H. Snyder Co. over a few years, they have purchased a considerable amount of tapered bearings from Bower, and also the records show that substantial purchases were made from Hoover when they were in a position to furnish tapered roller bearings.

In respect to Cymot Ltd., I had occasion to question a number of prominent export people, including Ed Caswell of Thompson Products, who Cymot represents in the Union of South Africa, and Ed tells me they are the largest independent automotive wholesaler in South Africa. Harry Herts has visited South Africa a number of times and has called on Cymot, substantiated this opinion, and further believes that in certain parts of South Africa they are distributors for British Timken Ltd. I of course have no way of verifying this.

In regard to the broader aspect of this problem, the analysis outlined by you are entirely correct, because I can well recall long before the war, that Dodge & Seymour Ltd. have approached me on many occasions, having substantial orders for British Timken markets such as India, Ceylon, Burma, Dutch East Indies, Federated Malay States, etc., and I know for an absolute certainty that in many cases this business went to Hoover and Bower, and on some occasions the gypsies such as New York Bearing Co., L. C. Smith and Leterstone. Previous to the war we made certain variations in our British Timken policy, and I believe with the concent of British Timken, the outstanding exception being General Motors Overseas Operations, who we

placed on an equal footing throughout the world. We also made an exception to those American controlled metal and mining companies who had properties in our territory where they enjoyed our extreme export prices, and also properties in British Timken territory.

In respect to Bower competition through Ahlberg, it is very true that they employ the same price policy of 70% on general sizes and 60% on Ford sizes in all world markets. I understand that Bower's export business is under the [fol. 4345] personal control of Fred Burkholder out at Chicago, and I have been informed that they do not have any New York export representative, but rather operate their own export department. In their export advertising they are making quite a bid for distributors and sales representatives, but if they were the least bit aggressive, they certainly could do a job in such markets where they only have to contend with British Timken competition, and of course protective price policy from the States precludes our being in the picture at all.

I for one would believe it good judgment on our part to be in a position to quote competitive discounts from the States in line with Bower's policy, and I certainly believe that now is the time that some very definite thought should be given to that subject, particularly when Bower are in a position to offer a complete hearing service, which is quite an item when considering shipping costs.

As emphasized above, I am not particularly recommending that we go out and solicit business in the British Timken territory, but do know for a fact that a good many of the export houses who have requirements for tapered roller bearings, do not approach us because of the present price barrier; and to repeat, I would recommend that we set our present price policy for Latin-America to all world markets in cases where business is offered to us.

R. A. Baal.

ES

[fol. 4346] PLAINTIFF'S EXHIBIT 133

Canton 6, Ohio, July 10, 1944.

Mr. M. B. U. Dewar
British Timken Limited
Cheston Road, Aston
Birmingham 7, England

Dear Michael:

I am inclosing copy of a report from our Service-Sales Division Manager, Mr. E. H. Austin, covering certain British Timken export markets which in some cases have been coming to us during the war period, and you will note that previous to the war in markets such as this there was a protective discount of 50% quoted as against our general discount in other markets of 70%. This has no reference to bearings that are purchased through Lend-Lease. In that case, of course, there is an entirely different policy, but there are still many of the other markets where they come to us direct and we would like to get your thoughts on how we might handle such inquiries.

After writing this letter I received another communication from Mr. Austin, a copy of which you will also find attached.

Very truly yours, —— ——, Vice President.

L. M. Klinedinst:BAS
Incs. 2

[fol. 4347] CC: R. A. Baal, New York

The Timken Roller Bearing Company

Inter-organization Correspondence

Attention of: Mr. L. M. Klinedinst.
Subject: Price Competition—British Timken Export Markets

From Canton.
Date July 6, 1944.

A short while ago Muller and Phipps, New York City, who represent us in a number of far eastern markets, took over the firm of Ira Snyder, an old export company located in New York City. It comes to light that there were a num-

ber of orders on their books involving the purchase of Bower bearings for the account of Cymot, Ltd., who, according to our records, are one of the largest independent automotive wholesalers in South Africa and handle many nationally known, American parts lines. Investigation discloses that we did not receive an inquiry from Ira H. Snyder Company to quote on these requirements for the reason that it had been previously established by them that our prices would not be competitive with such concerns as Bower Roller Bearing Company, Tyson Bearing Company, and the Hoover Steel Ball Company, all located here in the States.

It is a part of our knowledge that, for the reason just stated above, other important American exporters buying for the accounts of some of the large automotive wholesalers in British Timken markets are referring their requirements to competition, more especially the Bower Roller Bearing Company. I have in mind such concerns as Dodge and Seymour, Ltd., with whom we are very well acquainted, who have claimed many times that they could give us considerable business in British Timken markets if our prices were competitive.

You will recall that a number of years ago through arrangements with our British associates, it was decided that on unsolicited business from export houses in this country and destination British Timken markets, we would quote a protective discount of 50% from the American service list. In our markets our distributor discount on General Line bearings is 70% and on the Ford 799000 series, 60%. The Bower Company, through Ahlberg who represent them in all foreign markets, has established a resale schedule comparable to our own. It is natural, however, that they do not differentiate between their quotations in markets that we serve and those served by British Timken.

It is quite obvious that in the future this is going to present a more serious competitive situation than it has in the past and it would be my recommendation that this matter be brought to the attention of our British associates with the view of establishing a more workable pricing arrangement.

I feel that we should recognize the fact there are many important automotive wholesalers in British Timken mar-

kets who handle, pretty generally, American automotive parts lines and their natural inclination is to place their requirements through buying houses located in the States. And if we do not do something competitively to protect this business for ourselves as well as British Timken, it is going to be wide open for competition.

The above recommendations are not in any way intended to convey that we will be inclined to solicit this type of business involving British Timken territory, but we do know for a fact that a good many of the export houses who have requirements for tapered roller bearings, do not approach us because of the present price barrier. And I repeat I would recommend that we consider extending our present price policy for Latin America to all world markets in cases where business is offered to us.

E. H. Austin.

vd

[fol. 4348] Date July 7, 1944.

This will supplement my letter to you of July 6 having to do with resale prices on service requirements in British Timken territory.

Our New York office has just received an inquiry from the export house of John Dunn, Son & Company, 21 West Street, New York City, involving approximately 350 bearings for miscellaneous tractor and farm implement applications. This involves an order from one of their accounts in East London, South Africa.

Our normal procedure would be to quote 50% from the U. S. service list. We are quite positive that this quotation will force this business to competition who, as indicated in our previous letter, will employ their regular export discount regardless of the fact that this material is for a market which we classify as British Timken.

E. H. Austin.

vd

[fol. 4349] PLAINTIFF'S EXHIBIT 134

65 Cheston Road,
Birmingham, 7.
30th November, 1943.

MY DEAR LOUIS:

The last time that I was at Canton before I came back to England, you talked to me for a short while on the problem of post war markets. The South American markets were mentioned, and you suggested that financial considerations might make it necessary for us to export to some of the South American markets from England, as most of the countries had very large sterling balances, but were short of dollars. I made one suggestion in this connection: that we might have joint Timken selling offices in that territory, so that the maximum of Timken products should be sold there, whether they came from England or from the U. S.

Since I have been home, I have given a great deal of thought to the post war position and I feel, myself, that we should endeavor to come to some arrangement which would enable both of us to sell, perhaps more freely than in the past, in each other's markets. The mainspring for this suggestion is, of course, political. I had the pleasure of discussions and breakfast with Eric Johnston, President of the U. S. Chamber of Commerce when he was in London, and I have naturally read the American papers, which have been fairly outspoken regarding agreements between American and European firms. It would appear, therefore, that some such new arrangement between us might also be helpful to you in dealing with your post war situation.

As far as we, in England, are concerned, we are being driven into much closer association with the bearing firms here than we were before the war; the war has shown how dependent on imports into England from Scandinavia one of the British bearing firms was. This revelation has weakened the status of that company very much here, as they appear to have imported some 85% of their prewar turnover in taper bearings, and about 50% of their turnover in other types. They are trying to weaken our growing strength by saying that we are in the same position vis-avis the U. S. A.

If we are to play our part in the discussions which are beginning—and which may conceivably lead to negotiations

on a Governmental level between Great Britain, the United States and Sweden, I should like to feel that we are in a position to say that we are not being prevented by you from exporting to any markets by reason of a trade agreement between us.

Briefly, I think that greater freedom of action will be beneficial to both of us in the period of world reconstruction and, as soon as I can, I will come over to discuss the general position with you.

If you can, through some semi diplomatic channel, let me know that you agree to such an idea in principle, it will enable us to take a stronger line regarding, what must always be the mainstay to both our firms, namely: tapered roller bearings both vis-a-vis our competitors and the British Government.

With very best wishes to you for Christmas and the New Year from us all,

Yours ever, (Signed) Michael Dewar.

[fol. 4350] PLAINTIFF'S EXHIBIT NO. 137

Complete United Production of Ball and Roller Bearings and Steel Balls.

Reported to the AEBMA by members of the Association, from January 1941 through July 1945.

No reports received prior to January 1941 or after July 1945, when reporting was discontinued.

The annexed summary prepared January 17, 1946.

ANNULAR BALL BEARING GROUP

	Aircraft Control & Pulley Ball, Rod End & Ball Crank		Aircraft Control and Pulley		
[illegible]	1941	1942	1943	1944	1945 (7 months)
Bliss	899,029	3,255,192	5,991,324	4,546,381	1,907,950
New Departure	35,101	1,398			
SKF	338,253	715,040	3,321,529	2,764,616	621,984
Torrington	226,918	900,871	790,452		
Fafnir	9,377,046	17,942,565	24,442,877	14,991,419	5,978,358
Heron-Hoffmann	1,639,120	2,854,552	2,408,976	1,531,062	951,955
Federal	1,377,617	3,954,503	1,803,230	1,454,699	459,297
Berlin-Rockwell	608,305	2,819,997	1,520,906	920,182	151,799
Silica Steel			25,370		
			307,242		
	14,501,390	31,244,118	40,171,906	25,608,599	10,070,683
			Aircraft Rod End		
Fafnir			6,803,931	3,396,232	1,760,246
Heron-Hoffmann			548,076	177,949	23,952
Federal			1,069,592	480,976	54,017
Berlin-Rockwell			447,254	156,154	67,656
			8,868,853	4,211,311	1,905,871
			Aircraft Ball Crank		
Fafnir			1,686,041	1,315,097	239,351
Heron-Hoffmann			86,663	20,790	9,765
Federal			425,912	135,953	11,895
Berlin-Rockwell			254,022	77,090	47,816
			2,452,638	1,548,850	308,827

ANNUAL BALL BEARING GROUP - Continued

Propeller Blade Retention Sets
(No. 1-5.1 per cent; No. 2-4 per cent)

Company	1941	1942	1943	1944	1945 (7 mos.)
New Departure	3,089	38,863	97,918	98,227	55,230
Marlin-Rockwell	37,572	197,253	117,497	227,830	95,266
SKF			5		
Tyson				9,844	
Fafnir				24,898	22,683
	40,661	236,116	215,520	360,299	172,179

Airwell Roller Ara Fraction

Norma-Hoffmann	1,465	599			
New Departure	336	800,033	4,430,588	3,149,537	304,964
Marlin-Rockwell	677,610	1,864,019	1,783,434	371,853	4,256
SKF	243,699	433,724	874,682	2,443,412	738,585
Hoover		4,925	131,766	189,524	
Bower			39,[illegible]6	168,939	44,722
Timken			4,602,311	3,115,849	903,814
Ahlberg				45,289	2,293
	922,310	3,103,290	11,841,737	6,822,782	3,820,676

A. BALL BALL BEARING GROUP - Contd.

BELOW 30 mm. O.D.
(Incl. Miniature & Instrument)

Company	1941	1942	1943	1944	1945 (7 months)
Barnes-Hoffman	2,739,368	3,519,131	3,306,091	2,940,493	1,336,380
New Departure	14,980,842	26,421,502	40,479,178	37,955,331	19,701,983
Federal	1,086,790	1,879,729	2,919,007	2,091,103	1,178,790
Berlin-Rockwell	689,370	1,135,109	1,814,000	2,121,852	980,784
Fafnir	2,724,987	6,818,995	10,275,366	13,543,873	7,542,813
Torrington	361,906	575,207	693,299		
SKF	435,833	1,942,305	3,321,950	5,770,937	3,628,992
*SKF	4,977,000				
Barden	-		76		
Hoover		2,664	113,191	105,088	52,226
Gwynn				386,714	244,621
Jack & Heintz					43,197
	28,615,976	42,494,242	61,822,118	64,515,391	34,709,346

*Includes Below 30 mm.O.D. and 31 mm. O.D. thru 52 mm. O.D.

ANNULAR BALL BEARING GROUP - Continued

31 mm. O.D. thru 52 mm. O.D.

Company	1941	1942	1943	1944	1945 (7 months)
Marlin-Rockwell	4,484,493	5,317,872	4,913,436	6,429,712	3,413,775
Federal	3,163,276	1,978,814	2,169,090	3,259,330	1,566,038
Aetna	15,190	11,993	16,451	13,130	8,729
Bee Departure	22,083,670	22,189,366	20,792,370	29,518,896	15,579,072
Herma-Hoffmann	2,723,257	1,949,458	1,702,552	2,999,791	1,379,819
Fafnir	2,971,414	4,431,078	4,581,824	7,221,465	3,874,912
Torrington	583,997	466,866	279,487		
McGill	76,634	138,475	108,619	231,365	147,990
Bearings Company of America	125,237	110,479	101,140	125,310	67,550
Hoover	1,538,262	1,384,559	1,658,946	1,469,695	688,469
Ahlberg	111,681	175,371	128,091	174,667	110,035
SKF	1,568,109	5,481,294	5,061,754	5,391,025	3,181,087
Bantam		170	788	2,210	396
Jack & Heintz					361,404
	39,460,180	43,628,675	41,506,498	56,433,096	30,378,376

ANNULAR BALL BEARING GROUP - Continued

53 mm. O.D. thru 100 mm. O.D.

Company	1941	1942	1943	1944	1945 (7 months)
Borse-Hoffmann	443,915	556,838	767,101	705,665	432,298
New Departure	27,717,277	14,043,684	11,35.,445	21,904,303	12,108,600
Aetna	54,116	52,026	50,011	30,973	37,254
Federal	3,174,620	2,276,091	1,908,713	3,166,733	2,053,457
Marlin-Rockwell	5,669,348	3,784,198	3,669,713	4,373,607	2,666,979
Fafnir	2,108,515	2,374,269	2,129,166	2,988,013	1,963,160
McGill	224,998	349,140	312,104	536,913	292,908
Torrington	26,927	14,743	52,444		
Bearings Company of America	509,521	551,104	396,924	771,183	325,992
SKF	2,709,996	2,806,657	1,867,971	2,487,338	1,445,503
Hoover	721,827	1,005,179	775,555	739,863	472,406
Ahlberg	201,569	453,053	173,067	327,779	198,618
Bantam		2,354	871	2,948	650
Tyson				176,010	158,971
Jack & Heints					298,752
	43,562,929	28,269,336	23,453,135	37,811,328	22,435,108

ANNULAR BALL BEARING GROUP - Continued

91 mm. O.D. thru 240 mm. O.D.			101 mm. O.D. thru 170 mm. O.D.		
Company	1941	1942	1943	1944	1945 (7 months)
Marlin-Rockwell	731,682	1,191,310	891,003	867,176	579,262
Federal	101,763	327,806	315,477	392,622	65,278
New Departure	1,493,649	3,488,448	3,685,481	4,514,697	1,827,780
Norma-Hoffmann	47,723	62,148	60,289	62,377	31,297
Fafnir	426,064	578,097	534,168	578,955	334,893
Torrington	5,570	1,319	39		
McGill	82,789	158,353	107,702	163,781	39,536
Bearings Co. of America	101,884	189,976	217,178	285,432	125,255
SKF	490,104	875,145	769,303	1,012,898	239,124
Hoover	66,795	78,794	71,423	101,253	51,248
Ahlberg	41,378	152,854	95,723	96,359	46,429
Santas		2,554	1,692	1,070	660
Tyson			2,704	43,942	14,911
Jack & Heints					79,681
	3,578,901	7,106,754	6,752,180	8,120,776	3,386,834

ANNULAR BALL BEARING GROUP - Continued

171 mm. O.D. thru 240 mm. O.D.

Company	1941*	1942*	1943	1944	1945 (7 mos.)
Ahlberg			28,997	22,262	8,999
Bearings Co. of America			13,930	9,437	1,030
Fafnir			224,999	196,640	104,794
Hoover			8,796	275	7,254
McGill			6,419	9,538	4,568
New Departure			654,121	670,241	262,519
Norma-Hoffmann			9,261	6,376	3,935
Orenge			344	1,240	860
SKF			154,921	183,902	105,569
Bantam			4,412	7,364	2,202
Tyson			41,787	35,241	2,967
Marlin-Rockwell			166,425	171,725	79,379
Federal			49,214	16,461	3,805
			1,362,345	1,130,702	587,881

*1941 and 1942 figures included in size 101 thru 240 mm.O.D.

Above 240 mm. O.D.

Norma-Hoffmann	3,084	1,997	5,091	3,772	2,330
New Departure	13,978	46,877	130,965	25,845	11,248
Federal	69	2,051	4,937	666	200
Marlin-Rockwell	5,332	11,989	34,347	8,105	4,399
Fafnir	1,871	4,711	3,781	2,660	1,973
SKF	23,034	8,752	21,413	11,977	6,454
McGill	335	114	4	1,643	130
Ahlberg		4,361	10,172	4,158	3,421
Bantam		5,781	5,243	5,350	3,636
Tyson			1,047	915	7
Hoover					8,485
	47,703	86,633	207,000	63,621	41,883

TIMKEN BALL BEARING GROUP

Up to A° O.P.

Maker	1941	1942	1943	1944	1945 (7 months)
Aetna	3,496,256	2,301,706	2,497,286	2,236,379	1,628,768
Bico	4,728,737	3,722,352	1,261,008	366,087	128,459
Borns-Hoffmann	90,459	141,763	216,736	201,851	56,741
Harlin-Rockwell	244,822	297,155	266,513	195,376	91,249
Fafnir	166,972	275,318	275,950	156,699	99,455
Bearings Co. of America	1,107,490	475,669	539,145	650,528	440,312
SKF	185,721	204,466	140,422	119,905	63,958
Auburn	36,517	54,975	39,248	26,238	16,722
Ahlberg	2,951	15,521	28,715	128,667	39,427
Bantam		202,925	123,624	107,103	60,737
Andrews			170,889	186,776	91,499
Hoover			750,338		
	10,099,425	7,691,852	6,309,874	4,365,339	2,716,927

Over A° O.P.

Harlin-Rockwell	14,480	19,593	38,358	24,523	10,481
Borns-Hoffmann	136	64	5,022	7,790	5,410
Bico	1,468	11,999	7,523	890	992
Aetna	44,775	97,854	99,832	86,798	46,595
Fafnir	5,363	10,941	10,510	12,908	6,620
Bearings Co. of America	30,142	79,380	125,533	61,856	44,751
SKF	39,727	56,091	40,529	30,304	19,198
Auburn	3,879	2,968	5,000	5,872	2,561
Steerns-Stafford	1,141				
Ahlberg		880	415	2,851	737
Bantam		37,702	99,995	11,463	4,679
Andrews			19,233	22,039	8,993
Hyatt			24,187	80,090	115
	141,111	337,472	435,537	347,384	150,532

Segment Type
Counter Weight Bearings (sets)

Fafnir	39,025	104,545	83,302	22,707	11,061

[illegible] BALL BEARING GROUP

Over 50 mm. O.D.

Company	1941	1942	1943	1944	1945 (7 months)
Berne-Hoffmann	71,012	99,560	12,992	30,752	6,060
SKF	100,533	950,191	1,493,975	1,010,639	74,758
Federal			245	654	797
	171,545	1,049,751	1,506,812	1,042,045	81,615

51 mm. O.D. thru 52 mm. O.D.

Berne-Hoffmann	19,138	19,728	16,500	25,688	21,161
Fafnir	8,385	22,248	10,733	9,074	
SKF	188,301	425,157	481,088	345,408	360,691
Ahlberg	16,964	13,006	16,362	17,140	11,857
Federal			11	2,305	15,329
	232,688	480,139	524,694	399,615	408,838

51 mm. O.D. thru 100 mm. O.D.

erne-Hoffmann	2,077	1,957	2,493	7,168	5,593
Fafnir	114,893	99,296	62,648	64,810	
McGill	3,628				
SKF	246,924	588,706	301,718	422,950	445,999
Ahlberg	50,814	48,537	38,486	56,213	52,895
Federal			1,246	681	8,641
	418,336	738,496	406,591	551,822	513,088

Above 100 mm. O.D.

Berne-Hoffmann	426	682	606	906	570
Fafnir	16,122	20,558	12,097	12,911	
SKF	54,360	181,207	95,454	166,845	172,869
Ahlberg	2,737	2,993	6,706	9,139	2,731
Federal				5	123
	73,645	205,440	114,863	189,806	176,293

PRECISION CYLINDRICAL ROLLER GROUP — FLANGE TYPE

CYLINDRICAL ROLLER GROUP — FLANGE TYPE

Aircraft Crankshaft Bearings

Company	1941	1942	1943	1944	1945 (7 mos.)
Borse-Hoffmann	1,166				
Berlin-Rockwell	64,981	182,718	249,891	163,330	56,117
Hyatt	6,163	107,176	404,098	370,260	69,027
SKF	61,939	155,584	211,370	189,363	86,742
Bower				11,685	18,397
	134,249	445,478	865,359	734,638	230,283

Size 0" to 2" O.D. Incl.

Borse-Hoffmann	20,410	28,904	80,576	69,613	32,102
Hyatt	3,956	26,964	38,909	119,135	61,432
Bower		40,886	34,667	48,840	1,251
SKF		498,487	774,208	450,757	63,505
Bellway			931	481	4,150
Banton			1,827		
	24,366	595,041	931,118	688,826	162,440

Over 2" to 4" O.D. Incl.

Borse-Hoffmann	73,956	119,578	108,801	71,382	25,698
Hyatt	834,000	1,138,033	1,380,437	1,655,418	919,267
SKF	455	76,514	100,533	96,003	60,471
Bower		86,371	255,497	970,955	365,698
Banton		8	6,997	60,177	14,709
McGill			5,122	2,459	2,201
Bellway			24,206	23,254	12,507
	908,411	1,420,504	1,881,593	2,879,648	1,621,502

Over 4" to 6" O.D. Incl.

Borse-Hoffmann	13,885	10,814	13,136	17,749	12,977
Hyatt	86,170	115,448	237,777	305,211	154,932
Bower	29,800	111,415	138,771	330,613	96,537
SKF		52,633	38,151	98,728	35,695
Banton		607	7,141	15,356	949
McGill			48,824	25,548	34,073
Bellway			33,248	23,211	29,910
Stearns-Stafford			80		
	129,855	290,917	511,148	776,614	324,983

PRECISION CYLINDRICAL ROLLER GROUP — FLANGE TYPE

CYLINDRICAL ROLLER GROUP — FLANGE TYPE

Over 4" to 8" O.D. Incl.

Company	1941	1942	1943	1944	1945 (7 mos.)
Borse-Hoffmann	8,445	6,511	4,181	5,770	3,589
Hyatt	30,950	110,068	146,771	198,053	121,910
Bower	111,450	42,055	129,596	125,121	27,723
SKF		19,357	19,864	19,026	9,116
Benton		48	1,855	3,095	1,345
McGill			25,767		97
Rollway			23,425	18,483	21,151
	150,845	178,039	341,459	369,548	184,891

Over 8" to 10" O.D. Incl.

Borse-Hoffmann	1,251	1,277	1,586	1,622	749
Hyatt	6,170	13,694	9,977	8,542	4,991
SKF		5,220	4,608	6,385	2,951
Benton		316	389	1,166	712
Bower		9,741	21,892	8,871	
McGill			2,289	1,814	13
Rollway			1,986	3,366	4,179
	7,421	30,248	42,727	31,766	13,195

Over 10" O.D.

Borse-Hoffmann	864	1,311	775	2,090	1,182
Hyatt	1,372	2,015	2,445	4,723	1,912
SKF		3,443	2,530	4,396	2,570
Benton		304	1,165	2,739	2,785
Bower			3,887		
McGill			244	176	39
Rollway			5,295	2,672	3,104
	2,236	7,073	16,141	16,774	11,592

	COMMERCIAL CYLINDRICAL ROLLER GROUP		CYLINDRICAL ROLLER GROUP NON-FLANGE TYPE		
Size 0" to 2" O.D. Incl.					
Company	**1941**	**1942**	**1943**	**1944**	**1945 (7 months**
Roller Bearing Co. of America	1,367,302	847,729	582,718	549,731	343,774
Aetna	293,378	130,346	-	146,460	85,417
Hyatt	5,783,000	3,595,452	4,324,772	2,144,536	421,312
SKF	299,377				
Rollway	1,971,038	1,459,149	687,178	1,213,918	747,291
Bower	916,962	1,053,653	1,353,182	549,050	
Bantam		4,080	3,341	15	
McGill		14,951			
Orange			2,162	485	1,139
Hoover				1,230	
	10,531,057	7,105,360	6,952,853	4,605,425	1,599,143
Over 2" to 4" O.D. Incl.					
Roller Bearing Co.	567,581	538,772	677,075	586,718	314,784
Hyatt	8,021,000	3,350,439	2,299,274	3,138,194	2,790,690
McGill	14,647	54,155			
SKF	51,894				
Rollway	1,099,525	184,732	220,466	314,152	261,248
Bower	925,748	1,095,178	985,936	1,623,590	1,137,086
Bantam		40,986	4,831	460	167
Orange			1,743	3,984	2,538
Hoover				3,347	
	10,675,395	5,264,262	4,189,195	5,670,445	3,916,513

COMMERCIAL CYLINDRICAL ROLLER GROUP — CYLINDRICAL ROLLER GROUP NON-FLANGE TYPE

over 4" to 6" O.D. Incl.

Company	1941	1942	1943	1944	1945 (7 months)
Roller Bearing Co.	9,659	46,323	34,833	47,87[illegible]	15,882
Hyatt	545,800	456,327	258,577	243,9[illegible]	136,026
McGill	25,216	21,426			
SKF	39,639			[illegible]	
Rollway	41,402	37,064	27,489	30,165	64,958
Bower	16,850	320			
Ahlberg	12,403				
Bantam		29,297	7,204	235	154
Stearns-Stafford		175	258	249	
Orange			3,179	6,235	9,440
Hoover				1,151	
	690,962	590,932	331,534	329,870	221,560

Over 6" to 8" O.D. Incl.

Roller Bearing Co.	796	3,303	2,3[illegible]	5,054	646
Aetna	5,693	5,783	8,808	8,856	3,684
Hyatt	83,300	159,562	255,010	136,771	64,078
McGill	2,042	4,354			
SKF	16,661				
Rollway	21,031	17,218	7,651	9,649	8,423
Bower	7,928				
Ahlberg	2,836				
Bantam		8,180	768	159	215
Orange			205	1,788	773
	139,983	198,430	274,763	161,577	77,819

	COMMERCIAL CYLINDRICAL ROLLER GROUP		CYLINDRICAL ROLLER GROUP NON-FLANGE TYPE		
Over 8" to 10" O.D. Incl.					
Company	**1941**	**1942**	**1943**	**1944**	**1945 (7 months)**
Roller Bearing Co.	249	165	556	2,208	477
Hyatt	11,070	67,025	109,281	78,766	41,559
McGill	1,239	780			
Rollway	6,902	4,365	1,185	1,021	2,004
SKF	1,921				
Bantam		3,641	2,446	117	131
Orange			557	574	45
Aetna				20,847	
	21,381	75,976	114,025	103,533	44,216
Over 10" O.D.					
Roller Bearing Co.	115	489	39	131	27
Aetna		53			
Hyatt	8,865	8,219	11,344		12,031
McGill	96	322		14,117	
Rollway	2,706	2,257	2,080	5,771	2,979
SKF	817				
Bantam		1,227	586	673	505
Orange			355	1,138	354
	12,599	12,567	14,404	21,830	15,896

CYLINDRICAL ROLLER THRUST GROUP

Propeller Blade Retention Bearings (sets)

Company	1941	1942	1943	1944	1945 (7 months)
Pafnir	135,745	265,285	307,785	170,849	
Aetna	450	63,878	283,772	147,629	51,913
Hyatt		15,504	355,178	438,438	214,429
	135,695	344,617	965,915	745,916	266,342

Up to 4" O.D. Incl.

Rollway	69,768	21,492	10,588	8,278	5,775
Bantam		363			
SKF			8		
Orange				56	
	69,768	21,855	10,596	8,334	5,775

Over 4" O.D.

Rollway	15,236	11,743	16,120	16,619	5,155
Bantam		1,201	5,106	2,375	1,620
Stearns-Stafford		68	121	33	
Aetna		605		16,290	
Orange			378	1,254	1,771
	15,236	13,617	21,725	36,371	7,846

CYLINDRICAL NEEDLE ROLLER BEARINGS

Size 0" to 2" O.D. - Aircraft Control Type

Company	1941	1942	1943	1944	1945 (7 months)
Fafnir	297,331	484,363		77	
McGill	213,135	314,336	489,295	508,346	201,099
Torrington	11,388,290	11,600,005	19,448,659	22,340,214	13,183,172
Roller Bearing Co.	327,335	670,362	999,999	747,737	229,971
Bantam		171,785	230,852	285,822	138,941
Hyatt		81,485	141,198	37,247	8,128
Orange			39,801	132,098	91,412
Rollway			3,883	6,644	2,044
	12,226,031	13,322,336	20,953,647	24,058,145	13,854,767

Over 2" to 4" O.D.

Hyatt	58,080	129,622	147,952	30,014	633
orrington	130,788	156,396	170,250	122,795	36,489
McGill	144,645	144,359	275,637	95,634	43,560
Roller Bearing Co.	70,017	196,126	174,955	141,725	69,514
Link-Belt	67,580	739,502	903,081	430,795	202,850
Bantam		186,192	192,966	209,118	126,177
SKF			1,012	15	69
Orange			48,331	99,949	58,924
Rollway			2,375	4,036	2,451
	471,110	1,552,197	1,916,559	1,134,081	540,667

[illegible] METRIC NEEDLE ROLLER BEARINGS

Over 4° to 6° O.D.

Company	1941	1942	1943	1944	1945 (7 months)
[illegible]ell	13,184	31,316	24,362	72,692	115,330
Roller Bearing Co.	4,608	20,922	39,873	43,391	17,314
Torrington		55,785	48,639	70,966	23,286
Hyatt		31,211	66,996	18,045	7,990
Orenge			4,945	16,461	4,523
Rollway			2	1,161	
SKF			861	116	42
Torrington			383	244	10
	17,792	139,234	185,696	222,676	168,095

Over 6° to 8° O.D.

[illegible]ell	1,082	3,438	2,183	1,729	4,978
Roller Bearing Co.	883	2,590	2,677	306	87
Torrington		4,919	9,742	8,864	1,968
range			1,012	4,549	18,652
Torrington			4,318	21,967	31,136
	1,965	18,937	19,932	37,415	56,421

Above 10°

[illegible]ell	50	511	255	47	-
Roller Bearing Co.	188	795	293	-	-
Torrington	-	52	875	128	-
Orange			1,029	1,342	-
	238	1,358	2,452	1,517	-

SELF-ALIGNING ANGULAR CONTACT ROLLER GROUP

Size 0" to 2" Incl.

Company	1941	1942	1943	1944	1945 (7 months)
Hyatt	1,569,300	826,322	918,417	1,024,382	560,200
Link-Belt	226,158	210,578	135,427	111,104	42,925
SKF			117		
	1,795,458	1,036,881	953,961	1,135,486	603,125

Over 2" to 4" Incl.

Hyatt	4,815,443	2,312,066	1,700,549	2,363,124	1,377,379
SKF	23,275	31,969	35,477	41,977	7,384
Link-Belt	186,171	196,886	127,593	200,322	124,518
	5,024,889	2,540,921	2,063,639	2,604,423	1,439,281

Over 4" to 6" Incl.

Hyatt	625,997	797,493	585,032	866,603	513,196
SKF	72,393	66,499	57,337	66,489	33,286
Link-Belt	70,211	65,840	48,234	93,881	60,538
	768,501	929,792	690,603	1,026,973	607,020

Over 6" O.D.

SKF	84,754	185,079	238,958	186,964	114,078
Link-Belt	10,477	19,670	24,299	31,074	19,699
	95,231	204,749	263,257	218,038	133,777

SELF-ALIGNING ROLLER GROUP

Aircraft Control

Link-Belt	-	-	99,318	56,222	37,060

Rod-End

Link-Belt	-	-	29,112	25,142	5,492

TAPER ROLLER BEARING GROUP

Tapered Roller Axle Bearings

Company	1941	1942	1943	1944	1945 (7 mos.)
Timken	833,431	2,707,135			
Bower	-	71,565			
	833,431	2,778,700			

Size 0" to 4" O.D. Incls.

Bower	8,446,513	2,128,581	998,057	2,055,248	956,570
Tyson	67,380	22,463			
Timken	8,943,268	4,055,270	4,268,024	4,526,029	2,591,642
Hoover			97,793	83,429	35,748
	17,457,161	6,206,314	5,363,874	6,664,706	3,583,960

Over 2" to 4" O.D. Incls.

Hyatt	1,012,379	202,306	135,709	448,137	317,224
Bower	9,830,201	5,996,266	6,063,775	5,754,567	3,755,710
Tyson	83,101	49,376	46,523	61,904	51,022
Timken	28,323,174	23,627,128	25,978,325	24,982,307	13,263,148
Hoover			67,154	84,114	33,622
SKF			320	1	91
	39,248,855	29,875,076	32,291,806	31,331,010	17,420,817

Over 4" to 6" O.D. Incls.

Bower	244,472	2,908,627	1,452,806	2,046,960	1,000,500
Tyson	13,019	24,987	41,985	71,974	55,903
Timken	7,144,054	9,336,644	9,177,864	11,878,430	6,315,241
Hyatt		71,309	110,647	285,697	247,898
Hoover			9,063	6,393	3,361
SKF			95		497
Bantam			4		
	7,401,545	12,341,567	10,792,464	14,289,454	7,622,560

Over 6" to 8" O.D. Incls.

Bower	104,835	551,757	8,038	20,687	13,787
Tyson	3,273	11,964	25,968	33,799	25,601
Timken	533,153	882,891	657,000	1,075,636	542,309
SKF			401		49
	641,261	1,446,212	691,407	1,130,082	581,746

[illegible] - Continued

Over 8° to 10° O.B. Incl.

[illegible]	1941	1942	1943	1944	1945 (7 months)
[illegible]	48	877	7,825	10,904	6,482
Tyson					
Pinkon	101,721	111,953	201,169	194,791	87,069
Banton		352	238	4	
SKF				234	
	101,769	113,202	209,232	205,913	93,551

Over 10° to 30° O.B. Incl.

Pinkon	79,425	88,396	66,451	81,313	52,709
Banton		1,161	751	201	
Tyson		1,913	10,098	14,544	7,083
Orango			132	86	
SKF			672	763	477
	79,425	91,470	78,064	96,907	60,269

Over 30° to 80° O.B. Incl.

Over 30° O.B.

SKF					52
Pinkon	877	799	668	270	207
Banton		133	31	16	
	877	932	699	286	259

[illegible] BALL THRUST BEARINGS

Bore 0" to 4" O.D. Incl.

Country	1941	1942	1943	1944	1945 (7 months)
Timken	1,422,229	1,960,932	1,964,905	3,984,457	1,488,463
Tyson	3,145	976			
SKF			3		
	1,425,374	1,961,908	1,964,908	3,984,457	1,488,463

Over 4" to 10" O.D. Incl.

Country					
Timken	5,422	6,723	7,607	12,472	7,989
Tyson	1,410	1,046		4,349	
SKF			1	13	53
	6,832	7,769	7,608	16,834	8,042

Over 10" O.D. Incl.

Country					
Timken	1,432,790	1,969	517	396	704
Tyson		230			
SKF			140	92	183
	1,432,790	2,199	657	488	887

Over 30° to 90° - 90 mm. Less Ball Thrust Bearings

Country					
Timken		744	1,870		

ALLOY STEEL BALLS

Below 1/2" D. (000's)

Company	1941	1942	1943	1944	1945 (7 months)
New Departure			945,794,957	1,016,542,046	570,357,407
SKF			353,212,000	408,551,000	171,839,000
Strom			632,708,678	653,822,510	347,721,581
Abbott			72,230,000	224,080,000	112,450,000
Nice			1[illegible]3,014,000		
Hoover			728,541,550	921,533,654	465,024,752
Vulcanite				275,022,000	240,500,000
			2,845,501,185	3,499,551,210	1,907,892,740

1/2" to and incl. 1" D. (000's)

New Departure			130,866,815	170,836,651	80,865,711
SKF			13,398,000	20,147,000	6,793,000
Strom			35,888,057	65,854,852	37,505,550
Ab-ott			3,719,306		
-er			29,144,376	28,630,047	15,999,676
			213,016,554	285,468,550	141,153,937

Over 1" D. (000's)

New Departure			10,128,222	6,579,637	2,442,490
SKF			863,000	561,000	387,000
Strom			8,997,982	8,226,248	4,965,814
Hoover			5,863,814	4,667,406	1,831,309
			25,853,018	20,034,291	9,626,613

ALLOY STEEL ROLLERS

Below 1/2" D. (000's)

Company	1941	1942	1943	1944	1945 (7 months)
Hyatt			76,683,852	92,288,263	34,997,990
Bantam			710,255,820	857,053,000	383,232,000
Bower			1,178,238	2,810,000	
McGill			1,254,000	918,000	687,000
Norma-Hoffmann			231,500		
Rollway			12,231,850	2,232,753	9,827,275
SKF			4,295,000	2,798,000	1,418,000
			806,130,260	958,100,016	430,162,265

1/2" to and incl. 1" D. (000's)

Bantam			719,760	281,000	51,000
McGill			112,000		
Rollway			4,864,340	4,122,700	1,857,875
			5,696,100	4,403,700	1,908,875

Over 1" D. (000's)

Bantam			226,312	6,000	2,000
Rollway			13,230	3,513	
			239,542	9,513	2,000

Volume III

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SUPREME COURT, U.S.

Vol. III

TRANSCRIPT OF RECORD

(Pages 1577 to 1752)

Supreme Court of the United States

OCTOBER TERM, 1950

No. 352

THE TIMKEN ROLLER BEARING COMPANY,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

FILED OCTOBER 11, 1950.

SUPREME COURT OF THE UNITED STATES

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VOL. III

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[fol. 4374]

PLAINTIFF'S EXHIBIT No. 138

	1941			1942			1943		
Taper Roller Bearing Group	Total	Timken	% of Total	Total	Timken	% of Total	Total	Timken	% of Total
Tapered Rocker Arm Bearings	833,431	833,431	100.0	2,778,700	2,707,135	97.4	.....	.....	....
Size 0" to 4" O. D. Incl.	17,457,161	8,943,268	51.2	6,20–,..4	4,055,270	65.3	5,363,874	4,268,024	79.6
Over 2" to 4" O. D. Incl.	39,248,855	28,323,174	72.2	29,875,076	23,627,128	79.1	32,291,806	25,978,325	80.5
Over 4" to 6" O. D. Incl.	7,401,545	7,144,054	96.5	12,341,567	9,336,644	75.6	10,792,464	9,177,864	85.0
Over 6" to 8" O. D. Incl.	641,261	533,153	83.1	1,446,212	882,891	61.0	691,407	657,000	95.0
Over 8" to 10" O. D. Incl.	101,769	101,721	99.9	113,202	111,953	98.9	209,232	201,169	96.2
Over 10" to 30" O. D. Incl.	79,425	79,452	100.0	91,470	88,396	96.6	78,064	66,451	85.1
Over 30" to 80" O. D. Incl.	877	877	100.0	932	799	85.7	699	668	95.6
Thrust Bearing Group									
Size 0" to 4" O. D. Incl.	1,425,374	1,422,229	99.8	1,561,908	1,560,932	99.9	1,564,508	1,564,505	100.0
Over 4" to 10" O. D. Incl.	6,832	5,422	79.4	7,769	6,723	86.5	7,608	7,607	100.0
Over 10" O. D. Incl.	1,432,790	1,432,790	100.0	2,199	1,969	89.5	657	517	78.7
Over 30" to 80"—90 mm.—Gun Ball Thrust Bearings	.....	.....	....	744	744	100.0	1,870	1,870	100.0
Grand Total	68,629,320	48,819,544	71.1	54,426,093	42,380,584	77.9	51,002,189	41,924,000	82.2

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PLAINTIFF'S EXHIBIT NO. 138—Continued

Taper Roller Bearings Group	1944 Total	1944 Timken	1944 % of Total	1945—7 months Total	1945—7 months Timken	1945—7 months % of Total
Tapered Rocker Arm Bearings						
Size 0" to 4" O. D. Incl.	6,664,706	4,526,029	67.9	3,583,960	2,591,642	72.3
Over 2" to 4" O. D. Incl.	31,331,010	24,982,307	79.7	17,420,817	13,263,148	76.1
Over 4" to 6" O. D. Incl.	14,289,454	11,878,430	83.1	7,622,560	6,315,241	82.8
Over 6" to 8" O. D. Incl.	1,130,082	1,075,636	95.2	581,746	542,309	93.2
Over 8" to 10" O. D. Incl.	205,913	194,791	94.6	93,551	87,069	93.1
Over 10" to 30" O. D. Incl.	96,907	81,313	83.9	60,269	52,709	87.5
Over 30" to 80" O. D. Incl.	286	270	94.4	259	207	79.9
Thrust Bearing Group						
Size 0" to 4" O. D. Incl.	3,584,457	3,584,457	100.0	1,488,463	1,488,463	100.0
Over 4" to 10" O. D. Incl.	16,834	12,472	74.1	8,042	7,989	99.3
Over 10" O. D. Incl.	488	396	81.1	887	704	79.4
Over 30" to 80"—90 mm.—Gun Ball Thrust Bearings						
Grand Total	57,320,137	46,336,101	80.3	30,860,554	24,349,481	78.9

[fols. 4375-4376] PLAINTIFF'S EXHIBIT 139

August 10, 1939.

British Timken Limited, Cheston Road, Aston, Birmingham, England.

GENTLEMEN:

We are quoting verbatim our Mr. Baal's memo of August 1 regarding Rudolph Morgerger, Kralja Petra 11.6., Novisad, Yogoslavia. This is sent for your information and following if you care to do so.

"Mr. Morberger called this morning with the express purpose of arranging for the purchase of Timken Bearings for shipment to Yougoslavia. He knew of British Timken Limited, but he claims in buying through their local distributors he was of the opinion that even though he had to buy at a higher price from the United States, that the bearing cost would be lower through the elimination of the British Timken Distributor. The writer completely outlined our relations with British Timken Ltd., which he appreciated, and we made the promise that we would make his interest known to British Timken.

"He was formerly a distributor for the German made Fischer bearing, but he lost this due to what he terms politics. He represents the English ball bearing manufacturer, R. & M."

Very truly yours, The Timken Roller Bearing Co.
——— ———, Assistant to the President.

W. Robert Timken
REF:BAS

[fol. 4377] PLAINTIFF'S EXHIBIT 140

September 21, 1939.

British Timken Limited, Cheston Road, Aston, Birmingham, England.

GENTLEMEN:

Parres Hermanos
Postal Box No. 141
Mellilla, Morocco

Attached hereto is copy of their letter dated August 26 together with a copy of our translation. We would appreciate your handling.

It may be inopportune at this time to mention future business conditions, but it is possible that you may wish to have us take care of certain markets for you during this period of emergency, and we wish to assure you that we shall be very glad indeed to give you every cooperation possible.

Very truly yours, The Timken Roller Bearing Co.
——, Assistant to the President.

W. Robert Timken
REF:BAS
Incs. 2

[fol. 4378] PLAINTIFF'S EXHIBIT 140A

The Timken Roller Bearing Co.
Service—Sales Division

Inter-Organization Correspondence

New York, 9-15-39.

Subject: Parres Hermanos, Postal Box No. 141, Mellilla, Morocco.

We are attaching original and translations of a letter received from the subject company which you will observe involves British Timken territory. As time goes on we no doubt will receive many inquiries from territory under British Timken control but we presume that it is much

too soon to consider any emergency policy in respect to neutral countries that were formerly supplied by British Timken Ltd.

In the meantime, we are following out the established routine and forwarding this original inquiry to you.

R. A. Baal.

B.

[fol. 4379] PLAINTIFF'S EXHIBIT 140B

Morocco.

August 26th, 1939.

Parres Hermanos, Postal Box No. 141, Melilla

Timken Roller Bearing Service & Sales Co.,
16 West 60th Street,
New York, N. Y.

MY DEAR SIRS:

We are writing to ask you to send us your latest catalogs indicating at the same time price and maximum discounts because we are interested in the importation of your products.

For your information, we wish to advise that our Government demands pro-for a invoices with prices of origin to grant importation license and in order to save time, we suggest that together with your information you will send us some sets of blank invoices so that we can prepare the pro-form invoices here in accordance with the monthly amount of exchange that we can obtain and with our requirements.

Awaiting to hear from you, we remain,

Yours very truly, ——

[fol. 4380] PLAINTIFF'S EXHIBIT No. 141

September 20, 1945.

British Timken Limited, Cheston Road, Aston, Birmingham 7, England.

Attention: Mr. J. E. Spear.

GENTLEMEN:

This is in reference to your letter of August 31, which relates to inquiries for tapered roller bearings from Liverpool export houses to Brazil.

We prefer all of the business for this country be handled by our Brazilian subsidiary. As you perhaps know, we trained several engineers at our plants here before sending them to Brazil. We are adverse to brokerage or export houses becoming involved in the sale of our product, particularly when so much pioneering and engineering work is to be done. It is our ambition to develop Latin American markets the same as we did in the United States—have all new applications, for example, to be submitted to our company for approval.

If this Liverpool exporting house cares to give us the name of the firm who is interested in purchasing such bearings, we will immediately cable our South American Company to contact the firm or firms involved.

Very truly yours, The Timken Roller Bearing Company. General Manager, Foreign Division.

H. C. Sauer: rp

[fol. 4381] PLAINTIFF'S EXHIBIT 141A

JES/JD

31st August, 1945.

The Timken Roller Bearing Company, Canton 6, Ohio, U. S. A.

DEAR SIRS:

We are receiving enquiries from a Liverpool firm of exporters for tapered roller bearings for export to Brazil. Various bearings are covered by their enquiries including I. S. A. sizes, which we believe you do not manufacture.

Will you please advise us how you would like us to handle these enquiries and if you have no objection to our quoting for the bearings concerned, do you wish us to add any allowances.

Yours faithfully, —— ——, General Sales Manager, for British Timken Limited, Fischer Bearing Company Limited.

[fol. 4382] PLAINTIFF'S EXHIBIT No. 142

Defendant's Answer to Interrogatory #2

Government's Interrogatory No. 2

2. State the following concerning each inquiry and order to purchase anti-friction bearings for shipment, and inquiry for distributor representation, outside of the territory allocated to the defendant under the Tripartite Agreement, received by the defendant from July 1, 1945 to date *; the date of the inquiry or order, the inquirer's or buyer's name and address, the type and quantity of anti-friction bearings inquired for or ordered, the name and location of the intended user thereof, and the disposition of such inquiry or order.

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* To date is defined as February 20, 1947.

[fol. 4383]

1.	2.	3.	4.	5.	6.	7.	8.
Date	Name of Inquirer or Buyer	Address of Inquirer or Buyer	Type of Anti-Friction Bearings Inquired For or Ordered	Quantity Anti-Friction Brgs. on Inquiry or Order	Name of Intended User	Address of Intended User	Disposition of Order or Inquiry
10- 6-46	British Timken	Duston, England	Timken Axleboxes	Unknown	Spanish Ry.	Unknown	Advised we had no information.
10- 7-46	British Timken	"	Locomotive Brgs.	For 16-50 Locos.	India Ry.	Unknown	We contacted India's engineers in Washington
3- 1-46	British Timken	"	Unknown	Unknown	Unknown	Unknown	We advised no such parts
8-21-46	British Timken	"	Timken Bearings and Ford replacements	Unknown	Joseph Tomroz and Files	Beirut, Lebonon	We turned business over to British Timken Ltd.
4- 9-46	Timken Roller Bearing	Canton, Ohio	Plain friction brgs. for 45 tank cars	Unknown	Eagle Oil and Shipping Co.	London, England	Referred them to British Timken Ltd.
10- 2-46	Timken Roller Bearing	Canton, Ohio	Class 24 locomotive bearings	100	C.M.E.	Africa	C.M.E. refused to consider our application.
12-17-45	British Timken	Cheston, Birmingham	424000 series	Unknown	Guest Keen Boldwins Ltd.	Port Talbot South Wales	It was decided to use Skefko bearings.
12-20-45	British Timken	"	Pinion bearings NA and S types	Unknown	Chrysler Motors Ltd.	Unknown	We did all we could to assist them.
5-10-46	British Timken	"	12" Acme-Gridley Chuckmatic Machines	Unknown	Natl. Acme	Cleveland, Ohio	We advised we did not have these machines in our plant but it was a good cup machine.
8-30-46	British Timken	Dunston, Northampton	NA749-742D	32			Shipped complete
			66225-66462	4			Shipped complete
			NA569-562DS	70			Shipped complete
11-14-46	British Timken	"	753	6			Shipped complete
			27680-27620	6			Shipped complete
			29685-29620	4			Shipped Complete
			389A	4			Shipped complete
[fol. 4384]							
10-24-46	British Timken	Northampton	34301-34500	2			Shipped complete
8-16-46	British Timken	Northampton	8314	4			Shipped complete
			8318	4			Shipped complete
10- 9-46	British Timken	Northampton	1003 rollers (green)	69000			Shipped complete
			1003 rollers (ground)	6000			Cancelled
2-26-46	British Timken	Northampton	NA-357-353D	144			Shipped complete
			NA-132083-132126D	4			Shipped complete
7-30-46	British Timken	Northampton	NA-67885SW-67820D	32			Shipped complete
8- 1-46	British Timken	Northampton	NA-71450-71751D	3			Shipped complete
			98004 cages	100			Shipped complete
			133005 cages	12			Shipped complete
11- 1-46	British Timken	Northampton	NA-46790SW-46720D	9			Shipped complete
8-15-46	British Timken	Northampton	NA-46790SW-46720D	36			Shipped complete
9- 4-46	British Timken	Northampton	02811	2000			Shipped complete
			67311	250			Shipped complete
12-19-46	British Timken	Birmingham	EE780653-781400	1	Unknown	Unknown	Shipped complete
6-14-46	British Timken	Northampton	Two Row Assemb. 2-56425 1-56650D 1-XIS56425 cone spacer on B-24800 Provide .002" end play in two rows	30			Cancelled 24 each shipped balance complete
			67434-67675	30			
1-17-47	British Timken	Birmingham	Automotive Application sheets	5 sets			Shipped complete

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4387]

1.	2.	3.	4.	5.	6.	7.	8.
Date	Name of Inquirer or Buyer	Address of Inquirer or Buyer	Type of Anti-Friction Bearings Inquired For or Ordered	Quantity Anti-Friction Brgs. on Inquiry or Order	Name of Intended User	Address of Intended User	Disposition of Order or Inquiry
12-24-46	British Timken	Birmingham	Residual Stresses and Fatigue Studies.		British Timken	Birmingham	Shipped Complete
			Shot Peening to Improve Fatigue Resistence.				
			Design of Crankpins for Locomotives.				
			Fatigue Strength of Members as Influenced by Surface Conditions.				
			Correlation of Residual Stresses in the Fatigue Strength of Axles.				
			Mechanical and Metallurgical Advantages of Shot Peening.				
			Improving Fatigue Resistance of Shot Peening.				
			Locomotive Shipping Tests.				
			Fatigue Strength Improved by Flame Treatment.				
			Photoelasticity as Applied to Design Problems.				
			Roller Bearing Rods in Passenger Service Over a Year.				
			Fatigue Tests of Some Manufactured Parts.				
			Modern Locomotive and Axle Testing Equipment.				
			Effect of Surface Rolling on the Fatigue Strength of Steel.				
7-11-45	British Timken	"	25289-D	7	Unknown	Unknown	Shipped Complete
			59412	8	"	"	"
			363-D	8	"	"	"
			363-X	14	"	"	"
			563-A	20	"	"	"
			3329	33	"	"	"
			59412	18	"	"	"
			39412-B	2	"	"	"
7- 6-45	British Timken	"	368-X	13	"	"	"
			375-D	4	"	"	"
			63555	72	"	"	"
			440	61	"	"	"
			529	37	"	"	"
			540	16	"	"	"
			623	6	"	"	"
			2691	2	"	"	"
			3659	100	"	"	"
			5356	6	"	"	"
			5582	39	"	"	"
			A-6079-	6	"	"	"

[fol. 4388]

4- 4-46	British Timken	Birmingham	12168-12303	50	Unknown	Unknown	Shipped Complete
10-31-46	British Timken	"	24780	40	"	"	"
			28985	12	"	"	"
			15578	122	"	"	"
			3760	1	"	"	"
			43131W	2	"	"	"
			15523	30	"	"	"
			28920	2	"	"	"
			15520	20	"	"	"
			15523	100	"	"	"
			17244B	1	"	"	"
			19281	68	"	"	"
9-30-46	British Timken	"	T-5005	361	"	"	"
3-12-46	British Timken	"	48506-48750	2	"	"	"
			NA-87700-87112D	2	"	"	"
			NA74525-74851D	1	"	"	"
			NA82576-82951D	2	"	"	"
			NA22171-22325D	26	"	"	"
			5795-5735	8	"	"	"
			NA558-552D	2	"	"	"
			52387W-52637B	8	"	"	"
			6484-6420	3	"	"	"
			750550-751200	2	"	"	"
			645	50	"	"	"
			598W	4	"	"	"
			42362	3	"	"	"
			3384	2	"	"	"
			568W	6	"	"	"
4-10-46	British Timken	"	8003 (cages)	24	"	"	"
			8314	2	"	"	"
			15385	30	"	"	"
			364D	1	"	"	"
7- 7-45	British Timken	"	2796	10	"	"	"
			356	10	"	"	"
			42375-42584	15	"	"	"
			34274-34478	8	"	"	"

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4390]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
7-11-45	British Timken	Birmingham	799	13	Unknown	Unknown	Shipped Complete
			467	1	"	"	"
			476	50	"	"	"
			750	7	"	"	"
			33251	6	"	"	"
			468-T	1	"	"	"
			355-X	12	"	"	"
			748	25	"	"	"
			6456	10	"	"	"
			3581	15	"	"	"
4-19-46	British Timken	Northampton	9178	1	"	"	"
			780-W	3	"	"	"
			462-T	8	"	"	"
3-29-46	British Timken	Birmingham	4-CB	1800	"	"	"
			6-A	550	"	"	"
5-28-46	British Timken	Northampton	Case Engineering journals.	1	"	"	"
			Graphite Steel Booklets.	12	"	"	"
			Technical Bulletins	2	"	"	"
4-19-46	British Timken	"	13181-13318	3	"	"	"
10-16-45	British Timken	Birmingham	3329	43	"	"	"
			5521	8	"	"	"
			A6157-B	50	"	"	"
			15251-D	16	"	"	"
			19281	70	"	"	"
			3328	12	"	"	"
			95927-D	4	"	"	"
7-4-45	British Timken	"	T-6005	1000	"	"	"
7-11-45	British Timken	"	338	6	"	"	"
			5356	36	"	"	"
			5550	24	"	"	"
			5554	9	"	"	"
			5582	6	"	"	"

[fol. 4391]

7-11-45	British Timken	Birmingham	839	6	Unknown	Unknown	Shipped Complete
			837	6	"	"	"
			661	12	"	"	"
			467	12	"	"	"
			466-S	24	"	"	"
			776	24	"	"	"
			795	12	"	"	"
			3755	6	"	"	"
4-1-46	British Timken	Birmingham	892-B	120	"	"	"
			898	120	"	"	"
7-12-45	British Timken	Birmingham	374	6	"	"	"
			384-D	6	"	"	"
			384-ED	6	"	"	"
			25520	10	"	"	"
			25821	6	"	"	"
			47621	6	"	"	"
			67720	13	"	"	"
			5521	4	"	"	"
			19281	16	"	"	"
			363-D	2	"	"	"
			3329-B	37	"	"	"
			19281	3	"	"	"
11-3-45	British Timken	"	97004	135	"	"	"
			98004	412	"	"	"
2-11-46	British Timken	"	37625	125	"	"	"
			37425	125	"	"	"
			NA22171	24	"	"	Cancelled
			22325-D	12	"	"	Cancelled
			64002	40	"	"	Shipped Complete
3-21-46	British Timken	"	NA-643	8	"	"	"
			632-D	4	"	"	"
			6452	2	"	"	"
7-6-45	British Timken	"	276	36	"	"	"
			315	36	"	"	"
			375-S	6	"	"	"
			3356	2	"	"	"

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4393]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
10-18-45	British Timken	Birmingham	EE518061	4	Unknown	Unknown	Shipped Complete
			518135	4	"	"	"
			NA-97450	22	"	"	"
			97901-D	11	"	"	"
			EE-516057	2	"	"	"
			516122	2	"	"	"
			NA-82576	2	"	"	"
			82951-D	1	"	"	"
			NA-798	14	"	"	"
8-16-46	Commonwealth of Australia	Washington, D. C.	493-S	24	"	"	"
			3420	20	"	"	"
			3476	20	"	"	"
7-29-46	Commonwealth of Australia	Washington, D. C.	493-S	24	"	"	Cancelled Complete
			3420	20	"	"	"
			3476	20	"	"	"
6-22-46	British Timken	Northampton	753	6	"	"	Shipped Complete
7- 1-46	British Timken	Northampton	579-D	8	"	"	"
			A-6157-B	20	"	"	"
			580-W	1	"	"	"
6- 6-46	British Timken	Northampton	49520	50	"	"	"
6-13-46	British Timken	"	17580-17520	30	"	"	"
7-22-46	British Timken	"	13318	6	"	"	"
6-19-46	British Timken	Birmingham	21-BA	1500	"	"	"
4-11-46	British Timken	Birmingham	NA222075	4	"	"	"
			222127-D	2	"	"	"
7-30-46	British Timken	Birmingham	Blueprints	84	"	"	"
12-15-45	British Timken	Birmingham	430000	12	"	"	"

[fol. 4394]

3- 8-46	British Timken	Birmingham	15385	750	Unknown	Unknown	Shipped Complete
			17580	500	"	"	"
			17520	500	"	"	"
			09004	1000	"	"	"
			14002	1000	"	"	"
2-26-46	British Timken	Northampton	15385	650	"	"	"
			17580-17520	200	"	"	"
1- 1-46	British Timken	Birmingham	776	2	"	"	"
			28137	36	"	"	"
			3474	13	"	"	"
			8319	2	"	"	"
			12580	6	"	"	"
			37425	9	"	"	"
			NA67790	16	"	"	"
			837	24	"	"	"
			416	40	"	"	"
			3582	6	"	"	"
			NA-861	8	"	"	"
			4370	16	"	"	"
10-17-45	British Timken	Birmingham	3951	29	"	"	"
			29	30	"	"	"
12-18-45	British Timken	Birmingham	EE7000091-700167	4	"	"	"
2-28-46	British Supply and Air Commission	New York, N. Y.	580	6	"	"	"
			572	6	"	"	"
			560	6	"	"	"
			553-X	6	"	"	"
			6379	6	"	"	"
			6320	6	"	"	"
			537	6	"	"	"
			532-A	6	"	"	"
4-16-46	British Timken	Birmingham	4018	1000	"	"	"

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4397]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
10-16-45	British Timken	Birmingham	NA-558	8	Unknown	Unknown	Shipped Complete
			552-D	4	"	"	"
			34275-34481-B	1	"	"	"
			34274-34481-B	1	"	"	"
			6375	4	"	"	"
			6454	12	"	"	"
			6460	1	"	"	"
10-16-45	British Timken	Birmingham	49151	12	"	"	"
			316	4	"	"	"
			442-S	2	"	"	"
			422-T	2	"	"	"
			3197	4	"	"	"
			5354	2	"	"	"
			468-T	1	"	"	"
			462-T	2	"	"	"
8- 1-46	British Timken	Northampton	NA749	32	"	"	"
			742-D	16	"	"	"
			580-W	2	"	"	"
			16137	2	"	"	"
7- 3-46	British Timken	Northampton	NA938	4	"	"	"
			932-D	2	"	"	"
			NA-52375	12	"	"	"
			52637-D	6	"	"	"
			NA-861	6	"	"	"
			854-D	3	"	"	"
2-26-46	British Timken	Northampton	13181-13318	7	"	"	"
			2820	60	"	"	"
			6355	10	"	"	"
			23256-B	2	"	"	"
			53387-B	12	"	"	"
			776	2	"	"	"
			3381-T	6	"	"	"
			570	12	"	"	"
			NA-74525	2	"	"	"
			74851-D	1	"	"	"
			NA-99600	20	"	"	"

[fol. 4398]

2-26-46	British Timken	Northampton	99102-D	10	Unknown	Unknown	Shipped Complete
			3659-3620	12	"	"	"
11-14-46	British Timken	Birmingham	Timken Engineering Journal	2	"	"	"
			Copies of "Balanced Proportions" booklet	50	"	"	"
9- 4-46	British Timken	Northampton	Reference Manuals	12	"	"	"
3-29-46	British Timken	Birmingham	4361	14	"	"	"
			NA-749	16	"	"	"
			742-D	8	"	"	"
			9178-9120	17	"	"	"
			13181-13318	4	"	"	"
			NA-99600	8	"	"	"
3-29-46	British Timken	Birmingham	99102-D	4	"	"	"
			NA-71450	8	"	"	"
			71751-D	4	"	"	"
			291250-291750	4	"	"	"
7-19-46	British Timken	Northampton	15385	1500	"	"	"
			4-CB	7000	"	"	"
			6-A	7000	"	"	"
			17580	1000	"	"	"
			17520	1000	"	"	"
9-11-46	British Timken	Northampton	2003	1,000,000	"	"	"
10-15-45	British Timken S.A. Ltd.	Johannesburg, S.A.	86650	6	"	"	"
			86100	6	"	"	"
			NA-99600	16	"	"	"
			99102-D	8	"	"	"
10-11-46	British Timken S.A. Ltd.	Johannesburg, S.A.	Set S-S Application Sheets	1	"	"	"

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4400]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
8-28-46	British Timken	Birmingham	5355	4	Unknown	Unknown	Shipped Complete
			3490-T	2	"	"	Cancelled Complete
			1280	30	"	"	Shipped Complete
			1220	30	"	"	"
			NA-95500	2	"	"	"
1-22-46	British Timken	"	95927-D	1	"	"	"
			795-792	2	"	"	"
			87750-87111	4	"	"	"
			NA-74525	12	"	"	"
			74851-D	6	"	"	"
			799-792	4	"	"	"
			8320	6	"	"	"
			8319	2	"	"	"
			W-17	1	"	"	"
			AN-17	2	"	"	"
8-16-46	British Timken	"	NA-98350	4	"	"	"
			98789-D	2	"	"	"
			NA-659	8	"	"	"
7-18-46	British Timken	"	654-D	4	"	"	"
			839-832	1	"	"	"
			13181-13318	6	"	"	"
			18200-18337	4	"	"	"
7-24-46	British Timken	"	9185-9120	1	"	"	"
			Two Row Assemb. NA-782 774-D.	25	"	"	Cancelled Complete
5-30-46	British Timken	Northampton	797-792	2	"	"	Shipped Complete
			NA-776	4	"	"	"
			774-D	2	"	"	"
			28155-28300	5	"	"	"
			28677-T-28622	2	"	"	"
			377-T	5	"	"	"

[fol. 4401]

7-22-46	British Timken	Northampton, Eng.	NA-26118	96	Unknown	Unknown	Shipped Complete
			26284-D	48	"	"	"
4-30-46	British Timken	"	2554	3	"	"	"
			4554	6	"	"	"
1-22-46	British Timken	"	932-B	2	"	"	"
			2736	10	"	"	"
			7	50	"	"	"
			452-D	35	"	"	"
			17244-B	18	"	"	"
			99102-D	2	"	"	"
			752-D	2	"	"	"
			74851-D	3	"	"	"
			34481-B	4	"	"	"
			394-D	2	"	"	"
7-22-46	British Timken	"	26882	103	"	"	"
			26820	10	"	"	"
5-22-46	British Timken	"	3011	2000	"	"	"
10-26-45	British Timken	Birmingham, Eng.	258	2	"	"	"
			440	1	"	"	"
			6377	6	"	"	"
			49151	3	"	"	"
			25580	12	"	"	"
			43131-W	3	"	"	"
			49151	4	"	"	"
			25580	1	"	"	"
			59175	5	"	"	"
			3750	2	"	"	"
			458-T	40	"	"	"
			748	30	"	"	"
			748	2	"	"	"
			5550	37	"	"	"
			595	40	"	"	"
			375-S	8	"	"	"
			49585	2	"	"	"
			579-TD	30	"	"	"
			49585	100	"	"	"

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4404]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
11-14-46	British Timken	Northampton, Eng.	4554	2	Unknown	Unknown	Shipped Complete
			4520	2	"	"	"
			49585	50	"	"	"
			49520	50	"	"	"
9- 4-46	British Timken	"	Assem. ea. consist of 1 A-3044 1 A-3045 32 "A" Rolls	100	"	"	"
9-30-46	British Timken	"	87750-87111	4	"	"	"
			49585-49520	100	"	"	"
11-14-46	British Timken	"	Two Row Assemb. 2.NA782 1.774-D	25	"	"	"
11- 5-46	British Timken	"	799	4	"	"	"
			18590	10	"	"	"
			64450	3	"	"	"
			18520	10	"	"	"
			65320	5	"	"	"
			654-D	2	"	"	"
			64700-B	3	"	"	"
11- 2-46	British Timken	"	28580-28521	5	"	"	"
			NA-44163	8	"	"	"
			44363-D	4	"	"	"
			13687	4	"	"	"
			13621-D	2	"	"	"
			26884-26823	12	"	"	"
			28985-28920	6	"	"	"
12- 6-46	British Timken	"	580-W	2	"	"	"
			572	2	"	"	"
			NA-385	2	"	"	"
			384-D	1	"	"	"
			462-W	6	"	"	"
			453-B	6	"	"	"
			23100-X	6	"	"	"
			23256-B	6	"	"	"

fol. 4405]

10- 4-46	British Timken	Northampton, Eng.	26884	50	Unknown	Unknown	Shipped Complete
			28622	4	"	"	"
			26883	50	"	"	"
			26824	50	"	"	"
8-20-46	British Timken	Northampton, Eng.	898-892	40	"	"	"
12- 6-46	British Timken	"	26883	80	"	"	"
			26824	80	"	"	"
			26884	20	"	"	"
10- 1-46	British Timken	"	14118	10000	"	"	"
			14283	10000	"	"	"
			3984	10000	"	"	"
			11-BA	5000	"	"	"
			3984	10000	"	"	"
			355-X	10000	"	"	"
8-10-45	British Timken	Birmingham, Eng.	Blueprints	For year 1945	"	"	"
8-30-45	British Timken	Birmingham, Eng.	2878-2820	18	"	"	"
8-17-45	British Timken	"	NA-643	2	"	"	"
			632-D	1	"	"	"
7-12-45	British Timken	"	NA-48390	12	"	"	"
			48320-B	12	"	"	"
			NA-48390	12	"	"	"
			48320-D	6	"	"	"
7- 4-45	British Timken	"	88003	36	"	"	"
10-17-45	British Timken	"	5565	12	"	"	"
			5521	12	"	"	"
8-20-45	British Timken	"	NA-659	4	"	"	"
			654-D	2	"	"	"
			567-W	6	"	"	"
			575-W	6	"	"	"

The lower portion of this Exhibit appears in the frame immediately below.

			[illegible]	200			Shipped complete
			67311	250			Shipped complete
12-19-46	British Timken	Birmingham	EE780653-781400	1	Unknown	Unknown	Shipped complete
6-14-46	British Timken	Northampton	Two Row Assemb. 2-56425 1-56650D 1-XIS56425 cone spacer on B-24800 Provide .002" end play in two rows	30			Cancelled 24 each shipped balance complete
1-17-47	British Timken	Birmingham	67434-67675 Automotive Application sheets	30 5 sets			Shipped complete
[fol. 4385]							
11-27-45	British Timken	Birmingham	T-311	1	Unknown	Unknown	Shipped Complete
5- 9-46	British Timken	Northampton	97004 (cage)	50	Unknown	Unknown	"
			98004 (cage)	50			
5-15-46	British Timken	"	97004 (cages)	50	Unknown	Unknown	"
			745-A	2	"	"	"
			NA659-654D	1	"	"	"
			13181-13318	6	"	"	"
			34481B	4	"	"	"
8-15-46	British Timken	Northampton	NA-792-D	6	Unknown	Unknown	"
			6375	8	Unknown	Unknown	"
7-20-46	British Timken	"	NA798-792D	2	"	"	"
			NA-99600-99102D	2	"	"	"
			569-563D	2	"	"	"
5- 7-46	British Timken	"	291250-291750	2	"	"	"
			A-6157-B	18	"	"	"
5-30-46	British Timken	"	Two Row Assemb. 2-13687 1-13621D 1-XIS Cone Spacer on B-23458	100	"	"	"
5-29-46	British Timken	"	133005 (cages)	24	"	"	"
			3329	40			
7-25-46	British Timken	"	450001 (cages)	2	"	"	"
			129006 (cages)	48	"	"	"
			430000 (cages)	1	"	"	"
			146	200	"	"	"
7-18-46	British Timken	"	17119-W	8	"	"	"
			250005 (cages)	2	"	"	"
4-17-46	British Timken	Northampton	250005 (cages)	4	"	"	"
			540002 (cages)	2	"	"	"
[fol. 4386]							
1- 9-47	British Timken	Birmingham	776-772	2	Eric Meylan	Geneva, Switzerland	Shipped Complete
1- 6-46	British Timken	Birmingham	41286B	16	Unknown	Unknown	"
8- 6-46	British Timken	Northampton	280006 (cages)	20	"	"	"
8- 9-46	British Timken	"					
1- 8-47	British Timken	Birmingham	Copies of Trading Post	15	Unknown	Unknown	"
8- 7-46	British Timken	Northampton	396	2	"	"	"
			392	192	"	"	"
			NA-476-472D	2	"	"	"
8- 1-46	British Timken	"	540002 (cages)	6	"	"	"
			450001 (cages)	240	"	"	"
1-10-47	British Timken	"	T-59769 heat indicator	2	"	"	"
5-23-46	British Timken	"	K-16598 heat indicator	2	"	"	"
			450001 (cages)	8	"	"	"
5-15-46	British Timken	"	Two row Assemb. 2-NA749 1-743DS	40	"	"	"
			NA569-562DS	65	"	"	"
5-22-46	British Timken	"	N-03	610	"	"	"
			N-04	460	"	"	"
			N-05	610	"	"	"
			W-02	305	"	"	"
			N-07	760	"	"	"
			N-06	760	"	"	"
			W-04	460	"	"	"
			W-03	610	"	"	"
			W-05	610	"	"	"
			W-06	760	"	"	"
			W-07	760	"	"	"

			598W	4	"	"	"
			42362	3	"	"	"
			3384	2	"	"	"
			568W	6	"	"	"
4-10-46	British Timken	"	8003 (cages)	24	"	"	"
			8314	2	"	"	"
			15385	30	"	"	"
			364D	1	"	"	"
7- 7-45	British Timken	"	2796	10	"	"	"
			356	10	"	"	"
			42375-42584	15	"	"	"
			34274-34478	8	"	"	"
[fol. 4389]							
7- 7-45	British Timken	Birmingham	368-362	3	Unknown	Unknown	Shipped Complete
			335-332	3	"	"	"
			67388-67320D	26	"	"	"
3-23-46	British Timken	"	21BA	2500	"	"	1000 shipped 1500 cancelled
10-16-45	British Timken	"	133005	20	"	"	Shipped Complete
5- 6-46	British Timken	Northampton	26882	100	"	"	"
4- 5-46	British Timken	Birmingham	26882	100	"	"	"
2-15-46	British Timken	"	W-06	200	"	"	"
			W-07	200	"	"	"
			W-08	150	"	"	"
			W-04	100	"	"	"
			W-09	150	"	"	"
			W-05	400	"	"	"
			W-11	50	"	"	"
4-19-46	British Timken	Northampton	N-06	105	"	"	"
			N-07	105	"	"	"
			N-07	105	"	"	"
			N-06	105	"	"	"
4-10-46	British Timken	Birmingham	66225-66462	4	"	"	"
7-11-45	British Timken	Birmingham	3187	6	"	"	"
			466S	4	"	"	"
			495A	38	"	"	"
			3776A	1	"	"	Cancelled Complete
			3795	36	"	"	Cancelled Complete
			3585	15	"	"	Cancelled Complete
			2796	12	"	"	Shipped Complete
			2585	6	"	"	"
			767D	12	"	"	"
			53178	15	"	"	"

			19281	3	"	"	"
11- 3-45	British Timken	"	97004	135	"	"	"
			98004	412	"	"	"
2-11-46	British Timken	"	37625	125	"	"	"
			37425	125	"	"	"
			NA22171	24	"	"	Cancelled
			22325-D	12	"	"	Cancelled
			64002	40	"	"	Shipped Complete
3-21-46	British Timken	"	NA-643	8	"	"	"
			632-D	4	"	"	"
			6452	2	"	"	"
7- 6-45	British Timken	"	276	36	"	"	"
			315	36	"	"	"
			375-S	6	"	"	"
			3386	2	"	"	"
[fol. 4392]							
7- 6-45	British Timken	Birmingham	4353	18	Unknown	Unknown	Shipped Complete
			02875	8	"	"	"
			44143	8	"	"	"
			319	24	"	"	"
			343	24	"	"	"
12-21-45	British Timken	"	02811	100	"	"	"
			88003	8	"	"	"
			35-BC	15	"	"	"
			55187	6	"	"	"
2-25-46	British Timken	Northampton	N-03	20	"	"	"
			AN-17	10	"	"	"
			W-13	10	"	"	"
			W-17	20	"	"	"
11-23-45	British Timken	Birmingham	EE551026-551663-D	4	"	"	"
			6376	1	"	"	"
11-19-45	British Timken	Birmingham	867-D	17	"	"	"
			377-T	8	"	"	"
7- 6-45.	British Timken	Birmingham	772	2	"	"	"
			52387-W-52637-B	1	"	"	"
			2631	3	"	"	"
			44143-44348	12	"	"	"
			52387-W-52637	2	"	"	"
			86650	14	"	"	"
			86100	14	"	"	"
10-16-45	British Timken	Birmingham	552-A	17	"	"	"
			67322-D	100	"	"	"
			88003	48	"	"	"
			67311	1300	"	"	"
			W-03	72	"	"	"
			6010	40000	"	"	"
			T-5065	20	"	"	"

			29	30	"	"	"
12-18-45	British Timken	Birmingham	EE7000091-700167	4	"	"	"
2-28-46	British Supply and Air Commission	New York, N. Y.	580	6	"	"	"
			572	6	"	"	"
			560	6	"	"	"
			553-X	6	"	"	"
			6379	6	"	"	"
			6320	6	"	"	"
			537	6	"	"	"
			532-A	6	"	"	"
4-16-46	British Timken	Birmingham	4018	1000	"	"	"
[fol. 4395]							
10-26-45	British Timken	Birmingham	32-C	4	Unknown	Unknown	Shipped Complete
			33	3	"	"	"
			34	2	"	"	"
			36	2	"	"	"
			3328	25	"	"	"
			25520	24	"	"	"
			25540	75	"	"	"
			02811	300	"	"	"
			31-BA	6	"	"	"
			31-C	6	"	"	"
7-22-46	British Timken	Northampton	Brg. NA-93800TR-93127DTR	15	"	"	"
9- 4-46	British Timken	Northampton	3329-B	40	"	"	"
9- 5-46	British Timken	Birmingham	French Lubrication Maintenance Instructions book	100	"	"	"
7-22-46	British Timken	Northampton	56425-W-56650-B	30	"	"	"
			56425-56650-B	30	"	"	"
3- 6-46	British Timken	Birmingham	65390-65320	2	"	"	"
			59186-59429	2	"	"	"
			EE516057-516122	2	"	"	"
			NA46790-SW	28	"	"	"
			46720-D	14	"	"	"
			18790-18720	50	"	"	"
			NA-97450	4	"	"	"
			97901-D	2	"	"	"
			NA-44163	4	"	"	"
			44363-D	2	"	"	"
3- 6-46	British Timken	Birmingham	NA74525	2	"	"	"
			74851-D	1	"	"	"
			NA-44163	6	"	"	"
			44363-D	3	"	"	"
			NA-17098	200	"	"	"
[fol. 4396]							
3- 6-46	British Timken	Birmingham	17245-D	100	Unknown	Unknown	Shipped Complete
			28985-28920	2	"	"	"
			28682	2	"	"	"
			49585	2	"	"	"
			26879-T	4	"	"	"
			4361	2	"	"	"
			33262	3	"	"	"
			59186	1	"	"	"
			59200	1	"	"	"
			21-BA	3	"	"	"
			NA-357	176	"	"	"
			15120	30	"	"	"
			5361	6	"	"	"
8-29-46	British Timken	Northampton	24780	20	"	"	"
			24720	20	"	"	"
10- 7-46	British Timken S.A.	Johannesburg S. A.	Set of Service Sales Automotive Application Sheets.	1	"	"	"
10- 7-46	British Timken	Birmingham	Sets of Service Sales Application Sheets (Automotive)	5	"	"	"
9- 5-46	British Timken	Northampton	17520	6	Messrs. J. J. Niven & Co. Ltd.	Christ Church, New Zealand	"
			17580	6	"	"	"
9-17-46	British Supply office	Washington, D. C.	3476	14	Unknown	Unknown	"
			3420	3	"	"	"
11-12-46	British Timken	Northampton	6010	5000	Unknown	Unknown	"
10-16-45	British Timken	Birmingham	96900-96140	1	"	"	"
			898-892	6	"	"	"
			87750-87111	36	"	"	"
			EE234156-234220	4	"	"	"

			NA-99600	8	"	"	"
3-29-46	British Timken	Birmingham	99102-D	4	"	"	"
			NA-71450	8	"	"	"
			71751-D	4	"	"	"
			291250-291750	4	"	"	"
7-19-46	British Timken	Northampton	15385	1500	"	"	"
			4-CB	7000	"	"	"
			6-A	7000	"	"	"
			17580	1000	"	"	"
			17520	1000	"	"	"
9-11-46	British Timken	Northampton	2003	1,000,000	"	"	"
10-15-45	British Timken S.A. Ltd.	Johannesburg, S.A.	86650	6	"	"	"
			86100	6	"	"	"
			NA-99600	16	"	"	"
			99102-D	8	"	"	"
10-11-46	British Timken S.A. Ltd.	Johannesburg, S.A.	Set S-S Application Sheets	1	"	"	"
[fol. 4399]							
10-11-46	British Timken	Birmingham	Sets of S-S Application Sheets	5	Unknown	Unknown	Shipped Complete
1-22-46	British Timken	Northampton	590	4	"	"	"
			28131-T	1	"	"	Cancelled Complete
			74510-D	8	"	"	Shipped Complete
			NA-99600	8	"	"	"
			NA-455	22	"	"	"
			53175	4	"	"	"
			2580-W	10	"	"	"
			NA-798	2	"	"	"
			792-D	1	"	"	"
3- 7-46	British Timken	Birmingham	127096-SW	88	"	"	"
			127136-D	44	"	"	"
9- 1-45	British Timken	Birmingham	EE-780655	2	"	"	"
			781400	2	"	"	"
10-16-45	British Timken	Birmingham	440	18	"	"	"
			467	36	"	"	"
			NA-95500	16	"	"	"
			02475	10	"	"	"
			31-BA	41	"	"	"
			59412	20	"	"	"
			5351	1	"	"	"
			5320	1	"	"	"
			44363-D	50	"	"	"
10-16-45	British Timken	Birmingham	NA44163	100	"	"	"
			540	36	"	"	"
			5365	6	"	"	"
			3384	1	"	"	"
			761-W	12	"	"	"
			4353	36	"	"	"
			33262	8	"	"	"
			59200	2	"	"	"
			NA-44163	16	"	"	"
			44363-D	8	"	"	"

			49151	3	"	"	"
			25580	12	"	"	"
			43131-W	3	"	"	"
			49151	4	"	"	"
			25580	1	"	"	"
			59175	5	"	"	"
			3750	2	"	"	"
			458-T	40	"	"	"
			748	30	"	"	"
			748	2	"	"	"
			5550	37	"	"	"
			595	40	"	"	"
			375-S	8	"	"	"
			49585	2	"	"	"
			579-TD	30	"	"	"
			49585	100	"	"	"
[fol. 4402]							
9-25-45	British Timken	Birmingham	1975	1	Unknown	Unknown	Shipped Complete
			1932	1	"	"	"
7- 7-45	British Timken	Birmingham	34002	1000	"	"	"
7- 7-45	British Timken	"	NA48685-SW	72	"	"	"
			48620-D	36	"	"	"
7-12-45	British Timken	"	3979	12	"	"	"
9- 6-45	British Timken	"	6461	4	"	"	"
			29585	24	"	"	"
			52387-W	30	"	"	"
			02877	12	"	"	"
			02820	12	"	"	"
			745-A	2	"	"	"
			742-B	2	"	"	"
11-27-45	British Timken	"	59201-T	30	"	"	"
			342-3320-B	2	"	"	"
11-19-45	British Timken	"	46162	40	"	"	"
			46369	40	"	"	"
12-18-46	British Timken	"	Head Die coined	2	"	"	"
			Taper Die	2	"	"	"
			Knockout pin	2	"	"	"
			1st Operation Punch	1	"	"	"
			Cut off Die	2	"	"	"
			Sheer Blades	2	"	"	"
			Hd. Die Back-up Block	1	"	"	"
			Adapter	1	"	"	"
			Adapter Plug	1	"	"	"
			Taper Die Back-up Block	1	"	"	"
			Coils wire for 2003 Roll on 437 Header .350" Dia. 52100 steel	2	"	"	"
[fol. 4403]							
12-18-46	British Timken	Birmingham, Eng.	Coils wire for .003 Roll on 375 Header .292" Dia. 52100 Steel	2	Unknown	Unknown	Shipped Complete
2-13-47	British Timken	Birmingham, Eng.	Sets of Service Sales application Sheets	5	"	"	"
2-13-47	British Timken S.A. Ltd.	Johannesburg South Africa	Set of S-S Application sheets	1	"	"	"
12-11-46	British Timken	Northampton, Eng.	Two Row Assemb. 2-EE551026 1-551663-D	4	"	"	"
10-25-46	British Timken	Northampton, Eng.	742-B	2	"	"	"
			374	54	"	"	"
			392	24	"	"	"
8-29-46	British Timken	"	556	31	"	"	"
3-29-46	British Timken	Birmingham, Eng.	NA-21075	44	"	"	"
			21226-D	22	"	"	"
			898-892	10	"	"	"
			NA-46790-SW	18	"	"	"
			46720-D	9	"	"	"
			34275	6	"	"	"
			34481-B	6	"	"	"
			49585-49520	50	"	"	"
			487-TD	6	"	"	"
11-14-46	British Timken	Northampton, Eng.	568-W	16	"	"	"
12- 3-46	British Timken	"	59162	4	"	"	"
			59200	2	"	"	"
			2924	4	"	"	"
11-14-46	British Timken	"	39412-B	42	"	"	"

8-30-45	British Timken	Birmingham, Eng.	2878-2820	18	"	"	"
8-17-45	British Timken	"	NA-643	2	"	"	"
			632-D	1	"	"	"
7-12-45	British Timken	"	NA-48390	12	"	"	"
			48320-B	12	"	"	"
			NA-48390	12	"	"	"
			48320-D	6	"	"	"
7- 4-45	British Timken	"	88003	36	"	"	"
10-17-45	British Timken	"	5565	12	"	"	"
			5521	12	"	"	"
8-20-45	British Timken	"	NA-659	4	"	"	"
			654-D	2	"	"	"
			567-W	6	"	"	"
			575-W	6	"	"	"
[fol. 4406]							
10-11-45	British Timken	Birmingham, Eng.	NA-44163	100	Unknown	Unknown	Shipped Complete
			44363-D	50	"	"	"
			15520	12	"	"	"
			570	24	"	"	"
7-27-45	British Timken	Birmingham, Eng.	15250	4000	"	"	800 Cancelled 3200 Shipped
			14125-A	2000	"	"	Shipped Complete
			14274	2000	"	"	"
			16150	15000	"	"	3000 Cancelled 12000 Shipped
			16284	15000	"	"	3000 Cancelled 12000 Shipped
			2787	2000	"	"	Shipped Complete
			2720	2000	"	"	1500 Cancelled 500 Shipped
			26118	11000	"	"	8900 Cancelled 2100 Shipped
			26283	11000	"	"	8000 Cancelled 3000 Shipped
9-10-45	British Ministry of Supply Mission	New York, N. Y.	14274	120	"	"	Shipped Complete
			14130	120	"	"	"
			414	120	"	"	"
			418	120	"	"	"
11-16-45	British Timken	Birmingham, Eng.	170005	16	"	"	"
10-16-45	British Timken	"	T-6005	30	"	"	"
7- 4-45	British Timken	"	34300	150	"	"	"
			34478	150	"	"	"
			Two Row Brg. Assy.	4	"	"	"
			EE-738101-D				
			738172				
[fol. 4407]							
7- 4-45	British Timken	Birmingham, Eng.	Four Row Assem. Brg.	4	Unknown	Unknown	Shipped Complete
			82681-D				
			82620				
			82620-D				
10-26-45	British Timken	Birmingham, Eng.	364-D	1	"	"	"
			352-D	1	"	"	"
			384-D	1	"	"	"
			533-D	1	"	"	"
			6-A	40	"	"	"
			7	2	"	"	"
			832-B	20	"	"	"
			832-B	15	"	"	"
			17	2	"	"	"
			24	2	"	"	"
			6-A	3	"	"	"
			34500	4	"	"	"
			67720-D	2	"	"	"
			34500	4	"	"	"
			16	2	"	"	"
			18337	29	"	"	"
			3735	20	"	"	"
			774-D	1	"	"	"
			534-C	2	"	"	"
			253	2	"	"	"
			33	6	"	"	"
			32-C	6	"	"	"
4-18-46	British Timken	Northampton, Eng.	N-13	3	"	"	"
			W-13	3	"	"	"
7-24-45	British Timken	Birmingham, Eng.	86669-86100	2	"	"	"
			87750-87111	2	"	"	"
			EE780655-781400	2	"	"	"
8-16-45	British Timken	"	07100-W	6	"	"	"
			4365	6	"	"	"
			74510-D	12	"	"	"

[fol. 4408]

1. Date.	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
8-16-45	British Timken	Birmingham, Eng.	479	12	Unknown	Unknown	Shipped Complete
			554	48	"	"	Cancelled Complete
			2776	12	"	"	Cancelled Complete
			52387-W	1	"	"	Shipped Complete
			2684	3	"	"	Cancelled Complete
			2684	120	"	"	Shipped Complete
			NA05075	2	"	"	"
			316	22	"	"	"
			395-A	2	"	"	"
			750-W	4	"	"	"
			2793	51	"	"	"
			5551	37	"	"	"
			3781-W	2	"	"	"
			360	6	"	"	Cancelled Complete
			4-CB	75	"	"	Shipped Complete
			758	18	"	"	"
			279	25	"	"	Cancelled Complete
			369-S	4	"	"	Shipped Complete
			396	7	"	"	Cancelled Complete
			398	8	"	"	"
			461	3	"	"	Shipped Complete
			461-T	2	"	"	Cancelled Complete
			566-W	2	"	"	Shipped Complete
			570	3	"	"	Cancelled Complete
			707-D	10	"	"	Shipped Complete
			857	4	"	"	Cancelled Complete
			1975	1	"	"	Shipped Complete
			2776	15	"	"	Cancelled Complete
			2783	13	"	"	"
			3490-T	3	"	"	Shipped Complete
			3585	2	"	"	Cancelled Complete
			5351-A	27	"	"	Shipped Complete
			5553	61	"	"	"
			6279	9	"	"	"
			6455	6	"	"	Cancelled Complete
			13181	6	"	"	Shipped Complete
			15120	4	"	"	"
			16137	21	"	"	"

[fol. 4409]

8-16-45	British Timken	Birmingham, Eng.	19150-T	10	Unknown	Unknown	Cancelled Complete
			67388	2	"	"	Shipped Complete
			71426-D	1	"	"	"
			77375	1	"	"	"
			87750	1	"	"	"
			87750	2	"	"	"
			41125-W	9	"	"	"
			6361	2	"	"	Cancelled Complete
3-28-46	British Timken	"	53175	22	"	"	Shipped Complete
			41286-B	2	"	"	"
8-21-45	British Timken	"	26882-26823	100	"	"	"
2- 4-46	British Timken	Northampton, Eng.	470001	15	"	"	"
6-29-46	British Timken	"	13181-13318	2	"	"	"
2- 4-46	British Timken	"	780700-781400	8	"	"	"
4-19-46	British Timken	"	8314	2	"	"	"
			34301-34481-B	1	"	"	"
			NA-74525	4	"	"	"
			74851-D	2	"	"	"
7-6-45	Commonwealth of Australia	Washington, D. C.	18590	5000	"	"	"
			18520	5000	"	"	"

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4412]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
12- 1-45	British Timken	Birmingham	28920	12	Unknown	Unknown	Shipped Complete
			3735	20			
			14CE	3			
			2736	3			
7-11-45	British Timken	Birmingham	898-892	280	Unknown	Unknown	Shipped Complete
			NA-659-654D	4			
			NA-643-632D	4			
			1953-1920	10			
			25580-25520	30			
			41125W-41286B	113			
			42376-42584	1			
			NA-43131-43319D	1			
			44143-44348B	13			
			67388-673220D	1			
			NA-74525-74851D	6			
7- 3-45	British Timken	Birmingham	Blue Prints	—	Unknown	Unknown	Shipped Complete
7-11-45	British Timken	"	6454	8	Unknown	Unknown	Shipped Complete
			31593	56			
			31593	18			
			1920	14			
			2620	4			
			6461	2			
			384-D	4			
7-11-45	British Timken	Birmingham	25520	40	Unknown	Unknown	Shipped Complete
			453-AB	6			
			5521	6			
			15523	18			
			25584	32			
			25520	32			
			455	48			
			453DW	24			
			3520	35			
			02420	13			
			3732	12			
			452-A	50			

[fol. 4413]

7-11-45	British Timken	Birmingham	743	30	Unknown	Unknown	Shipped Complete
			3530	35			
			612-X	6			
			2732	12			
			332-B	6			
			622-D	6			
			742-D	1			
			15251-D	2			
3-20-46	British Timken	"	Pkg. Blue Prints	1	Unknown	Unknown	Shipped Complete
7-13-45	British Timken	"	Photographs	142	"	"	"
9-22-46	Van Maanen	Amsterdam, Netherlands	Request for Distribution		"	"	Referred to B. T. Ltd.
10- 7-46	Kibutsey Hashomer Hatsair-Tel-	Aviv, Palestine	"	"	"	"	"
9-14-46	U. M. A. L.	Bruxelles, Belgium	Request price & delivery of brgs.		U. M. A. L.	Bruxelles, Belgium	"
9-18-46	Kolben-Kraus	Wien, Austria	Request price & delivery of brgs.		Kolben-Kraus	Wien, Austria	"
9-24-46	Aktiebolaget	Sodertalje, Sweden	Request for brgs.	4	Unknown	Unknown	Referred sketch to B. T. Ltd.
8- 5-46	General Motors	Kampala, India	Request for Catalogs & Distribution		"	"	Referred to B. T. Ltd.
10- 1-46	Hinuma	Gravenhage, Holland	Request for Distribution		"	"	"
10-17-46	Bartos Pal	Budapest, Hungary	"		"	"	"
10-15-46	V. Mahmourian	Bruxelles, Belgium	"	"	"	"	"

[redacted]lower portion of this Exhibit appears in the frame immediately below.

[fol. 4417]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
7-11-46	Sincom	Bucharest, Romania	Request catalog & Distribution		Unknown	Unknown	Referred to B. T. Ltd.
7- 1-46	Soc. An. Materiale Plastico Industriale	Varese, Italy	Request information concerning our product		"	"	"
7-19-46	Mr. Paul Rosa	Bruxelles, Belgium	Request Catalogs		"	"	"
7-25-46	Mr. Manuel Nunes	Lisboa, Portugal	Request catalogs—Distribution		"	"	"
8- 1-46	Mr. John Borg	Gzua, Malta	Request for Distribution		"	"	"
7-24-46	H. Janssens-Raymaekers	Anvers, Belgium	"		"	"	"
7-24-46	Mr. Ramon Mendia	Zumarraga, Spain	"		"	"	"
7- 7-46	Prof. L. Burnot	Lods, Poland	Request information on operation of bearings		"	"	"
3-25-46	Dowding Estates & Trading Co. Lta.	Bridgetown, Barbados, B. W. I.	Attached order for brgs.		"	"	Advised 4 items are sizes we do not make. Advised substitute sizes and listed comparison of dimensions.
7-31-46	Santos L. Acevodò, Ingeniero	Madrid, Spain	Request for Distribution		"	"	Referred to B. T. Ltd.
8- 2-46	Mr. Tsolino Esbeves da Silva	Lisboa, Portugal	Request for information concerning our product		"	"	"
7-17-46	Inter-Contientaler Huttenbau	Linz, Austria	Request price, delivery of rolling mill steel stripes		"	"	"
7- 2-46	Anastassiadis Sosos & Co.	Athens, Greece	Request for Distribution		"	"	"
8- 2-46	Reis & Fmaos	Funchal, Portuga'	"		"	"	"

[fol, 4418]

7-25-46	France-Auto	Casablanca, Mor.	Request Catalog & Price Lists		Unknown	Unknown	Referred to F. T.
6-27-46	Politechnika Lodzka	Lodz, Poland	Request Litterature for Teaching & lecturing purposes		"	"	Referred to B. T. Ltd.
11-18-46	Mr. Franz Dollinger	Basel, Switzerland	Request for Distribution		"	"	"
11-18-46	J. H. Kimmanis	Den Haag, Holland	"		"	"	"
11- 8-46	H. Gegielski Sp. Akc. W. Pozaniu	Poznan, Poland	Request Catalogs of Brgs.	2	"	"	"
8-20-46	Wilcox & Co.	Lyallpur, India	Request for Distribution		"	"	"
11-14-46	Armas Jarnstrom	Helsingfors, Finland	"		"	"	"
11-25-46	Taskers of Andover (1932) Ltd.	Andover Haunts, England	Request deliver, price, etc. on bearings		"	"	Referred to B. T.
9-17-46	Marciso Mendoza	Las Palmas de Gan Canaria, Canary Island	Request for Representation		"	"	Referred to B. T. Ltd.
9-20-46	Mr. M. L. Lobato de Faria	Angola, Luanda, Portuguese West Africa	Request for Distribution		"	"	"
No Date	Sociedade Lusitana de Terraplanagens, Lda.	Lisbon, Portugal	"		"	"	"
10-15-46	Alchim S. A. R.	Bucharest, Rumania	"		"	"	"
11- 6-46	Mr. Manolis N. Vellissarios	Piraeus, Greece	"		"	"	"

The lower portion of this Exhibit appears in the frame immediately below.

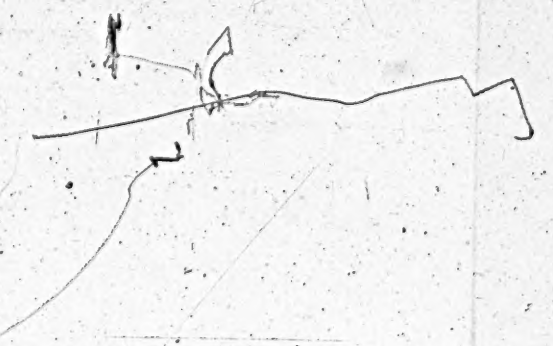
[fol. 4422]

1.	2.	3.	4.	5.	6.	7.	8.
Date	Name of Inquirer or Buyer	Address of Inquirer or Buyer	Type of Anti-Friction Bearings Inquired For or Ordered	Quantity Anti-Friction Brgs. on Inquiry or Order	Name of Intended User	Address of Intended User	Disposition of Order or Inquiry
9-14-45	Vawes Import & Export N. V.	S Gravenhage, Holland	Request for Representation		Unknown	Unknown	Referred to B. T.
9- 5-45	Adolf Hansen	Kovenhaven, N. Denmark	"		"	"	"
8-10-45	Mr. Leon Mingaud	Long Island City, N. Y.	Request for Distributorship		"	"	Referred to F. T.
1-29-46	Overseas Mercantile Co.	N. Y. C.	I.S.A. size bearings Steel Balls Steel rollers	45,371 60 gross 40000	Salka works	Prague	Referred to B. T.
9- 5-45	Sindacato Italiano Scambi Internazionali	Rome, Italy	Alloy steel	Representation	Unknown	Italy	Cannot supply more steel now
11-20-45	Mutual Chemical Co. of America	New York, N. Y.	Roller Brgs. Wearing sleeves for brg. Thrust Brgs. Brgs. (unknown)	50,000 2,000 6,000 2,000	Mutual Chemical Co. of America	New York, N. Y.	Informed—Unable to supply. Confine manufacture to tapered type of bearing. Referred to B. T.
9- 4-45	Mr. Juan Dominiguez Guedes	Las Palmas de Gran Camaria, Spain	Request for distribution		Unknown	Unknown	Referred to B. T.
7-31-45	Briggs Motor Body Ltd.	Dagenham, England	Request for delivery on bearings	6	"	"	Advised delivery requested
7-10-45	Republic Francaise	Washington, D. C.	Forwarding order rec'd. in N. Africa		"	"	Referred to F. T.
6-12-45	Globo Sociedade De Equipamentos Industries, Lda.	Porto, Portugal	Request for distribution of our bearings		"	"	Referred to B. T.
9- 5-45	Sindacato Italiano Scambi Internazionali S. A.	Rome, Italy	State references for distribution of our roller brg.		"	"	Referred to B. T.

[fol. 4423]

5- 3-46	Mr. Zadik I. Mevorak	New York City	Request for Distributorship		Unknown	Bulgaria	Referred to B. T.
4-18-46	Mr. George B. Baylous	San Antonio, Texas	Request for Representation		"	Italy	"
4- 5-46	Mr. Howard Morrison	New York City	Request for Distributorship		"	Palestine	"
3-27-46	Teca Corporation	"	"		"	India	"
1-31-46	Mr. Jesus Matute	San Francisco, Calif.	Request for Representation		"	Spain	"
3-11-46	Himelblau, Byfield & Co.	Chicago, Illinois	"		"	Hungary	"
3- 6-46	Ardesco & Co. Inc.	New York City	Request for Distributorship		"	Italy	"
2-20-46	Milan Importing - Exporting Co. Ltd.	Chicago, Illinois	Request for Representation		"	Unknown	"
2-18-46	Fiske Brothers Refining Co.	Newark, N. J.	"		"	Spain	"
2- 8-46	James C. Herron	Chicago, Illinois	"		"	Scandinavian Countries	"
2- 4-46	Mr. J. H. Hardmeier	Syracuse, N. Y.	Request for Distributorship		J. F. Pfeiffer Ltd.	Switzerland	"
1- 8-46	Mr. Teofilo Carlos Da Costaolves	New York City	"		Unknown	Portuguese East Africa	"
12-29-45	Mr. P. A. de Barsy	"	Roller Bearing	Future Requirements	"	Belgium	"

The lower portion of this Exhibit appears in the frame immediately below.



[fol. 4427]

1.	2.	3.	4.	5.	6.	7.	8.
Date	Name of Inquirer or Buyer	Address of Inquirer or Buyer	Type of Anti-Friction Bearings Inquired For or Ordered	Quantity Anti-Friction Brgs. on Inquiry or Order	Name of Intended User	Address of Intended User	Disposition of Order or Inquiry
11- 8-46	Pashabhai Patel & Co.	Bombay, India	Inquiry production bearing		Pashabhai Patel & Co.	Bombay, India	Referred to B. T.
11- 6-46	Rahmani Trading Corp.	New York City	Request for Representation		Unknown	Unknown	"
11- 1-46	Jas. M. Khoury	Youngstown, Ohio	"		"	"	"
10-29-46	Turkish Purchasing Commission	New York City	Quotation 412 440	22 0	"	"	"
10-23-46	Fenchurch Export Corp.	New York City	Quotation 86100/86650	future requirements	Messrs. Brg. Service Co. of Australia	Sydney, Aust.	"
10-25-46	Kirk Machinery Corp.	Washington, D. C.	Ball Bearings Steel Balls Taper Roller Brg. (Metric Standard) Single Row Radial Ball Bearing	30000 444000 gross 32500 77535	Unknown	Unknown	Referred to B. T. " " "
10-22-46	Agric Machinery Corp.	New York City	Request for Representation		Unknown	Norway	"
10- 3-46	Mr. Erick Eriksen	Vashon, Washington	"		"	Denmark	"
7-16-46	Timken Roller Brg.	Canton, Ohio	TRB request B. T. personnel list		Timken Roller Bearing	Canton, Ohio	British Timken sent list 7-22-46
1-14-47	French Timken	Asnieres, France	Request for special supervision of servicing Timken equipped locomotives in France		Unknown	Unknown	Arrangements made to have Mr. V. Murray fly to France
1- 9-46	British Timken	Duston, England	Thank you note for copies of 1942 Tractor Catalog sent them		"	"	
10- 3-46	Tashers of Andovers Ltd.		Request to buy bearings		"	"	Offered all help possible
[fol. 4428]							
12-17-45	Leon Sokolowski	Belgium	Request for distributorship		Unknown	Unknown	Referred to B. T.
10- 8-45	Jose Balzola	Bilbao, Spain	Requested for catalogs and name of representative in Spain		"	"	"
12- 5-45	George Bournoff	Sofia, Bulgaria	Requested distributorship		"	"	"
10-12-45	Adolph Lopez Rodriguez	Valencia, Spain	Request for distributorship		"	"	"
11-14-45	Valodos, Ltd.	Lisbon, Portugal	Request for distributorship and catalogs		"	"	"
10-22-45	Georges Aignon	Madrid, Spain	"		"	"	"
11-25-45	"Gorgast" Importociones	"	Request for Representation		"	"	"
11-11-45	G. H. Habib & Company	Labou, India	Request to represent The Timken Roller Bearing Co. in Punyat Province		"	"	"
10-18-45	Asher Gruenbaum	Tel-Aviv, Palestine	Request to distribute Timken products in Palestine		"	"	"
10-18-45	Joe Scichund	Musto, Malta	Said B. T. had suggested orders be sent to TRB		"	"	B. T. advised later they could handle these orders.
10-20-45	Bulard Pekarun	Istanbul, Turkey	Request to represent TRB in Turkey		"	"	Referred to B. T.
10-20-45	Maschinen-Lager	Varna, Bulgaria	Request to represent TRB in Bulgaria		"	"	"

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4431]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
9-14-45	Invicta Industrius, Ltd.	Lahore, India	Request information on ball bearings		Unknown	Unknown	Referred to B. T.
8-12-45	Sayegh Freres	Aleppo, Syria	Request to distribute bearings in Syria		"	"	"
10-18-45	Ascher Grunbaum	Tel-Aviv, Palestine	Request to distribute bearings in Palestine		"	"	"
9-13-45	A. Barandiaran	San Sebastian, Spain	Request to distribute bearings in Spain		"	"	"
8-21-45	John T. Doutopoulos	Athens, Greece	Request to distribute bearings in Greece		"	"	"
10-25-45	Arnost Minich	Havlickova, Czechoslovakia	Request to distribute bearings in Czechoslovakia		"	"	"
9- 5-45	Luis R. De Ledesma	Madrid, Spain	Request to distribute bearings in Spain		"	"	"
9- 9-45	Dott Ing. Francesco Valentini	Torino, Italy	Request to distribute bearings in Italy		"	"	"
10- 8-45	C. J. Van Bavel	De Bilt, Holland	Request to distribute bearings in Holland		"	"	"
10-25-45	Comercio Iberico De Importacao & Exportacao, Ida	Lisboa, Portugal	Request to distribute bearings in Portugal		"	"	"
10- 2-45	H. J. Reesink & Co.	Zutphen, Holland	Request to distribute bearings in Holland		"	"	"
10- 3-45	Mocambique Commercial Limitadu	Beira, Mozambique, Africa	Request to distribute bearings in African territories		"	"	"
9-10-45	Wetzlar & Co.	Milano, Italy	Request to distribute bearings in Italy		"	"	"

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10-10-45	Rifat Arman	Izmir, Turkey	Request to distribute bearings in Turkey		Unknown	Unknown	Referred to B. T.
10-20-45	Izak S. Erdenbaum	Tel-Aviv, Palestine	Request to distribute bearings in Palestine		"	"	"
10-20-45	R. Schwarz	Zurich, Switzerland	Request for information on bearings		"	"	"
10- 7-45	William Ral	Amsterdam, Holland	Request to represent TRB in Europe		"	"	"
8- 1-45	Francisco Parres Ping	Melilla, Morocco	Request for agency in Spanish Morocco		"	"	"
9-30-45	Zehbi & Nashif	Damascus, Syria	Request to distribute bearings in Syria and Lebanon		"	"	"
2-21-46	Schwarzenbach & Reiman-Vetikov	Schweg, Switzerland	Request represent us for machine tools				Stated—not manufactures of machine tools
3-15-46	Galeria Des Machines	Tunis, Tunisia	Requested catalogs and information				Referred to British Timken
3-14-46	United Press Associations	New York City, New York	Requested for Mr. Barbosa of Portugal, distribution of bearings				"
March	Sr. Edwardo Mendez Barbosa	Lisboa, Portugal	Requested distribution of bearings in Portugal				"
2-21-46	Francisco Mantero, Lda.	Lisbon, Portugal	"				"
1-29-47	Recambios Egido	San Sebastian, Spain	Requested catalog and price lists of Timken bearings				"

The lower portion of this Exhibit appears in the frame immediately below.

8-16-45	British Timken	Birmingham, Eng.	19150-T	10	Unknown	Unknown	Cancelled Complete
			67388	2	"	"	Shipped Complete
			71426-D	1	"	"	"
			77375	1	"	"	"
			87750	1	"	"	"
			87750	2	"	"	"
			41125-W	9	"	"	"
			6361	2	"	"	Cancelled Complete
3-28-46	British Timken	"	53175	22	"	"	Shipped Complete
			41286-B	2	"	"	"
8-21-45	British Timken	"	26882-26823	100	"	"	"
2-4-46	British Timken	Northampton, Eng.	470001	15	"	"	"
6-29-46	British Timken	"	13181-13318	2	"	"	"
2-4-46	British Timken	"	780700-781400	8	"	"	"
4-19-46	British Timken	"	8314	2	"	"	"
			34301-34481-B	1	"	"	"
			NA-74525	4	"	"	"
			74851-D	2	"	"	"
7-6-45	Commonwealth of Australia	Washington, D. C.	18590	5000	"	"	"
			18520	5000	"	"	"
fol. 4410]							
9-5-45	British Timken	Birmingham	1941 Service catalogs	50	Unknown	Unknown	Shipped Complete
			1942 Supplements	50	"	"	"
8-30-45	British Timken	"	Marine & Hydraulic sections of Engineering Journal Hardenability Calculators	12	"	"	"
				3	"	"	"
8-29-45	British Timken	"	Blue Prints	26	"	"	"
8-13-45	British Timken	"	3729-D	12	"	"	"
8-13-45	British Timken	"	3729-D	20	"	"	"
8-23-45	British Ministry of Supply Mission	New York	2684-2631	10	"	"	"
6-25-45	British Ministry of Supply Mission	"	580-572B	6	Unknown	Unknown	Shipped Complete
			776-772	6	"	"	"
8-20-45	British Colonies Supply Mission	Washington, D. C.	748S-742	4	"	"	"
12-12-45	British Ministry of Supply Missions	New York	NA782-774D	2	"	"	"
1-2-46	British Timken	Birmingham	81606	30	Unknown	Unknown	Shipped Complete
7-9-45	British Timken	"	64700	2	Unknown	Unknown	Shipped Complete
			74851-D	1			
			NA-749	35			
			742-D	17			
			799-792	12			
			NA95500-95927D	8			
			2 row assembly				
			2-67388	26			
			1-67322				
2-4-46	British Timken	Northampton	66225-66462	5	"	"	"
[fol. 4411]							
7-11-45	British Timken	Birmingham	6353	36	Unknown	Unknown	Shipped Complete
			44143	50			
			776	3			
			52387	4			
			5553	4			
			25580	48			
			26112	36			
			3951	11			
			NA44163	260			
			776	3			
			452-A	36			
			15251D	2			
			82950-B	2			
			44363-D	100			
			02811	24			
1-28-46	British Timken	Birmingham	52387-W	16	Unknown	Unknown	Shipped Complete
2-15-46	British Timken	"	NA-861-854D	6	Unknown	Unknown	Shipped Complete
			NA-659-654D	2			
			NA-455-452D	2			
			26823	100			
12-1-45	British Timken	"	38X	15	Unknown	Unknown	Shipped Complete
			37	15			
			36	15			
			2736	5			
			3329	3			
			792	3			
			2736	6			
			15251D	2			
			33	5			
			6323	1			
			14CE	4			
			353D	86			
			13CS	40			
			14CB	40			
			14CE	50			
			A-6157-B	25			
			12520	4			

3-20-46	British Timken	"	Pkg. Blue Prints	1	Unknown	Unknown	Shipped Complete
7-13-45	British Timken	"	Photographs	142	"	"	"
9-22-46	Van Maanen	Amsterdam, Netherlands	Request for Distribution		"	"	Referred to B. T. Ltd.
10- 7-46	Kibutsey Hashomer Hatsair-Tel-	Aviv, Palestine	"	"	"	"	"
9-14-46	U. M. A. L.	Bruxelles, Belgium	Request price & delivery of brgs.		U. M. A. L.	Bruxelles, Belgium	"
9-18-46	Kolben-Kraus	Wien, Austria	Request price & delivery of brgs.		Kolben-Kraus	Wien, Austria	"
9-24-46	Aktiebolaget	Sodertalje, Sweden	Request for brgs.	4	Unknown	Unknown	Referred sketch to B. T. Ltd.
8- 5-46	General Motors	Kampala, India	Request for Catalogs & Distribution		"	"	Referred to B. T. Ltd.
10- 1-46	Hinuma	Gravenhage, Holland	Request for Distribution		"	"	"
10-17-46	Bartos Pal	Budapest, Hungary	"		"	"	"
10-15-46	V. Mahmourian	Bruxelles, Belgium	"	"	"	"	"
[fol. 4414]							
9- 9-46	Brown, Boveri, & Co. Ltd.	Boden, Switzerland	Request for Catalog & delivery of bearings		Unknown	Unknown	Referred to B. T. Ltd.
10-14-46	Sotal	Lisboa, Portugal	Request for Distribution		"	"	"
9-29-46	Mr. J. F. Clere	Bulach, Switzerland	Request for bearings		"	"	"
10-10-46	Ferreira, Rio C. a L. da	Porto, Portugal	Request for Distribution		"	"	"
10- 1-46	Jugoauto	Beogard, Yugoslavia	"		"	"	"
7-17-46	Standal Maskin-forretning	Floro, Norway	Request for catalog of bearings		"	"	"
10- 1-46	Fr. Bastiaensen	Bruxelles, Belgium	Request for catalogs & distribution		"	"	"
8-28-46	Mr. A. Lorenzo Lopez	Vigo, Spain	"		"	"	"
8-27-46	Mikoly & Major	Budapest, Hungary	Request for Distribution		"	"	"
10-12-46	Ribeiro Lopes, Cupertine & Guerreiro, Lda.	Lisboa, Portugal	Request address of British Timken		"	"	Advised correct address
9-13-46	Echo, Ltd.	Copenhagen, Denmark	Request catalog & Distribution		"	"	Referred to B. T. Ltd.
9- 6-46	Stelios Polydorou	Famagusta, Cyprus	Request for Distribution		"	"	"
9-19-46	G. Santos, Lda.	Lisboa, Portugal	Received order for brgs.		"	"	"
[fol. 4415]							
8-23-46	Oranje, Nassau Mejnen	Hurben, Holland	Request for Distribution		Unknown	Unknown	Referred to B. T. Ltd.
9-20-46	Commercial Anonima Blanch	Madrid, Spain	Request for Distribution		"	"	"
9-26-46	Corporacao Geral De Importacao E Exportacao, Lda.	Lisboa, Portugal	"		"	"	"
9-16-46	Erektia Oy.	Helsinki, Finland	"		"	"	"
9-10-46	Ammon	Athens, Greece	"		"	"	"
9-24-46	Simol	Lisboa, Portugal	"		"	"	"
9-23-46	M. Gaetano & Cie	Athens, Greece	"		"	"	"
8-22-46	Zsengeriandor	Budapest, Hungary	"		"	"	"
9-16-46	Sociedade De Produtos Lino, Lda.	Lisboa, Portugal	Request catalogs & price list		"	"	"
9-24-46	Aktiebolaget Scania-Vabis	Sodertalje, Sweden	Request Delivery of bearings	4	"	"	"
7- 8-46	H. & M. Company	Vienna, Austria	Request for Distribution		"	"	"
9- 4-46	Ap. Coronis & Co.	Athens, Greece	"		"	"	"
9-13-46	Axel Christiernssons Maskin-Aktiebolog	Stockholm, Sweden	Request for Catalogs	3	"	"	"
9- 4-46	Ribeiro Lopes, Cupertino & Guerreiro, Lda.	Lisboa, Portugal	Request for Distribution		"	"	"
[fol. 4416]							
9- 9-46	Brown, Boveri & Company	Boden, Switzerland	Request delivery, price of bearings		Unknown	Unknown	Referred to B. T. Ltd.
8-30-46	Ch. & S. Phostiropoulos	Athens, Greece	Request for distribution		"	"	"
8-28-46	A. Nogueira, Lda.	Lunada, Angola	Request catalog & price lists, etc.		"	"	"
8-15-46	Teheran-Europe Co. Lda.	Teheran, Iran	"		"	"	"
8-23-46	R. Jacobson	Batavia, C.	Request for Distribution		"	"	"
10-19-46	Etablissements A. Olier Ebremont-Ferrand	France	"		"	"	Referred to F. T.
9- 4-46	Francisce de Lamos Nova Corte-Real	Lisboa, Portugal	"		"	"	"
9- 4-46	Mr. Guido Mezzera	Milan, Italy	"		"	"	Referred to B. T. Ltd.
8-21-46	Evoca	Utrecht, Holland	"		"	"	"
8-28-46	Mr. P. A. Soetjahjo	Amsterdam, Netherlands	Request Catalog & price lists		"	"	"
8-22-46	Encose	Barcelona, Spain	Request for Distribution		"	"	"
8-27-46	Kabalan Bros. & Co.	Alexandria, Egypt	"		"	"	"
8-23-46	Mr. G. I. Rubinstein	Haifa, Palestine	Request Catalog		"	"	"

	Faria	Portuguese West Africa			"	"	"
No Date	Sociedade Lusitana de Terraplanagens, Lda.	Lisbon, Portugal	"		"	"	"
10-15-46	Alchim S. A. R.	Bucharest, Rumania	"		"	"	"
11- 6-46	Mr. Manolis N. Vellissarios	Piraeus, Greece	"		"	"	"
[fol. 4419]							
10-18-46	Ing. Gianfranco Carcetti & C	Milan, Italy	Request catalog of brgs.		Unknown	Unknown	Referred to B. T. Ltd.
10-23-46	Jas. J. Niven & Co. Ltd.	Wellington, New Zealand	Request copy of discounts for Export		"	"	"
11-11-46	Workspoor, N. V.	Amsterdam, Netherlands	Request delivery & price of bearings		"	"	"
11-11-46	Mr. J. A. Valente	Lisboa, Portugal	Request for Representation		"	"	"
9-20-46	Comercial Anonima Blanch	Madrid, Spain	Request catalog and price lists		"	"	"
10- 7-46	Agencia Portugal	Laurenco Marques	"		"	"	"
10-10-46	Pinto & Vasconcelos, Lda.	Lisboa, Portugal	"		"	"	"
11- 1-46	North British Metal Ware Manufactures Ltd.	Hunslow, Middx England	Request delivery of ball bearings	400	"	"	"
9-14-46	Mr. R. D. E. Sneers	Bruxelles, Belgium	Request catalogs about tapered brgs.		"	"	"
11-16-46	Auto-Industria Rafael Castro Fernandez	Ceuta, Spanish Morocco	Request for Distribution		"	"	"
12-19-46	Bolinder Hellenic Trading Company	Piraeus, Greece	"		"	"	"
12-12-46	Th. Bull	Oslo, Norway	Request price, delivery weight on brgs.	400	"	"	"
12-20-46	Atlas Diesel	Stockholm, Sweden	Request price & delivery on brgs.	1050	"	"	Referred to B. T.
[fol. 4420]							
10-21-46	Portelinhas, Lda.	Lisboa, Portugal	Request distribution of Brgs.		Unknown	Unknown	Referred to B. T. Ltd.
12-12-46	Jose R. Fernandez Gontalez	Gijon, Spain	Request for Distribution		"	"	"
12-21-46	Graham Brothers A. B.	Stockholm, Sweden	Request for Bearings		"	"	"
12-17-46	Tjeder & Aberg	Stockholm, Sweden	Request for Distribution		"	"	"
12-18-46	Mauricu Segal	Bucharest, Roumania	"		"	"	"
12-17-46	U.M.A.L.	Brussels, Belgium	"		"	"	"
12-17-46	Kockums	Malmo, Sweden	Request for Catalog on brgs.		"	"	"
12-17-46	Novagent	Helsinki, Lauttassari Finland	Request for Distribution		"	"	"
11-25-46	Steenkolenmijnen Laura & Vereeniging	Eygelshoven, Netherlands	Request delivery, price etc. brgs.	123	"	"	"
11-12-46	A. Kupfer	Tel-Aviv, Palestine	Request Catalog of Brgs. Nos. etc.		"	"	"
12- 6-46	Reliable Traders	Bombay, India	Request for Distribution		"	"	"
9-20-46	Port-Louis Gen'l. Stores	Port-Louis, Mauritius	"		"	"	"
11-27-46	Terka Co., Ltd.	Athens, Greece	"		"	"	"
12- 4-46	Escritorio Tecnico-Roberto Cudell, Lda.	Porto, Portugal	"		"	"	"
[fol. 4421]							
11-25-46	Mr. H. J. Schat	Batavia, Dutch East Indies	Request for Representation		Unknown	Unknown	Referred to B. T. Ltd.
10- 5-46	Mr. Antonio Lopes Gomes	Porto, Portugal	Request for Distribution		"	"	"
7-15-46	Union Commercial & Industrial Co. Ltd.	Bombay, India	Request Delivery of Steel Balls	50,000 to 100,000	"	"	Referred to Fischer B. B. Co.
7- 3-46	Soteva	Helsinki, Finland	Request Delivery & price of brgs.		"	"	Referred to B. T. Ltd.
7-12-46	Mr. L. A. Var	Coimbra, Portugal	Request catalog & price information		"	"	"
5-28-46	Cutsuridis & Chrissopoulos Ltd.	Khartoum, Anglo-Egyptian Sudan	Request for Distribution		"	"	"
11- 7-46	American Chamber of Commerce in Spain	Barcelona, Spain	Request Names of Firm we are represented by in Spain		"	"	"
9- 5-45	Theodor Angueloff & Co.	Sofia, Bulgaria	Request for Representation		"	Bulgaria	Referred to B. T.
8-13-45	A. S. Ahlowalia & Co.	Sudhiana, India	Request catalog of Roller Bearing & Machine Tools		"	India	Informed we didn't manufacture machine tools. Referred to B. T.
9-27-45	Sa'adi Hussain Dabbas	Baghdad, Iraq	Request for Representation		"	Iraq	Referred to B. T.
8-21-45	Mr. Osias Merling	Tel-Aviv, Palestine	Request for Representation		"	Palestine	"
9-15-45	Mustafa Komili Sons	Ayvalik, Turkey	"		"	Turkey	"

2-18-46	Fiske Brothers Refining Co.	Newark, N. J.			"	Scandinavian Countries	"
2- 8-46	James C. Herron	Chicago, Illinois	"		"	Switzerland	"
2- 4-46	Mr. J. H. Hardmeier	Syracuse, N. Y.	Request for Distributorship		J. F. Pfeiffer Ltd.	Portuguese East Africa	"
1- 8-46	Mr. Teofilo Carlos Da Costaolves	New York City	"		Unknown	Belgium	"
12-29-45	Mr. P. A. de Barsy	"	Roller Bearing	Future Requirements	"		

[fol. 4424]

12-20-45	International Associates	New York City	Request for Representation		Unknown	India	Referred to B. T.
12- 8-45	Mr. Alex A. Mengarelli	Syracuse, N. Y.	"		"	Italy	"
11-27-45	The Netherlands Chamber of Commerce	New York City	"		"	Netherlands	"
9-26-45	Mr. H. J. Schetzer	Rotterdam, Netherlands	"		"	"	"
10- 9-45	Von Kauffmann & Co. A/B	Stockholm, Sweden	"		"	Sweden	"
7-31-45	Maquinaria Industrial Jose Garcia Granados	Tacoronte, Canary Islands	"		"	Canary Island	"
9- 1-45	Mr. Manolis N. Petihakis	Athens, Greece	"		"	Greece	"
9-17-45	Irpinia	Milan, Italy	"		"	Italy	"
10- 2-45	Arka Co. Ltd.	Athens, Greece	"		"	Greece	"
8-21-46	Palestine Purchasing Service Inc.	New York City	Quotations Timken Catalog		Kelet-Afikim Ltd.	Afikim, Palestine	"
9-24-46	Lindeteves Inc.	"	Request Engineering Journals	12	Unknown	Unknown	Sent copy of request to B. T.
10- 1-46	Henrik Mannerfrid Inc.	New York City	Inquiry small conical Roller brgs. quotation seamless tubing		"	"	Requested their requirements as to type, size and usage. Informed them what type we manufacture.

[fol. 4425]

9-26-46	Overseas Mercantile Co. Inc.	New York City	Request for Catalog, prices of Bearings		Skodaworks	Czechoslovakia	Referred to B. T.
9- 4-46	American Eastern Corp.	New York City	Request for Representation		Unknown	Unknown	"
8- 7-46	Mr. Martin Fopp	Tacoma, Washington	Estimate on 3 sizes Balls for Ball Brgs.		"	Basel, Switzerland	Informed same we do not manufacture Ball Brgs. or parts thereof.
8- 6-46	Mr. J. G. Rousseau	New York City	Metric size precision type		Precision		
			32207	32	Moderne	Unknown	Referred to B. T.
			32211	32			Referred S. A. Francaise Timken
			30209	32			
			30211	32			
7-29-46	Fenchurch Export Corp.	New York City	Request for Distributorship		Unknown	Unknown	Referred to B. T. S. A. (Pty.) Ltd.
7-15-46	Overseas Mercantile Co. Inc.	New York City	Quotation for Conical roller bearings		"	Czechoslovakia	Referred to B. T.
7-12-46	Ignatius J. Szper	"	Request for Representation		"	Unknown	"
6-21-46	Vernon A. Shurm	Richmond, Va.	Request for Representation		"	India	Referred to B. T.
6- 8-46	Mr. John G. Abadjis	New York City	Request data of complete line of Ball & Roller Brgs.		"	Grecee	"
5-23-46	Mr. Bruno Waller	"	Request for Catalog and price list for Ball & Roller Brgs.		"	Czechoslovakia	"
4- 6-46	Mr. Raymond M. Denize	Los Angeles, Calif.	Request for Representation		"	Frence, Belgium & Holland	Referred to B. T. & F. T.

[fol. 4426]

2-20-47	Luso Importing Corp.	New York, N. Y.	Request for distribution of Timken Line		Unknown	Unknown	Advised Brazil is direct factory brands. Advised Portugal associated with B.T.
1-29-47	Deep Sea Export & Import Co.	"	Ball Bearings	1179	"	"	Referred to B. T.
1-21-47	A. C. E. C. Co.	"	Ball Bearings Cylindrical roller brgs.	76700	A. C. E. C. Co.	Charleroi, Belgium	"
1-22-47	Sviex America Inc.	Chicago, Illinois	Request distributorship		Sviex	Stockholm, Sweden	"
1-20-47	Renault	New York, N. Y.	End Thrust Bearings	100	Regie Nationale	Bellancourt	Referred S. A. Francaise
			Type S	100	des Urines Remult	Seine France	Timken
			Type R	50			
			Type S10	50			
1-15-47	Merchants Ntl. Bank of Mobile	Mobile, Alabama	Ball Bearings	400	North British Metal Ware Mfg. Ltd.	Hounslow Middlesex Eng.	Referred to B. T.
1- 4-47	Emil J. Nagy	New York, N. Y.	Request for Representation		Unknown	Hungary & Bulkans	"
1-10-47	Koehring Co.	Milwaukee, Wisconsin	Taper Roller Brgs.	Future Requirements	Koehring Co.	England	"
12-21-46	Elmo De'Paoli	New York, N. Y.	23072	8	Unknown	Belgium	"
12- 6-46	W. T. Kennedy Co.	"	Request for Representation		Badhni Engr. & Trading Co.	Teheran Iran	"
11-26-46	Import Export Industries	"	Quotations T138-X	458	Unknown	Belgium	"
			365	50			

10-22-45	Georges Aignon	Madrid, Spain	Request for Representation	"	"	"	
11-25-45	"Gorgast" Importociones	"		"	"	"	
11-11-45	G. H. Habib & Company	Lahou, India	Request to represent The Timken Roller Bearing Co. in Punyat Province				
10-18-45	Asher Gruenbaum	Tel-Aviv, Palestine	Request to distribute Timken products in Palestine	"	"	"	
10-18-45	Joe Scichund	Musto, Malta	Said B. T. had suggested orders be sent to TRB	"	"	"	B. T. advised later they could handle these orders.
10-20-45	Bulard Pekarun	Istanbul, Turkey	Request to represent TRB in Turkey	"	"	"	Referred to B. T.
10-20-45	Maschinen-Lager	Varna, Bulgaria	Request to represent TRB in Bulgaria	"	"	"	
fol. 4429]							
10-14-45	Eric Meylon	Geneva, Switzerland	86669-86100	Unknown	Unknown	Unknown	B. T. advised they could furnish requirements for this customer
			65390-65320	"			
			Cage & Roller Ass. 21	"	"	"	
			Cups # 23	"	"	"	
10- 9-45	Jolly & Honest	G. P. O. Box # 434 Bombay, India	Request for information concerning representation in India				Referred to B. T.
10-19-45	Jose Ma Bellido	San Sebastian, Spain	Request to represent TRB in Spain	"	"	"	
11- 5-45	Constantine L. Tsvetcoff	Sofia, Bulgaria	Request to represent TRB in Bulgaria	"	"	"	
8- 1-45	Tino Bagni	Saghaus, Italy	Request to distribute bearings in Italy	"	"	"	
11-1945	Hollandex Trading Co.	Amsterdam, Netherlands	Request to distribute bearings in Netherlands	"	"	"	
11-15-45	Compania General de Comersio, S. L.	Bilbao, Spain	Request to represent TRB in Spain	"	"	"	
11-15-45	Nissen & Lisjo	Stockholm, Sweden	Request information on distribution of bearings in Scandanavian market	"	"	"	
10-17-45	Vasfi Orgun	Istanbul, Turkey	Request price lists and information on representation in Turkey	"	"	"	
11- 5-45	Jaime Pinto Coelho da Rocha Paula	Oporto, Portugal	Request to represent TRB in Portugal	"	"	"	
10- 5-45	Amadeo Lorenzo Lopez	Vigo, Spain	Request for literature and information on representation in Spain	"	"	"	
[fol. 4430]							
10-15-45	Ir. G. J. Engelsman	Haarlem, Holland	Request for information about Timken products	Unknown	Unknown	Referred to B. T.	
10-31-45	Fa. E. Schwartz	Rotterdam, Netherlands	Request to represent TRB in Netherlands	"	"	"	
9- 5-45	Auto-Accessories Quevedo, S. A.	Madrid, Spain	Request to represent TRB in Spain	"	"	"	
9-24-45	Rafael Martinez Portela	Vigo, Spain	Request for information concerning representation in Spain	"	"	"	
9-13-45	Domenico Pasquali & Company	Firenze, Italy	Request to represent TRB in Italy	"	"	"	
11-16-45	Ad. Voigt & Co.	Amsterdam, Netherlands	Request to distribute bearings in Netherlands	"	"	"	
10-13-45	Antonio Crespo	Sevilla, Spain	Request to distribute bearings in Netherlands	"	"	"	
10-25-45	Ing. Rag Lamberto Beinporad	Roma, Italy	Request to distribute bearings in Italy	"	"	"	
10-26-45	O. Jiri Himmel	Prague, Czechoslovakia	Request to distribute bearings in Central Europe	"	"	"	
8-13-45	National India Engineering Co.	Bombay, India	Request to distribute bearings in India	"	"	"	
9-15-45	D. Lopeg Jimeney	Letnan, Spanish Morocco	Request to distribute bearings in Morocco	"	"	"	
10-30-45	Le Material Sinex	Paris, France	Request information on Ball Bearings	"	"	"	
9-22-45	G. Anzola	Seville, Spain	Request to distribute bearings in Spain	"	"	"	

9-30-45	Zehbi & Nashii	Damascus, Syr	Request to distribute bearings in Syria and Lebanon	
2-21-46	Schwarzenbach & Reiman-Vefikov	Schweg, Switzerland	Request represent us for machine tools	Stated—not manufactures of machine tools
3-15-46	Galeria Des Machines	Tunis, Tunisia	Requested catalogs and information	Referred to British Timken
3-14-46	United Press Associations	New York City, New York	Requested for Mr. Barbosa of Portugal, distribution of bearings	"
March	Sr. Edwardo Mendez-Barbosa	Lisboa, Portugal	Requested distribution of bearings in Portugal	"
2-21-46	Francisco Mantero, Lda.	Lisbon, Portugal	"	"
1-29-47	Recambios Egido	San Sebastian, Spain	Requested catalog and price lists of Timken bearings	"
[fol. 4433]				
2-27-47	J. B. Artiaga & Cia.	Lisboa, Portugal	Request distribution of bearings in French Equatorial Africa	Referred to B. T.
No date	Aktiebolaget Servus	Stockholm, Sweden	Requested shipping date on order transferred to British Timken	Order to be shipped by B. T. Ltd.
2- 1-47	Empire & Foreign Traders, Ltd.	Auckland C. I. N. Z.	Requested forwarding regarding exports in the future.	Referred to B. T.
2-14-47	Manuel Chaves Caminba Ltda.	Porto, Portugal	Requested they represent us in Portugal	"
11-27-45	Agencia Portuguese De Publicidade Lda.	Lisbon, Portugal	"	"
2- 3-46 & 3- 9-46	Tico Tehran Installation Co. Ltd.	Tehran, Iran	Requested catalog and information on bearings	Before sending information wanted to know if definitely interested in the tapered type of bearing
1-10-46	Eng. A. Cuncic & Eng. A. Balacesco	Plcesti, Roumania	Requested they represent us in Roumania	Referred to B. T.
11-15-45	"Cabldger"	Bucuresti, Roumania	"	"
1-19-46	Mr. W. Kriager	Zurich, Switzerland	Sent drawings and information regarding sliding ball bearings	Manufactures of tapered bearings only. Not interested in ball bearings or this item.
2-28-46	Sociedade Portuguesa De Corticas Lda.	Lisbon, Portugal	Request they represent us in Portugal	Referred to B. T.
1-23-47	Mr. Chri N. Anastassiades	Limassel, Cyprus	Request they represent us in Cyprus	"
[fol. 4434]				
12-28-45	Mr. Rag. Oneglio Ignazio	Milano, Italy	Request they represent us in Italy	Referred to B. T.
2-26-46	Casa Dovaz, Docet y Vazquez S. L.	Vigo, Spain	Requested catalog on bearings for American trucks and automobiles	"
3-19-46	Glavno Cvozdarsko Predvece AD	Belgrade, Yugoslavia	Requested distribution of bearings in Yugoslavia	"
4-16-46	Mr. R. W. Evans	North Sydney, Australia	Requested engineering information on Timken bearings	"
4- 8-46	Mr. M. Fernandez Teijido	Gijon, Spain	Requested distribution of bearings in Spain	"
2-15-46	Mr. Richard Sadendeek	Madrid, Spain	Requested distribution of bearings in Spain	"
2- 6-46	Esperanza Y Cia., S. A.	Marquina (Vizcaya) Spain	"	"
3-12-46	The National India Rubber Wks. Ltd.	Sialkof City, India	Interested in Timken bearings for milling machines	"
3-23-46	Mr. Telis Lopas D. Eng.	Athens, Greece	Requested distribution of bearings in Greece	"
2-18-46	Ripoll & Granados	Barcelona, Spain	Requested distribution of bearings in Spain	"
2-10-46	F. LLi Sarnataro	Naples, Italy	Requested distribution of bearings in Italy	"
12-20-45	Casale	Milan, Italy	Requested catalogue containing specifications and prices	"
3-21-46	Sociendade Comercial Vltiamarina	Lourence Marques, Mazambique	Requested distribution of bearings in Mazanbique	"
2- 9-46	UK-USA-India Trading Co.	Karachi, India	Request distribution of bearings in India	"
[fol. 4435]				
1-14-46	Abdollah Eghbal	Teheran, Iran	Request distribution of bearings in Iran	Referred to B. T.
1-11-46	Eng. G. Chahverdian	Tehran, Iran	Request distribution of bearings in Iran	"
3-18-46	Oy-Ferro-Tekno Alv	Helsingfors, Finland	Request distribution of bearings in Finland	"
3-22-46	A. B. Cementvarumaskiner	Enstaberga, Sweden	Requested distribution of bearings in Sweden	"
1-24-46	Mr. Francesa Algardi	Bari, Italy	Requested distribution of bearings in Italy	"
4- 2-46	Secondo Prati	Milano, Italy	"	"
3-22-46	Vertex	Milano, Italy	"	"
2-14-46	C. Kennedy	Budapest, Hungary	Requested distribution of bearings in Hungary	"
3- 8-46	N. V. Rismoco	Den Haag, Holland	Requested distribution of bearings in Holland	"
1-19-46	N. B. Sarker & Co. Ltd.	Calcutta, India	Requested distribution of bearings in Holland	"
12-10-45	Mercury	Roma, Italy	Requested distribution of our bearings in Italy	"
11-30-46	Mr. Alfredo De Gouveia Vila De Santa Cruz	Madeire (Portugal)	Requested catalog Data, prices, etc.	"
10-18-46	Mr. Agustin J. Muanda	Santa Cruz De Tenerife, Canary Island	Requested catalogues, price lists, discounts, etc.	"
1-11-46	Mr. Ferrando Gomes De Almeida	Lisboa, Portugal	Requested distribution of our bearings in Portugal	"
1-29-46	Foreign Credit Interchange Bureau	New York City, N. Y.	Gave us information regarding Ataceri Co. of Turkey	Referred matter to B. T. Ltd.
1- 2-46	Ataceri	Ankara, Turkey	Requested distribution of our bearings in Turkey	Referred to B. T.

[fol. 4436]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
11-26-46	Mr. Chr. G. Angelopoulos	Patras, Greece	Requested distribution of our bearings in Greece				Referred to B. T.
12-12-45	Mr. Joso Lopes Da Silva	Lisboa, Portugal	Requested latest catalog				"
12- 3-45	Mr. Jeronimo Da Cunha	Porto, Portugal	Requested distribution of our bearings in Portugal				"
12-28-45	Mr. Hedegaard Broch	Kobanhavs-Valley, Denmark	Requested to represent us in Denmark				"
11- 5-45	Reexim	Madrid, Spain	Requested exclusive rights as distributor of our product in Spain				"
11-18-45	Mr. Silas Goncalves	Porto, Portugal	Requested to represent our product in Porto & Northern Portugal				"
11-21-45	Mr. Felix Del Paso	Palencia, Portugal	Requested to represent our product in Portugal, also request catalog, etc.				"
12-13-45	Ferrokone Cy	Helsinki, Finland	Requested to represent our product in Finland				"
10-20-45	Mr. Menahem Galizon Berhemn	Centa, Morocco	Requested to represent our product in Morocco				"
10-19-45	The Excelsior Finishing Products Co.	Bombay, India	Requested to represent our product in India				"
10-30-45	The Tire Industries	Allahabad, India	Requested to represent our product in India and Burma				"
11-18-45	Manufacturers Association of Palestine	Tel-Aviv, Palestine	Requested to represent our product in Palestine				"
10-16-45	Cojinetes a Bolas y Rodillos SA	Barcelona, Spain	Requested to represent our product in Spain				"
12-20-45	Aismalibar SA	Moncada (Barcelona) Spain	Requested booklets, etc.				"

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11-17-45	Daily General Supply Store	Baghdad, Iraq	Requested to represent our products in Iraq				Referred to B. T.
11-12-45	Mr. Giorgio Rona	Milano, Italy	Requested to represent our product in Italy				"
2- 5-46	Imprec Ltd.	Sofia, Bulgaria	Requested to represent us in Bulgaria				"
2- 9-46	St. Boyadjieff Freres	Sofia, Bulgaria	"				"
1-16-46	Fratelli Pavedati	Torino, Italy	Requested to represent us in Italy				"
10-16-45	A. Fross-Bussing	Austria	Sent order not manufactured by us (ball bearings)				"
2- 1-46	Aktilbolaget Servus	Stockholm, Sweden	Requested distribution of our bearings in Sweden				"
1-12-46	Hanomag	Oesterreich, (Austria)	Requested distribution of our bearings in Austria				"
12-24-45	Vebner (Pty.) Ltd.	Cape Town, South Africa	Requested distribution of our bearings in South Africa				"
12- 5-45	Casa Parres	Mellilla, Spain	Requesting B. T. representative in Spain				Almacen Industrial I. F. S'Dad Armo 10 Fernando VI—Madrid
1-22-46	Mr. Louis J. De Ville	Liege, Belgium	Requested distribution of our bearings in Belgium, Belgian Congo & Luxembourg				Referred to B. T.
12-27-45	Bureau Technique	Athens, Greece	Requested distribution of our bearings in Greece				"
1- 7-46	Mr. Ernesto Reynaud	Biella, Italy	Requested distribution of our bearings in Italy				"
2- 5-46	Mij. "De Betume" N. V.	Tiel, Netherlands	Requested price list of Timken tapered bearings				"
1-25-46	Compania General de Motoresy Accesorios	Barcelona, Spain	Requested to represent us in Spain				"

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1-15-46	Adam & Co. Ltd.	Port Louis, Mauritius	Request information and price of bearings to be used on sugar mills.				Referred to B. T.
1-18-46	Mr. Jose Gracia Lizan	Zaragoza, Spain	Requested to represent us in Spain				"
1-18-46	Mr. W. Hildebrandt	Stockholm, Sweden	Sent order for roller sets and outer rings for wheel hubs.				Order sent to B. T.
12-17-46	Masseys	Madras, India	Inquiry for bearings to suit their application				Letter and drawings sent to B. T. Ltd.
1- 4-46	Antonopolos Freres	Athens, Greece	Requested bearing applications to be used in jeeps.				Referred to B. T.
12- 1-45	S. A. G. A.	Milano, Italy	Requested distribution of our bearings in Italy				"
12-29-45	A. Gambrelli	Athens, Greece	Requested distribution of our bearings in Greece				"
11-29-45	Mr. Dott Ing. Riccardo Fliva	Milano, Italy	Requested distribution of our bearings in Italy				"
12- 1-45	Societa Antonima Gomme Ed Affine	Milano, Italy	"				"
2- 6-47	Adamant Engr. Co. Ltd.	Luton, Eng.	Requested quotation and delivery on 250,000 taper rollers				"
2- 7-47	Relas Service	Paris, France	Requested applications in Autocar products and price lists				Referred to S. A. Francaise T.
1-30-47	Thornborg & Lundberg	Stockholm, Sweden	Requested information on Hyatt bearings				Referred to Hyatt Bearing
2- 6-47	Walter Hummel Engr.	Alb-Aussee, Austria	Requested application for a position				Referred to B. T.
1-20-47	Antonio Joaquim Lopes & Cia. Lda.	Nova Lisboa, Angola, Port. W. Africa	Requested catalogues and current prices				"
5- 5-46	Mr. Michael Wolfman Eng.	Tel-Aviv, Palestine	Requested cost of airplane bearings				"

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4442]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
7- 8-46	Soc. Italmarina	Genoa, Italy	Request distribution of bearings in Italy				Referred to B. T.
7- 8-46	Mr. Alfredo Riego	Barcelona, Spain	Request distribution of bearings in Spain & African Zone				"
5-27-46	S. M. Ajmera & Co.	Bombay, India	Request importation of Timken bearings				"
6-28-46	G. Caglioni & Co.	Morgantalstrasse	Request for distribution of bearings				"
7- 2-46	R. W. Rochette & G. Dombey	Buenos Aires, Argentina	Informed us of correct address				
7- 2-46	Mr. J. E. Hart	Dudley, England	Request for catalogue and technical data				Referred to B. T.
7-28-46	Mr. Ceofilo Carlos Da Costa Alves	Lourena Marques (African Oriental)	Request for distribution of bearings				"
7-28-46	E.D.A. Administration & Agencies Co. S.A.	Athens, Greece	Request information about ball bearings				"
6-26-46	Pinherios & Tonseca Lda.	Porto, Portugal	Request for distribution of bearings in Portugal				"
6-25-46	Mr. Constantio Jose Comes	Porto, Portugal	"				"
4-30-46	Mr. F. Mo. Gregersam Civ. Engr	Oslo, Norway	Request for ball bearings				"
6-20-46	Ditta Cesare Beretta Fu Daniele	Sonima Lombardo, Italy	Request for ball bearings				Referred to Fischer Brgs. Co. in Wolverhampton
5- 6-46	Foui Maina di Carlo-Asti	Asti, Italy	Request for distribution of bearings in Italy				Referred to B. T.

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6-17-46	Georges Sparveri	Thessaloniki, Greece	Request for roller bearings				Referred to B. T.
6-14-46	Empresa Metalurgica Ltda.	Luanda, Angola	Request for catalogue and selling arrangements				"
4-28-46	E. A. Enriquez	Tel-Aviv, Palestine	Request for distribution of Timken bearings in Palestine				"
6- 6-46	Mr. J. G. Smith	Ashfield, New South Wales, Australia	Request for technical data and publications				Ref. to Mr. A. C. Fall-Kemsley & Co. Pty. Ltd.—109 Russel St., P. O. Box 18620, Melbourne or B. T.
5-31-46	Mr. Manuel Numes	Lisboa, Portugal	Request catalogue, prices and terms				Referred to B. T.
5-31-46	Mr. George Ardichvilli	La Hulpe, Belgium	Request application of bearings to calendars & mixers for plastics				"
5-22-46	Alianca Exportadora, Euro-Africiana Ltda.	Lobito, Angola, Portuguese W. Africa	Request distribution of Timken bearings				"
5- 7-46	Whitehead Paul Agency	Calcutta, India	Request distribution of bearings in India				"
5- 7-46	Madin R. Ronson	La Coruna, Spain	Request distribution of bearings in Spain				"
4-10-46	The Kothar Motor Co. Ltd.	Rangoon (Burma)	Request distribution of bearings				"
4-23-46	Mr. Marcel Massy	Chateauroux, France	Inquired about Railway bearings				Referred to S. A. Francaise Timken
4- 5-46	Magone & Servetto	Genova, Italy	Request distribution of bearings in Italy				Referred to B. T.
3-30-46	Antonio Jose Da Costa & Cia. Sucres Ltda.	Lisbon, Portugal	Request distribution of bearings in Portugal				"

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5- 3-46	Mr. Charles Le Borgne	Montreal, Canada	Request catalogues and prices				Referred to S. A. Francaise Timken
4-12-46	Mr. Erwin Rudh	Tetuan, Morocco	Request distribution of bearings in Morocco				Referred to B. T.
5- 2-46	Mr. P. N. Moraitees	Athens, Greece	Request distribution of bearings in Greece				"
3-28-46	Mr. Manuel Neira	Viego, Spain	Request distribution of bearings in Spain				"
4-25-46	Mr. Monteiro Dos Santos	Porto, Portugal	Request distribution of bearings in Portugal				"
4- 9-46	Costa & Estenes	Porto, Portugal	Request distribution of bearings in Portugal				"
4-11-46	Inu, S. A.	Tangier, Morocco	Request distribution of bearings in Spanish Morocco				"
3-22-46	Teenica Industrial Do Libito	Lisbon, Portugal	Request distribution of bearings in Portugal				"
4-16-46	Acciaieries Feriere Lombarde Falch	Milano, Italy	Request roll neck bearings				"
3-22-46	Sociedad Iberica de Construcciones y Oluas Publicas S. A.	Valencia, Spain	Request catalog and price information				"
4-15 & 17/46	Antonopoulos Freres	Athens, Greece	Request symbol numbers for Chrysler number on Dodge trucks				"
4-16-46	Gustanfsson & Gortz A P	Orebro, Sweden	Request distribution of bearings in Sweden				"
Not dated	Reliance Technecians & Traders	Shanghai, China	Request distribution of bearings in China and regarding ball bearings				Handled by Muller & Phillips—N. Y. Moore export & import
3- 6-46	Carlos de Bianchi, Ltda.	Funchael, Madetra Portugal	Request distribution of bearings in Portugal				Referred to B. T.

[fol. 4445]

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4447]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
6-24-46	Francaise Timken	Asnieres (Seine) France	385-383	6	Unknown	Unknown	Shipped Complete
			539-532	10			
			685-672	1			
			3196-3120	6			
			3198-3120	6			
			3578-3520	6			
			05079-05185	6			
			558-552	6			
			15250	6			
			1985	8			
			1931	8			
3-18-46	Mr. B. H. Riley	"	Blue Prints	73	Mr. B. H. Riley	Asnieres (Seine) France	Shipped Complete
10- 7-46	Francaise Timken	"	S. S. Automotive Application sheets	3 sets	Francaise Timken	"	"
9- 5-46	Francaise Timken	"	French Lubrication Maintenance Instruction books	100	"	"	"
6-20-46	Francaise Timken	"	95525-95925	4	Unknown	Unknown	Shipped Complete
7-30-46	Francaise Timken	"	495-493	10	"	"	"
5-13-46	Francaise Timken	"	385-382	50	"	"	"
			482-472	100			
			580-572	50			
			687-672	30			
			780-772	30			
			71437-71750	30			
			71437-71750	30			
			74525-74850	30			
			74537-74850	10			
			82550-82950	30			
			86669-86100	5			
			94700-94113	10			
3- 4-46	Francaise Timken		EE241701-242375	2	"	"	"
			86669-86100	2			

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5-13-46	Francaise Timken	Asnieres (Seine) France	397-394	50	Unknown	Unknown	Shipped Complete
			385-382B	50			
			482-472B	100			
			580-572	50			
			780-772	50			
			687-672	20			
			71437-71750	30			
			74525-74850	30			
			74537-74850	10			
			82550-82950	30			
			94700-94113	20			
5-13-46	Francaise Timken	"	385-382B	50	"	"	"
			482-472B	100			
			580-572	50			
			687-672B	30			
			780-772	30			
			71437-71750	30			
			71437-71750	30			
			74525-74850	30			
			74537-74850	10			
			82550-82950	30			
			86669-86100	5			
			94700-94113	10			
10-11-46	Francaise Timken	"	S. S. Application Sheets	3 Sets	French Timken	Asnieres, France	"
11-15-46	Francaise Timken	5E 11 Quai Aulagnuer Asnieres (Seine) France	354B	4	Unknown	Unknown	Cancelled Complete
1- 7-47	Francaise Timken	"	EE291250	1			
			291750	1			
			EE526130	1			
			526190	1	"	"	Completed
11- 6-46	Francaise Timken	"	16150	100	"	"	"
			41125	200			
10-31-46	Francaise Timken	"	26823	50	"	"	"

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4451]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
6- 6-46	French Timken		74525-74850	300	Unknown	Unknown	Shipped Complete
			74537-74850	35			
			82550-82950	200			
			86669-86100	45			
			94700-94113	50			
			99600-99100	40			
4- 3-46	Francaise Timken	Asnieres (Seine) France	Engineering Journals	2	Francaise Timken	Asineres (Seine) France	Shipped Completed
10-15-46	Francaise Timken	"	84003 (Cages)	5	Unknown	Unknown	"
			100005 "	10			
			52387	2			
5-13-46	Francaise Timken	"	385-382B	50	"	"	"
			482-472B	100			
			580-572	50			
			780-772	50			
			687-672	30			
			71437-71750	20			
			71437-71750	30			
			71425-74850	30			
			74537-74850	10			
			82550-82950	30			
			86669-86100	10			
			94700-94113	20			
9- 9-46	Francaise Timken	"	EE215040	4			
			215098	4			
			EE128111	1			
			128160	1			
			EE724120	1			
			724195	1			
			EE241701	1			
			242375	1			
			EE737181	1	"	"	Completed
			737260	1			
8-26-46	Francaise Timken	"	580-572	50	"	"	"
			687-672	50			

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9-25-46	Francaise Timken	Asnieres (Seine) France	EE215040	16	Unknown	Unknown	Completed
			215098	16			
			3780-3720	20			
			3982-3920	20			
8-26-46	Francaise Timken	"	598-592A	1			
			456W-453B	1			
			3780-3720	2	"	"	"
8-29-46	Francaise Timken	"	26881	12	"	"	"
			26823	12			
8-26-47	Francaise Timken	"	EE420801	12	"	"	"
			421437	12			
9- 2-46	Francaise Timken	"	26823	6	"	"	"
9-27-46	Francaise Timken	"	71450	2	"	"	"
			71750	2			
6-24-46	Francaise Timken	"	343	6			
			333-	6			
			462	6			
			453	6			
			2687	12			
			2631B	12			
			2794	6			
			2720	6			
			23092	6			
			23255	6	"	"	"
2-13-47	Francaise Timken	"	Service Sales Application	3 Sets	Francaise Timken	Asnieres (Seine) France	Completed
1-17-47	Francaise Timken	"	Automotive Application Sheets	3 Sets	"	"	"
12-21-45	British Timken	Birmingham 7 England	3762	2	Unknown	Unknown	"
			14123T	2			
			12580	6			
			24780	2			
			17580	3			

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4454]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquire or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
12-28-46	Francaise Timken	Asnieres (Seine) France	A4050-4138B	20	Unknown	Unknown	
			2794-2720	5			
			368-362	10			
			366-363	5			
			41107-41283	6			
			454-466	12			
			8305	1			
			8314	1			
			T302	6			
			288-284	10			
			439T	2			
			8311	1			
			8316	1			
6-19-46	Francaise Timken	"	291250-291750	2	"	"	Advised price & delivery
			101103-101160	2			Cup 101160 should be 101600
6-20-46	Francaise Timken	"	97004T	100			Advised price & delivery
6-17-46	Francaise Timken	"	161400-161900	1			"
			526130-526190	1			
5-20-46	Francaise Timken	"	658-653	20	"	"	"
			78250-78551	12			
			78250-78551	12			
			1985-1931B	12			
1-17-47	Francaise Timken	"	418	2	"	"	"
			4520	12			
			467-453	20			
			496-493	20			
1-14-47			T-411	2	"	"	"
			T-911	1			
12-26-46	Francaise Timken	"	26881-26822	20	"	"	"
			25877-25821	10			
			25580-25520	10			
				6			
			3585-3530	4			
			49368	2			
			3875-3830	6			
			2780	6			

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12-26-46	Francaise Timken	Asnieres (Seine) France	2736	1	Unknown	Unknown	Advised time on delivery
			2794	10			
			36137	3			
			2780	5			
			14138	12			
			14276	24			
			35326	6			
			14123	12			
			46175-46368	4			
12- 5-46	Francaise Timken	"	EE130904-131400-131402	4	"	"	Advised price & delivery
			A2031-A2126	6			
			291250-291750	1			
			EE526130-526190	1			
1-17-47	Francaise Timken	"	158350-058442	4			
12-28-46	Francaise Timken	"	14131	200			
			14276	100			
			18590	500			
			18520	6,900			
			11590-11520	1,200			
			24721	4,000			
			24780	400			
			31952-31520	200			
			02872-02820	200			
			5BC-6	200			
			24780-24721	2,000			
2-14-47	Francaise Timken	"	14137-14276B	2	"	"	"
			346TK-2D	2			
			3188A-3120A	2			
			16150-16284B	1			
			3198-3120B	1			
			1779-1729	1			
			16150-16284	1			
			3198-3120A	1			
			14117	1			
12-17-46	Francaise Timken	"	385-383	500	"	"	"
2- 7-47	Francaise Timken	"	16150-16284B	8			
			288-284	5			
			1985-1920	6			
			T-151	4			

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4457]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
5-10-46	Francaise Timken	Asnieres (Seine) France	343-333	6	Unknown	Unknown	Advised price & delivery
			462-453	6			
			2687-2631B	12			
			2794-2720	6			
			23255-23098	6			
			NA798-792D	2			
			NA94700-94114D	2			
			NA132083-132126	2			
			EE231401-232025	1			
			EE132078-132125	1			
			558-552	8			
			1985-1931	8			
			NS2228-NS2224	20			
			15250	6			
			385-383	6			
			467-474	10			(467-474 wrong comb. should be 475-474 or 455-454)
			539-532	10			
			685-672	1			
			3196-3120A	6			
			3198-3120A	6			
			3578-3520	6			
			05079-05185	6			
5- 8-46	Francaise Timken	"	687-672	20	"	"	Advised price & delivery
			3982-3920	40			
			NA455-452D	2			
			44157-44348	4			
5- 3-46	Francaise Timken	"	580-572	52	"	"	"
			687-672	52			
4-29-46	Francaise Timken	"	11162-11300	6	"	"	"
			81600-81963	1			
4- 2-46	Francaise Timken	"	A6075-A6157B	20	"	"	"
4-19-46	Francaise Timken	"	385-382B	200			
			397-394A	50			
			482-472B	500			
			482-472B	200			
			580-572	200			
			687-672B	250			
			780-772	100			
			71437-71750	200			

[fol. 4458]

4-19-46	Francaise Timken	Asnieres (Seine) France	71437-71750B	300	Unknown	Unknown	Advised Price & delivery
			74525-74850	200			
			74537-74850	25			
			82550-82950	100			
			86669-86100	15			
			86669-86100	10			
			94700-94113	50			
			99600-99100	25			
			275109-275155-275156	4			
			428462-428420-428421	2			
3-29-46	Francaise Timken	"	EE526131-526190-526191	4	"	"	"
1- 4-47	British Timken	Duston, Northampton	654D	2	Unknown	Unknown	Unknown
			74525-74851D	2			
			2875	20			
			2984	20			
			2924	20			
			A3044-3045	50			
			3585	20			
			3776A-3735	20			
			3879-3820A	15			
			4553	6			
			4554	10			
			5720	45			
			2479T	70			
			536T	20			
			624	20			
			612X	20			
			559D	20			
			3820W	100			
			59425	30			
			636	20			

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4460]

1.	2.	3.	4.	5.	6.	7.	8.
Date	Name of Inquirer or Buyer	Address of Inquirer or Buyer	Type of Anti-Friction Bearings Inquired For or Ordered	Quantity Anti-Friction Brgs. on Inquiry or Order	Name of Intended User	Address of Intended User	Disposition of Order or Inquiry
11-28-46	Francaise Timken	Asnieres (Seine) France	415-T-414	8	Unknown	Unknown	Advise price and delivery
			237-233	10			
			459-452	1			
			463-452	1			
11-27-46	Francaise Timken	"	2631-B	4	"	"	"
11-26-46	Francaise Timken	"	317-313	2	"	"	"
11-27-46	Francaise Timken	"	14296	6	"	"	Advise delivery time
			3420	6			
			5720	1			
			T-95	12			
			14117	13			
			5358	6			
			3188	2			
12-18-46	Francaise Timken	"	420801-421437	2	"	"	"
			700091-700167	2			
11- 5-45	Francaise Timken	"	EE241701-242375	2	"	"	Refered to British Timken—they put it in our hands
			86669-86100	2			
1-19-46	Francaise Timken	"	EE724120-724196	1	"	"	Received order and advise delivery
10-28-46	Francaise Timken	"	8375-8575-D	8	"	"	Advised price and delivery
			8375-8520-D	8			
8- 7-46	Francaise Timken	"	222075-222128	240	"	"	"
7-22-46	Francaise Timken	"	128111-128160	1	"	"	"
			724120-724195	1			
			241701-242375	1			
			737181-737260	1	"	"	"
7-29-46	Francaise Timken	"	14117-14276B	2	"	"	"
7-17-46	Francaise Timken	"	215040-215098	4	"	"	"

[fol. 4461]

7-12-46	Francaise Timken	Asnieres (Seine) France	EE420801-421437	2	Unknown	Unknown	Advised price and delivery
7- 8-46	Francaise Timken	"	EE201250-201800	5	"	"	"
			EE291201-291750	5			
6-28-46	Francaise Timken	"	358-354A	60	"	"	"
			560-552A	60			
			724120-724196	2			
7- 5-45	British Timken Ltd.	Birmingham 7 Eng.	64450-64700B	6	"	"	Advised Delivery
7-11-45	British Timken Ltd.	"	NA67885-SW67820D		"	"	"
7- 3-45	British Timken Ltd.	"	898-892	240	"	"	"
9-21-45	British Timken Ltd.	"	NA798-792D	14	"	"	"
			NAS97400-97901D	13			
			NA82576-89251D	1			
			EE516057-516122	4			
5-15-46	British Timken Ltd.	"	13687-13621D	80	"	"	Advised price and delivery
			56425W-56650B	30			
			56425-56650B	30			
			3079	10			
4-10-45	Renold Chains Ltd.	Brussels	5BA-6A	6	"	"	Inquiry referred to British Timken Ltd.
			31A-32	6			
			31A-33	6			
			31C-32C	6			
			6377-6320	6			
			49151-49368	4			
			59412	6			
			316-312	6			
			479-472	4			
			2689-2634	10			
			3875-3820	14			
			5557-5520	3			
			14123-14276	4			
			25580-25520	4			
			44143-44348	4			
			44156-44363D	10			

The lower portion of this Exhibit appears in the frame immediately below.

12- 1-45	S. A. G. A.	Milano, Italy	Requested distribution of our bearings in Italy	"
12-29-45	A. Gambrelli	Athens, Greece	Requested distribution of our bearings in Greece	"
11-29-45	Mr. Dott. Ing. Riccardo Fliva	Milano, Italy	Requested distribution of our bearings in Italy	"
12- 1-45	Societa Antonima Gomme Ed Affine	Milano, Italy	"	"
2- 6-47	Adamant Engr. Co. Ltd.	Luton, Eng.	Requested quotation and delivery on 250,000 taper rollers	Referred to S. A.
2- 7-47	Relas Service	Paris, France	Requested applications in Autocar products and price lists	Francaise T.
1-30-47	Thornborg & Lundberg	Stockholm, Sweden	Requested information on Hyatt bearings	Referred to Hyatt Bearing
2- 6-47	Walter Hummel Engr.	Alb-Aussee, Austria	Requested application for a position	Referred to B. T.
1-20-47	Antonio Joaquim Lopes & Cia. Lda.	Nova Lisboa, Angola, Port. W. Africa	Requested catalogues and current prices	"
5- 5-46	Mr. Michael Wolfman Eng.	Tel-Aviv, Palestine	Requested cost of airplane bearings	"
[fol. 4439]				
1- 4-47	Doka	Istanbul, Turkey	Requested prices etc. regarding plastic articles	Stated—not engaged in plastic articles
12- 8-46	Officine Meccaniche Faes	Milan, Italy	Requested catalogues covering our products	Referred to B. T.
12-28-46	Halil Tascioghn	Istanbul, Turkey	Requested catalogues covering products for building hardware	Stated not manufacturers of building hardware
1-18-47	Mr. R. Bancu Technician	Arseau (Hainaut) Belgium	Requested catalogues of products	Referred to B. T.
1-21-47	Mr. G. C. Jones	Wolverhampton, Straffordshire, England	Requested catalogues and current prices	"
1- 5-47	Joao Marques Pinto & Co.	Porto, Portugal	Requested prices and delivery of ball bearings	Not manufacturers of ball bearings—Referred to B. T.
12-14-46	A B Allmotor	Orebro, Sweden	Requested handling our products in Sweden	Referred to B. T.
1- 7-47	Empresa De Automoueis Lda.	Luanda, Angola, Portugal	Requested catalogues, price lists and delivery	"
1-30-47	Fornborg & Lundberg Aktiebolog	Stockholm, Sweden	Requested catalogues and quotations	"
12-20-46	A. Smex & Fils	Desschel, le vieux Marche, Belgium	Requested distribution of Timken bearings in Belgium	Referred to B. T.
1-10-47	Tornborg & Lundberg Aktiebolog	Stockholm, Sweden	Requested delivery and prices on ball bearings	"
1-10-47	Petros Petropoulos	Thessaloniki, Greece	Requested catalogues and price list	"
1-16-47	Mr. Tom Halleen	Helsingfere, Finland	Requested distribution of Timken bearings in Finland	"
1- 7-47	Autokampioen	The Hague, Holland	Requested distribution of Timken bearings in Holland	"
[fol. 4440]				
1- 9-47	Ardeshir Khesravani	Teheran, Iran	Requested catalogues and price lists	Referred to B. T.
1- 3-47	Fabrique de Papiers Andre Scherb	Turckheim, Haux Rhin, France	Requested to represent Timken bearings in France	Referred to S.A. Francaise Timken
1-15-47	Bucher-Geyer Mach. Wks.	Niederiveningen, Switzerland	Requested catalogues on ball bearings	Referred to B. T.
1-10-47	Spiral Co. Inc. Tools & Machy.	Basle, Switzerland	Requested catalogues, price lists and delivery conditions	"
1-10-47	Thornborg & Lundberg Aktiebolog	Stockholm, Sweden	Requested prices and delivery for ball bearings	"
1- 2-47	A. M. Daisy & Co.	Amritsar, India	Regarding importation of steel balls	Stated that we manufacture tapered bearings—not steel balls
12-23-46	S. Pittaluga Pietro	Torino, Italy	Request for distribution of Timken bearings in Italy	Referred to B. T.
1- 6-47	Stoecklin & Co.	Basel, Switzerland	Request for distribution of Timken bearings in Switzerland	"
12-28-46	O. T. I. S. A.	San Sebastian, Spain	Request importation of machinery and fittings	Stated that Timken does not make these products
1- 8-47	Establissements SIM	Morges, Switzerland	Request catalogues for selecting high precision roller and thrust bearings	Referred to B. T.
12-23-46	E.N.V. Engineering Co. Ltd.	London, England	Request price and delivery on bearings	Given price and delivery
12-23-46	Juyoti Limited	Baroda, India	Request distribution of ball bearings in India	Referred to B. T.
7- 2-46	U. M. A. L.	Bruxelles, Belgium	Request distribution of bearings in Belgium	"
[fol. 4441]				
7-11-46	Mecanique De Precision Et Ponderie Moderne	Casablanca, Morocco	Request for replacement bearings for McCormick Deering Tractor	Referred to French T.
7- 5-46	Giovanni Crochati	Trieste, Italy	Request for distribution of bearings in Italy	Referred to B. T.
6-26-46	Auto Commercial Limetoda	Luanda Portuguese W. Africa	Request catalogues and price lists	"
7-15-46	Importadoras Reunidos SA	Bilbao, Spain	Request distribution of bearings in Spain	"
5-19-46	Mr. Edmund Way	East Africa	Request distribution of bearings in East Africa	"
5-29-46	American Industrial Equipment Co.	Turin, Italy	Request distribution of bearings in Italy	"
7-11-46	Paula & Sousa Lda.	Porto, Portugal	Request distribution of bearings in Spain	"
7- 9-46	Le Grand Sutcliff & Gill Ltd.	Southall, Middlesex, England	Request for ball bearings	Referred to Fischer Brg. Co. of Wolverhampton
7- 9-46	Mr. Y. N. Basv	Bahreen Island, Persian Gulf	Request for catalogue of bearings	Referred to B. T.
7- 9-46	Torres Parra Y. Co. Lda	Madrid, Spain	Request for distribution of bearings in Spain	"
7- 9-46	Establissements A.H.A.	Thessaloniki, Greece	Request distribution of bearings in Greece	Referred to B. T.
7- 9-46	Fiat Societa Per Azioni	Torino, Italy	Request for technical data, prices and delivery	"

4- 5-46	Costa & Esteves	Porto, Portugal	Request distribution of bearings in Portugal				"
4-11-46	Inu, S. A.	Tangier, Morocco	Request distribution of bearings in Spanish Morocco				"
3-22-46	Teenica Industrial Do Libito	Lisbon, Portugal	Request distribution of bearings in Portugal				"
4-16-46	Acciaieries Feriere Lombarde Falch	Milano, Italy	Request roll neck bearings				"
3-22-46	Sociedad Iberica de Construcciones y Oluas Publicas S. A.	Valencia, Spain	Request catalog and price information				"
4-15 & 17/46	Antonopoulos Freres	Athens, Greece	Request symbol numbers for Chrysler number on Dodge trucks				"
4-16-46	Gustanfsson & Gortz A P	Orebro, Sweden	Request distribution of bearings in Sweden				"
Not dated	Reliance Technecians & Traders	Shanghai, China	Request distribution of bearings in China and regarding ball bearings				Handled by Muller & Phillips—N. Y. Moore export & import
3- 6-46	Carlos de Bianchi, Ltda.	Funchael, Madetra Portugal	Request distribution of bearings in Portugal				Referred to B. T.
[fol. 4445]							
2- 5-46	Mr. Allan Terny	Newcastle, N. S. U., Australia	Relating to distribution and engineering for Australia				Referred to B. T.
3- 7-46	Compagnie de Fives-Lillepour	Paris VIII, France	Requested catalogues and information about bearings to be used in the cylinders of sugar cane mills				Referred to S. A. Francaise Timken
7- 4-46	Francaise Timken	Asnieres (Seine) France	3781W-3720	12	Unknown	Unknown	Shipped Complete
			78250-78551	12			
			1985-1931B	12			
			A6075-A6157	12			
			A6062-A6157	12			
			A4050-A4138	24			
			16150-16284B	12			
			3477-3420	12			
			41106-41286	12			
			4520	3			
7-22-46	Francaise Timken	"	34300-34478	1	"	"	"
5-13-46	Francaise Timken	"	387-382	1			
			397-394	50	Unknown	Unknown	Shipped Complete
			580-572	50			
			780-772	50			
			71437-71750	35			
			74525-74850	35			
			82550-82950	35			
			94700-94113	20			
7-17-4	Francaise Timken	"	NA455-452D	2	Unknown	Unknown	Shipped Complete
5-14-46	Francaise Timken	"	44157-44348	4	"	"	"
			385-382	50			
			482-472	100			
			580-572	50			
			687-672	30			
			71437-71750	30			
			71437-71750	30			
			74525-74850	30			
			82550-82950	30			
			86669-86100	5			
			99600-99100	20			
[fol. 4446]							
5-14-46	Francaise Timken	Asnieres (Seine) France	482-472B	200	Unknown	Unknown	Shipped Complete
			687-672B	50			
			71437-71750	30			
			71425-74850	50			
			86669-86100	5			
			99600-99100	10			
5-14-46	Francaise Timken	"	71437-71750	50	"	"	"
			687-672B	60			
			71437-71750B	230			
			71437-71750	20	"	"	"
5-14-46	Francaise Timken	"	482-472B	200			
			687-672B	50			
			71437-71750	45			
			71437-71750	50			
			74525-74850	15			
			86669-86100	10			
5-27-46	Francaise Timken	"	96900-96140	17	"	"	"
			87750-87111	17			
5-27-46	Francaise Timken	"	687-672	20	"	"	"
5-27-46	Francaise Timken	"	A6075-A6157	6	"	"	"
5- 8-46	Francaise Timken	"	NA569-563D	2	"	"	"
6-28-46	Francaise Timken	"	2558-2523	9	"	"	Cancelled Complete
8- 1-46	Francaise Timken	"	2791A-2720	2			
7-17-46	Francaise Timken		2 Row Assy Ea. Const. of 2 EE724-120 Cone 1724196D Cup 1 1 XIS 724-120 Spacer on B21649				
			Provide 018 Lateral 2 Rows	2	"	"	Shipped Complete

			86669–86100	5			
			94700–94113	10			
10–11–46	Francaise Timken	"	S. S. Application Sheets	3 Sets	French Timken	Asnieres France	"
11–15–46	Francaise Timken	5E 11 Quai Aulagnuer Asnieres (Seine) France	354B	4	Unknown	Unknown	Cancelled Complete
1– 7–47	Francaise Timken	"	EE291250	1			
			291750	1			
			EE526130	1	"	"	Completed
			526190	1	"	"	"
			16150	100			
11– 6–46	Francaise Timken	"	41125	200	"	"	"
10–31–46	Francaise Timken	"	26823	50			
[fol. 4449]							
1– 9–47	Francaise Timken	5E 11 Quai Aulagnuer Asnieres (Seine) France	A2031	6	Unknown	Unknown	Completed
			A2126	6			
9– 9–46	Francaise Timken	"	T302	10	"	"	"
9– 9–46	Francaise Timken	"	14117	2			
			14276	2			
9– 9–46	Francaise Timken	"	52387	1	"	"	"
10 –1–46	Francaise Timken	"	86669	2			
			86100	2			
			87750	2			
			87111	2			
1– 1–47	Francaise Timken	"	354B	6	"	"	"
11–14–46	Francaise Timken	"	3161	2	"	"	"
			3120	2			
			9378	1			
			9320	1			
8–28–46	Francaise Timken	"	72200	2	"	"	"
			72487	2			
1–21–47	Francaise Timken	"	8316	1	"	"	"
			938	2			
			932B	2			
9– 2–46	Francaise Timken	"	3586	6	"	"	"
1–15–47	Francaise Timken	Asnieres (Seine) France	575–572	25	"	"	"
			683–672	25			
2–11–47	Francaise Timken	"	T302	6	"	"	"
2–11–47	Franciase Timken	"	4364	12	"	"	"
			4320	12			
12–27–46	Francaise Timken	"	2791A	2	"	"	"
			2720	2			
[fol. 4450]							
12–20–46	Francaise Timken	Asnieres (Seine) France	T400	2	Unknown	Unknown	Completed
9–20–46	Francaise Timken	"	93800–93125	1	"	"	"
9–25–46	Francaise Timken	"	389	2	"	"	"
			382	2			
9–27–46	Francaise Timken	"	1380	100	"	"	"
			1328	100			
9– 9–46	Francaise Timken	"	365–362	22	"	"	"
			580–572	55			
			687–672	25			
			397–394	25			
5–27–46	Francaise Timken	"	9378	6	"	"	"
			9320	6			
			NA130902	4			
			1314012 (N. A.).	2			
			NA130902	4			
			131401D (N. A.)	2			
			EE28516D	2			
			285226	4			
			11162	8			
			11300	8			
			NA81600	2			
7– 3–46	Francaise Timken	"	482–472	320	"	"	"
			482–472	320			
11– 5–46	Francaise Timken	"	A6075	10	"	"	"
			A6162	10			
6– 6–46	French Timken		385–382B	300	"	"	Shipped Complete
			397–394A	100			
			482–472B	100			
			580–572	300			
			780–772	200			
			687–672B	350			
			71437–71750	300			
			71437–71750B	500			

			2687	12				
			2631B	12				
			2794	6				
			2720	6				
			23092	6				
			23255	6	"	"	"	
2-13-47	Francaise Timken	"	Service Sales Application	3 Sets	Francaise Timken	Asnieres (Seine) France	Completed	
1-17-47	Francaise Timken	"	Automotive Application Sheets	3 Sets	"	"	"	
12-21-45	British Timken	Birmingham 7 England	3762	2	Unknown	Unknown	"	
			14123T	2				
			12580	6				
			24780	2				
			17580	3				
[fol. 4453]								
12-21-45	British Timken	Birmingham 7 England	658	30	Unknown	Unknown	Completed	
			6279	1				
			21088	5				
			02475W	5				
			14130	15				
			4368	76				
3-7-46	British Timken	"	02878	5	"	"	"	
			6454	3				
			6454	24				
			4553	1				
			6553	8				
			3585	2				
			623	2				
			15A	6				
			644	1				
			746	2				
			3381T	2				
			3575T	1	"	"	"	
12-28-46	Francaise Timken	Asnieres (Seine) France	Request price & Dely. on					
			31593-31520	1000	Unknown	Unknown	Advised price & Dely. No part no. 31592 obsolete 6325 No part #41107-41283	
			02872-02820	1000				
			14131-14276	1000				
			18590-18520	1000				
			11590-11520	4000				
			9378-9320	16				
			6361-6325	2				
			09075-09193	1				
			8316	1				
			462-4520	4				
			355-3520	4				
			6396-6320	20				
			455-452	50				
			528-522	20				
			3984-3920A	4				
			215040-215098	4				
			598-592A	50				
			3578-3520	10				
			444-432	15				
			3490-3420B	10				

			02872-02520	200			
			5BC-6	200			
			24780-24721	2,000			
2-14-47	Francaise Timken	"	14137-14276B	2	"	"	"
			346TK-2D	2			
			3188A-3120A	2			
			16150-16284B	1			
			3198-3120B	1			
			1779-1729	1			
			16150-16284	1			
			3198-3120A	1			
			14117	1			
12-17-46	Francaise Timken	"	385-383	500	"	"	"
2- 7-47	Francaise Timken	"	16150-16284B	8			
			288-284	5			
			1985-1920	6			
			T-151	4			
[fol. 4456]							
2- 7-47	Francaise Timken	Asnieres (Seine)	5A-8X	100	Unknown	Unknown	5BA replaced 5A Have no cup 8X
			13318-	2			
1-31-47	Francaise Timken	"	531201-531300-531301	2	"	"	Advised price & delivery
			NA130902-131401	1			
			9978X-9922X	8			Don't manuf. 9978X-9922X
			EE130850-131400	1			
			1330	4			
1-24-47	Francaise Timken	"	641-632	12	"	"	Advised price & delivery
			3379-3320	10			
			EE551026-551663	1			
			EE722110-722186	1			
			EE522102-523088	1			
			EE936-EE932	3			
			15A-16	10			
1-17-47	Francaise Timken	"	3478-3420	1	"	"	"
			1150-1130	20			
			11163-11301D	6			
			14125-14275	6			
			99600-99100	2			
			1380-1328	6			
			3982W-3920	1			
			936-932	4			
			99575-99100	4			
			938-932	2			
			35175-35326	2			
			1988-1931	2			
			05062-	4			
5-20-46	Francaise Timken	"	A6075-A6157	12	"	"	"
			A6062-A6157B	12			
			A4050-A4138	12			
			16150-16284B	12			
			3477-3420	12			
			41106-41286	12			
			4520	3			
6- 7-46	Francaise Timken	"	34300-34478	10 or 40	"	"	"
			387-383	10 or 40			
5-20-46	Francaise Timken	"	2558-2523	9	"	"	"

			3879-3820A	15			
			4553	6			
			4554	10			
			5720	45			
			2479T	70			
			536T	20			
			624	20			
			612X	20			
			559D	20			
			3820W	100			
			59425	30			
			636	20			
			65225	6			
			4595	30			
			562	6			
			NA691-672D	2			
			NA759-752D	1			
			799	2			
			745A	6			
			18590	200			
			18520	200			
			11520	200			
[fol. 4459]							
1-21-47	British Timken	Duston, Northampton	EE170975-171450	Unknown	Unknown	Unknown	Unknown
			EE170950-171450				
			2581T				
			2585				
			2790				
			3875				
			T-138				
			59200				
			570				
			581				
			24720				
2- 6-46	Francaise Timken	Asnieres (Seine) France	EE324103-324160-324161	16	"	"	Advise price & delivery
12-12-46	Francaise Timken	"	758-752	1	"	"	"
			3984-3920	1			
			418-414	1			
			4364-4320	12	"	"	Delivery date given
			3382-3320	5			
			3188-3120	5			
			575-572	25			
			683-672	25			
			496-493	30			
			472-484	30	"	"	Can deliver—don't manuf. # 558XW-553A could be 558W-553A
12-12-46	Francaise Timken	"	344-332	4			
			496-493	35			
			558XW-553A	12			
12-12-46	Francaise Timken	"	28118	2			Advise delivery time
			752	12	"	"	Don't manuf. brg. No. 6555-6523- or 08110X-08235X
			6555-6523	8			
			081110X-08235X	2			
12-17-46	Francaise Timken	"	31593-31520	1,000	"	"	Advise delivery date
			24780-24721	2,000			
			02872-02820	1,000			
			14131-14276	1,000			
			18590-18520	1,000			
			11590-11520	4,000			
12-18-46	Francaise Timken	"	T-500	4	"	"	Advise price & delivery
12-17-46	Francaise Timken	"	68 3571A (5BC)	2000 to 3000			

			[illegible]	"			
			14123–14276	4			
			25580–25520	4			
			44143–44348	4			
			44156–44363D	10			
[fol. 4462]							
4–10–45	Renold Chains Ltd.	Brussels	44158	6	Unknown	Unknown	Inquiry referred to British Timken
			44363D	6			
			53175–53375	4			
			59175–59412	10			
			59200–59412	4			
			59201T–59412	8			
9–11–45	British Timken Ltd.	Birmingham 7 Eng.	15385	750	"	"	Advised delivery and price
			17580–17520	500			
			4CB	100			"
2– 7–47	British Timken Ltd.	"	569–5632	2	"	"	
			NA93800–93127	15			
			NA861–854D	3			
			NA938–932D	3			
1–24–47	British Timken Ltd.	"	T411				
			861–854		"	"	Advised Delivery
			850–832		"	"	"
12–30–46	British Timken Ltd.	"	64450–647005	3	"	"	"
1– 4–46	British Timken Ltd.	"	6553	36	"	"	Advised delivery and price
1– 2–46	British Timken Ltd.	"	CN25540		"	"	"
1–26–45	British Timken Ltd.	"	NA643–632D	4	"	"	Advised no such serial number
1–24–47	British Timken Ltd.	Duston, Northampton, England	103S–33	4	"	"	Advised delivery
1–15–47	British Timken Ltd.	"	82576–82950	4	"	"	Advised delivery and price
12–31–46	British Timken Ltd.	"	18685–18620D With spacers	30	"	"	

[fol. 4463]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
1- 3-47	British Timken Ltd.	Duston, Northampton. England	41286B	16	Unknown	Unknown	Advised delivery
2-26-46	British Timken Ltd.	"	898-892		"	"	"
6- 7-46	British Timken Ltd.	"	56425-56650D				
			X1856425	30			
			NA93800-93121	15			
			NA87700-87112D		"	"	Advised delivery and price
6- 5-46	British Timken Ltd.	Birmingham 7, England	395-3920	10			
			14120-14273	30			
			780705-781400	4			
5-31-46	British Timken Ltd.	"	14138A				
			14274				
			1779				
			1729		"	"	Advised price
8-28-46	British Timken Ltd.	Melbourne, Australia	422-414	1000	"	"	Advised delivery
8- 8-46	British Timken Ltd.	Northampton, England	Rolls 2003 Grades 4C&5	1 Million	"	"	Advised price and delivery
8-29-46	British Timken Ltd.	"	A6157B	20			
			42584	75			
			18337	80			
			42375	65			
			18200	80			
			3329B	40	"	"	Advised delivery
9-17-46	Gainer Mobile Equip. Ltd.	North Acton Rd. London	23256-23100	1200			
			19138-19283	1200	"	"	Cable Inquiry Referred to British Timken
10- 8-46	E. E. Packard Co., Inc.	New York, N. Y.	2788-2720	1500			
			529X-522	500			
			15100-15250	1000	"	"	Inquiry referred to BT

[fol. 4464]

10- 4-46	British Timken Ltd.	Duston, Northampton	K9003		Unknown	Unknown	Advised price and delivery
			K8111				
			K6108				
			T40606				
10- 3-46	British Timken Ltd.	"	780650-781400		"	"	Advised price
			750550-751200				
			780700-781400				
10- 3-46	British Timken Ltd.	"	738000	8	"	"	Advised price and delivery
11-21-46	British Timken Ltd.	"	215040-215098	10	"	"	Advised price, delivery and serial no. change
11- 7-46	British Timken Ltd.	Birmingham 7, England	8575-8575D-8520D	16	"	"	Advised price and delivery
12-21-46	British Timken Ltd.	"	NA-3577		"	"	Advised no such symbol no. made
11-15-46	Demircelik	Karabuk, Turkey	S-S Type	10	"	"	Unknown
11-18-46	British Timken	Birmingham 7, England	56425-56650D	30	"	"	Advised price and delivery
12- 6-45	British Timken	"	C21307	9	"	"	"
12- 4-46	British Timken	"	92380D-92381-92320D	16	"	"	"
10-16-45	British Timken	Johannesburg	86650-86100	6			
			NA99600-99102D	8	"	"	"
8-27-46	British Supply Office	Washington, D. C.	305263	14			
			305301	3			
			305310	231			
			210060	463	"	"	Advised serial No. Not Ours.

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4467]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquire or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
10-15-46	Gen. Motors Overseas Oper.	New York, N. Y.	455	1	Unknown	Unknown	Shipped as instructed
			3982	8			
			3984	5			
			59200	1			
			453-X	1			
			59412	1			
6-28-46	Gen. Motors Overseas Oper.	"	16150	100	"	"	"
			16284	100			
			387	48			
			395	48			
			2788	48			
			3982	24			
			41125	24			
			44150	12			
			382	48			
			394-A	48			
			2720	48			
			3720	48			
			3920	12			
			41286	24			
			44348	12			
10-16-46	Gen. Motors Overseas Oper.	"	T-151	4	"	"	"
6-14-46	Gen. Motors Overseas Oper.	"	387	4	"	"	"
9-20-46	Gen. Motors Overseas Oper.	"	T-113	30	"	"	"
4- 3-46	Gen. Motors Overseas Oper.	"	383	750	"	"	"
			385	750			
			2788	1000			
			2720	1000			
6-14-46	Gen. Motors Overseas Oper.	"	344	4	"	"	"
			350	24			
			368	2			
			390	6			

[fol. 4468]

6-14-46	Gen. Motors Overseas Oper.	New York, N. Y.	395	18	Unknown	Unknown	Shipped as instructed
			395-S	12			
			438	6			
			455	2			
			462	8			
			447	4			
			482	12			
			498	4			
			1755	24			
			1779	24			
			2479-T	4			
			387	12			
			2585	4			
			2586	4			
			2780	8			
			2787	4			
			2788	18			
			2788-T	6			
			2794	4			
			2795-T	2			
			2798-T	6			
			3190	4			
			3193	6			
			3198	6			
			3199	4			
			3379	4			
			3381-T	2			
			3382	12			
			3875	4			
			3877	4			
			3478	6			
			3982	12			
			14118	15			
			14130	6			
			12580	4			
			17580	4			
			15112	6			
			15118	24			
			15119	4			
			15580	4			

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4470]

1.	2.	3.	4.	5.	6.	7.	8.
Date	Name of Inquirer or Buyer	Address of Inquirer or Buyer	Type of Anti-Friction Bearings Inquired For or Ordered	Quantity Anti-Friction Brgs. on Inquiry or Order	Name of Intended User	Address of Intended User	Disposition of Order or Inquiry
6-14-46	Gen. Motors Overseas Oper.	New York, N. Y.	2736	4	Unknown	Unknown	Shipped as instructed
			3420	6			
			3720	6			
			3820	8			
			12520	4			
			14283	24			
			15520	4			
			16282	4			
			16283	2			
			16284	4			
			17520	4			
			24721	4			
			25520	10			
			25523	4			
			25820	4			
			25821	24			
			28300	4			
			28315	6			
			31520	6			
			33462	4			
			44348	12			
			53375	6			
			53387	4			
			53390-D	2			
			59412	4			
			59429	4			
			02420	2			
			02820	4			
			09194	30			
			09195	12			
			09196	6			
			3920	12			
			453-A	8			
8- 1-46	Gen. Motors Overseas Oper.		482	8			
			2689	2			
			472	6			
			472-A	2			
			473	5			
			2631	2			
			3525	6			

[fol. 4471]

5-31-46	General Motors Overseas Oper.	New York, N. Y.	1784-A	36	Unknown	Unknown	Shipped as instructed
			1729	18			
			44348	12			
			2685	6			
			2720	12			
			3382	18			
			3920-A	6	"	"	"
8-27-46	General Motors Overseas Oper.	"	377-T	2			
			3732	4			
			3779	4			
			3820	4			
			3880	4			
8-20-46	General Motors Overseas Oper.	"	6-A	50	"	"	"
			38-C	2			
8-13-46	General Motors Overseas Oper.	"	T-113	10	"	"	"
5-19-46	General Motors Overseas Oper.	"	5-BA	10			
			359-S	10			
			2580	10			
			2786	5			
			2794	5			
			03062	20			
			A-4059	44			
			07098	10			
			09074	100			
			14125	10			
			14130	30			
			25877	10			
			26118	10			
			31590	10			
			31593	10			
			06	5			
			354-A	10			
			2523	10			
			3120	20			
			03162	20			

The lower portion of this Exhibit appears in the frame immediately

[fol. 4473]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
8- 6-46	General Motors Overseas Oper.	New York, N. Y.	455	2	Unknown	Unknown	Shipped as instructed
			3820	2			
			3875	2			
			59201-T	2			
6-11-46	General Motors Overseas Oper.	"	3720	20	"	"	"
			3780	20	"	"	"
7-31-46	General Motors Overseas Oper.	"	419	6	"	"	"
			438	7			
			639	1			
			3982	96			
			5358	4			
			432	29			
			632	2			
			2620	22			
			6320	1			
			21750	2			
			99600	2			
			99100	4			
5- 7-46	General Motors Overseas Oper.	"	T-113	4	"	"	"
			387	2			
			395	2			
			462	2			
			482	2			
			3982	2			
			07098	2			
			17118	2			
			53176	2			
			394-A	4			
			472	2			
7-10-46	General Motors Overseas Oper.	"	2788-T	4	"	"	"
			390	5	"	"	"
6-14-46	General Motors Overseas Oper.	"	447	3	"	"	"
			1751	8			
			2689	1			
			2780	2			
			2788-T	4			

[fol. 4474]

6-14-46	General Motors Overseas Oper.	New York, N. Y.	28158	4	Unknown	Unknown	Shipped as instructed
			412	1			
			412-A	2			
			432	3			
			03062	10			
5-24-46	General Motors Overseas Oper.	"	336	2	"	"	"
			342-S	4			
			344	4			
			377	3			
			390	1			
			447	2			
			2581	2			
			12580	6			
			780	12			
			13	2			
			333	6			
			432	7			
			572	5			
			772-B	12			
			1220	6			
			2720	6			
			0316	12			
			3420	6			
			2420	6			
			26283	8			
			26822	5			
			28300	2			
			390	5			
			447	3			
			1751	8			
			2689	1			
			2780	2			
			03062	10			
			28158	4			
			412	1			
			412-A	2			
			432	3			

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4476]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
2-21-46	General Motors Overseas Oper.	New York, N. Y.	354	10	Unknown	Unknown	Shipped as instructed
			394-A	100			
			394	8			
			414	4			
			592-A	10			
			1729	24			
			1730	24			
			2523	14			
			2729	10			
			02820	12			
			3120	7			
			3320	12			
			3720	6			
			07204	10			
			09194	36			
			09196	22			
			12520	12			
			14273	12			
			14274	36			
			14276	12			
			14283	12			
			15250	12			
			25520	6			
			25821	10			
			26820	10			
			31520	6			
			44348	4			
5-9-46	General Motors Overseas Oper.	New York, N. Y.	390	5	"	"	"
			412-A	2			
			412	1			
			432	3			
			447	3			
			1751	8			
			2689	1			
			2780	2			
			2788-T	4			
			03062	10			
			28158	9			

[fol. 4477]

7-9-46	General Motors Overseas Oper.	New York, N. Y.	T113	36	Unknown	Unknown	Shipped as instructed
			2685	4			
			3382	4			
			3984	4			
			53176	6			
			6-A	9			
			2631	4			
			3320	4			
			3920	4			
			53375	6			
7-8-46	General Motors Overseas Oper.	"	T113	863	"	"	"
			T151	20			
			449	20			
			2689	39			
			1380	3			
			33462	5			
			T113	500			
			T113	363			
			T151	20			
			449	20			
			2689	39			
			1380	3			
			33462	5			
2-19-46	General Motors Overseas Oper.	"	455	30	"	"	"
			462	2			
			498	6			
			1784	20			
			3578	40			
			3779	4			
			33281	50			
			11-BC	2			
			382-A	20			
			563	20			
			1729	4			
			2634	10			
			3320	10			
			3525	10			
			1329	4			
			25520	4			

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4479]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquire or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
6-21-46	General Motors Overseas Oper.	New York, N. Y.	455	4	Unknown	Unknown	Shipped as instructed
			495-A	1			
			3984	6			
			53176	2			
			493	1			
			3920	6			
			42584	1			
			53375	2			
			42368	1			
6-20-46	General Motors Overseas Oper.	"	T113	200	"	"	"
12- 4-45	General Motors Overseas Oper.	"	527	1	"	"	"
			559	37			
			567	2			
			580	30			
			861	3			
			3187	1			
			3191	24			
			3578	5			
			3975	15			
			3982	24			
			09078	20			
			15113	1			
			15116	2			
			15118	200			
			15119	6			
			3379	12			
			414	24			
			552-A	42			
			572	25			
			854	10			
			2720	84			
			3120	24			
			3120-B	1			
			3525	5			
			3720	8			
			3320	12			
			12520	2			
			14274	40			
			14276	26			

[fol. 4480]

5-17-46	General Motors Overseas Oper.	New York, N. Y.	653	6	Unknown	Unknown	Shipped as instructed
			665	6			
			529-X	6			
			6386	6			
			14276	200			
			14138-A	200			
6-28-46	General Motors Overseas Oper.	"	38.5	4	"	"	"
4-17-46	General Motors Overseas Oper.	"	T-113	400	"	"	"
4- 2-46	General Motors Overseas Oper.	"	462	16	"	"	"
			2790	6			
			477	2			
			467	2			
			07098	14			
			4125-A	20			
			13130	24			
			15118	4			
			95525	6			
			362	4			
			382	4			
			2720	50			
			3920-A	40			
			A-4138	24			
			4274	43			
			14276	26			
			14283	12			
			26822	23			
6- 4-46	General Motors Overseas Oper.	"	316	14	"	"	"
			342	6			
			375	6			
			419	28			
			438	7			
			447	29			
			477	1			
			639	1			

The lower portion of this Exhibit appears in the frame immediately below.

11-18-46	British Timken	Birmingham 7, England	C21307	9	"	"	"
12- 6-45	British Timken	"	92380D-92381-92320D	16	"	"	"
12- 4-46	British Timken	"	86650-86100	6	"	"	"
10-16-45	British Timken	Johannesburg	NA99600-99102D	8	"	"	"
8-27-46	British Supply Office	Washington, D. C.	305263	14			
			305301	3			
			305310	231	"	"	Advised serial No. Not Ours.
			210060	463			
[fol. 4465]							
9- 4-46	British Supply Office	Washington, D. C.	3476	14	Unknown	Unknown	Advised price and delivery
			3420	3			
12-18-46	British Timken	Northampton	A2047-A2126	50 or 250	"	"	"
			A4059-A4138	10 or 50	"	"	Unknown
12-23-46	British Timken	Birmingham 7.	NA3577	10			
2-19-46	British Ministry of Supply Mission	New York	580	6			
			572	6			
			560	6			
			553-X	6			
			6379	6			
			6320	6			
			537	6	"	"	Advised price and delivery
			532-A	6			
10- 3-46	British Timken	Johannesburg	S86650-86100	6	"	"	Unknown
			NA99600-99102D	8			Referred to British Timken
10-12-45	Petko Boyadjriff	Sofia-Bulgaria	Distribution Financial statement attached				
2- 6-46	Francaise Timken	Asnieres (Seine) France	DO71450-71751D	8			
			DO795-792D	16			
			DO EE130851-131401	4			
			EE128111-128160	1			
			EE724120-724195	1			
			EE234156-234215	1	"	"	Advised price and delivery
			EE571703-572654	1			
2-14-46	Francaise Timken	"	QQ EE130904-131400-131402	1			
			XIH 130904	4			
			X5S 131400	16	"	"	Reference to British Timken
11- 7-45	French Supply Council	Washington, D. C.	344332	10,000			
[fol. 4466]							
9-27-45	French Supply Council	Washington, D. C.	Visit of French Officials				Advised by Mr. Sauer
6- 5-45	S. A. Francaise Timken	Asnieres (Seine) France	EE724120-724196 XIS-724120	1	Unknown	Unknown	Purchase order signed and returned

			3875	4			
			3877	4			
			3478	6			
			3982	12			
			14118	15			
			14130	6			
			12580	4			
			17580	4			
			15112	6			
			15118	24			
			15119	4			
			15580	4			
[fol. 4469]							
6-14-46	Gen. Motors Overseas Oper.	New York, N. Y.	16150	2	Unknown	Unknown	Shipped as instructed
			24780	4			
			25580	6			
			25877	22			
			25577	6			
			28158	4			
			33262	4			
			35175	4			
			36137	6			
			44156	24			
			49151	4			
			53176	4			
			53178	4			
			59175	4			
			59186	4			
			28156	4			
			02872	4			
			09074	24			
			09078	12			
			02474	4			
			02875	4			
			14120	24			
			09075	6			
			332-A	6			
			352	24			
			354	18			
			363	4			
			382	8			
			383	12			
			394	18			
			432	4			
			472-A	12			
			493	4			
			1730	6			
			2420	4			
			2523	12			
			2720	12			
			2729	24			

				06882		20		
				A-4059		44		
				07098		10		
				09074		100		
				14125		10		
				14130		30		
				25877		10		
				26118		10		
				31590		10		
				31593		10		
				06		5		
				354-A		10		
				2523		10		
				3120		20		
				03162		20		
[fol. 4472]								
5-19-46	General Motors Overseas Oper.	New York, N. Y.		07204		10	Unknown	Unknown	Shipped as instructed
				09194		50			
				09196		50			
				14276		30			
				15250		30			
				25821	A	10			
				26283		10			
				31520		20			
8- 9-46	General Motors Overseas Oper.	"		35326		5	"	"	"
				41348		2			
8- 8-46	General Motors Overseas Oper.	"		T-95		6	"	"	"
				256		33			
				342		3			
				350		6			
				355		2			
				419		6			
				422-T		4			
				463		2			
				478		2			
				558		1			
				567		2			
				568		2			
				2580		12			
				2785		11			
				3190		1			
				A-6067		1			
				14117-A		1			
				36137		5			
				453		9			
				2320		1			
				2530		6			
				2729		5			
				3420		10			
				A-6157		6			
				15250		11			
				36300		1			

			26283	8			
			26822	5			
			28300	2			
			390	5			
			447	3			
			1751	8			
			2689	1			
			2780	2			
			03062	10			
			28158	4			
			412	1			
			412-A	2			
			432	3			
[fol. 4475]							
2-21-46	General Motors Overseas Oper.	New York, N. Y.	5-BA	4	Unknown	Unknown	Shipped as instructed
			5-BC	4			
			11-BA	2			
			21-BC	100			
			T94	20			
			T101	4			
			350	20			
			358	6			
			359	1			
			395	100			
			395-S	41			
			555-S	3			
			580	3			
			595	3			
			1755	24			
			1779	8			
			2580	6			
			02877	12			
			3188	4			
			3198	4			
			3476	6			
			3478	1			
			3776	12			
			3778	6			
			09074	29			
			09075	20			
			14118	27			
			14120	20			
			14131	30			
			14137-A	6			
			14138-A	48			
			15112	6			
			15119	6			
			25580	6			
			25877	3			
			31590	6			
			31593	2			
			44150	4			
			332	2			
			352	12			

			2689	39			
			1380	3			
			33462	5			
2-19-46	General Motors Overseas Oper.	"	455	30	"	"	"
			465	2			
			498	6			
			1784	20			
			3578	40			
			3779	4			
			33281	50			
			11-BC	2			
			382-A	20			
			563	20			
			1729	4			
			2631	10			
			3320	10			
			3525	10			
			1329	4			
			25520	4			
[fol. 4478]							
5-24-46	General Motors Overseas Oper.	New York, N. Y.	T113	127	Unknown	Unknown	Shipped as instructed
			339	6			
			359-A	2			
			387	20			
			395	16			
			419	6			
			529	20			
			537	20			
			1380	1			
			2585	4			
			566	20			
			2685	20			
			2689	1			
			2790	2			
			27911	15			
			3379	6			
			3875	40			
			3880	2			
			3984	100			
			14137-A	2			
			26883	2			
			53162	6			
			53176	30			
			55200	20			
			59200	20			
			59201-T	30			
			13	4			
			14-C	2			
			354-A	2			
			382	20			
			394-A	20			
			522	30			
			2523	4			
			3720	5			
			3820	50			
			3920	100			
			14274	2			
			26824	2			
			33462	25			
			44348	4			
			53375	50			
			59412	25			

			382	4			
			2720	50			
			3920-A	40			
			A-4138	24			
			4274	43			
			14276	26			
			14283	12			
			26822	23			
6- 4-46	General Motors Overseas Oper.		316	14			
			342	6			
			375	6			
			419	28			
			438	7			
			447	29			
			477	1			
			639	1			
[fol. 4481]							
6- 4-46	General Motors Overseas Oper.	New York, N. Y.	643	1	Unknown	Unknown	Shipped as instructed
			665	2			
			749	2			
			NA-759	2			
			779	4			
			780	5			
			898	2			
			2687	24			
			3659	4			
			3776	3			
			A-4059	6			
			5558	3			
			6379	5			
			12580	2			
			14120	20			
			14124	6			
			14138-A	40			
			53186	2			
			53178	12			
			78216-D	10			
			95525	4			
			312	4			
			432	12			
			453-B	50			
			632	6			
			632-3	25			
			652	12			
			742	2			
			772	2			
			892-B	2			
			2620	2			
			3920	48			
			A-4138	6			
			5520	1			
			6320	4			
			14283	12			
			15250	136			
			53375	2			
			95925	13			
			3982	12			

[fol. 4482]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
2-27-46	General Motors Overseas Oper.	New York, N. Y.	5-BC 15-BA 35-BC 6-A 06 6-C 7-A 13 16 17 36-X 38-X	100 2 2 50 2 4 2 2 2 2 2 2	Unknown	Unknown	Shipped as instructed
3-11-46	General Motors Overseas Oper.	New York, N. Y.	2720-1729-2791-A 1784-A-394-A-382 395-387	2 each	"	"	Quoted price and shipped as per instructions.
4-11-46	General Motors Overseas Oper.	New York, N. Y.	394-A 3525 33281	1-6-2	General Motors Overseas Oper.	New York, N. Y.	" Quoted prices. Shipped as per special instructions.
3- 4-46	General Motors Overseas Oper.	"	382 387 395	4-8-4	"	"	Quoted prices. Shipped as per special instructions. Along with statement of purchase for export.
12- 7-45	General Motors Overseas Oper.	"	T-126 575 33281 572 33462	30-20-20 20-20	Unknown	Unknown	Quoted prices. Shipped per special instructions with statement of purchase for export.
11-20-45	General Motors Overseas Oper.	"	T-113 3578 2689 382-A 387 394-A 395 1729 1784-A 2720 2791-A 3920 3982 44150 44348 33462 33281 3525 2631	12-12-12-12 12-12-12 12-12-12 12-6-6-6 6	General Motors Overseas Oper.	New York, N. Y.	Quoted prices. Shipped per special instructions. Also statement for purchase for export.

[fol. 4483]

9-20-45	General Motors Overseas Oper.	New York 19, N. Y.	14-C 772-B 780 572 580 592-A 595	4-6-6-5-3-10	General Motors Overseas Oper	New York, N. Y.	Quoted prices. Shipped per special instructions.
11-26-45	General Motors Overseas Oper.	"	5-BA 6-A 06 359-S 354-A 382 387-A 390 394-A 1330 1351 1729 1755 3120-A 3188-A 3199 3820 3875 3920-A 3982-A 3984 03062 03162 07204 07098 09074 09194 09196 14125-A 14138-A 14276 15118 15250 25520 25580 35175 35326	10-5-5-10-10- 10-10-5-5-4-4- 5-5-20-15-5- 5-5-15-5-10- 20-20-10-10- 40-20-20-10- 20-30-10-10- 10-10-5-5-	"	"	Quoted prices. Shipped per special instructions. Along with statement of purchase for export.
3-27-46	J. A. Ewing & McDonald	New York 16, N. Y.	861 854	6 each	South African Iron & Steel Industrial Corp. Ltd.	South Africa	Quoted prices. Delivery made as instructed.
4- 5-46	Colony Shipping Company	New York, N. Y.	33281 33462	3 each	Cheneaux & P. de Reynal	Fort de France Martinique	Quoted prices. Shipped as per instructions.
1- 3-46	Arabian American Oil Company	San Francisco, California	598	10	Unknown	Unknown	Shipped as instructed
1-18-46	Arabian American Oil Company	"	6386 6320	10 10	"	"	"
2-13-46	Arabian American Oil Company	"	567 3984 33275 563 3920 09196 33462	20 15 20 20 15 10 20	"	"	"

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4485]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquire or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
6- 7-46	Arabian American Oil Company	San Francisco 4, California	632-D	1	Unknown	Unknown	Shipped as instructed
			672	6			
			477	10			
			527	10			
			528	10			
			537	4			
			567	4			
			623	4			
			643	4			
			685	10			
			779	4			
			938	4			
			941	8			
			1380	4			
			2793	4			
			3982	4			
			6379	6			
			14132	4			
			69354	4			
			71450	4			
			74500	8			
			472	10			
			522	10			
			532	6			
			592-A	4			
			672	4			
			772	4			
			932	8			
			1328	4			
			3920	4			
			6320	6			
			5520	8			
			14274	4			
			53387	6			
			71750	4			
			69630	4			
			74850	8			
			632D	3			
			563	6			

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4488]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
11- 6-46	Colony Shipping Co., Inc.	New York, N. Y.	1755	16	Unknown	Unknown	Shipped as instructed
			2578	15			
			3578	20			
			3585	5			
			3982	28			
			3982	2			
			09074	10			
			14125	2			
			14125	2			
			14130 (sub. 14132)	10			
			14138	60			
			26878	10			
			36137	4			
			3925	5			
			14276	30			
			15250	10			
			25821	10			
			799065	20			
			3585	5			
			14125	6			
			799003	50			
			799004	50			
7- 8-46	Colony Shipping Co., Inc.		344	3	"	"	"
			385	20			
			397	3			
			419	5			
			438	5			
			537	5			
			642	3			
			1779	50			
			2578	10			
			26881	10			
			36137	5			
			44156	10			
			49585	30			
			59175	25			
			382	30			
			394	30			
			394	20			

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4491]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
2-13-46	Industrial Sales Corp.	New York, N. Y.	4320	4	Unknown	Unknown	Shipped as instructed
			5520	4	"	"	
10- 7-46	Banque Belge Pour l'Etranger (overseas) Ltd.	New York	(Credit)				Letter of credit extended to August 31.
4-23-46	Banque Belge Pour l'Etranger (overseas) Ltd.	"	335, 537 Cones 3320, 532A Cups	100 each 100 each	Union Niniere Du Haut-Katanga	Elisabethville, Belgian, Congo	Shipped as instructed
9-10-46	Mining Equip. Corporation	New York, N. Y.	11162, 387 Cones 11315, 382 Cups	3 each 3 each	Manggar District	Billiton Netherland East Indies	Wrote letter with information requested
10-28-46	Netherland Purchasing Commission	"	3476 cone 3420	12 12	Unknown	Unknown	Returned signed duplicate of order for their file.
11-22-46	The Oil Well Engineering Co., Ltd.	"	47680, 65200 Cones 47620, 65500 Cups	6 each 6 each	"	"	Sent letter regarding Shipment
10- 3-46	The Oil Well Engineering Co., Ltd.	"	26883, 26820 42584, 42362D 7455A, 742X, 742B	12 each 2 each 2 each	"	"	Sent B/L regarding shipment
11- 8-46	The Oil Well Engineering Co., Ltd.	"	42375, 42584	6 each	"	"	Requested instructions
11-28-45	The Oil Well Engineering Co., Ltd.	"	751200, 750502	2 each	"	"	Wrote letter for instructions necessary for shipment
4-10-46	O'Okiep Copper Company, Ltd.	"	472A, 480	64 each	"	"	Sent B/L regarding shipment

[fol. 4492]

1-23-46	Portuguese Railway Mission	Germantown, Phila, Pa.	5752	2	Companhia dos Caminhos de Ferro Portugueses	Lisbon, Portugal	Wrote letter and made delivery
1- 9-47	General Mtrs. Overseas Oper.	New York, N. Y.	342-S, 2581-T	4 each	Unknown	Unknown	Shipped as instructed
			3187, 3876, 16143	4 each			
			28155, 49368	4 each			
			1751, 3382-T	6 each			
			2795-T	2			
			14118	15			
			14138-A, 1729	24 each			
			09075	5			
			3320, 14274, 14276	12 each			
			15250	18			
8-26-46	General Motors Overseas Oper.	New York, N. Y.	799061	50	"	"	
			799135	10			
			799032	6			
			799037	72			
			799076	30			
			799094	12			
			799132	10			
			31520	10			
			44363D	12			
			59412	6			
			799024	6			
			14125-A	10			
			14130	10			
			14138-A	30			
			15112	6			
			16150	6			
			25577	4			
			25580	12			
			25877	20			
			26118	6			
			28155	6			
			31590	10			
			31593	6			
			35175	6			

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4494]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
8-26-46	General Motors Overseas Oper.	New York, N. Y.	478	4	Unknown	Unknown	Shipped as instructed
			480	12			
			482	6			
			1351	6			
			1751	10			
			1779	6			
			1986	6			
			2581-T	6			
			2687	6			
			2689	4			
			2788-T	6			
			3188	12			
			3198	6			
			3199	10			
11-18-46	General Motors Overseas Oper.		113	10			
			449	4			
			495	2			
			495-A	2			
			537	4			
			575	4			
			2689	4			
			3578	4			
			3982	2			
			33281	2			
			42368	2			
			52400	2			
			53176	2			
			55200	2			
			432	4			
			532-A	4			
			572	4			
			2631	4			
			3525	4			
			3920	2			
			33462	2			
			42584	2			
			52618	2			
			53375	2			

[fol. 4495]

9-16-46	General Motors Overseas Oper.	New York, N. Y.	342-S	4	Unknown	Unknown	Shipped as instructed
			1751	6			
			2581-T	4			
			2795-T	2			
			3187	4			
			3382-T	6			
			3876	4			
			14118	15			
			16143	4			
			14138-A	24			
			28155	4			
			09075	18			
			1729	24			
			3320	12			
			14274	12			
			14276	12			
			15250	18			
			49368	4			
9- 4-46	General Motors Overseas Oper.		T-88	150			
			T-113	120			
			482	40			
			1784A	3			
			2689	10			
			3578	10			
			3984	15			
			472-B	50			
			3320	2			
			3920	15			
9- 3-46	General Motors Overseas Oper.		11-BC	10			
			342	50			
			355	15			
			355-X	2			
			387	6			
			395	6			
			462	14			
			482	2			
			755	1			

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4497]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquire or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
7- 8-46	General Motors Overseas Oper.	New York, N. Y.	854	4	Unknown	Unknown	Shipped as instructed
			71750	4			
8-16-46	General Motors Overseas Oper.	"	355	15	"	"	"
			3750	54			
			14276	100			
			26820	7			
			26822	7			
			42362	5			
			447	4			
			594	7			
			3339	3			
			3780	50			
			3782	1			
			33472	3			
			359-S	1			
			394-A	10			
			462	5			
			532-A	12			
			563	1			
			567	1			
5-27-46	General Motors Overseas Oper.	"	33275	100	"	"	"
			399-A	100			
			33472	100			
			394-A	100			
			395	100			
			387	100			
			382	100			
11- 6-46	General Motors Overseas Oper	"	5-BC	50	"	"	"
			6-A	50			
			11-BC	6			
			1729	6			
			1755	2			
			1779	4			
			25820	2			
			25877	2			
			25520	4			
			25580	4			

[fol. 4498]

11- 6-46	General Motors Overseas Oper.	New York, N. Y.	09078	2	Unknown	Unknown	Shipped as instructed
			09195	2			
			14138-A	2			
			14274	2			
4-31-46	General Motors Overseas Oper.	"	42368	2	"	"	"
			53176	2			
			42584	2			
			493	2			
			495-A	2			
			53375	2			
			T-113	6			
			2791-A	4			
			395	4			
			387	4			
11-29-46	General Motors Overseas Oper.	"	1784-A	4	"	"	"
			2791-A	4			
			44156	4			
			44348	4			
4-23-46	General Motors Overseas Oper.	"	28677-T	2	"	"	"
			28622	2			
11-19-46	General Motors Overseas Oper.	"	T-113	100	"	"	"
10-15-45	General Motors Overseas Oper.	"	339	4	"	"	"
			342-S	4			
			387	4			
			395-S	4			
			462	4			
			399-A	4			
			382	8			
			394-A	3			
			4356	3			
8-13-46	General Motors Overseas Oper.	"	387	2	"	"	"
			399-A	6			
			395	2			

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4500]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
10-25-46	General Motors Overseas Oper.	New York, N. Y.	33462	3	Unknown	Unknown	Shipped as instructed
			799008	1			
			799079	2			
			799009	1			
			799065	6			
5-10-46	General Motors Overseas Oper.	"	382-A	100	"	"	"
			387	100			
			394-A	100			
			395	120			
			1729	120			
			1784-A	120			
			2720	100			
			2791-A	120			
			3920	60			
			3982	60			
8-12-46	General Motors Overseas Oper.	"	T-113	600	"	"	"
			387	30			
			395	30			
			399-A	4			
			455	20			
			480	10			
			529	30			
			2685	10			
			2689	30			
			3379	20			
			3875	50			
			3877	40			
			3982	30			
			3984	80			
			33281	20			
			53162	10			
			53176	10			
			52900	30			
			59201-T	50			
			382	10			
			382-A	10			
			394-A	20			
			453-X	50			

[fol. 4501]

8-12-46	General Motors Overseas Oper.	New York, N. Y.	522	30	Unknown	Unknown	Shipped as instructed
			563	10			
			612	4			
			1729	6			
			2631	10			
			3320	20			
			3525	10			
			3820	50			
			3920	50			
			33462	20			
			53387	30			
			55437	10			
			59412	10			
6-17-46	General Motors Overseas Oper.	"	3920	60	"	"	"
			3982	10			
			53176	20			
			53390-D	20			
6-3-46	General Motors Overseas Oper.	"	T-88	50	"	"	"
			T-113	50			
			T-126	10			
			462	5			
			482	10			
			2580	1			
			2689	5			
			2790	1			
			33281	5			
			382	3			
			472-B	10			
			3720	3			
			53375	8			
7-18-46	Amerbel L. A.	Bruxella, Belgium			Amerbel L. A.	Brunelia, Belgium	Referred to B.T. and Francaise Timken
9-25-46	Arabian American Oil Company	San Francisco, California	749,759,742,752	40 each	Unknown	Unknown	We quoted prices

The lower portion of this Exhibit appears in the frame immediately below.

2-13-46	Arabian American Oil Company	"	567	20			
			3984	15			
			33275	20			
			563	20			
			3920	15			
			09196	10			
			33462	20			
[fol. 4484]							
6-6-46	Arabian American Oil Company	San Francisco, California	432	16	Unknown	Unknown	Shipped as instructed
			532-A	8			
			563	8			
			572	12			
			592-A	16			
			4367	4			
			5582	4			
			438	16			
			536	8			
			570	8			
			581	6			
			596	16			
			4320	4			
			5521	4			
2-11-46	Arabian American Oil Company	"	835101	60	"	"	"
			691241	60			
			856859	40			
			856861	40			
			619395	40			
			688474	40			
10-25-45	Arabian American Oil Company	"	5361	1	"	"	"
			332	20			
			1729.	10			
			790056	30			
			336	20			
			355	4			
			368-A	20			
			447	2			
			560	50			
			5361	2			
			14124	10			
			41125	10			
			362-A	10			
			563	2			
			5720	5			
			09194	35			

			09080	4			
			74850	8			
			632D	3			
			563	6			
[fol. 4486]							
7- 1-46	Arabian American Oil Company	San Francisco 4, California	14117	20	Unknown	Unknown	Shipped as instructed
			799056	30			
			799115	10			
5-20-46	Arabian American Oil Company	"	07098	50	"	"	"
			07204	50			
10-25-45	Arabian American Oil Company	"	563	2	"	"	"
			336	20			
			339	5			
			342-S	15			
			368-A	10			
			559	13			
			560	50			
			566	5			
			1779	10			
			09078	10			
			12175	10			
			14124	10			
			15119	5			
			41125	10			
			332	16			
			362	10			
			472	10			
			552	10			
			1729	10			
			572	4			
			5320	4			
			09194	35			
			14276	10			
			15250	5			
			41286	5			
			799053	10			
			799095	5			
			799055	20			
9-24-46	Arabian American Oil Company	"	783	1	"	"	"
[fol. 4487]							
10- 3-45	Arabian American Oil Company	San Francisco 4, California	336	20	Unknown	Unknown	Shipped as instructed
			337	2			
			368-A	10			
			376	4			
			560	50			
			783	1			
			5361	5			
			362-A	10			
			374	4			
			563	2			
			1729	10			
			572	4			
			5720	5			
10-31-46	Arabian American Oil Company	"	T-163	12	"	"	"
			462	8			
			453-A	8			
11-11-46	Arabian American Oil Company	"	799065	20	"	"	"
8-15-46	Arabian American Oil Company	"	559	2	"	"	"
			332	4			
			799065	20			
12-20-46	Arabian American Oil Company	"	53176	13	"	"	"
			799135	6			
			53387	6			
5-24-46	Arabian American Oil Company	"	749	40	"	"	"
			759	40			
			742	40			
			752	40			
9-24-46	American Smelting & Refining Co.	New York, N. Y.	568	12	"	"	"
			563	12			
11- 6-46	Colony Shipping Co., Inc.		567	5	"	"	"

			394	30			
			394	20			
[fol. 4489]							
7- 8-46	Colony Shipping Co., Inc.	New York, N. Y.	414	10	Unknown	Unknown	Shipped as instructed
			432	5			
			563	15			
			1729	30			
			2523	20			
			2736	20			
			3720	5			
			26283	5			
			33462	20			
			35326	25			
			44348	10			
			49520	25			
			59412	20			
			799047	20			
			799056	10			
			799079	10			
			799085	15			
			799080	10			
			799055	10			
2-18-46	Joseph Tamraz & Files	Beyrouth, Lebanon, Syria	T-82	30	"	"	"
			T-95	50			
			T-126	50			
			385	5			
			449	5			
			566	20			
			2687	10			
			2689	10			
			799003	100			
			799004	100			
			799061	50			
			382	30			
			432	5			
			563	20			
			2620	20			
			2631	20			
			799065	40			
[fol. 4490]							
5- 9-46	Tata Incorporated	New York, N. Y.	560	2	Unknown	Unknown	Shipped as instructed
			740	2			
			552-D	1			
			742-D	1			
3-21-46	Tata Iron & Steel Co., Inc.	"	NA-82576	2	"	"	"
1-17-46	Tata, Inc.	"	82951	1	"	"	"
			T-702	2			
			938	6			
			932	6			
7-24-46	Union Miniebi Du Haut-Katanga	Elisabethville Belgian, Congo	07098	1000	"	"	Released to Atlantic Overseas Corp. as Instructed
					"	"	Shipped as instructed
7-29-46	Union Miniebi Du Haut-Katanga	"	6461	2			
			82576	2			
			6420	2			
			82950	2			
1-17-46	Union Miniebi Du Haut-Kalanga	"	3199	2	"	"	"
			3490	2			
			3120	2			
			3420	2			
8- 5-46	Hojgoard & Schultz	Reykjavik, Iceland	898	2	"	"	"
			71450	2			
			892	2			
			71750	2			
9-16-46	Industrial Sales	New York, N. Y.	4368	4	"	"	"
2-13-46	Industrial Sales	"	2689	4	"	"	"
			3578	4			
			3982	4			
			5578	4			
			382	4			
			394-A	6			
			1719	6			
			2720	6			

			25877	20			
			26118	6			
			28155	6			
			31590	10			
			31593	6			
			35175	6			
[fol. 4493]							
8-26-46	General Motors Overseas Oper.	New York, N. Y.	43125	3	Unknown	Unknown	Shipped as instructed
			799005	30			
			799008	20			
			799038	30			
			799047	30			
			799052	30			
			3382-T	4			
			07098	10			
			354	10			
			382	10			
			383	60			
			472-A	6			
			532-A	6			
			552-A	6			
			563	4			
			1329	12			
			1730	6			
			2720	24			
			3120	50			
			3420	6			
			3720	10			
			3820	6			
			02820	6			
			09195	6			
			14274	24			
			16284	6			
			25520	12			
			25523	4			
			25820	12			
			25821	12			
			342	12			
			344	4			
			358	6			
			359-S	6			
			387-A	60			
			390	6			
			395	10			
			395-S	10			
			397	6			
			455	6			

	Overseas Oper.		355	15		
			355–X	2		
			387	6		
			395	6		
			462	14		
			482	2		
			755	1		
[fol. 4496]						
9– 3–46	General Motors Overseas Oper.	New York, N. Y.	757	1	Unknown	Unknown	Shipped as instructed
			466–S	1		
			2788	4		
			3188	2		
			3982	10		
			3984	4		
			14118	2		
			14125–A	2		
			2788	300		
			3780	200		
			31593	6		
			36137	4		
			26881	150		
			44156	6		
			354–A	15		
			453–A	6		
			382	6		
			592–A	5		
			742–B	4		
			3120	1		
			752	2		
			3720	200		
			15250	4		
			26822	200		
			33462	4		
			36300	4		
			44348	6		
7– 8–46	General Motors Overseas Oper.	New York, N. Y.	679	10		
			15578	8		
			2788	200		
			385	200		
			539	30		
			639	10		
			861	4		
			672	10		
			15523	8		
			2720	200		
			383	200		
			532–X	30		

8-13-46	*General Motors Overseas Oper.		387	4			
			395-S	4			
			462	4			
			399-A	4			
			382	8			
			394-A	3			
			4356	3			
			387	2			
			399-A	6			
			395	2			
[fol. 4499]							
8-13-46	General Motors Overseas Oper.	New York, N. Y.	3982	3	Unknown	Unknown	Shipped as instructed
			14137-A	2			
			26884	4			
			41125	18			
			44150	3			
			382	2			
			394-A	12			
			3720	6			
			3920	3			
			16284	6			
			33472	6			
			41286	18			
			44348	2			
			5-BC	5			
11- 8-46	General Motors Overseas Oper.		6-A	5			
			389-A	6			
11- 8-46	General Motors Overseas Oper.		02878	18			
			65321	6			
			14119-A	12			
			02872	3			
			25580	6			
			14137-A	18			
			28985	4			
			65385	6			
			382	6			
			28920	3			
			25520	6			
			09195	12			
10-25-46	General Motors Overseas Oper.		5-BC	25			
			3877	2			
			3982	3			
			16143	1			
			33281	3			
			6-A	25			
			3820	2			
			3920	3			
			16284	1			

7-18-46	Amerbel L. A.	Bruxella, Belgium	53375	8	Amerbel L. A.	Brunella, Belgium	Referred to B.T. and Francaise Timken
9-25-46	Arabian American Oil Company	San Francisco, California	749,759,742,752	40 each	Unknown	Unknown	We quoted prices
[fol. 4502]							
7-23-46	Arabian American Oil Company	San Francisco, California	453-A, 462	8 each	Unknown	Unknown	Returned their form with information requested.
			T-163	12	"	"	"
7- 2-46	Arabian American Oil Company	"	612, 3920 Cups	50 each			
			49520 Cups	100			
			41286, 3720 Cups	160 each			
			592-A, 493 Cups	80 each			
			5520	300			
			615 Cones	50			
			3979, 47580 Cones	100 each			
			41125, 3780 Cones	160 each			
			594, 498 Cones	80 each			
			5557 Cones	300			
12-18-45	Arabian American Oil Company	"	14276, 14130	8 each	"	"	Wrote letter and returned form quoting prices.
4-23-46	Avequipo, Inc.	New York, N. Y.	03062	50	"	"	Wrote letter and returned form quoting price and shipment.
7-14-45	P. F. Baillet	"	14125-14276	25 each	"	"	Wrote letter and advised to make up new order shipment too large.
			09074, 09174, 387/383	25 each			
			3982/3920, 395/394CS	25 each			
			14138/14276	25 each			
			2525/2523, 15118/15250	10 each			
			387/382	100			
			RA-99000	200			
			RA-93344	50			
			158-R&RA-94622 Needle	500 each			
			26 and 25 front wheel	100 each			
			NRA-307 & SRA-406 Ball Bearing	10 each			
			2788, 14125, 44363 49585, 49520, 2720 14276, 9194, 1755, 3984, 1729, 3920	50 each 100 each			
			387	150			
			382, 383	75 each			
			A-4059, A4138	20 each			

[fol. 4503]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquire or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
3-19-46	South African Iron & Steel Industrial Corp. Limited	New York, N. Y.	861, 854	6 each	South African Iron & Steel Industrial Corp.	South Africa	Wrote letter with information requested price and time of delivery.
6-18-46	Industrial Sales Corp.	"	07098	1000	Unknown	Unknown	Wrote letter and quoted price.
3-27-46	Industrial Sales Corp.	"	6461, 6420 82576, 82950	2 each	"	Belgian Congo	Wrote letter with information requested.
3-27-46	Industrial Sales Corp.	"	335, 3320 537, 532 3780, 3720	100 each 6 each	"	"	"
3-27-46	Industrial Sales Corp.	"	335, 537, 3320 532-A	100 each	"	"	"
1-18-46	Liebermann Waekhli & Co.	"	Steel Balls 1/8" 5/32" 3/16" 1/4" 5/16"	10,000 10,000 10,000 5,000 1,000	"	"	Wrote letter making no quotations since articles are not of our manufacture.
11- 5-46	Nord International Corp.	"	SKF #6202	2,000	"	"	"
12-25-46	The Oil Well Engineering Co., Ltd.	"	42375, 42584	2 each	"	"	Wrote letter stating information requested.
2-27-46	The Oil Well Engineering Co., Ltd.	"	Order #NY/D'ARCY 97/45/1		Oil Well Co.	England	Wrote letter informing them merchandise on this order unavailable due to labor difficulties.

[fol. 4504]

11-27-45	The Oil Well Engineering Co., Ltd.	New York, N. Y.	NA-67885 SW 67820-D	12 6	Unknown	Unknown	Wrote letter and sent cable cancelling order.
12- 4-45	Oy Suomen Autoteollesuus AB	Helsingfors, Finland	479 580 SKF463 SKF3193 472A 572 SKF4520 SKF3120-A	169 330 329 542 486 492 598 530	Oy Suomen Autotellesuus	Helsingfors, Finland	Wrote letter and quoted prices.
8-26-46	Joseph Tamraz & Tils	Beyrouth, Liban	570 3757 35175 333 799087 35326 35175 633 799054	10 3 25 3 15 25 20 3 50	Joseph Tamraz & Til	Beyrouth, Liban	Wrote letter quoting brgs. manufactured and shipped by TRB and distributor referred to B.T.
12-17-46	Tata, Inc.	New York, N. Y.	96900, 96140	8 each	Unknown	Unknown	Wrote letter regarding information requested.
10- 1-46	Jacques J. Van Aubel	New York, N. Y.	Roller Brgs. for molding machine	16	Belgian Congo	West Africa	Wrote letter advising bearings are not of our manufacture.
6-13-46	Van Cleef Bros.	Chicago, Ill.	Information of products to be representative by—		Andres Garcia	Havana, Cuba	Wrote letter advising no record of having done business with them.

The lower portion of this Exhibit appears in the frame immediately below.

[lof. 4506]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
9-24-45	American Arabian Oil Company	San Francisco, California	6379	6	Unknown	Unknown	Request Acknowledged
			69354	4			
			71450	4			
			74500	8			
9-10-45	Arabian American Oil Company	San Francisco, California	368-A	10	"	"	Request for quotation granted.
			376	4			
			560	50			
			783	2			
			5361	5			
			362-A	10			
			374	4			
			563	2			
			1729	10			
			572	4			
			5720	5			
			336	20			
			337	2			
9- 5-45	Arabian American Oil Company	"	332	20	"	"	"
			362-A	10			
			472	10			
			562-A	10			
			563	2			
			1729	10			
			572	4			
			5320	4			
			09194	35			
			14276	10			
			15250	5			
			41286	5			
			799055	20			
			799065	20			
			336	20			
			339	5			
			342-S	15			
			368-A	10			
			Each Timken Cones?	15			

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4509]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
1- 4-46	Arabian American Oil Co.	San Francisco, California	39250	10	Unknown	Unknown	Packed and awaiting receipt of shipping instructions.
			52400	6			
			53176	3			
			332	30			
			362-A	5			
			382	5			
			472	25			
			522	100			
			552-A	78			
			1729	15			
			09194	60			
			14276	17			
			15250	5			
			39412	3			
			52637	2			
			53387	3			
			59412	1			
			64700	1			
			71750	5			
			71750-13	2			
			799056	90			
			799095	4			
			799115	84			
			799135	2			
			799055	25			
			799116	90			
11- 2-45	Arabian American Oil Co.	San Francisco, California	799133-DC-792305	4	"	"	Shipped as instructed
10-30-45	John Dunn & Son	New York, N. Y.	355	1	"	"	"
			354-A	1			
7- 2-45	John Dunn & Son	"	336	2	"	"	"
			342	3			
			368	4			
			375	4			
			395	2			
			535	1			
			537	1			
			2788	2			

[fol. 4512]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
7-19-45	General Motors Overseas Oper.	New York, N. Y.	44156-44162 53176-53387	6-6-1-1	General Motors Overseas Oper.	New York, N. Y.	Quoted prices. Shipped as per instructions.
7-17-45	General Motors Overseas Oper.	"	3525-3578 2631-2689	1-2-1-2	"	"	Quoted prices. Shipped as per instructions.
8- 9-45	B. M. Hude	New York, N. Y.	A-2031 HCC A-2126	1 each	Unknown	Oslo, Norway	Shipped per instructions
9- 7-45	Madagascar Agencies	New York, N. Y.	237-233 319-313	30-15-10-6	Downtown	New York, N. Y.	Quoted prices. Shipped as per instructions
			385-383 397-393	36-15-20-30	Storage		
			465-454 749-742 1380-1331 1779-1729	50	Warehouse		
			29177-29334	12 each	Unknown	Unknown	Shipped as per instructions
9- 6-45	Porcello Fieen & Co., Inc.	New York, N. Y.	3780-3720-3578 3525		"	"	"
8-24-45	Pan American World Airway	New York, N. Y.	3476-3420	2 each	Pan American Airway	N. Y.	Acknowledged receipt of purchase order
10- 1-45	Robert W. Hunt Company	New York 7, N. Y.	48309		Union Miniere Ne Homiet Katango	Elizabethville Belgian Congo	Quoted prices
9- 5-45	Colony Shipping Company	New York 5, N. Y.	Roller Bearing	2 cases	Egell Velhjalmsson	Reykjavik Iceland	Shipped as per instructions
10-19-45	Colony Shipping Company	"	Roller Bearings 799115 45 799116 17520 14276-D	1 case 100-45-20-15	"	"	"
12-14-45	Colony Shipping Company	"	Roller Bearings 18590 2520	1 case 100 each	"	"	"
2- 7-47	Robert W. Hunt Co. Engineer	New York 7, N. Y.	4050-25 mm.	—	Union Miniere Katango	Elizabethville Belgian Congo	Didn't have that type of bearing.

[fol. 4513]

2-10-47	Arthur B. Larsen	Elizabeth 3, N. J.	30307 30209	—	A client in Hungary		Referred them to British affiliate British Timken, Ltd., Birmingham, England
12- 2-46	Oil Well Engineering Co.	New York 4, N. Y.	875-K 832	6-6	Oil Well Co.	New York, N. Y.	Gave quotation of prices on 835-832 instead of 875K which they ordered Shipped 6-835 6-832
1-29-47	Robert W. Hunt Co.	New York 7, N. Y.	532A 537	60-60	Union Miniere Katango	Elizabethville Belgian Congo	Wrote for letters of credit also asking for export license. Sent copies of invoice to Norton Lilly & Co. as per shipping instructions. Sent sight draft and letters of credit. Sent one case bearings to Norton Lilly & Co. for shipment to client.
12-30-46	Dodge & Seymour Ltd.	New York 7, N. Y.	333 570 633 35326-799054 799087	3-10-3 25-50-15	Messrs. Joseph Tamros & Til	Beyrouth Liban	Shipped as instructed
1- 6-47	Tata, Inc.	New York 4, N. Y.	96140 96900	8-8	Tata, Inc.	Bombay, India	Shipped as instructed
12-26-46	General Motors Overseas Oper.	New York 19, N. Y.	T-88 453-X	100-15	Unknown	Unknown	"
			2631 2791-A	15-2-10			
			3920 3525	10			
10-29-46	General Motors Overseas Oper.	"	T-113 453X 462	24-36-36	"	"	"
			2631 2687 3320	50-50-50			
			3383 3984 3920	50-36-42			
			3982 53176 53390-D	6-12-12			

The lower portion of this Exhibit appears in the frame immediately below.

[fol. 4515]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
1- 9-47	General Motors Overseas Oper.	New York, N. Y.	390-A	50	Unknown	Unknown	Shipped as instructed
			3767	100			
			33472	100			
			33275	100			
			26824	50			
			26883	50			
			26884	50			
12-30-46	General Motors Overseas Oper.	"	482	2	"	"	"
			472-A	2			
			498	1			
			493	1			
			3578	4			
1-20-47	General Motors Overseas Oper.	"	453-X	3	"	"	"
			455	3			
			3820	3			
			3875	3			
			59201-T	3			
12-24-46	General Motors Overseas Oper.	"	09075	13	"	"	"
1-28-47	General Motors Overseas Oper.	"	332	232	"	"	"
			339	232			
			342-S	71			
			382	10			
			387	6			
			387-A	10			
			394-A	28			
			399-A	22			
			453-X	8			
			462	8			
			3920	215			
			3982	158			
			14137-A	103			
			53176	178			
			53390-D	144			

[fol. 4518]

1. Date	2. Name of Inquirer or Buyer	3. Address of Inquirer or Buyer	4. Type of Anti-Friction Bearings Inquired For or Ordered	5. Quantity Anti-Friction Brgs. on Inquiry or Order	6. Name of Intended User	7. Address of Intended User	8. Disposition of Order or Inquiry
9-16-46	General Motors Overseas Oper.	New York, N. Y.	17520	180	Unknown	Unknown	Shipped as instructed
			18720	6			
			24721	5			
			25523	2			
			25820	5			
			33472	5			
			52618	10			
			65500	5			
			18790	6			
			24780	5			
			26880	6			
			28580	6			
			31593	3			
			52400	8			
			65200	3			
			1A3044-1A3045-32A	10			
9-16-46	General Motors Overseas Oper.	"	3188-A	20	"	"	"
			09074	50			
			14138-A	12			
			15118	30			
			35175	5			
			A4138	20			
			09196	50			
2-5-47	General Motors Overseas Oper.	"	339	2	"	"	"
			362	10			
			365	5			
			372	10			
			383	200			
			385	6			
			394	30			
			413	3			
			422	2			
			439	22			
			473	18			
			529	25			
			532-A	10			
			623	12			
			645	20			

The lower portion of this Exhibit appears in the frame immediately below.

12-17-46	Tata, Inc.	New York, N. Y.	30300, 30730	8 each	Unknown	Unknown	Wrote letter regarding information requested.
10- 1-46	Jacques J. Van Aubel	New York, N. Y.	Roller Brgs. for molding machine	16	Belgian Congo	West Africa	Wrote letter advising bearings are not of our manufacture.
6-13-46	Van Cleef Bros.	Chicago, Ill.	Information of products to be representative by—		Andres Garcia	Havana, Cuba	Wrote letter advising no record of having done business with them.
[fol. 4505]							
9- 4-45	American Near East Corp.	New York, N. Y.	Request for catalogue and price list of tapered bearings.	2	Unknown	Unknown	Referred to British Timken
10-15-45	American Arabian Oil Co.	San Francisco, California	6020	100	"	"	Referred to Gardner-Denver Co.
			7339	9000			
			6020	140			
10- 6-45	American Arabian Oil Co.	"	Request for shipping date of material ordered.		"	"	Order to be shipped in approximately two weeks.
12- 5-45	American Arabian Oil Co.	"	Request for catalogue with their reference number	2	"	Philadelphia	Mailed catalogues to Behring Shipping Co.
9-24-45	American Arabian Oil Co.	"	932	8	"	Unknown	Request acknowledged
			1328	4			
			3920	4			
			5520	8			
			6320	6			
			14274	4			
			53387	6			
			71750	4			
			69630	4			
			74850	8			
			477	10			
			527	10			
			528	10			
			537	4			
			567	4			
			623	4			
			643	4			
			685	10			
			779	4			
			938	4			
			941	8			
			1380	4			
			2793	4			
			3982	4			
			14132 (14130)	4			

			336	20			
			339	5			
			342-S	15			
			368-A	10			
			Each Timken Cones?	15			
[fol. 4507]							
9- 5-45	Arabian American Oil Company	San Francisco, California	560	50	Unknown	Unknown	Request for quotation granted
			566	5			
			1779	10			
			07078	10			
			12175	10			
			14117	20			
			14124	10			
			15119	5			
			41125	10			
			799052	10			
			799056	30			
			799095	5			
			799115	10			
			799133	4			
7-19-45	Arabian American Oil Company	"			"	"	"
10-19-45	Asiatic Petroleum Corp.	New York, N. Y.	NA67787-67720	1	"	"	"
10-19-45	Asiatic Petroleum Corp.	"	86100-86669	2	"	"	"
10-19-45	Asiatic Petroleum Corp.	"	99600	2	"	"	"
6-29-45	British Timken	Aston, Birmingham, England	Request for order #4939		"	"	Request for shipment granted.
11- 5-45	Robert W. Hunt Co. Engineer	New York, N. Y.	3490-3420	2	"	"	Request for quotation granted.
7- 5-45	Robert W. Hunt Co. Engineer	"	3199-3120 07098-07204	2	"	"	Order acknowledged. Shipment due in 1-2 weeks.
8-30-45	Import-Export Ind. Inc.	New York, N. Y.	Request for catalogue	2	"	"	Referred to British Timken Ltd.
[fol. 4508]							
8-27-45	Import-Export Ind. Inc.	New York, N. Y.	36305		Unknown	Unknown	Referred to British Timken, Ltd.
10-16-45	Lyddon & Co.	"	SKF-30309	30 units	"	"	Unable to quote—do not manufacture and unable to refer.
			SKF-30310	42 units			
			SKF-30213	20 units			
			SKF-30210	12 units			
9-24-45	R. B. Miller	Detroit, Michigan	5-BC	30	"	"	Quotation made but in future advised to refer to British Timken, Ltd.
			5-BA	30			
			6-A	50			
10-19-45	Oil Well Engineering Co., Ltd.	New York, N. Y.	Single Thrust Ball Bearing	1	"	"	Do not manufacture
10-22-45	Tata, Inc.	"	Request for Booklet	2	"	"	Sent booklets
7-27-45	Arabian American Oil Co.	San Francisco, California	6386	4	"	"	Shipped to Ras Tanura as instructed
12-22-45	Arabian American Oil Co.	San Francisco, California	14138-A	10	"	"	Packed and awaiting receipt of shipping instructions
1- 4-46	Arabian American Oil Co.	"	326	4	"	"	"
			342-S	15			
			368-A	5			
			387	15			
			480	25			
			527	130			
			559	15			
			560	90			
			566	3			
			1779	11			
			09074	68			
			09078	7			
			14117	30			
			14124	10			
			15119	4			

			368	4			
			375	4			
			395	2			
			535	1			
			537	1			
			2788	2			
[fol. 4510]							
7- 2-45	John Dunn & Son	New York, N. Y.	368-A	4	Unknown	Unknown	Shipped as instructed
			3876	1			
			3982	4			
			15100	1			
			15118	8			
			15120	1			
			25580	1			
			26882	4			
			44150	1			
			332	2			
			362	8			
			2720	2			
			3320	6			
			3720	4			
			3920	6			
			3821	1			
			15250	9			
			25520	1			
			26820	4			
			532	2			
			44348	1			
10-11-45	General Motors Overseas Oper.	New York, N. Y.	387	130	"	"	"
			394-A	130			
			44348	70			
			44150	70			
			382-A	130			
11- 2-45	General Motors Overseas Oper.	"	T-113	10	"	"	"
			65390	4			
			65320	4			
9-21-45	General Motors Overseas Oper.	"	385	500	"	"	"
			2788	500			
			383	500			
			2720	500			
[fol. 4511]							
9-26-45	General Motors Overseas Oper.	New York, N. Y.	T-88	50	Unknown	Unknown	Shipped as instructed
			T-113	60			
			462	4			
			482	25			
			2689	5			
			3382	1			
			3578	3			
			3982	2			
			3984	4			
			53176	5			
			472	25			
			2631	5			
			3320	1			
			3920	5			
			5337	2			
7-17-45	General Motors Overseas Oper.	New York, N. Y.	T-382, T-453X	1-2-1-1-1	General Motors Overseas Oper.	New York, N. Y.	Quoted prices and shipped as per instructions
			T-394A, T-395	1-4-2-2			
			T-387, T-3920	1-1-2-1-1			
			T-3984, T-462				
			T-33462, T-33281				
			T-3982, T-563				
			T-566				
12- 7-45	General Motors Overseas Oper.	"	438, 432, 537	4 each	"	"	Quoted prices shipped
			532				Shipped as per instructions
8- 7-45	General Motors Overseas Oper.	"	566, 55200, 563	15-10-15	"	"	Shipped as per instructions
8- 6-45	General Motors Overseas Oper.	"	T-113, 3578, 2689	40-40-40-6-6	"	"	Quoted prices
			382-A, 387, 394-A	6-6-6-6-6-6-6			Shipped as per instructions
			44150, 44348, 33462	4-2-6-6			
			33281-3525-2631				
			33275-399A-41125				
			41286				

12-20-46	General Motors Overseas Oper.	"	2631 2791-A	10 2 10	"	"	"
			3920 3525	10			
			T-113 453X 462	24-36-36			
10-29-46	General Motors Overseas Oper.	"	2631 2687 3320	50-50-50			
			3383 3984 3920	50-36-42			
			3982 53176 53390-D	6-12-12			
[fol. 4514]							
12-20-46	General Motors Overseas Oper.	New York 19, N. Y.	2791-A 1784-A 1729 2720 395 387 394-A 382	10-10-10-10 6-4-6-6	Unknown	Unknown	Shipped as instructed
			532-X 539 21-BC	50-60-50	"	"	Shipped as per special instructions
10-17-46	General Motors Overseas Oper.	"	472 09196	5-14	"	"	Shipped as per instructions
9-19-46	General Motors Overseas Oper.	"	T-113 399-A 1729 33275 41125 41286 44150 44156 44348	100-10-50 6-12-20-50 10-30			
					"	"	"
9-26-46	General Motors Overseas Oper.	New York, N. Y.	799072	100			
			799076	100			
			799061	300			
			799065	300			
			472	10			
			482	15			
			3120	1			
			6280	6			
			6320	5			
			T113	25			
8-13-46	General Motors Overseas Oper.	"	382	80	"	"	"
			387-A	70			
			387	30			
			394-A	80			
			462	50			
			453-X	50			
			399-A	50			
1-20-47	General Motors	"	565	3	"	"	"
1-17-47	General Motors Overseas Oper.	"	3877	4			
			332	50			
1- 9-47	General Motors Overseas Oper.	"	3776	50			
			41286	50			
			41125	50			

			3920	215			
			3982	158			
			14137-A	103			
			53176	178			
			53390-D	144			
[fol. 4516]							
9-27-46	General Motors Overseas Oper.	New York, N. Y.	T88	150	Unknown	Unknown	Shipped as instructed
			462	10			
			482	10			
			2580	2			
			2685	6			
			53176	5			
			394-A	1			
			472-A	6			
			2631	10			
			3525	12			
10-29-46	General Motors Overseas Oper.	"	T113	500	"	"	"
			3920	10			
			3982	60			
			53176	32			
			53390-D	10			
8- 2-46	General Motors Overseas Oper.	"	339	10	"	"	"
			387	10			
			395	10			
			2689	10			
			3578	10			
			3982	10			
			3776	10			
			16150	10			
			33275	10			
			332	15			
			382	10			
			394-A	10			
			2631	25			
			3525	20			
			3920	10			
			33472	10			
			44150	25			
8- 9-46	General Motors Overseas Oper.	"	15118	400	"	"	"
			09074	400			
[fol. 4517]							
9-16-46	General Motors Overseas Oper.	New York, N. Y.	336	36	Unknown	Unknown	Shipped as instructed
			440	20			
			463	2			
			465	45			
			536-T	10			
			581	40			
			623	5			
			644	5			
			645	10			
			685	10			
			740	52			
			02474	8			
			2554	28			
			2585	12			
			2586	6			
			2790	2			
			2796	8			
			2984	6			
			3387	10			
			3585	10			
			3779	7			
			3876	1			
			A6067	50			
			6463	18			
			15100	20			
			17580	200			
			14	6			
			36	3			
			02420	10			
			2732	4			
			2736	6			
			2925	6			
			3520	2			
			3925	10			
			A6157	40			
			15251D	10			

			439	22			
			473	18			
			529	25			
			532-A	10			
			623	12			
			645	20			
[fol. 4519]							
2- 5-47	General Motors Overseas Oper.	New York, N. Y.	685	20	Unknown	Unknown	Shipped as instructed
			1328	10			
			1351	5			
			1380	30			
			2530	15			
			2578	10			
			2581	50			
			2685	200			
			2688	6			
			2786	6			
			2787	2			
			3320	150			
			3476	10			
			3520	50			
			3578	240			
			3579	20			
			3876	2			
			A-4059	100			
			4320	20			
			A-6067	50			
			A-6157	60			
			00050	12			
			14123-T	36			
			14276-D	10			
			15251-D	20			
			16143	5			
			16284	24			
			17244	4			
			24721	12			
			25520	30			
			25877	50			
			26283	5			
			28738	2			
			33281	60			
			35179	15			
			44363-D	100			
			53387	40			
			69354	3			
			71450	12			
			72487	2			
[fol. 4520]							
1-27-47	General Motors Overseas Oper.	New York, N. Y.	T-113	1200	Unknown	Unknown	Shipped as instructed
			2631	1200			
			2687	1200			
			3383	1200			
			3320	1200			
2- 3-47	Arabian American Oil Company	San Francisco, California	799055	25	"	"	"

[fol. 4521] PLAINTIFF'S EXHIBIT 143

January 19, 1945.

Mr. Ibrahim Tascioglu, P. O. Box 1086, Istanbul, Turkey.

DEAR SIR:

We acknowledge with thanks receipt of your letter of November 16th in which you have expressed an interest in the procurement of certain types of ball bearings.

Our company in the United States do not manufacture ball bearings; however, our associate company, British Timken Limited of Birmingham, England manufacture ball bearings and particularly the adapter type which you are interested in obtaining for transmissions and pillow blocks.

Additionally, the British Timken company handle the distribution of our tapered roller bearings as well for Turkey so we would suggest you contact them.

Very truly yours, The Timken Roller Bearing Company, —— ——, General Manager, Foreign Division.

H. C. Sauer: gm

[fol. 4522] PLAINTIFF'S EXHIBIT 143-A

Ibrahim Tascioglu, Istanbul—Export-Import, Electricity, Mines, Supplies for Public Works, Installations et Commissions—Codes: Bentley's Second, Rudolf Mosse.

Istanbul, Galata, Voyvoda Caddesi 84
Cable Address: E S E R O
Post Office Box: 1086
Telephone: 40782

November 16, 1944.

The Timken Roller Bearing Co., Canton, Ohio, U. S. A.

GENTLEMEN:

Indebted for your address to the Thomas' Register of American Manufacturers for the year 1938, I beg to inform

you that I require the transmission bearings as follows, from the S. K. F. serial number S 1500:

S 1505	150 pieces	S 1513	200 pieces
1506	150 pieces	1515	100 pieces
1507	250 pieces	1516	100 pieces
1508	150 pieces	1517	100 pieces
1509	250 pieces	1518	50 pieces
1510	150 pieces	1519	50 pieces
1511	250 pieces	1520	30 pieces
1512	100 pieces	1522	30 pieces

Please quote for these bearings separately with rollers and without rollers and send me the respective catalogues.

If you are manufacturing the following S. K. F. serial numbers in millimetres:

1.200, 1.300, 13.300, 10.400, 2.200, 2.300, 1.500, 1.600, 2.500, 2.600, 6.200, 6.300, 6.400, R, RL, E, 3.200, 3.300, 21.300, 22.200, 21.600, 22.500, NU, NJ, N, 30.200, 31.300, 32.200, 32.300,

please send me the respective catalogues with price lists.

Please note that I can do a great — of commerce with you on this article, if your prices are acceptable.

Looking forward to the pleasure of hearing from you, I remain,

Yours very truly, Ibrahim Tascioglu.

[fol. 4523] PLAINTIFF'S EXHIBIT 144

April 16, 1945.

France-Auto, Boulevard de Paris, Casablanca, Morocco, N. Africa.

GENTLEMEN:

This is in reference to your letter of March 8th in which you advise that your order bearing "Shipping Mark 204-106" is somewhere in the United States for a determination as it is to be filled under Lend-Lease or through commercial order.

We will endeavor to find out just how this order is being processed and if under Lend-Lease purchased through the French Mission in the United States, we can handle it.

In the event it becomes a commercial order, we will forward it to the British Timken Company in Birmingham, England, for execution as they supply our product in your country.

Very truly yours, The Timken Roller Bearing Company. —— ——, General Manager, Foreign Division.

H. C. Sauer: gm

[fol. 4524] TRANSLATION

Business Publishers International Corporation
330 West 42nd Street, New York, N. Y.

France-Auto

Boulevard de Paris, Casablanca

Morocco, N. Africa,
March 8, 1945.

Air Mail

The Timken Roller Bearing Company, Canton, Ohio.

GENTLEMEN:

We have again been authorized to send orders to our suppliers in the U. S. A. for separate parts practically in the same manner as we did formerly, that is to say under "lend-lease", with shipment through the French and American Authorities.

Attached herewith you will find copy of the order which we have established in your name and as you will note it bears the reference "Shipping Mark 204-106", and this reference must appear on everything connected with this order.

However, the responsible Authorities have advised us that this order temporarily passed under "lend-lease", might eventually become a direct order if certain agreements now being negotiated are carried out. Therefore you will note that the party to whom the goods is destined is no longer given as "Importateurs de l'automobile du Maroc" (Automobile Importers of Morocco), or in other words the Asso-

ciation, but the name of our own company appears which becomes therefore your direct purchaser.

We do not know the exact terms on which this new order forwarded for the second semester of 1945 will be executed, but we have considered it advisable to forward to you the attached copy and to point out to you the situation as it is at the present time.

We request you therefore, to endeavor to ascertain the terms for the eventual execution of this order at your end, and would it be possible for you to advise us by an early mail how your Government in America proposes to handle this, as perhaps you would be able to give us more precise information than what we have given you above.

We would also like you to try to give us a definite idea of the balance that you are to deliver to us on our preceding orders, and for your information, we will say that we are just now receiving the first part of the orders that we sent you for the second semester of 1944.

If you could let us know the status of the orders of the first semester of 1945 and finally the balance to be delivered [fol. 4525] on the preceeding orders, we would then have some valuable information regarding the supplies of our stock.

We thank you in anticipation for all that you may be able to do for us along these lines, and awaiting an early reply from you, we remain,

Yours very truly, France-Auto.

[fol. 4526] Specification Sheet for Order to Allied Countries

Second Semester of 1945

Country of Destination: Morocco

Destined to: Societe France Auto, 113 Boulevard de Paris, Casablanca, Morocco, N. Africa.

Port of Unloading: Casablanca.

Project: General Supplies.

Shipping Mark 204-106.

Product: Roller Bearings.

Net weight in metric tons: 0.800 ton.

Specifications

Suppliers: The Timken Roller Bearing Co.
Article

Schedule B Quantity Net Weight

(For items see original order.)

(Translator's Note): On second page of order the paragraph in English is a translation of the French paragraph appearing immediately above it.

[fol. 4527] France-Auto
Boulevard de Paris, Casablanca

Morocco, N. Africa, March 8, 1945.

Air Mail

The Timken Roller Bearing Company
Canton, Ohio

Gentlemen:

We have again been authorized to send orders to our suppliers in the U.S.A. for separate parts practically in the same manner as we did formerly, that is to say under "lend-lease," with shipment through the French and American authorities.

Attached herewith you will find copy of the order which we have established in your name and as you will note it bears the reference "Shipping Mark 204-106," and this reference must appear on everything connected with this order.

However, the responsible Authorities have advised us that this order temporarily passed under "lend-lease," might eventually become a direct order if certain agreements now being negotiated are carried out. Therefore you will note that the party to whom the goods is destined is no longer given as "Importateurs de l'automobile du Maroc" (Automobile Importers of Morocco), or in other words the Association, but the name of our own company appears which becomes therefore your direct purchaser.

We do not know the exact terms on which this new order forwarded for the second semester of 1945 will be executed, but we have considered it advisable to forward to you the

attached copy and to point out to you the situation as it is at the present time.

We request you therefore, to endeavor to ascertain the terms for the eventual execution of this order at your end, and would it be possible for you to advise us by an early mail how your Government in America proposes to handle this, as perhaps you would be able to give us more precise information that what we have given you above.

We would also like you to try to give us a definite idea of the balance that you are to deliver to us on our preceeding orders, ans for your information, we will say that we are just now receiving the first part of the orders that we sent you for the second semester of 1944.

If you could let us know the status of the orders of the first semester of 1945 and finally the balance to be delivered [fol. 4528] on the *on the* preceeding orders, we would then have some valuable information regarding the supplies of our stock.

We thank you in anticipation for all that you may be able to do for us along these lines, and awaiting an early reply from you, we remain,

Yours very truly, France-Auto.

[fol. 4529] Specification Sheet for Order to Allied Countries

Second Semester of 1945 Country of Destination: Morocco

Destined to: Societe France Auto, 113 Boulevard de Paris, Casablanca, Morocco, N. Africa
Port of Unloading: Casablanca
Project: General Supplies
Shipping Mark: 204-106
Product: Roller Bearings
Net Weight in metric tons: 0.800 ton

Specifications

Suppliers: The Timken Roller Bearing Co.

Article Schedule B	Quantity	Net Weight
(for items see original order)		

(Translator's Note): On second page of order the paragraph in English is a translation of the French paragraph appearing immediately above it.

[fol. 4530] France-Auto

Boulevard de Paris, Casablanca, le 8 mars 1945

The Timken Roller Bearing Company
Canton—(Ohio)—U. S. A.

Messieurs,

Nous venons d'être, une fois encore, autorisés à passer à nos fournisseurs des U.S.A. des commandes de pièces détachées pratiquement établies sous la même forme que précédemment, c'est-à-dire selon la formule "prêt-bail" avec transmission par l'intermédiaire des Autorités Françaises et Américaines.

Vous trouverez ci-joint, un exemplaire de l'ordre que nous avons établi à votre intention et qui porte, vous le verrez, la référence "Shipping Mark 204-106" cette référence devant suivre toutes les périgrinations de cette commande.

Toutefois, il nous a été indiqué par les Autorités responsables, que cette commande ainsi passée pour le moment au titre "prêt-bail," pourrait éventuellement et si certains accords qui sont en cours de négociation arrivent à conclusion, devenir une commande directe et c'est pourquoi vous remarquerez que les imprimés mentionnent comme destinataire, non plus les importateurs de l'automobile du Maroc, c'est-à-dire la collectivité, mais bien notre propre Société qui redevient donc, en fait, votre acheteur direct.

Nous ignorons évidemment les modalités exactes selon lesquelles ce nouvel ordre transmis au titre du 2éme semestre 1945, sera éxecuté, mais nous avons cru bon de vous en transmettre la copie ci-jointe et de vous signaler la situation qui nous était faite, pour le moment, de ce point de vue.

Nous vous demanderons donc, si celà vous est possible, de bien vouloir de votre côté, t-cher de connaitre les détails d'exécution éventuelle de ces livraisons, et si par prochain courrier vous pouviez nous dire comment votre Administration, en Amérique, envisage la question, vous nous obligeriez grandement, puisqu'ainsi nous aurians peut-être des précisions plus nettes que celles que nous vous résumons cidessus.

Nous aimerions également à cette occasion, que vous puissiez essayer de faire le point avec nous de ce qui vous reste à nous livrer sur nos précédentes commandes, et pour vous guider, nous vous dirons que nous recevons maintenant

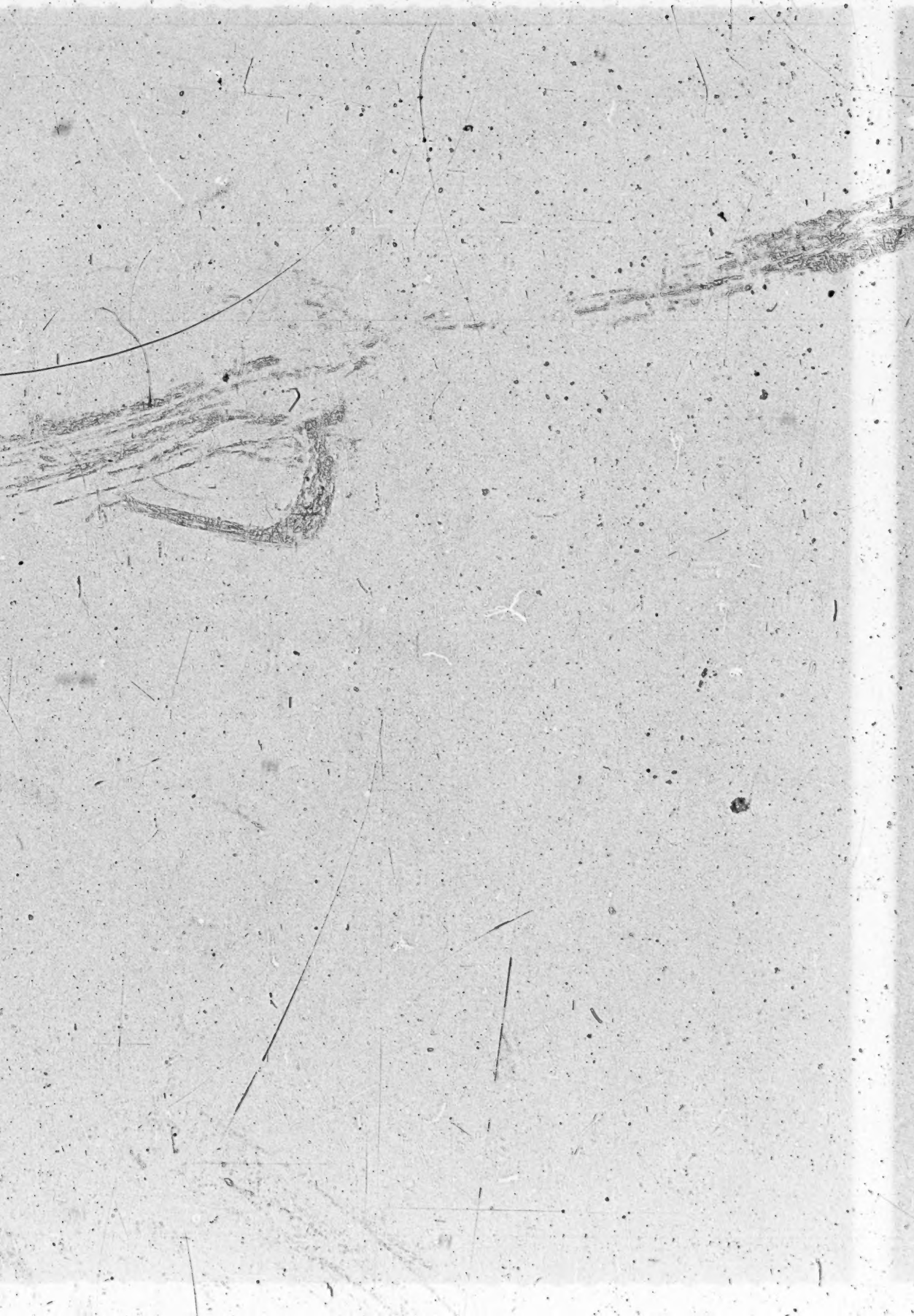
même, une première partie des commandes que nous vous avions transmises au titre du 2ème- semestre 1944.

Si donc vous pouviez nous dire quel est l'état d'avancement des commandes du 1° semestre 1945, et éventuellement ce qui vous reste à livrer sur de précédents ordres, nous aurions des indications précieuses quant à l'articulation de notre stock.

Nous vous remercions par avance de tout ce que vous pourrez faire dans cet ordre d'idée, et dans l'attente de vos promptes nouvelles, nous vous prions d'agréer Messieurs, nos salutations distinguées./.

F. Dorner, Administrateur-délégué.

Here follow 2 photolithographs, side folios 4531, 4532.



1632A

N° MNA :

FICHE de SPECIFICATIONS de COMMANDE aux PAYS ALLIES

2ème Semestre 194[illegible]

Pays Destinataire : MAROC

Société [illegible]

11ème Boulevard de Paris - CASABLANCA -

Port destination : CASABLANCA

Code :

Produit : Approvisionnement Général / General Supply

SHIPPING MARK : Lot-107

Responsable du Produit : Roulements à rouleaux / Roller Bearing

Poid. net en tonnes métriques :

SPECIFICATIONS ou DESIGNATION	Unité	Quantité	Prix
Fournisseur : SKF TIMKEN ROLLER BEARING COMPANY Supplier : - CANTON - (OHIO) U.S.A.			
[illegible] 150	Unité	[illegible]	
[illegible] 150 B			
[illegible] 150 BS			
[illegible] 552			
[illegible] 552 A			
[illegible] 552 X			
[illegible] 552 XB			
[illegible] 594 X			
548			
578			
580 X			
457 X			
8.190			
8.328			
8.850			
8.877			
8.879			
14.138			
14.139 X			
15.100			
15.117 X			
15.118			
16.150			
31.590			
25.580			
25.877			
31.593			
3.982		100	
33.881		100	
3886		25	
26.884		25	

Fait à Rabat, le 7509

Signature

4531

1632 B

[illegible] DE SPÉCIFICATIONS DE DOMICILES AUX PAYS ALLIÉS — N° MNA :

MARQUE DE EXPEDITION — SHIPPING MARK

MAROC

Sixième Semestre 194 0 — Schedule "B"

SPÉCIFICATIONS ou DÉSIGNATION	UNITÉ	QUANTITÉ	POIDS NET
ourettes	[illegible]	[illegible]	
cap			
L.729		[illegible]	
385		300	
822		2	
565		20	
898 A		48	
854 BB		120	
772 X		20	
388		8	
472		6	
493 X		8	
3.130		8	
3.320		4	
3.380		20	
8.320		14	
14.282		20	
15.250		10	
15.244 X		20	
15.280		20	
16.234		2	
31.620		8	
25.820		4	
26.821		4	
3,220		100	
20.492		100	
5.826		25	
24.285		25	

Valeur approximative / Approximate value { $ = I.500.- F.C.B. Usine

Factory

Ce chiffre n'est qu'approximatif et il doit être entendu qu'il n'engage en rien les Gouvernements des Etats-Unis ou de France, pas plus que les Exportateurs ou les Importateurs.

The above value is approximate and it is to be considered that it does not bind in any way the U.S. or French Governments or the manufacturer or importer.

[fol. 4533] PLAINTIFF'S EXHIBIT 145

June 5, 1945.

Rene Amiel
5, Rue Helene
Paris, France

Dear Sir:

With reference to your letter of April 6th in which you desire the distribution of our product, we would suggest you contact our French Timken plant located in Asnieres (Seine) France who handle the distribution for France and French possessions.

Thanking you for your interest,

Very truly yours, The Timken Roller Bearing Co.
——— ———, General Manager, Foreign Division.

H. C. Sauer:gn

[fol. 4534] Rene Amiel

Commission—Importation—Exportation

Paris, the 6th April 1945.

The Timken Roller Bearing Co.,
1025 Cleveland Avenue,
Columbus.

Dear Sirs,

I beg to say that I am indebted for your address to the Chamber of Commerce of your town.

I shall feel obliged to you to let me know if you would be disposed to set up an understanding for your sales in France and French Colonies. In the affirmative case, please point to me your basis terms so that, after examination of same, I could see if it is feasible for me to give you my agreement.

My Banking references are the following: Societe Generale, 89, rue de Clichy, Paris. (———).

Banque Nationale pour le Commerce et l'Industrie, 80, rue de Clichy, Paris.

My Commercial references are at your disposal, but I would say that such concern only Manufacturers with whom I am working for about twenty years.

For your guidance, up to 1940, I exclusively dealt in the export of French goods to English and French Colonies and in the import of raw materials and colonial products. Now, owing to the circumstances, we must modify our way of working, because our country at the end of the war shall be strongly Importer and shall not be able to export for rather a long time. The moment, should be, therefore, most favourable for an understanding which would be certainly profitable for both parties.

Awaiting your good news, with Thanks, and remaining at your disposal for any information you should require from me.

I am, Dear Sirs, Yours faithfully, Rene Amiel.

[fol. 4535] PLAINTIFF'S EXHIBIT 146

July 24, 1945.

Propaganda A. G., fur Handel und Industrie, Bern, Switzerland.

GENTLEMEN:

Reference is made to your letter of June 28th.

The distribution of our product for Switzerland is handled by the British Timken company in Birmingham, England, and we would suggest you direct your correspondence to them.

Thanking you for your interest.

Very truly yours, The Timken Roller Bearing Company, —— ——, General Manager, Foreign Division.

H.C.Sauer:gm.

[fol. 4536] PLAINTIFF'S EXHIBIT 146-A

Propaganda A. G., fur Handel und Industrie, Bern.
Bureau: Christoffelgasse 3.
Telegramme: Propaganda.
Telephon: 2 32 18.
Postcheck: III 2816.

Berne, June 28, 1945.

The Timken Roller Bearing Service & Sales Co., Canton, Ohio, U. S. A

DEAR SIRS:

We are interested in all your industrial products, including those concerned with motors. Please let us know whether you already have an agent in Switzerland or if you would be inclined to appoint our firm as your representative. At the same time we should be glad to have your business terms, together with catalogues and price-lists. We should buy for our own account.

Looking forward to your kind reply,

Yours faithfully, Propaganda A.-G., R. Rhinehardt.

References:

Swiss Banking Association, Berne,
Banque Cantonale de Berne,
Banque Federale S.A. Berne, etc.

[fol. 4537] PLAINTIFF'S EXHIBIT 147-A

JES/JD.
22nd August, 1945.

Copies—FBC; T.R.B.; File.

Messrs. A. Martinez e Hijos Sda de Rsp. Lda., Av. General Paz 341, Cordoba, Argentine.

DEAR SIRS,

We acknowledge receipt of your letter of the 18th June and would advise you that we have passed this over to our associated Company—Fischer Bearings Company Limited, Upper Villiers Street, Wolverhampton—who will reply to it direct.

So far as tapered roller bearings are concerned, you should address any communications in regard to supplies of bearings to our associated Company—The Timken Roller Bearing Company, Canton, Ohio, U. S. A.—who cover the Argentine.

Yours faithfully, J. E. Spear. (signed), General Sales Manager for British Timken Limited, Fischer Bearings Company Limited.

[fol. 4538] PLAINTIFF'S EXHIBIT 147

JES/JD.
22nd August, 1945.

The Timken Roller Bearing Company, Canton 6, Ohio, U. S. A.

DEAR SIRS,

A. Martinez e Hijos Sda de Rsp, Lda., Av. General Paz 341, Cordoba, Argentine.

For your information, we enclose herewith, copy of a letter we have today addressed to the above concern.

Yours faithfully, J. E. Spear, General Sales Manager for British Timken Limited, Fischer Bearings Company, Limited.

Encls.

[fol. 4539] PLAINTIFF'S EXHIBIT 148

Feb. 4, 1937.

Timken Trade-Marks

This memorandum covers a meeting in Canton on February 3, 1937 of Messrs. Gravely, H. H. Timken, Jr., L. M. Klinedinst, R. P. Kelley, W. H. Richardson and G. H. Turner, in which the following decisions were made:

I—*"Timken"*

Our primary trade-mark, being a surname, is not a technical trade-mark and could not be registered until the 1920 Law was passed. The notice "Trade-Mark Reg. U. S. Pat. Off." should be used as often as consistent with good advertising and particularly on cartons.

II—*"TRB CO. in Triangle"*

This is a technical trade-mark and was registered at one time in almost as many countries as "Timken" is now registered. During latter 1928 or early 1929, a decision was made to allow these registrations to expire, presumably to save the expense of re-registration. This mark will be re-registered and registrations renewed in countries where the present potential business warrants. In the event that the present British Timken trade-mark problems are not solved satisfactorily, it might prove valuable to have the mark registered in the countries involved.

III—*"T in Oval"*

The use of this mark will be discontinued because it is not considered good and has not been registered extensively. All registrations will be allowed to expire as they come up for renewal.

IV—*"Timken Bearing Service" and "Timken Bearing Equipped" Symbols*

These symbols are not registrable unless the printed matter is disclaimed which would mean disclaiming and thereby weakening the mark "Timken".

V—*"Gilliam Tapered Roller Bearings"*

This mark is registered only in the United States and expires December 11, 1943. There is now only a small amount of Gilliam bearing replacement business. The registration will not be renewed because the amount of business probably will be negligible upon expiration.

VI—*"Bock"*

Two bearings are now manufactured for replacement in old Caterpillar tractors. U. S. registration expires June 21, 1941 and by that time Bock business probably will be very small. British Timken does not make Bock bearings any more. All registrations will be allowed to expire.

VII—*Cartons*

1. Remove "T in Oval" and "TRBCO in Triangle" from inside of front flap where they are unseen when the carton is closed.

2. Remove "Timken Bearing Service" symbols from both sides and substitute "TRBCO in Triangle" with orange background and registration notice.

[fols. 4540-4561] 3. Remove "Tapered Roller Bearings" from back and use "Timken" alone with registration notice.

4. Remove "Timken Bearing Service" symbol and "This Package Contains" from front and substitute "Timken Cup or Cone" with proper part number.

5. On the back the "Instructions for Mounting and Adjusting Timken Tapered Roller Bearings" should be condensed to be readable on small cartons. The "Caution" to replace a failed cup as well as cone could be reworded for effectiveness and to include the opposite condition.

6. The new logotype could be used on the top with registration notice above or below "Timken".

7. Remove "Patented Nov. 15, 1927" from the top. This notice refers to Buckwalter Patent No. 1,649,285 for the C-Type roll which is the only *single* feature common to *all* Timken bearings. This patent is of questionable validity, and we would not sue for infringement of any of its claims. The sole value of the notice is to permit the collection of damages, which is a remote possibility.

We do not have another patent which covers a feature common to all bearings and much confusion and error would result in printing different patent notices on cartons for various bearings. An incorrect patent notice is illegal.

At present we are using black, white and buff cartons. An effort will be made to effect a standard which will have a better appearance and protect our trade-marks.

G. H. Turner.

GHT/MC.

CC—Carr & Carr & Gravely, H. H. Timken, Jr., L. M. Klinedinst, R. P. Kelley, W. H. Richardson.

[fol. 4562] PLAINTIFF'S EXHIBIT 151A

UNITED STATES OF AMERICA

TREASURY DEPARTMENT, WASHINGTON

March 18, 1948.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed copies of the following five documents:

1. Application of The Timken Roller Bearing Company, Canton, Ohio, dated October 5, 1921, for the recordation in this Department of the trade-mark "Timken," registration No. 144,149;

2. Power of attorney executed by the registrant naming the firm of Carr and Carr, St. Louis, Missouri, as its attorneys in this case;

3. Letter dated October 10, 1921, from Carr and Carr formally filing the application and power of attorney;

4. Bureau letter of October 13, 1921, to Carr and Carr informing them of the recordation of the mark on that date; and

5. Bureau letter of October 13, 1921, addressed to the nine headquarters ports mentioned therein notifying them of the recordation;

are true copies of such documents on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

Margaret B. Choppin, Records Administration Officer, Division of Office Services, Office of Administrative Services, Department of the Treasury.

[fol. 4563] TREASURY DEPARTMENT, OFFICE OF THE SECRETARY, WASHINGTON

Division of Customs

October 13, 1921.

In reply refer to 109764

Messrs. Carr & Carr, 610 Boatmen's Bank Building, St. Louis, Mo.

GENTLEMEN:
SIR:

In reply to your letter of the 10th instant, I have to inform you that facsimiles of the trade marks of The Timken Roller Bearing Company, No. 144149, were this day sent to the Collectors of Customs at the ports specified in your application.

Respectfuliy, (Signed) Chas. Stevenson Assistant Chief, Division of Customs.

Facsimiles of trade marks. Form 850.-6-20-21—250.

[fol. 4564] Carr & Carr Attorneys At Law Suite 610 Boatmen's Bank Building St. Lous, Mo.
109764 James A. Carr Thomas Percey Carr
Joseph J. Gravely Edgar T. Farmer
Patent Law A Specialty

October 10, 1921.

Hon. Secretary of the Treasury, Washington, D. C.

DEAR SIR:

We enclose herewith an application of The Timken Roller Bearing Company for registration of its trade-mark "Timken" in the Treasury Department. The trade-mark has been registered in the United States Patent Office, No. 144,149, dated June 21, 1921; and we enclose herewith eighteen printed copies of the trade-mark.

We also enclose herewith a Certified copy of the Certificate of Registration.

Yours truly, (signed) Carr & Carr.

JJG:H Encs.

[fol. 4565] TREASURY DEPARTMENT OFFICE OF THE SECRETARY
WASHINGTON

Division of Customs

October 13, 1921.

In reply refer to 109764

The Collector of Customs, New York, Baltimore, Philadelphia, Boston, San Francisco, New Orleans, Seattle, Portland Oreg., Portland Me.

SIR:

In accordance with the provisions of T.D. 29975 of September 7, 1909, the trade-mark of The Timken Roller Bearing Co. No. 144149, has been recorded in the Department, and I enclose herewith facsimiles thereof for record and file in your office and in the offices at the sub-ports in your district in order that no article of foreign manufacture bearing copying or simulating marks may be admitted to entry in your district.

Respectfully, (Signed) Chas. Stevenson Asst. Chief, Division of Customs.

Inclusore Notice of Recording Trade-Marks. Form 849

[fol. 4566] POWER OF ATTORNEY

To the Secretary of the Treasury:

The undersigned, The Timken Roller Bearing Company, hereby appoints Carr and Carr, (a firm composed of James A. Carr and T. Percy Carr, of Boatmen's Bank Building, St. Louis, Missouri), its attorneys, with full power of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate and to transact all business in the Treasury Department connected therewith.

(Internal-revenue stamp)

The Timken Roller Bearing Company By Herman Ely, Vice President

Canton, Ohio, October 5th, 1921.

[fol. 4567] To the Secretary of the Treasury:

The undersigned, The Timken Roller Bearing Company, a corporation of Ohio having its principal office and place of business at Canton, Ohio, requests that its trade-mark "Timken" for Roller Bearings and Parts Thereof be registered in the Treasury Department. Said trade-mark has heretofore been registered in the United States Patent Office, No. 144,149, dated June 21, 1921 and a certified copy of said certificate of registration and eighteen printed copies of said trade-mark are presented herewith. The goods on which said trade-mark is used are manufactured at Canton, Ohio and at Columbus, Ohio. It is desired that facsimiles of this registration be sent to the Ports of New York, Baltimore, Philadelphia, Boston, San Francisco, New Orleans, Seattle and Portland.

The Timken Roller Bearing Company By Herman Ely, Vice President

Canton, Ohio, October, 5th, 1921.

[fol. 4568] PLAINTIFF'S EXHIBIT No. 151B

(Excerpts from the Customs Regulations of 1943)

Trade-marks and Trade Names

TD 51779.

11.14 *Trade-marks and trade names; prohibition of importation.*—(a) The importation of merchandise of foreign or domestic manufacture is prohibited if such merchandise bears a mark or name which copies or simulates a trade-mark or trade name recorded in the Treasury Department under the Trade-Mark Act of February 20, 1905, or the Trade-Mark Act of July 5, 1946, unless such merchandise is imported by or for the account of, or with the written consent of, the owner of the protected trade-mark or trade name.[16]

Bourjois & Co. v. Aldridge, 263 US 675; TD 37021.

(b) A mark or name (including a mark or name which is a genuine trade-mark or trade name in a foreign country) on an article of foreign manufacture identical with a trade-mark or trade name recorded under the above-mentioned

trade-mark laws, as well as a mark or name on an article of foreign or domestic manufacture counterfeiting such recorded trade-mark or trade name, or so resembling such recorded trade-mark or trade name as to be likely to cause confusion or mistake in the minds of the public or to deceive purchasers, shall be deemed to copy or simulate such protected trade-mark or trade name. However, merchandise manufactured or sold in a foreign country under a trade-mark or trade name, which trade-mark is registered and recorded, or which trade name is recorded under the above-mentioned trade-mark laws, shall not be deemed to copy or simulate such United States trade-mark or trade name if such foreign trade-mark or trade name and such United States trade-mark or trade name are owned by the same person, partnership, association, or corporation. (R. S. 161, sec. 27, 33 Stat. 730, sec. 42, Public No. 489, 79th Cong., secs. 526, 624, 46 Stat. 741, 759; 5 U. S. C. 22, 15 U. S. C. 196, 19 U. S. C. 1526, 1624.)

TD 51779.

11.15 *Trade-marks; recording.*[16]—(a) To record a trade-mark with the Treasury Department, an application, which may be in the form of a letter, shall be addressed to the Bureau of Customs, Washington 25, D. C., stating the name, residence, and citizenship of the owner or owners (if a partnership, the citizenship of each partner; if a corporation or association, the country or state within which it was organized or created), and the name of the locality in which the goods are manufactured. The application shall be accompanied by one certified copy of the original certificate of registration issued by the Commissioner of Patents [fol. 4569] in accordance with the Trade-Mark Act of February 20, 1905, or section 7 of the Trade-Mark Act of July 5, 1946, to which shall be attached one printed Patent Office facsimile of the statement and drawing covering the trade-mark, such of the documents mentioned in paragraph (b) as may be required to show the ownership of the applicant, and 500 uncertified facsimiles of the statement and

[16] "Registration on the supplemental register or under the Act of March 19, 1920, shall not be filed in the Department of the Treasury or be used to stop importations." (Trade-Mark Act of July 5, 1946, sec. 28; Public No. 489, 79th Cong.)

drawing covering the trade-mark (which may be reproduced privately from a Patent Office facsimile) for distribution to all collectors of customs and appraisers of merchandise.[17]

(b) If ownership of a registered trade-mark is claimed by an applicant by virtue of an assignment of such trade-mark, there shall be transmitted with the application for recording, in addition to the documents and information specified in paragraph (a) of this section, a certified abstract of title from the records of the United States Patent Office showing the ownership of the applicant. Similar documentary evidence shall accompany an application for recording if the commercial name of the applicant has been changed subsequent to registration of the trade-mark. If the application for recording is presented after the expiration of the period for which the certificate of registration or a renewal thereof was issued, the application shall be accompanied by a certified copy of a certificate of renewal from the United States Patent Office showing that the registration is in force. In order to continue to receive the protection of the trade-mark statutes with respect to imported merchandise, such a certified copy of a certificate of renewal shall be filed with the Treasury Department if the period of protection expires after the trade-mark has been recorded. (R. S. 161, sec. 27, 33 Stat. 730, sec. 42, Public No. 489, 79th Cong., secs. 526, 624, 46 Stat. 741, 759; 5 U. S. C. 22, 15 U. S. C. 106, 19 U. S. C. 1526, 1624.)

TD 51779.

11.16 *Trade names; recording.*—(a) To record the trade name (not a trade-mark) of a manufacturer or trader, an application, which may be in the form of a letter, shall be addressed to the Bureau of Customs, Washington 25, D. C., stating the trade name, the name, residence, and citizenship of the owner or owners (if a partnership, the citizenship of each partner; if a corporation or association, the country or state within which it was organized or created), a description of the class or kind of merchandise to which the trade name is applied, and the name of the locality in which the merchandise is manufactured.[17] The application shall be accompanied by supporting evidence in the form

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[17] No fee is charged for recording trade-marks or trade names in the Treasury Department.

of affidavits by the owner or owners and by at least two other persons having actual knowledge of the facts, show- [fol. 4570] ing that the applicant has used the trade name in connection with the class or kind of merchandise described in the application for a specificed period of time, that the trade name is not identical with, or confusingly similar to, any other trade name or registered trade-mark used in connection with merchandise of such class or kind, and that the applicant has the sole and exclusive right to the use of such trade name in connection with merchandise of such class or kind.

(b) Such affidavits accompanying an application to record the trade name of a manufacturer or trader located in a foreign country shall be acknowledged before an American consular officer. (R. S. 161, sec. 27, 33 Stat. 730, sec. 42, Public No. 489, 79th Cong., secs. 526, 624, 46 Stat. 741, 759; 5 U. S. C. 22, 15 U. S. C. 106, 19 U. S. C. 1526, 1624.)

TD 51779.

11.17 *Detention; seizure; exportation; release.*—(a) Merchandise of foreign manufacture which bears a trade-mark entitled to the protection of section 526, Tariff Act of 1930,[18]

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[18] "(a) Importation Prohibited.—It shall be unlawful to import into the United States any merchandise of foreign manufacture if such merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a trade-mark owned by a citizen of, or by a corporation or association created or organized within, the United States, and registered in the Patent Office by a person domiciled in the United States, under the provisions of the Act entitled 'An Act to authorize the registration of trade-marks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same,' approved February 20, 1905, as amended, and if a copy of the certificate of registration of such trade-mark is filed with the Secretary of the Treasury, in the manner provided in section 27 of such Act, unless written consent of the owner of such trade-mark is produced at the time of making entry.

"(b) Seizure and Forfeiture.—Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to seizure and forfeiture for violation of the customs laws.

"(c) Injunction and Damages.—Any person dealing in

and merchandise which bears a mark or name copying or simulating a trade-mark or trade name entitled to the pro-
[fol. 4571] tection of section 27, Trade-Mark Act of February 20, 1905, or section 42, Trade-Mark Act of July 5, 1946,[19] if not imported by or for the account of, or with the appropriate written consent of, the owner of the United States trade-mark or trade name shall be detained for a period of 30 days from the date of notice to the importer that the merchandise is prohibited importation to permit

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any such merchandising may be enjoined from dealing therein within the United States or may be required to export or destroy such merchandise or to remove or obliterate such trade-mark and shall be liable for the same damages and profits provided for wrongful use of a trade-mark, under the provisions of such Act of February 20, 1905, as amended." (Tariff Act of 1930, sec. 526; 19 U. S. C. 1526.)

[19] "That no article of imported merchandise which shall copy or simulate the name of any domestic manufacture, or manufacturer, or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trade-mark registered in accordance with the provisions of this Act or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trade-marks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trade-mark, issued in accordance with the provisions of this Act, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the

the importer to secure the written consent of the owner of the trade-mark or trade name.

TD 47691.

(b) Whenever merchandise is detained in accordance with the foregoing provisions of this section and the importer indicates that he will not attempt to secure the [fol. 4572] written consent of the owner of the trade-mark or trade name to the importation of the merchandise, or such consent is not presented to the collector prior to the expiration of the 30-day period, the merchandise shall be seized and forfeited in the usual manner, except that in any such case within the purview of section 23.25 the collector may release the merchandise upon the condition that the name, mark, or trade-mark be removed or obliterated prior to the release, or may permit the merchandise to be exported under customs supervision and without expense to the Government. If the case is not within the purview of section 23.25 the importer may petition the Commissioner of Customs, through the collector, for the release of, or permission to export, the merchandise under the same conditions.

(c) Merchandise forfeited for violation of any trade-mark law may be disposed of in accordance with the procedure applicable to other customs forfeitures, but only after removal or obliteration of the name, mark, or trade-mark by reason of which the goods were seized.

(d) If the violation is not discovered until after entry and deposit of estimated duty, the entry shall be endorsed with an appropriate notation, the duty refunded as an erroneous collection, and the merchandise disposed of in accordance with the foregoing provisions of this section.

Treasury shall prescribe, and may furnish to the Department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trade-mark, and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs." (Sec. 42, Public No. 489, 79th Cong. See similar provision in Trade-Mark Act of February 20, 1905, sec. 27; 15 U. S. C. 106.)

The laws of the United States relating to patents, trade-marks, and copyrights have been extended to the Virgin Islands. (See 48 U. S. C. 1405c.)

(R. S. 161, sec. 27, 33 Stat. 730, sec. 42, Public No. 489, 79th Cong., secs. 526, 624, 46 Stat. 741, 759; 5 U. S. C. 22, 15 U. S. C. 106, 19 U. S. C. 1526, 1624.)

[fol. 4573] PLAINTIFF'S EXHIBIT 153

Appendix A

Exports of Bearings to British Timken Limited, Birmingham, England, by the Timken Roller Bearing Company

Year	Amount
1928	$ 28,985.34
1929	215,358.92
1930	100,325.40
1931	68,844.36
1932	14,213.72
1933	7,550.82
1934	39,084.96
1935	19,388.77
1936	22,280.20
1937	60,428.05
1938	149,520.10
1939	71,062.38
1940	337,429.02
1941	144,166.73
1942	1,980.80
1943	—0—
1944	—0—
1945	59,509.86
1946	203,408.05
1947	227,087.40
Total	$1,770,624.88

[fol. 4574] PLAINTIFF'S EXHIBIT No. 154

Appendix B

Exports of Bearings to Francaise Timken, S. A. Asnieres, Seine, France, by the Timken Roller Bearing Company

Year	Amount
1928	$ —0—
1929	—0—
1930	911.06
1931	7,567.41
1932	10,839.23
1933	3,480.46
1934	9,810.94
1935	16,386.18
1936	62,276.84
1937	51,306.05
1938	86,748.33
1939	110,836.02
1940	158,424.42
1941	—0—
1942	—0—
1943	—0—
1944	—0—
1945	—0—
1946	93,490.97
1947	227,190.64
Total	$839,268.55

[fol. 4575] PLAINTIFF'S EXHIBIT No. 155

Appendix C

Steel Sales to British Timken Ltd., 1928-1947

1929	7949.60
1930	18939.59
1931	25117.61
1932	235.90
1933	140.40
1937	6170.38
1938	3524.80
1939	8952.35
1940	440756.96
1946	2372.02

[fol. 4576] PLAINTIFF'S EXHIBIT No. 156

Appendix D

Steel Sales to S. A. Francaise Timken

1930	5661.06
1931	6953.30
1939	3409.30
1940	208642.80

[fol. 4577] PLAINTIFF'S EXHIBIT No. 157

Appendix E

Summary of Purchases from British Timken Ltd. by the Timken Roller Bearing Company of Tapered Roller Bearings

	1945	1946
Purchases & Frt. & Ins.	$33100.17	$4736.29
U. S. Customs Duties	2478.70	13670.69
Misc. Clearance Charges	31.25	162.07
Storage & Demurrage		97.75
Premium of Appraisement Bond		32.50
Total	$35610.12	$18699.30

[fol. 4578] PLAINTIFF'S EXHIBIT No. 158

Appendix F

Purchases from British Timken Limited Purchased by the Timken Roller Bearing Service and Sales, Limited (Formerly Timken Roller Bearing Company Limited)

Year	Purchases
1928	—0—
1929	—0—
1930	—0—
1931	$535.47
1932	1032.00
1933	22403.73
1934	1606.95
1935	2517.52
1936	253.23
1937	199.73
1938	240.23
1939	181.44
1940	336.37
1941	50.75
1942	34.89
1943	—0—
1944	—0—
1945	—0—
1946	—0—
1947	552.04

[fol. 4579] PLAINTIFF'S EXHIBIT 159

Appendix G

Total Sales on Which Commissions Were Paid by British Timken to the Timken Roller Bearing Company

Year	Sales
1928	—0—
1929	—0—
1930	—0—
1931	—0—
1932	$ 517.40
1933	11326.60
1934	35704.00
1935	2450.00
1936	2065.00
1937	748.80
1938	17068.80
1939	8722.20
1940	21037.73
1941	2473.00
1942	—0—
1943	—0—
1944	—0—
1945	—0—
1946	8946.50
1947	3619.55
Total	$114679.58

[fol. 4580] PLAINTIFF'S EXHIBIT No. 160

Appendix H

Sales by the Timken Roller Bearing Company in British Timken Limited Territory on which Commissions Were Paid

Year	Sales
1928	$ 83005.30
1929	466391.50
1930	232380.90
1931	373782.30
1932	55142.00
1933	14613.40
1934	34473.80
1935	68870.40
1936	35857.40
1937	12613.60
1938	32219.00
1939	14570.80
1940	261187.03
1941	932267.67
1942	149006.61
1943	6649.16
1944	8577.73
1945	10615.12
1946	32255.80
1947	156199.81
Total	$2980679.33

[fol. 4581] PLAINTIFF'S EXHIBIT '64

Cablegram

October 20 1928.

Britimken, Birmingham, England

Relative Ford tractor prices we have been informed they can purchase from RIV or SKF ballbearing number two eighteen at three dollars and two fourteen bearing at one dollar seventy cents stop Does this sound reasonable and could you quote replacement taper bearings at same price

or lower stop Production being planned Cork Ireland five hundred to eight hundred daily stop Can you quote better prices for tractor wheel bearings on above production than our prices we sent you recently stop All bearings go into Ireland no duty and they will purchase anywhere in world at best prices stop Providing use of our bearings we would handle production until you could get equipped for it stop Reply promptly

Hess

[fol. 4582] PLAINTIFF'S EXHIBIT 165

Inter-Organization Correspondence

The Timken Roller Bearing Company
Canton, Ohio

April 1, 1927.

Mr. Strough

Subject: British Timken Territory—Service.

In view of pending negotiations with British Timken, Limited, I believe arrangements should be made whereby the Service & Sales Company should be permitted to solicit without restrictions, Timken bearing replacement business in all territories controlled by British Timken, Limited with the possible exception of the British Isles.

We are now permitted to ship unsolicited orders into British Timken territory with the exception of France and French Colonial Possessions and Protectorates on which we give British Timken, a 10% of the net amount of the invoice commission. This arrangement results in some business, but in that we do not solicit from representatives handling American made motor vehicles, our competitors who do solicit this business secure a sizeable volume.

We would not wish to appoint Authorized Distributors in British Timken territory. Neither would we wish to make a general solicitation of the entire trade. Our suggested solicitation would be confined to representatives handling American made motor vehicles who naturally look to the American market for replacement parts and supplies. In the particular case of Hudson and Dodge, we handle all of their service. Bearings are not carried by the respec-

tive factories. On numerous occasions, Hudson and Dodge foreign agencies have complained because of the poor service they secure thru British Timken agencies. Most importers of American made motor vehicles are sizable houses and contend they are as much an importer as the concerns representing British Timken, Limited. Our experience has been that due to this fact and other jealousies, they wish to purchase direct. If we were permitted to solicit the business and handle the orders, it would keep for Timken, the bulk of the business now going to competitors.

With such an arrangement, we would be in equal competition with British Timken, Limited for all business in their territory. Between the two Companies, we could satisfy all potential buyers of bearings for service replacement purposes. Many of these buyers in the world market would favor purchasing thru the British market, while some prefer purchasing thru the American market.

One of the principal things to bear in mind is that in countries such as Australia, South Africa, India, New Zealand and many others, the car registration is largely American. It is only natural that the agencies selling these American made cars should look to the American market for their source of supply on replacement parts. With our encouragement to purchase from us, the business would not go to competitive makes of bearings.

In case of open and free solicitation of the world market, we would not of course wish to continue extending a 10% commission to British Timken, Limited, but if for any reason, it should be deemed advisable to continue the commission arrangement, it would be satisfactory to us.

R. C. Brower.

[fol. 4583] PLAINTIFF'S EXHIBIT 166

July 2, 1927.

British Timken Limited, Ward End, Birmingham, England

Attention Mr. William Dallow

GENTLEMEN:

With reference to your cable dated June 10th and your confirming letter of the same date regarding discounts extended to the service trade in your territory, we would first

ask that you discuss this thing with Mr. Hess of our company who is now in England because he familiarised himself with all conditions just prior to his departure from the States.

In explanation of our change in discount, we found it necessary to increase the discount from 35 to 50% in order to meet competition. We, of course, have not made direct quotations in your territory although it has developed in some few cases local export houses who have purchased material for shipment into countries controlled by us have also secured bearings for shipment into your territory at the same discount.

Another thing to consider is that while Gilliam and Bock were in the picture discounts of 50% and 50 and 10% were regularly extended. To show how far reaching the effects of this were, we can tell you that for the twelve months in 1926 Dock shipments into your territory were as follows:

Australia	$11,000.00
Continental Europe	34,000.00
Colonial Possessions	5,000.00

or a total of 50,000.00 in the territory controlled by you.

Some of the shipments made by us resulted from orders placed for Bock material. We happened to be out of sizes so then it came to a showdown that we would either supply Timken at the 50% discount or the order would be placed with either the Pratt Mfg. Co., or the Orange Roller Bearing Co. We assumed it would be best to accept the order because it had been our opinion right along that you would prefer to have the bearing business enjoyed either by your company or our company instead of reverting to competitors.

We, of course, can appreciate your position in that our quotations are now under yours and serious complications with your Authorized Distributors are bound to occur. On the the other hand, we know that Fichtel & Sachs are quoting a 50% discount in South America. We presume the same quotations are in existence in your territory. We fur- [fol. 4584] ther know that Pratt is quoting a 60% discount while Orange is also carrying this same discount. In order to meet competition, we believe we should have a price more comparable to competitors' quotations. Our 50% discount

which is extended to all of our export trade more or less controls this field.

As suggested before, we hope you will discuss this thing with Mr. Don Hess so that he can bring back a message covering your decision with respect to the present situation.

Very truly yours, —— ——, Vice-President.

R. C. Brower-JR.
cc—Mr. Don Hess.

[fol. 4585] PLAINTIFF'S EXHIBIT No. 167

The Timken Roller Bearing Company
Canton, Ohio

April 5, 1933.

Mr. H. H. Timkem, % Mrs. A. C. Bridges, 712 Electric Building, San Diego, Calif.

DEAR H. H.:

Louie Klinedinst and I were in New York last week and had a long talk with Fred Hughes and Lester Sigourney of New Departure and arrived at a mutually satisfactory selling price for flanged type bearings both ball and tapered roller. We held the price on these bearings at a point where a nice profit will be made for both companies, and I feel that we did a pretty good job as New Departure might have been out of line if we had not told them our prices, and in that event we should have had to cut our prices.

Later in the day Fred Griffiths and Joe Ashwell, Purchasing Agent of New Departure, came in and we talked over some steel matters, and if everything works as smoothly as at present I feel sure that we will have some New Departure business this year.

In the afternoon Louie and I called on Mr. Kennedy, Sales Manager of the Ingersoll-Rand Company and discussed with him detachable bits. Mr. Kennedy requested that we visit him to discuss this matter and see if we could arrive at a satisfactory price arrangement. Ingersoll-Rand feel that the bits should be sold for a minimum of 40 cents and do not believe that there is any future for sales to big operators. We do not agree with this idea and have proven

it to be fallacious. If the price is maintained at such a high level there is no saving over the conventional bit, and we would be licked before we started. Mr. Kennedy, of course, has as his main objective the maintenance of the old style of bit whereby he would sell more sharpening machines, jack-hammers and drill rod. The interview was a satisfactory one and we agreed to keep in touch with them from time to time and perhaps at some later date would be in better position to discuss fully the marketing practices best suited for an article of this kind. Kennedy objected very much to a quantity differential in price, but frankly admitted that he used the same selling tactics in selling drill rod, that is, a thousand ton order was sold at a considerably lower price per pound than a one ton order. Naturally this situation is a rather delicate one as we are interested in Ingersoll-Rand's bearing business and probably to some extent in their motor business through Hercules.

[fol. 4586] Chrysler is still on the fence as regards giving us 100% of their business, but we have made a definite proposal covering their requirements to January 1st, 1934, based on 100% volume and there is the bare possibility that we may get the entire line.

Most of the other automobile people have bucked off in their attitude regarding protection to January 1st.

Judd had a long talk with Strickland and he again expressed his willingness to play fair with us as regards price. While I haven't very much confidence in his integrity I do feel that he today realizes that we mean business when we say that we are going to protect our accounts and that he will be a little more careful about trying to use shady methods in chiseling in on us.

We are still experimenting with the new tube elongator and have pierced a few billets by this method. You understand, of course, that the small experimental mill which cost us around $5,000.00 was not intended for a piercing mill, but the few billets pierced came out remarkably well and very concentric.

We had a little flare-up with Ford regarding pinion bearings, and they tried to lay the fact that they have a noisy axle to bearing performance. This has been entirely

corrected, and we are today again in their good graces and our pinion bearings are going through the line 100%.

The Studebaker Company is still in the process of reorganization, and yesterday we obtained word that Ralph Vale has been made General Manager. This, of course, is very acceptable to us as Ralph is one of the best Timken boosters in the automobile business. I think it is almost certain that Erskine will not be included in any of the reorganization plans.

I think perhaps the best move we have made around here for satisfying our employees is the change in office hours effective the first of this month. All of the department heads say that it was a good move, and all the people seem to be appreciative of the fact that we have given them something instead of continually taking away.

Charlie Balough sent me a letter regarding the Diesel pump and Don Hess and I will see him sometime this afternoon to discuss the possibility of manufacturing such an article.

We have a fairly good schedule for this month and if it holds up we will work 20 days—7 hours per day.

Mr. Obermier is leaving tomorrow evening for Europe and will stop in to see W. R. in New York. The weather has changed to real Spring, and I don't believe we need expect any more rough weather.

With best regards until I see you next week.

Very truly yours, Bill.

WEUmstattd.
REF.

[fol. 4587] PLAINTIFF'S EXHIBIT 168

Thurston Patents

During the week of January 21st Mr. Kilborn of the Flannery Bolt and Nut Company called me twice regarding the patent situation on Thurston Patents. Mr. Kilborn said that he had been able to get Mr. Thurston to agree to accept a royalty of 5% of the selling price of bits or a flat 1¢ per bit with a minimum royalty of $250.00 per month from each of the four participating companies, Flannery, Crucible, Ingersoll-Rand and Timken. Mr. Kilborn said that Mr.

Hufnagel was willing to go along with this and if I would agree to it he felt sure that Mr. Hufnagel and I could sell Mr. O'Neil on the idea of going along with this.

A meeting was held in the office of Mr. Hufnagel January 26th with Messrs O'Neil and Campbell of Ingersoll-Rand, Messrs. Hufnagel and Haager of Crucible Steel and Umstattd and Richardson of The Timken Roller Bearing Company. After discussing and settling a policy regarding the sale of bits to the Federal Government and other purchasers the matter of securing a license under the Thurston Patents was discussed in detail. I told of my conversations with Mr. Kilborn and Mr. Hufnagel emphatically denied that he had said or had even intimated that he would be willing to pay a 5% royalty or a flat 1¢ per bit royalty. He also said, and was firmly seconded by Mr. O'Neil, that he would not under any consideration pay a minimum royalty as his company was very much opposed to this plan of payment. Mr. O'Neil also stated that his company would under no circumstances agree to a minimum royalty.

All three of the principals involved agreed that the patent was not valid and that if any license was taken out it would be merely a move for legalizing the fixing of prices so that we would not be threatened by either the Clayton or Sherman laws.

After some half hour of discussion it was agreed that Mr. Hufnagel would inform Mr. Kilborn that we would be willing to pay a flat ½¢ per bit royalty and that it would be useless to discuss anything beyond this price. Mr. Hufnagel will get in touch with Mr. Kilborn sometime Monday and the writer will call Mr. Kilborn later in the week and substantiate the above statement.

W. E. Umstattd.

[fol. 4588] PLAINTIFF'S EXHIBIT No. 169

UNITED STATES OF AMERICA,
District of New Jersey.

I, William H. Tallyn, Clerk of the District Court of the United States for the District of New Jersey, do hereby certify that the annexed is a true copy of Indictment No. 2793c in the matter of The United States of America vs.

Allegheny Ludlum Steel Corporation, et al, filed November 15, 1944, and true copy of the Docket Entries in the above entitled matter as the same remains of record, and on file in my office.

In testimony whereof, I have hereto subscribed my name and affixed the seal of said Court, at Trenton, in said District, this 5th day of April, A. D., nineteen hundred and forty-eight.

William H. Tallyn, Clerk, per Amy D. Bond, Deputy Clerk.

(Here follow 3 Photolithographs, side folios 4589-4591)

1662A

for 2793c

CRIMINAL DOCKET

TITLE OF CASE	ATTORNEYS
THE UNITED STATES vs. Allegheny Ludlum Steel Corporation Carnegie-Illinois Steel Corporation Crucible Steel Company of America Jones & Laughlin Steel Corporation Republic Steel Corporation Universal-Cyclops Steel Corporation	For U. S.: Russell M. Allen Paul F. Voigt, Jr. J. Baker Parker R.B. Christie Martin H. Schmid and T. F. McLaughlin J.S.3 for all 2 counts	For Defendant: H.Collin Minton, Jr. for Ft. S. Co. Riker, Marsh & Shearer, Esqs for Bethelemen Steel Co. Carpenter, Gilmour & Dwyer for Universal-Cliolopa Steel Corp.

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fees,			(See over for payment of fines)		
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
	Counts 1 & 2
	Act of Congress of 7/2, [illegible] as amended (26 Stat.209) [illegible] U.S.C. Secs. 1, 2, commonly known as the Sherman Anti-Trust Act.
	Indictment for Conspiracy in restraint of trade and commerce among the several states of the United States and Conspiracy to monopolize trade and commerce among the several states of the United States, filed (Vermas)
	Notice of Selection of Case to Trenton filed
	Order Extending Time for Filing of Motions or Pleadings filed(Forman)
	Eighth-Sterling Steel Company - Appearance of H.Collin Minton, Jr., Esq., and McCloskey, Best & Leslie filed
	Notice and Motion of defendant Bethlehem Steel Company
	Bill of Particulars filed
	Appearance of Riker, Marsh & Shearer for defendant Bethlehem Steel [illegible] filed

4589

16628

DOCKET

Cr. 2793 Sgd Edw

DATE 1945			CLERK'S FEES	
Feb.17	Pittsburgh Steel Co.	Pay't of Fine	10000 00	
"	Labtrobe Electric Steel Co.	"	10000 00	
"	Crucible Steel Company of America	"	10000 00	
"	Superior Steel Corp.	"	10000 00	
"	R.E.Christie	"	10000 00	
"	Firth Sterling Steel Co.	"	10000 00	
"	Republic Steel Corp.	"	10000 00	
"	Martin H. Schmidt	"	10000 00	
"	Russell M.Allen	"	10000 00	
"	Sharon Steel Corp.	"	10000 00	
"	Jessop Steel Co.	"	10000 00	
"	Allegheny Ludlum Steel Corp.	"	10000 00	
"	Universal-Cyclops Steel Corp.	"	10000 00	
"	J. Heber Parker	"	10000 00	
"	Carpenter Steel Co.	"	10000 00	
"	Paul F. Voigt,Jr.	"	10000 00	
"	Carnegie-Illinois Steel Corp.	"	10000 00	
"	The Midvale Co.	"	10000 00	
"	The Timken Roller Bearing Co.	"	100	
"	Bethlehem Steel Co.	"		
"	Rustless Iron and Steel Corp.	"		
"	The American Rolling Mill Co.	"	1000	
Feb.20	T.F.McLaughlin	"	10000	
"	Eastern Stainless Steel Corp.	"	10000 00	
Apr.12	Discount on [illegible]			2400

4590

E. C. 109

1945	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
Jan. 12	Allegheny Ludlum Steel Corp. & Russell M.Allen - Appearance of Carpenter,Gilmour & Dwyer,Esqs. filed		
13	Order continuing pleas of defendants to Feb. 3, 1945 and the motion of Bethlehem Steel Company is continued until Jan. 20, 1945 filed (Forman)		
16	Appearance of Carpenter,Gilmour & Dwyer for defendant Universal-Cyclops Steel Corp. filed		
20	Order of continuance filed (Forman)		
27	Order fixing day for pleading (Feb.17,1945) filed (Forman)		
"	Hearing before Judge Forman on motion for bill of particulars as to Bethlehem Steel Company - Motion granted - Order to be entered		
30	Appearance of Carpenter,Gilmour and Dwyer for defendant Sharon Steel Corporation filed		
Feb.6	Appearance of Carpenter,Gilmour & Dwyer for defendant Jessop Steel Company filed		
17	Rustless Iron and Steel Corp.-Appearance of Thornton C. Land,Esq. filed		
"	American Rolling Mill Co.-Appearance of Thornton C.Land, Esq.,filed		
"	Crucible Steel Co.,Latrobe Elec.Steel,Universal Steel Co. Superior Steel Corp. and R.E.Christie - Appearance of John A. Hartpence,Esq. filed		
"	Eastern Stainless Steel Corp. & T.F.McLaughlin - Appearance of John A.Hartpence,Esq. filed		
"	Timken Roller Bearing Co.-Appearance of James D.Carpenter, Luther Day or John G.Ketcham filed		
"	Plea - Nolo Contendere entered as to all defendants		
"	Each defendant was Sentenced to pay a Fine of $5.00 on each count, making $10.00 in all as to each defendant (Forman)		
20	Carnegie-Illinois Steel Corp.,Paul F.Voigt,Jr.,The Carpenter Steel Company and J.Hebert Parker - Appearance of Stryker,Tams & Horner,Esqs. filed		
27	Judgment as to all filed(Forman)		

[fol. 4592] [Stamp:] Filed Nov. 15, 1944, at 3:40 o'clock P. M. William H. Tallyn, Clerk.

No. 2793c (Criminal)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, Plaintiff,

v.

ALLEGHENY LUDLUM STEEL CORPORATION, et al., Defendants

INDICTMENT

Paul Fitting, A. W. Storms, Special Attorneys.

Wendell Berge, Assistant Attorney General; Thorn Lord, United States Attorney; Herbert A. Berman, Special Assistant to the Attorney General.

INDICTMENT—Filed November 15, 1944

[fol. 4593] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY, SEPTEMBER TERM, 1944

No. 2793c (Criminal)

UNITED STATES OF AMERICA

v.

ALLEGHENY LUDLUM STEEL CORPORATION, CARNEGIE-ILLINOIS STEEL CORPORATION, THE CARPENTER STEEL COMPANY, CRUCIBLE STEEL COMPANY OF AMERICA, REPUBLIC STEEL CORPORATION, RUSTLESS IRON AND STEEL CORPORATION, THE AMERICAN ROLLING MILL COMPANY, BETHLEHEM STEEL COMPANY, EASTERN STAINLESS STEEL CORPORATION, SHARON STEEL CORPORATION, FIRTH STERLING STEEL COMPANY, JESSOP STEEL COMPANY, LATROBE ELECTRIC STEEL COMPANY, THE MIDVALE COMPANY, PITTSBURGH STEEL COMPANY, SUPERIOR STEEL CORPORATION, THE TIMKEN ROLLER BEARING COMPANY, UNIVERSAL-CYCLOPS STEEL CORPORATION, RUSSELL M. ALLEN, PAUL F. VOIGT, JR., J. HEBER PARKER, R. E. CHRISTIE, MARTIN H. SCHMID, T. F. MC LAUGHLIN, Defendants.

INDICTMENT

UNITED STATES OF AMERICA,
District of New Jersey, ss.

The Grand Jurors of the United States of America, duly impaneled, sworn, and charged in the District Court of the United States for the District of New Jersey at the January Term of said Court in the year 1944, and sitting at Trenton, New Jersey, having begun but not finished in the January, 1944 Term of said Court an investigation of the matters charged in this indictment and having continued to sit by order of said Court in and for said District during the September, 1944 Term of said Court, for the purpose of [fol. 4594] finishing said investigation begun but not finished during the January 1944 Term of said Court; and inquiring within the aforesaid District at the January and September, 1944 Terms of said Court, do upon their oaths present and find as follows:

1, The following corporations organized and existing under the laws of the States indicated below, having their principal offices as indicated below, and which are herein-

after sometimes referred to by the names indicated below, are hereby indicted and made defendants herein:

Name of Corporation	*Abbreviated Name*	*State of Incorporation*	*Principal place of business*
Allegheny Ludlum Steel Corporation	Allegheny Ludlum	Pennsylvania	Brackenridge, Pa.
Carnegie-Illinois Steel Corporation	Carnegie-Illinois	New Jersey	Pittsburgh, Pa.
The Carpenter Steel Company	Carpenter	New Jersey	Reading, Pa.
Crucible Steel Company of America	Crucible	New Jersey	New York, N. Y.
Republic Steel Corporation	Republic	New Jersey	Cleveland, Ohio
Rustless Iron and Steel Corporation	Rustless	Delaware	Baltimore, Md.
The American Rolling Mill Company	Armco	Ohio	Middletown, O.
Bethlehem Steel Company	Bethlehem	Pennsylvania	Bethlehem, Pa.
Eastern Stainless Steel Corporation (Corporate name was "The Eastern Rolling Mill Company" prior to Sept. 1, 1944.)	Eastern	Maryland	Baltimore, Md.
Sharon Steel Corporation (Corporate name was Sharon Steel Hoop Company prior to March 10, 1936.)	Sharon	Pennsylvania	Sharon, Pa.
Firth Sterling Steel Company	Firth Sterling	Pennsylvania	McKeesport, Pa.
[fol. 4595]			
Jessop Steel Company	Jessop	Pennsylvania	Washington, Pa.
Latrobe Electric Steel Company	Latrobe	Pennsylvania	Latrobe, Pa.
The Midvale Company	Midvale	Delaware	Nicetown, Philadelphia, Pa.
Pittsburgh Steel Company	Pittsburgh	Pennsylvania	Pittsburgh, Pa.
Superior Steel Corporation	Superior	Virginia	Carnegie, Pa.
The Timken Roller Bearing Company	Timken	Ohio	Canton, Ohio
Universal-Cyclops Steel Corporation	Universal-Cyclops	Pennsylvania	Bridgeville, Pa.

2. The following individuals are hereby indicted and made defendants herein, each having the address and being associated with the company and having the official title or position therewith as below respectively indicated:

Defendant	*Position*	*Company*	*Address*
Russell M. Allen	Vice President and General Manager of Sales	Allegheny Ludlum Steel Corporation	Oliver Bldg. Pittsburgh, Pa.
Paul F. Voigt, Jr.	Manager, Stainless Steel Division	Carnegie-Illinois Steel Corporation	Carnegie Bldg. Pittsburgh, Pa.
J. Heber Parker	President	The Carpenter Steel Company	Reading, Pa.
R. E. Christie	Vice President	Crucible Steel Company of America	405 Lexington Avenue New York, N.Y.
Martin H. Schmid	Mgr. of Sales Alloy Sales Division	Republic Steel Corporation	Republic Bldg. Cleveland, O.
T. F. McLaughlin	President	Eastern Stainless Steel Corp.	Baltimore, Md.

Defendant T. F. McLaughlin was Vice President of Rustless Iron and Steel Corporation up until about January 1, 1942.

Wherever in this indictment initials are used to describe and identify any defendant, the Christian or given name [fol. 4596] of such defendant is to the Grand Jurors unknown.

3. During all or a part of the time covered by this indictment, including the period from October 10, 1939 down to the date of this indictment each individual defendant has been actively engaged in the management of the business of the corporation with which he is connected, and, on behalf of such corporation, has conferred in his official capacity with certain of the other defendants named herein, and each has participated in, approved, authorized, ordered and done, in whole or in part, the activities constituting the offenses hereinafter charged in this indictment.

The Co-Conspirators

4. The Chemical Foundation, Incorporated, hereinafter referred to as the Chemical Foundation, is a corporation organized and existing under the laws of Delaware. It was formed in or about 1919 for the purpose of holding and licensing numerous patents acquired by it in or about 1920 from the Alien Property Custodian. During the period of time covered by this conpsiracy until in or about May 1937

it has owned and licensed patents relating to stainless steel of the type hereinafter described as chrome nickel stainless steel. Chemical Foundation is not made a defendant but is named herein as a co-conspirator.

5. The Nirosta Corporation, hereinafter referred to as Krupp Nirosta, is a corporation organized and existing under the laws of Delaware. Prior to 1940 its corporate name was Krupp Nirosta Co., Inc. It was formed in or about 1928 by Fried. Krupp, A. G. of Essen, Germany, Ludlum Steel Company, defendant Crucible, and others to exploit two Krupp patents issued after the first World War relating to heat treatment of stainless steel of the type hereinafter described as chrome nickel stainless steel. Thereafter other stainless steel patents were assigned to it by Ludlum and Crucible. From its inception a majority of the stock of Krupp Nirosta was held by Fried. Krupp, A. G. [fol. 4597] of Essen, or its nominees. This foreign held stock was seized by the Alien Property Custodian in 1942. The minority stock interest in Krupp Nirosta has been held by Americans, including Ludlum and defendant Crucible. Krupp Nirosta is not made a defendant but is named herein as a co-conspirator.

6. Allegheny Steel Company and Ludlum Steel Company were merged on or about August 16, 1938 to form defendant Allegheny Ludlum. Both Allegheny Steel Company and Ludlum Steel Company participated in whole or in part in the activities hereinafter alleged in this indictment up until the time of their merger. Allegheny Steel Company and Ludlum Steel Company are not made defendants but are named herein as co-conspirators.

7. Universal Steel Company was merged with Cyclops Steel Company on or about September 30, 1936 to form defendant Universal-Cyclops Steel Corporation. Universal Steel Company participated in whole or in part in the activities hereinafter alleged in this indictment up until the time of its merger. Universal Steel Company is not made a defendant but is named herein as a co-conspirator.

8. Illinois Steel Company, a subsidiary of United States Steel Corporation, was merged with Carnegie Steel Company, another subsidiary of United States Steel Corporation, in or about October, 1935 to form defendant Carnegie-Illinois Steel Corporation. Illinois Steel Company participated in whole or in part in the activities alleged in this indictment up until the time of its merger. Illinois Steel

Company is not made a defendant but is named herein as a co-conspirator.

9. Timken Steel and Tube Company, a subsidiary of defendant Timken Roller Bearing Company, was merged into and became a division of defendant Timken Roller Bearing Company in or about December 1936. Timken Steel and Tube Company participated in whole or in part in the activities hereinafter alleged in this indictment up until the [fol. 4598] time of its merger. Timken Steel and Tube Company is not made a defendant but is named herein as a co-conspirator.

10. Riverton Steel Company was a corporation formed on behalf of Firth Sterling, for the sole purpose of obtaining a patent license from Chemical Foundation under which Firth Sterling manufactured stainless steel. Riverton Steel Company is not made a defendant but is named herein as a co-conspirator.

11. Acts, agreements, and understandings hereinafter alleged as entered into or carried out by the corporate defendants prior to the corporate mergers or acquisitions above-mentioned refer respectively to the acts, agreements and understandings of one or more of the above-mentioned predecessors of each of said defendants. The corporate defendants respectively succeeded to the interests of such predecessors, adopted such acts, and assumed such understandings and agreements.

12. William W. Buffum, now deceased, was the Treasurer and General Manager of Chemical Foundation during the period of its participation in the activities alleged in this indictment. The said William W. Buffum is not made a defendant but is named herein as a co-conspirator.

13. Emil Schill became a Director of Krupp Nirosta in 1930 and its President in 1935 and held both positions continuously up until 1942. The said Emil Schill is not made a defendant but is named herein as a co-conspirator.

Description of the Industry

14. The original development of stainless steel resulted from the discovery by both foreign and American metallurgists that an alloy of iron and chromium, or an alloy of iron, chromium and nickel, produced a steel that was either corrosion or heat resistant, or both. Stainless steel, as now manufactured, is an alloy of iron and chromium (known as straight chrome stainless steel), or of iron and

[fol. 4599] both chromium and nickel (known as chrome nickel stainless steel). Such alloys are manufactured with or without the addition of supplementary alloying agents, such as molybdenum, columbium, titanium, selenium, and others. Stainless steel is used where metal strength together with high corrosion or heat resistant qualities are required.

15. Stainless steel is initially produced in the form of ingots. Companies producing stainless steel ingots are referred to as melters. All the corporate defendants named herein are melters, with the exception of Eastern, Pittsburgh, and Superior. These companies are engaged only in conversion or fabrication of stainless steel products from ingots purchased from melters. Defendants who are melters are also engaged in such fabrication. The ingots are processed into various semi-finished products, such as blooms, billets, slabs, sheet bars, breakdowns, etc. These are in turn converted into bars, wire, structurals, plates, sheets, hot rolled strip, cold rolled strip, forging billets, etc., which are referred to as finished products. All stainless steel sold by defendants is sold by them in the form of stainless steel finished products, except for sales to other manufacturers of stainless steel finished products.

16. Since about 1933 standard type numbers have been generally used to designate the chemical compositions constituting the different types of stainless steel. The chrome nickel types are covered by the 300 series, the regular straight chrome types by the 400 series, and the very low straight chrome types by the 500 series. The chemical composition ranges of these types have been changed by the defendants from time to time between 1933 and the date of this indictment, new type numbers have been added, and old type numbers deleted, as the types of stainless steel manufactured have varied. All commercially manufactured types of stainless steel have been covered during the period of their manufacture by these standard type numbers and composition ranges.

[fol. 4600] 17. The sales price of finished stainless steel products is composed of a base price and extras. The base price is a price quoted for a specified quantity of stainless steel of a particular unit size and quality and varies with the chemical analysis of the steel and the type of product involved. Extras are additions to the base price for specifications and quantities other than those for which

the base prices are quoted. They cover sizes other than so-called standard sizes, quantities below certain large or base amounts, packing, close tolerances, certain finishes, machine cutting, testing, and innumerable other operations necessary to conform the steel to the specifications of the particular order. The extras are the same for all types. Practically no sales of stainless steel are made on base price alone, and the extras are a substantial part of the selling price and in large part determine it.

The Interstate Trade and Commerce Involved

18. The stainless steel industry has become one of major importance. In 1942 gross sales of stainless steel finished products in the United States amounted to approximately $175,000,000. The corporate defendants named herein produce and sell more than 90% of all the stainless steel finished products produced and sold in the United States.

19. The corporate defendants produce stainless steel finished products in various states of the United States, including Ohio, Pennsylvania, New York, New Jersey, and Maryland. Substantially all of the stainless steel finished products so manufactured are sold and shipped by said defendants into states other than the states of manufacture.

Background of the Conspiracy

20. Stainless steel of the straight chromium grade was introduced in the United States and first made and sold [fol. 4601] under patent licenses from the American Stainless Steel Company, which was organized to hold and license the patents. Starting in or about 1919 this company issued licenses to various steel manufacturers, including some of the corporations named as defendants herein. These licenses contained price fixing provisions, and prices were fixed by the Board of Directors of American Stainless Steel Company. The Board consisted, in part, of representatives of some of the licensees. American Stainless Steel Company was dissolved in 1936 after the expiration of its patents.

21. Certain applications for patents relating to the manufacture of chrome nickel stainless steels were filed by Benno Strauss, an employee of Fried. Krupp, A.G. of

Essen, Germany. These applications were seized by the Alien Property Custodian during the first World War and the patents which issued thereon were subsequently sold by the Alien Property Custodian to the Chemical Foundation. Beginning in 1923, the Chemical Foundation issued licenses for the manufacture of chrome nickel stainless steel to all of the corporate defendants, or their predecessors. Prior to July 1, 1934, these licenses contained no price fixing provisions. The last of the Chemical Foundation's stainless steel patents expired on or about May 4, 1937.

22. From about 1928 Krupp Nirosta issued licenses to stainless steel producers, including some of the corporate defendants named herein, under the patents referred to in paragraph 5 above, relating mainly to heat treatment of chrome nickel stainless steels. These licenses contained price fixing provisions until 1941.

The Conspiracy

23. Beginning in or about the year 1934, the exact date being to the Grand Jurors unknown, and continuing thereafter up to and including the date of the return of this indictment, defendants and co-conspirators together with others to the Grand Jury unknown, well knowing all the [fol. 4602] facts herein alleged, have continuously engaged in a wrongful and unlawful combination and conspiracy, carried out in part within the District of New Jersey, to arbitrarily fix, establish, and maintain uniform and non-competitive prices, terms, and conditions for the sale of stainless steel finished products in restraint of the hereinabove described trade and commerce among the several states of the United States in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (26 Stat. 209; 15 U. S. C. Sec. 1), commonly known as the Sherman Act. Said unlawful combination and conspiracy has consisted of a continuing agreement and concert of action between all defendants and co-conspirators, the substantial terms of which have been that:

(a) Defendants would from time to time fix uniform base prices for the various types of stainless steel finished products.

(b) Defendants would from time to time fix uniform extras on stainless steel finished products.

(c) Defendants would from time to time establish uniform cash discounts, courtesy discounts to other manufacturers, and other terms and conditions of sale of stainless steel finished products.

(d) Defendants would adopt and use Pittsburgh, Pennsylvania as the freight basing point for all sales by them of finished stainless steel products and would sell such steel to purchasers located throughout the United States only on the basis of f.o.b. Pittsburgh.

(e) Defendants would sell stainless steel finished products in the United States at uniform and arbitrary prices and upon uniform terms and conditions fixed as aforesaid.

[fol. 4603] The aforesaid unlawful combination and conspiracy has been formed and carried out by divers means, including those set forth in paragraphs 24 through 44 below.

24. Since in or about 1934 and prior thereto and continuing thereafter up to the date of the return of this indictment, defendants and co-conspirators or their representatives have continuously met together at meetings commonly known as stainless steel industry meetings, and at such meetings defendants have from time to time fixed and established uniform, arbitrary and non-competitive base prices, extras, and other terms and conditions of sale and have agreed to sell their stainless steel finished products at such fixed, uniform and non-competitive prices and on such terms and conditions of sale. All of the defendants and co-conspirators have attended some of said meetings and all defendants and co-conspirators have entered into the agreements and understandings arrived at in said meetings. Such meetings have been held at frequent intervals during the period above described, usually at the Duquesne Club, Pittsburgh, Pennsylvania; the Biltmore Hotel, New York, New York; White Sulphur Springs, West Virginia; and Hershey, Pennsylvania, the exact number and times and places of holding of all of said meetings being to the Grand Jurors unknown but known to defendants.

25. Said meetings have usually been attended by the following persons, and by other representatives and employees of defendant corporations to the Grand Jurors unknown, each representing and acting for his company or

its affiliated companies; defendant Russell M. Allen and C. B. Boyne, representing Allegheny Ludlum; G. F. Ahlbrandt, J. A. Ingwersen, and J. P. Butterfield, representing Armco; D. A. St. Clair, representing Bethlehem; defendant Paul F. Voigt, Jr. and Julian F. Gordon, representing Carnegie-Illinois; defendant J. Heber Parker and R. V. Mann, representing Carpenter; defendant R. E. Christie, F. D. Hoerle, and S. H. Reynolds, representing Crucible; J. A. Downey and J. R. Smith, representing Eastern; D. J. Clark, representing Firth Sterling; R. Edson Emory and [fol. 4604] R. J. Murray, representing Jessop; M. W. Saxman, Jr., representing Latrobe; Henry H. Ziesing, representing Midvale; defendant Martin H. Schmid and C. E. Roberts, representing Republic; defendant T. F. McLaughlin and Edward P. Geary, representing Rustless; D. B. Carson, representing Sharon and Pittsburgh; James D. Glenn, representing Sharon; W. G. Blume, representing Superior; Ben H. Miller, representing Timken; and J. O. Rinek, representing Universal-Cyclops. Within the period between October 10, 1939 and the return of this indictment, each of said individuals including each of said individual defendants, has attended one or more of said meetings, and has participated in the discussions had on the matters alleged in this indictment, and in making the herein alleged agreements and understandings reached at said meetings. All of the persons attending each of said meetings, and all of said meetings attended by each of said persons, are unknown to the Grand Jurors but known to defendants.

26. During the course of the aforesaid meetings in or about the year 1934 defendants and co-conspirators decided to utilize the patent licenses held by them from the Chemical Foundation as a means of effectuating the aforesaid combination and conspiracy. They thereupon agreed that each would accept an amendment to its said patent license which ostensibly would give the Chemical Foundation the right to fix and establish prices for stainless steel finished products made and sold thereunder and amendments to that effect were accepted by all the parties. The Chemical Foundation agreed to formally adopt and announce prices and extras for stainless steel finished products to be adopted and agreed upon by the defendants at the said industry meetings.

27. Between June 1934 and May 4, 1937 many of the stainless steel industry meetings above described were ostensibly meetings of Chemical Foundation licensees, although at some of such meetings Chemical Foundation was not represented. At these meetings changes in, and [fol. 4605] new, base prices, extras, and terms and conditions of sale for not only the chrome nickel stainless steel finished products to which the Chemical Foundation patents related, but for all types of stainless steel finished products, were discussed and agreed on by the defendants or their representatives as hereinbefore described.

28. The changes in, and new, extras, terms and conditions of sale for stainless steel finished products and some of the base prices therefor, discussed and agreed on at the industry meetings between June, 1934 and May 4, 1937, as described above, were formally confirmed in letters sent by Chemical Foundation to its licensees, including all the corporate defendants or their predecessors, announcing such changed or new extras, prices, terms, and conditions and their effective dates.

29. Chemical Foundation caused the printing from time to time, and particularly on or about April 1, 1936, August 15, 1936, and April 1, 1937, of formal booklets entitled "Stainless Steel Uniform Extras and Deductions for certain products of the Iron and Steel Industry. Approved by the Chemical Foundation, Inc.", containing all the extras then in use on all types of stainless steel finished products, which extras had been agreed upon at the above described stainless steel industry meetings. Copies of these printed books were furnished to all Chemical Foundation licensees, including all corporate defendants and their predecessors as named herein.

30. While the letters of Chemical Foundation dealing with extras and the above described printed extra books purported on their face to fix extras, terms, and conditions of sale on only the products licensed by Chemical Foundation, i. e., the chrome nickel stainless steels, defendants and their predecessors named herein intended to, agreed to, and did adopt the extras, terms, and conditions of sale in such letters and printed extra books as their own published, [fol. 4606] prices for the sale of all types of stainless steel finished products.

31. In or about 1934 defendants and co-conspirators also

agreed at the aforesaid industry meetings that the base prices for the sale of stainless steel finished products agreed upon between them at such meetings should be published by Sharon and circulated among them and used by defendants and co-conspirators in computing, determining, and publishing their own prices for all types of stainless steel products. The Sharon price lists were ordinarily published four times per year. They were published more frequently when there were base price changes. Since 1938, when base price changes have been infrequent, they have been published at longer intervals.

32. Each such list published by Sharon as aforesaid contained the chemical analyses and base prices for finished products for all types of stainless steel currently being produced commercially, including the types of chrome nickel stainless steel to which the Chemical Foundation patents related, although Sharon actually produced and sold only a few of the types appearing on such published price lists.

33. The successive issues of the Sharon price lists have been circulated among the defendants, and defendants continuously since in or about 1936 have used the Sharon lists as, or have used them in compiling, their own respective published base price lists.

34. During part or all of the time the corporate defendants or their predecessors were operating as licensees of Chemical Foundation, as hereinbefore alleged, and subsequent thereto, defendants Carpenter, Crucible, Republic, Bethlehem, Firth Sterling, and Jessop, and co-conspirator Ludlum were licensees of Krupp Nirosta under certain patents relating to heat treatment processes and other improvements on chrome nickel steels.

35. Carnegie-Illinois had the use of the Krupp Nirosta patents by virtue of a license to its parent company, United States Steel Corporation, from Fried. Krupp, A. G. of [fol. 4607] Essen, Germany. Carnegie-Illinois and United States Steel Corporation dealt with the co-conspirators Krupp Nirosta and Emil Schill, and such co-conspirators dealt with them, substantially as if they were direct licensees of Krupp Nirosta.

36. Each Krupp Nirosta license agreement contained a clause forbidding the licensee to sell at prices below those fixed by Krupp Nirosta. Co-conspirators Krupp Nirosta and Emil Schill, however, never made any independent

determination of the prices to be charged under the aforesaid license agreements. Krupp Nirosta has from time to time issued instructions under this provision of the licenses, but in all such cases has adopted the prices, terms and conditions of sale agreed upon by defendants as herein alleged.

37. The Chemical Foundation's patents expired on September 23, 1936 and May 4, 1937. During 1936 and 1937 defendants and co-conspirators held numerous meetings and discussions for the purpose of devising further means of carrying on price-fixing for stainless steel finished products. The exact places and dates of the meetings and discussions are to the Grand Jurors unknown. At these meetings defendants and co-conspirators sought to promote a pool of stainless steel patents to be contributed by members of the group, to be held and licensed by a patent holding company, for the avowed purpose of maintaining a patent cover to fix prices on stainless steel finished products. In the course of these deliberations defendants decided, however, to utilize for this purpose licenses which were then held by most of the defendants from defendant Carpenter under patents owned by the latter relating to free machining stainless steel. All of these licenses contained price fixing provisions.

38. The patents originally licensed by Carpenter as aforesaid were issued on or about December 8, 1931 and February 23, 1932. They related to the addition of sulphur, selenium and other alloying elements to stainless steel to facilitate its machining. Types of stainless steel made under these patents are known as free machining types. [fol. 4608] Carpenter had from time to time since 1932 issued licenses under these patents to various manufacturers. All the corporate defendants except Armco, Eastern, Pittsburgh, Superior, Sharon and Timken were in 1937 and have since continued to be licensees of Carpenter under the aforesaid patents. Defendants Timken and Sharon became licensees of Carpenter in 1938 and 1940 respectively. Each license granted by Carpenter has at all times contained a clause forbidding the licensee to sell stainless steel made and sold under the license at prices lower than those currently being charged by Carpenter.

39. As a result of a stainless steel industry meeting held in or about May 1937, the exact date and place being to the Grand Jurors unknown, at which most of the corporate

defendants or their predecessors were represented, defendants agreed that Carpenter in place of the Chemical Foundation would thereafter issue notices of changes in, or new, extras, terms and conditions for the sale of stainless steel finished products, and would publish printed extra books, in the manner previously carried out by the Chemical Foundation. Carpenter's aforesaid patents and others subsequently issued to it relate only to steels falling primarily within types 303, 416, 420F, and 430F, whereas there are more than 30 standard types of stainless steel. Ostensibly the instructions issued and the extra books published by Carpenter related only to the free machining types of stainless steel. Such extras could, however, and defendants agreed that they would, be used for computing extras for all types of stainless steel finished products.

40. Since 1937 and continuing thereafter up to and including the date of this indictment defendants have from time to time advised Carpenter of the changes in, and new, extras, terms and conditions for the sale of stainless steel finished products which they agreed upon either by correspondence or consultations between the defendants or at various industry meetings referred to in paragraphs 24 and 25 above. Some of these meetings were ostensibly meetings of Carpenter's licensees. Carpenter thereupon has formally [fol. 4609] confirmed by letter the changes in, or new extras, terms and conditions of sale and their effective dates so communicated to it by the defendants, all in the same manner as theretofore done by the Chemical Foundation as hereinbefore alleged. Carpenter has sent such letters to all of the defendant corporations or their predecessors who were licensees of Carpenter at the time and in most cases also to the remaining corporate defendants.

41. Defendant Carpenter from time to time, and particularly on or about July 1, 1937, April 1, 1939, January 15, 1940 and January 1, 1942, has published extra books entitled "Stainless Steel Standard Classification of Extras and Deductions", which contained the extras then in use and which had been agreed upon and fixed as above described.

42. Carpenter has sent such extra books to all the corporate defendants, irrespective of whether or not they were licensees of Carpenter. Defendants continuously since 1937

have used the Carpenter extra books as, or have used them in compiling, their own published lists of exfras.

43. While the Carpenter letters described above announcing new and changed extras, terms, and conditions for the sale of stainless steel finished products, and the printed Carpenter extra books, purported to confine the matters appearing therein to the products licensed by Carpenter, i.e., free machining stainless steels, defendants, however, agreed to and did use the extras, terms, and conditions for the sale of stainless steel finished products set forth in such letters and printed extra books as their own published extras on all types of stainless steel.

44. During the period of time covered by this indictment the United States Government and its various branches have become increasingly large purchasers and users of stainless steel finished products. As required by statute all such Government purchases are made through public competitive bidding and are awarded to the lowest bidder. The prices quoted by prospective suppliers of stainless steel [fol. 4610] thus become a matter of public record and maintenance by defendants of agreed prices on such bids has therefore been necessary in order to maintain their agreed upon price structure. Despite the fact that the defendants in preparing their bids for government purchases utilize the same base prices, extras, and terms and conditions of sale, slight differences in calculating the amount of the bids would result in minor discrepancies therein and would result in an award to the defendant whose bid was slightly lower than those of the remaining defendants. Therefore, in order to carry out the agreement of the defendants to maintain uniform prices on sales of stainless steel finished products and to avoid discrepancies in bids because of errors in computation, co-conspirator Chemical Foundation, defendant Carpenter, and, on occasion, other corporate defendants, pursuant to an agreement reached at the aforesaid industry meetings, circulating among the remaining corporate defendants so-called A.I.'s or Advance Informations. These A.I.'s showed the exact price to be used by all the defendants in quoting on designated government inquiries, and were calculated upon the agreed base prices, extras, terms and conditions of sale. The A.I.'s so sent out were used by the corporate defendants receiving them to conform their bids to those of all the other defend-

ants. As a result most of the bids submitted by the corporate defendants or their predecessors to the United States Government during the period covered by this indictment have been identical. Accordingly purchases of stainless steel finished products by the Government have by necessity been awarded among the defendants through selection by lot and competitive bidding has been prevented.

Effects of the Combination and Conspiracy

45. The aforesaid unlawful agreement, combination and conspiracy has had, as was intended by the defendants and co-conspirators, the following effects:

(a) Interstate trade and commerce in the manufac- [fol. 4611] ture and sale of stainless steel finished products has been substantially and unreasonably restrained.

(b) Prices of stainless steel finished products in the United States have been maintained at fixed, arbitrary, and non-competitive levels.

(c) Competition in the manufacture and sale of stainless steel finished products in the United States has been eliminated.

Jurisdiction and Venue

46. The combination and conspiracy hereinbefore alleged has been carried out in part in the District of New Jersey. During the period of time hereinbefore alleged, including the period from October 10, 1939 to the date of the return of this indictment, defendants and co-conspirators have performed within said District of New Jersey the following acts in effectuating and carrying out said unlawful combination and conspiracy:

(a) At various times and places so numerous as to be impractical to state specifically herein but being well known to defendants, some or all of the corporate defendants have quoted to inquiring purchasers of stainless steel within the District of New Jersey, both orally and in written bids, the prices, terms, and conditions of sale agreed upon and fixed pursuant to the aforesaid unlawful combination and conspiracy.

(b) Some or all of the corporate defendants have continuously published and circulated in the District

of New Jersey copies of their published base price and extra lists for stainless steel products, containing [fol. 4612] the prices, terms, and conditions of sale agreed on and fixed pursuant to the aforesaid unlawful combination and conspiracy.

(c) At various times so numerous as to be impractical to state specifically herein but being well known to defendants, some or all of the corporate defendants have sold and shipped large quantities of stainless steel finished products from other states than the State of New Jersey to purchasers in the said District of New Jersey, and such sales have been made at the prices, terms, and conditions of sale agreed upon and fixed pursuant to the aforesaid unlawful combination and conspiracy.

(d) At various times some or all of the corporate defendants have quoted prices on stainless steel finished products to the United States Army, particularly at Picatinny Arsenal, near Dover, in the District of New Jersey, which quotations were based on the arbitrary, uniform and non-competitive prices, terms, and conditions of sale, agreed upon and fixed pursuant to the aforesaid unlawful combination and conspiracy.

And so, the Grand Jurors aforesaid, upon their oaths aforesaid, do find and present that the defendants and co-conspirators throughout the period aforesaid, at the places and in the manner and form aforesaid, unlawfully have engaged in a continuing combination and conspiracy in restraint of trade and commerce in stainless steel finished products among the several states of the United States of America, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

[fol. 4613] Count Two

And the Grand Jurors aforesaid, inquiring as aforesaid, upon their oaths aforesaid, do hereby re-allege, re-affirm, and incorporate as if herein set forth in full, each of the allegations set forth in paragraphs 1 through 22, inclusive, of Count One of this indictment.

Control of the Industry

47. Throughout the period of time covered by this indictment, defendants and co-conspirators have possessed the power to fix and maintain, by concerted action, uniform and non-competitive prices, terms, and conditions for the sale of stainless steel finished products.

Combination and Conspiracy

48. Beginning in or about the year 1934, the exact date being to the Grand Jurors unknown, and continuing thereafter up to and including the date of the return of this indictment, defendants and co-conspirators named herein together with others to the Grand Jurors unknown, well knowing all the facts herein alleged, have continuously engaged in a wrongful and unlawful combination and conspiracy, carried out in part within the District of New Jersey, to monopolize trade and commerce in stainless steel finished products among the several states of the United States by agreeing with each other to arbitrarily fix, establish, and maintain prices, terms, and conditions for the sale of said products in said interstate trade and commerce, in violation of Section 2 of the Act of Congress of July 2, 1890, as amended (26 Stat. 209; 15 U. S. C. Sec. 2), commonly known as the Sherman Act. Said unlawful combination and conspiracy has consisted of a continuing agreement and concert of action between all defendants and co-conspirators, the substantial terms of which have been that:

(a) Defendants would from time to time fix uniform base prices for the various types of stainless steel finished products.

[fol. 4614] (b) Defendants would from time to time fix uniform extras on stainless steel finished products.

(c) Defendants would from time to time establish uniform cash discounts, courtesy discounts to other manufacturers, and other terms and conditions of sale of stainless steel finished products.

(d) Defendants would adopt and use Pittsburgh, Pennsylvania as the freight basing point for all sales by them of stainless steel finished products and would sell such steel to purchasers located throughout the United States only on the basis of f.o.b. Pittsburgh.

(e) Defendants would sell stainless steel finished products in the United States at uniform and arbitrary prices and upon uniform terms and conditions fixed as aforesaid.

The aforesaid unlawful combination and conspiracy has been formed and carried out by divers means including those set forth in paragraphs 24 to 44 inclusive, of Count One of this indictment, which are hereby re-alleged, re-affirmed, and incorporated herein as if set forth in full.

Effects of the Combination and Conspiracy

49. The aforesaid unlawful agreement, combination and conspiracy has had, as was intended by the defendants and co-conspirators, the following effects:

(a) Prices of stainless steel finished products in the United States have been maintained at fixed, arbitrary, and non-competitive levels.

(b) Competition in the manufacture and sale of stainless steel finished products in the United States has been eliminated.

[fol. 4615] Jurisdiction and Venue

50. The combination and conspiracy hereinbefore alleged has been carried out in part in the District of New Jersey. During the period of time hereinbefore alleged, including the period from October 10, 1939 to the date of the return of this indictment, defendants and co-conspirators, in effectuating and carrying out said unlawful combination and conspiracy, have performed within said District of New Jersey the acts set forth in paragraph 46 of Count One of this indictment, which is hereby re-alleged and incorporated herein as if set forth in full.

And so, the Grand Jurors aforesaid, upon their oaths aforesaid, do find and present that the defendants and co-conspirators throughout the period aforesaid at the places and in the manner and form aforesaid, unlawfully have engaged in a continuing combination and conspiracy to monopolize trade and commerce in stainless steel finished products among the several states of the United States of America, contrary to the form of the statute of the

United States in such case made and provided, and against the dignity of the United States of America.

A True Bill:

Jas. A. O'Connor, Foreman.

Paul Fitting, Special Attorney; A. W. Storms, Special Attorney.

Wendell Berge, Assistant Attorney General; Thorn Lord, United States Attorney; Herbert A. Berman, Special Assistant to the Attorney General.

[fol. 4616] PLAINTIFF'S EXHIBIT No. 173

Carr & Carr

Attorneys at Law

St. Louis, Mo., February 23, 1924.

The Timken Roller Bearing Company, Canton, Ohio.

British Contract

Attention: Mr. Homan Ely

GENTLEMEN:

. . . . . .

Accordingly, we feel that the British Company has no legal claim for a reduction of royalty; and it is certainly obtaining favorable consideration as long as it enjoys the use of your trade-mark "Timken" and of excluding you from competition with it.

On the other hand, the contract gives the British licensee the right to terminate the contract at any time on six months notice.

Under the circumstances, it strikes us that the situation is one for negotiation rather than for adjustment through lawyers, and that Mr. Lothrop could probably do more toward adjusting the matter than legal counsel. Judging from your letter, Mr. Lothrop seems to have in mind that the patent lawyers will undertake to pass on the extent of legal protection afforded to the British licensee by the several British patents with a view to determining the justice

of the British Company's claim to a reduction of its royalty. The defect in this proposition is that it wholly overlooks the trade-mark license, that is to say, the great value to the British Company of the right to use the word "Timken" on its products and the further great right of excluding you from competition with it.

* * * * * * *

Yours truly, (S.) Carr & Carr.

JAC:H.

[fol. 4617]

Carr & Carr

Attorneys at Law

1304 Central Natl. Bank Bldg.

Patent Law a Specialty

James A. Carr, Thomas Percy Carr, Joseph J. Gravely, Edgar T. Farmer

St. Louis, Mo., February 23, 1924.

The Timken Roller Bearing Company, Canton, Ohio.

British Contract

Attention: Mr. Heman Ely

GENTLEMEN:

By separate letter, we are advising you of our opinion that your contract with your British licensee will not expire with the expiration of the last of your three original British patents, but will be prolonged to the expiration of other British patents subsequently acquired by you; also that the expiration of the three original British patents will not have the effect of changing the rate of royalty, but that the British licensee will remain obligated to pay to you royalties at the present rate on all roller bearings made by it; and that the license to use the word "Timken" enables the British Company to participate in the good will heretofore built up and which it would have to surrender in case the contract is terminated. Accordingly, we feel that the British Company has no legal claim for a reduction of royalty; and it is certainly obtaining favorable consideration as long as it enjoys the use of your trade-

mark "Timken" and of excluding you f[illegible]n competition with it.

On the other hand, the contract gives the British li-
[fol. 4618] censee the right to terminate the contract at any time on six months notice.

Under the circumstances, it strikes us that the situation is one for negotiation rather than for adjustment through lawyers, and that Mr. Lothrop could probably do more toward adjusting the matter than legal counsel. Judging from your letter, Mr. Lothrop seems to have in mind that the patent lawyers will undertake to pass on the extent of legal protection afforded to the British licensee by the several British patents with a view to determining the justice of the British Company's claim to a reduction of its royalty. The defect in this proposition is that it wholly overlooks the trade-mark license, that is to say, the great value to the British Company of the right to use the word "Timken" on its products and the further great right of excluding you from competition with it. In the case of a license under broad patents and patents for minor improvements, it is more or less customary to provide for a reduction of royalty when the broad patents expired, on the principle that the tail should go with the hide; but in your case, the value of the good will has been steadily increasing at the same time that the value of the patent has been decreasing, so that the British licensee is now getting as much value in the form of the trade-mark as it originally had under the patents and the trade-mark together.

As we view the matter, therefore, it should be Mr. Loth-
[fol. 4619] rop's effort not merely to make clear the importance of the after-acquired patents, but to emphasize the value of the good will in the word "Timken".

The British agents, who have been our associates for years in handling your British patent matters are Messrs. Abel & Imray, 30 Southampton Buildings, London W. C. England; and they will be glad to furnish Mr. Lothrop any information in their line. The Buckwalter E-type Cage patent and the Process of Assembling the Same were handled through Mr. Butler and we do not know who his British associates were in the matter.

Yours truly, Carr & Carr.

JAC:H.

[fol. 4620] PLAINTIFF'S EXHIBIT No. 174

Received Nov. 21, 1927

Stibbard, Gibson & Co.

21 Leadenhall Street, London, E. C. 3

9th November, 1927.

DEAR SIRS,

Mr. Dewar has handed us the draft of an Agreement between you and British Timken Ltd. prepared by Mr. Higgins, and we have been going through this document. There is an important question at the start, as to which we should like to have your remarks.

The Agreement is substantially a license to make, use and sell under patents from time to time existing, and "Bearings" is the name given to bearings of all kinds manufactured under and in accordance with the specification of Letters Patent now or hereafter acquired by you in the Licensed Territory. Are there any patents in existence to which the Agreement will apply?; our impression is that there are none, and even if there are any at the present time, we rather think that the patent position is so shadowy that there may be no patents at some future date. The royalty is only payable upon bearings defined as above, so that if there is no patent now or at any future date, the royalty may cease to be payable.

As we understand the position, the main advantage derived by the English Company under the Agreement will [fol. 4621] be the advice and information to be received from you, the right to use the name "Timken" and the absence of your competition. Do you not think that it would be better to accentuate these advantages in the Agreement, rather than leave them merely as incidents in a patent license?

Then it would naturally follow that the royalty is payable on all bearings manufactured, used or sold by the British Company or any subsidiary or any Company, firm or person sub-licensed assisted or controlled by them.

We are to have a meeting with Mr. Dewar and Messrs. Linklaters & Paines on Friday in order, if possible, to settle

the draft Notices and Resolutions with respect to the alteration of the Articles of Association.

Yours faithfully, Stibbard, Gibson & Co.

The Timken Roller Bearing Company, Canton, Ohio.

[fol. 4622] PLAINTIFF'S EXHIBIT No. 175

October 22, 1934.

Mr. M. B. U. Dewar, 10 Mayfair Place, London, W. 1., England.

DEAR MICHAEL:

As I advised you in my cablegram of Saturday, Grover Higgins and I have been going over the various new agreements sent us by Mr. Duncan, and Grover has already written Mr. Duncan regarding several of the paragraphs therein.

* * * * * * *

In all of these discussions we feel it is very important to view the different points raised on the right basis. In other words, we are now arranging a new 15 year period where both of the former partners, i.e., Michael Dewar and Timken, are ostensibly remaining the same but actually are now quite different. In the so-called "New Deal" we feel and hope that our past pleasant cordial relationship will be continued, but at the same time it is the writer's opinion that we now have to consider that 50% of British Timken stock will be in the hands of the public and in a good many ways our business transactions can be made much more open from the public's viewpoint than heretofore. Then, again, from the standpoint of Timken America, we must bear in mind that we are now becoming a 25% owner of stock in an enterprise, not a majority stockholder, and that some of the things we formerly did willingly and freely, without any recompense, as affecting only our partner Michael Dewar, and ourselves, now becomes a matter of these same things being done for another company in which we hold a 25% interest only. Thus, as you will see from my various future letters, we feel it is quite desirable to definitely set up in our new agreements several

points beyond question of a doubt that in the past would only be the occasion of a simple letter from either of us to each other, thus settling any divergence of opinion in almost every instance.

* * * * * * * * *

Very truly yours, The Timken Roller Bearing Co.
——— ———, Assistant to the President.

DPH:MC
CC to Mr. A. J. M. Duncan

[fol. 4623] October 22, 1934

Mr. M. B. U. Dewar, 10 Mayfair Place, London, W.1., England.

DEAR MICHAEL:

As I advised you in my cablegram of Saturday, Grover Higgins and I have been going over the various new agreements sent us by Mr. Duncan, and Grover has already written Mr. Duncan regarding several of the paragraphs therein. We have just received a reply to his letter and it is having our attention. However, it is my positive opinion that it would be very desirable if you could come over here and discuss the thing with us. There are a good many points of minor importance and some of rather major nature that I know we could settle very quickly and satisfactorily in hearing each others viewpoint through personal contacts. Of course, none of these differences are of such a nature in my opinion that we cannot ultimately settle them by correspondence, but as you know this involves delay, and it is sometimes very difficult to get the right slant from rather a cold typewritten letter. However, on the assumption that you cannot come, I am writing you separate letters on each of the points involved, sending a copy of each letter to Mr. Duncan.

In all of these discussions we feel it is very important to view the different points raised on the right basis. In other words, we are now arranging a new 15 year period where both of the former partners, i.e., Michael Dewar and Timken, are ostensibly remaining the same but actually are now quite different. In the so-called "New Deal" we

feel and hope that our past pleasant cordial relationship will be continued, but at the same time it is the writer's opinion that we now have to consider that 50% of British Timken stock will be in the hands of the public and in a good many ways our business transactions can be made much more open from the public's viewpoint than heretofore. Then, again, from the standpoint of Timken America, we must bear in mind that we are now becoming a 25% owner of stock in an enterprise, not a majority stockholder, and that some of the things we formerly did willingly and freely, without any recompense, as affecting only our partner Michael Dewar, and ourselves, now becomes a matter of these same things being done for another company in which we hold a 25% interest only. Thus, as you will see from my various future letters, we feel it is quite desirable to definitely set up in our new agreements several points beyond question of a doubt that in the past would only be the occasion of a simple letter from either of us to each other, thus settling any divergence of opinion in almost every instance.

[fol. 4624] Another phase of this situation which we trust you will bear in mind is the fact that within the next 15 years, conditions in our company here may possibly change to a marked extent, and we therefore feel, both for your sake and ours, that every possible protection be given British Timken, French Timken and American Timken. Then, too, we also feel that should you in the future wish to retire from active participation in British Timken, we might be very unwilling, as far as American Timken is directly concerned, to continue the same relationship with some future partner as in the past. Of course, we fully realize that under such a condition we could purchase your intertests, but at this time we feel it would be highly desirable to have some British interest owning a considerable share of British Timken company (other than totally outside interests). This would mean that if such a person were to own such a share of British Timken stock, he would expect, in all probability, to work under the same kind of an arrangement that you and we have enjoyed for the past 7 years. Frankly, as we see it today, this might not appeal to us at such a time, and we therefore wish to view these new agreements from the possible

standpoint that some one other than Michael Dewar might eventually be a "party of the other part."

Summarizing this whole situation, we want you and your associates to get our viewpoint in as broad a manner as possible, and please do not feel, above all things, that we wish to question in any way your ability or honesty of intent. I think you know how we feel on this subject as far as you are concerned, but, as we said heretofore, we want to prepare these new agreements in as complete a manner as possible to cover all possible anticipated complications from both our view points. We hope and trust that the ownership of American Timken will remain as it is for the next 15 years, and, of course, under such circumstances you have nothing at all to be concerned about, but here, too, it is our feeling that British Timken and French Timken must be placed in a position so as not to be affected by any change whatever in our local affairs.

With kindest regards,

Very truly yours, The Timken Roller Bearing Co.

——— ———, Assistant to the President.

DPH:MC

CC to Mr. A. J. M. Duncan

[fol. 4625] PLAINTIFF'S EXHIBIT No. 176

10, Mayfair Place,
London, W.1.

5th November, 1934

Mr. D. P. Hess, Timken Roller Bearing Co., Canton, Ohio.

MY DEAR DON:

New Deal

Thank you for your letter of the 22nd October which I read with great interest and a great deal of sympathy for your point of view.

. . . . . .

However, I entirely agree with you that all these agreements have now to be prepared, bearing in mind the very separate and distinct identities of the various Companies

concerned. I feel, however, it should be quite simple to do this, even if we must bear in mind, as you seem quite correctly to infer, that no one Company has the right to expect any material benefit from another Company without properly paying for it.

I look forward to your criticisms on our Draft Agreements, and for your part, please rest assured that I do see your point of view; and as far as it is physically possible, I am prepared to do everything I can to ensure that the agreements that we are now reaching shall be equitable, and shall cover as far as possible all eventualities, having regard to the various interests concerned.

Yours sincerely, /s/ M.B.U. Dewar.

[fol. 4626]

10, Mayfair Place,
London, W.1.

5th November, 1934.

Mr. D. P. Hess, Timken Roller Bearing Co., Canton, Ohio.

My Dear Don:

New Deal

Thank you for your letter of the 22nd October, which I read with great interest and a great deal of sympathy for your point of view.

I entirely agree with you that settling all the points that may arise between us by correspondence is likely to be a much lengthier matter than settling them by personal contact round the table.

I would, however, urge that we should endeavour to settle as much as we possibly can by correspondence, leaving as little as possible to be settled by a personal meeting.

I am sure you will appreciate that it is very difficult for me to find time to make a lengthy trip to America this year; the same applies to Mr. Pascoe and I do not feel that it would be in the interests of any of the Companies for me to come without him. Nevertheless, if we can get things down so that the outstanding points can be settled in a few days, then, in view of the importance of the decisions which we are now reaching—which importance you admirably stress in the second paragraph of your letter—we will certainly consider a meeting between us.

The third paragraph of your letter rather concerns what might happen if I myself were no longer in the picture. You know at present that I have no thought of retiring from active business, neither have I at present any thought that my interests in the Timken Company, to which I have given so much of my life, should leave my family. As I see it there are two possibilities when I am no longer [fol. 4627] present:

(1) My interest would remain in my family, and although there would be no Michael Dewar in the relations between British Timken and American Timken, there would be some other Dewar. It was with the thought in mind that my and my family's interests in Timken would be a lasting one that I asked Mr. Pascoe to join the Company, in order to preserve continuity of management and association with yourselves. Should Mr. Pascoe be no longer available for any reason, I should seek someone else of equal standing, and ability to accompany me in my associations with yourselves. In this case, I should hope that the associations between the two Companies would be as pleasant as they have been in the past.

(2) The other alternative would be that you would purchase my interest. You would then own approximately 50% and the controlling interest in British Timken. You would be able to appoint your own management, and apart from the fact that you would have outside Shareholders, you would be in control of the Company as far as its association with yourselves went.

I do not quite appreciate your feeling that it might be desirable to have some other British interest owning a large block of Capital, as if we are to have any outside Shareholders at all, and we have decided to do so, then your 25% interest, with the possibility of your purchasing my 25% interest, should, I feel, give you a very satisfactory interest in the British concern.

However, I entirely agree with you that all these agreements have now to be prepared, bearing in mind the very separate and distinct identities of the various Companies concerned. I feel, however, it should be quite simple to do this, even if we must bear in mind, as you seem quite correctly to infer, that no one Company has the right to expect any material benefit from another Company without properly paying for it.

[fol. 4628] I look forward to your criticisms on our Draft Agreements, and for your part, please rest assured that I do see your point of view; and as far as it is physically possible, I am prepared to do everything I can to ensure that the agreements that we are now reaching shall be equitable, and shall cover as far as possible all eventualities, having regard to the various interests concerned.

Yours sincerely, M. B. U. Dewar

[fols. 4629-4630] PLAINTIFF'S EXHIBIT No. 179

Stibbard, Gibson & Co.

21 Leadenhall Street
London, E.C.3
ENCS: 11th January, 1939.

DEAR MR. TIMKEN,

Timken British Trade Mark.

In order that you may be advised as to the position in connection with the Application for registration of the Timken Trade Mark in this country, I enclose the following documents:—

1. Copy opinion of Mr. F. E. Bray, K. C., an expert on Trade Mark Law.
2. Copy Declaration made by Mr. Dewar in support of the Application.
3. Copy letter to the Registrar sent with the documents.

Yours faithfully, s/ A. I. M. Duncan

W. Robert Timken, Esqre.,

[fol. 4631] Dated 28th November, 1938.

Re "Timken" Trade Mark

Opinion of Mr. F. E. Bray, K. C.

Stibbard Gibson & Co., 21, Leadenhall Street, London, E. C. 3.

[fol. 4631-a] OPINION

. . . . . .

In any case before the mark is advertised, steps must be taken to ensure that importers of the American goods are secured so that they will not oppose the Application.

. . . . . .

F. E. Bray

Inner Temple
28th November, 1938

[fol. 4632]

21, Leadenhall Street,
London, E.C.3.
9th January, 1939.

SIR,

Trade Mark Application No. 600251-5 by British Timken Limited

We send herewith the Statutory Declaration by Mr. M.B. U. Dewar who is the Chairman and Managing Director of the Applicant Company in support of the above five applications.

The Applicant Company is desirous that a date may be fixed for a hearing by the Registrar at which Counsel for the Company can have an opportunity of discussing the evidence which may be required to substantiate the claim that "Timken" is a distinctive mark before steps are taken to procure this evidence from all over the country and the Applicant Company suggests that this discussion might take place upon a hearing on the question whether the applications should be advertised with or without acceptance under Section 18 (1) of the Trade Mark Act 1938. Any such discussion would of course be entirely without prejudice to any ultimate decision of the Registrar.

We are writing this in accordance with a suggestion made by Counsel.

We are, Sir, Your Obedient Servants, Stibbard Gibson & Co.,

The Registrar,
The Patent Office,
Trade Marks Branch.

[fol. 4633] Dated 28th November, 1938.

Re "Timken" Trade Mark

Opinion of Mr. F. E. Bray K.C.

Stibbard Gibson & Co., 21, Leadenhall Street, London, E.C.3.

[fol. 4634] Opinion

In my opinion it is very doubtful whether any evidence which may be available will enable the Company to obtain registration.

The Trade Marks Act 1938, which consolidates the law as affected by the Amendment Act of 1937, does not directly improve the position. If the trade Mark were already registered the difficulty involved by the arrangement which permits of the American Company's goods being sold in the territory of the British Company might perhaps be solved by registering the American Company as a user under Section 28. Even in that case, there would still be a difficulty if the American Company has made use of the provision of Clause 6 (c) of the 1934 agreement and the Licensees use the name "Timken" in connection with their goods as there would then be goods, not only of the American Company, but of any of the 4 licensed producers coming into this country marked "Timken"; and I have considerable doubts as to whether the Registrar would allow them to be registered as users.

As matters now stand, the trade mark cannot be registered without establishing by evidence that it is adapted to distinguish the goods with which the British Company is connected in the course of trade from goods in the case of which no such connection exists (see Section 9 (1) (e) and 9 (2) of the Act of 1938). "Timken", even if there is no one of that name in England is, admittedly a surname (of Warschauer Appn, 46 R.P.C. 42).

If, with the knowledge and consent of the British Company, American goods are coming into this Country marked [fol. 4635] "Timken" without any other distinguishing mark, it cannot be proved strictly that "Timken" is adapted to distinguish the British Company's goods from the American Company's goods, as the same mark would be in use on both. If the American goods are marked "made in U. S. A.", it may be possible to get evidence that "Timken"

alone without some such addition means the British Company's goods exclusively.

Indirectly, the new Act may improve the prospects to some extent, as the fact that the legislature has expressly recognised licenses in some cases shows that the old idea that, in all circumstances, a licence to use a trade mark is contrary to public policy no longer holds the field. It is possible, therefore, that it may be found that the Registrar is more inclined to try and find a way out of the difficulty than would have been the case a few years ago.

In these circumstances I think that it is advisable to try and ascertain the views of the Registrar before going to the trouble and expense of getting evidence from all over the Country to support the case that "Timken" is a distinctive mark. Accordingly, I advise that in the first instance only one statutory declaration should be filed by a Director of the Applicant Company, and that this should be sent with a letter to the Registrar stating that before going to the expense of getting further evidence, the Applicants desire that Counsel should have the opportunity of discussing (without prejudice, of course, to any ultimate decision of the Registrar) the evidence which may be required, and suggesting that this may be obtained by a hearing before the Registrar on the question whether the Ap- [fol. 4636] plication should be advertised with, or without, acceptance under Section 18 (1) of the Act. The Registrar could not, in my opinion, refuse a hearing, and it could be attended by Counsel with a view to seeing whether there is any prospect of getting over the difficulties. This course will have the advantage of avoiding the cost of getting evidence from all over the Country (which would be necessary) unless it looks as if there is a fair chance of success; it is also possible that the Registrar, who, if approached in the right way, is nearly always helpful, may offer some useful suggestions for getting over the difficulty.

The declaration should state that the Applicant Company commenced business in 1920 and give approximate figures for the annual turnover in the different goods marked "Timken" for which registration is sought, for the last five years or thereabouts. Examples of each class of goods marked "Timken" should be exhibited. The amount spent on advertising should be given, if it is impressive, and possibly advertising matter exhibited; but this should be

carefully examined before a decision is reached. I recollect that some of it at one time rather conveyed the impression that, "Timken" was a description of a type of article irrespective of the manufacturer. The declaration should then go on to state that to the best of the declarant's belief no goods of the above mentioned descriptions other than those of the Applicant Company have been sold in the United Kingdom since 1920 except:—

(1) Goods imported as components of completed machines.

(2) Replacements for machines so imported.

Comparative figures of sales of such imported goods might be given if the figures are known and are very much less than those of British Company's goods.

[fol. 4637] Assuming that the Merchandise Marks Act 1926 has been complied with and that such goods, if marked "Timken", are also marked "made in U.S.A." or "imported", this should be stated in the declaration.

Presumably it can also be said that these imported goods are only dealt in by a comparatively small number of dealers wh are service agents for the imported machines in question or who supply such service agents.

The declaration should also state that the declarant believes that evidence can be obtained from all over the Country that the trade mark "Timken" denotes exclusively the goods of the Applicants, although there would be some witnesses who know of the imported goods and distinguish them by the fact that they are imported for foreign cars only, and (if it be the fact) are marked with an indication of origin.

It could further be stated that, wherever there are associated companies in different territories manufacturing components under the same name, some importation of this sort must inevitably take place as the importation of complete machines cannot be stopped, and that this is known to the dealers in, and users of the goods, so that no confusion arises; that the Application is made with the active support of the American Company and that it is proposed to apply to register that Company as a user in respect of goods imported as components of complete machines or replacement parts for such machines. The declaration should be settled by experienced junior counsel.

At the suggested hearing, it may be argued that it is quite illogical that the position of the Applicant Company as proprietor and the American Company as registered [fol. 4638] user, which could have been reached if the mark were registered, is made for ever impossible merely because the mark is not registered; and that the British Company is in fact entitled to the exclusive right to the trade mark, subject only to a limited concurrent right of the American Company to use the mark with a distinguishing indication of origin.

I think that this course may be successful, and in any case, will do no harm, as the real objection which might lead to a refusal will be discussed before advertisement and, thus, without publicity.

This does not get over the difficulty of the goods of other licenced manufacturers in U.S.A., if there are any which are sold as Timken. I feel that there must be some practical way of requiring that any such licensees, when they get orders from the U.K. should supply the goods to the British Company who would resell them at the same price to the person giving the order, so that the goods would be of the merchandise of the British Company. It would facilitate the matter if the American Company would do the same, as, if that were done, the only goods marked "Timken" with which the British Company was not connected in the course of trade would be those imported as parts of complete machines, and possibly the Registrar might accept the applications if the specification of goods were limited by the addition of the words "not being goods imported as part of complete machines".

In any case before the mark is advertised, steps must be taken to ensure that importers of the American goods are secured so that they will not oppose the Application.

If the Registrar expresses an unfavourable view, I think [fol. 4639] the applications should be dropped. The importance of registration can be exaggerated. I appreciate that it would be valuable in this case, and especially as, if the Agreement terminates, the new Act would enable the American Company to reacquire the trade mark without the goodwill; but, for the reasons given above, I think the new Act will indirectly ease the difficulty which might have existed before the Act in enforcing common law rights against third parties, as the Courts are likely to be less

inclined to treat a licence as destructive of trade mark rights.

F. E. Bray

Inner Temple
28th November, 1938

[fol. 4640] Dated 9th January, 1939.

Trade Marks Act, 1938.

In the matter of Trade Mark Applications No. 600,251, No. 600,252, No. 600,253, No. 600,254 and No. 600,255 British Timken Limited.

Copy

Declaration of Michael Bruce Urquhart Dewar.

[fol. 4641] Trade Marks Act 1938

In the matter of Trade Mark Applications No. 600,251, No. 600,252, No. 600,253, No. 600,254 and No. 600,255, by British Timken Limited.

I, Michael Bruce Urquhart Dewar of 65 Cheston Road Aston in the City of Birmingham, Chairman and Managing Director of the Applicant Company British Timken Limited which has its registered office at the same address solemnly and sincerely declare as follows:

1. I became Chairman of the Board of Directors and Managing Director of the Applicant Company in the year 1927, and I have occupied that position ever since and am consequently well acquainted with the history and business activities of the Company from and after that date.

2. The Applicant Company was formed in 1920 for the purpose of manufacturing and marketing anti-friction bearings suitable for all sorts of purposes and has always been and still is closely associated with The Timken Roller Bearing Company of Canton, Ohio. U.S.A. Another associated Company was formed in France for the same purpose in the year 1928 under the name Societe Anonyme Francaise Timken and I am Managing Director of that Company. The American British and French Companies have all worked in close association.

The Applicant Company has carried on the business of manufacturing and marketing bearings in this Country

since it was incorporated and since 1935 it has also sold Lubricant testing machines and the Applicant Company has in mind the manufacture and/or sale of Machine Tools and Universal Joints in which bearings are component parts. Bearings are component parts of axle boxes which are [fol. 4642] bought fitted with bearings and sold by the Applicant Company.

4. Throughout its existence the Applicant Company has continuously marked and widely advertised its products under the Trade Mark "Timken" for the purpose of indicating that the products so marked and advertised are the products of the Applicant Company and in fact throughout its whole life the said mark "Timken" alone has been exclusively used in this Country by the Applicant Company except as hereinafter mentioned.

5. The sales of the Applicant Company during its existence have been large and increasing and considerable sums have throughout the same period been expended in advertising its said products under the said mark as is indicated by the following figures of sales and of advertising costs for the five years beginning in 1933 which figures I have caused to be extracted from the books of the Applicant Company.

Turnover.

Year	Tapered Bearings		Ball and Parallel Bearings		Lubricant Testing Machines
	Number	Value £	Number	Value £	Value £
1933	1,687,614	343,170	6,306	1,008	....
1934	1,943,810	401,747	46,953	6,320	....
1935	1,774,127	413,797	86,535	10,474	1,531
1936	1,946,078	494,684	110,036	16,986	955
1937	2,339,410	589,071	165,533	21,602	548
1938	1,928,832	660,155	293,017	37,437	570

[fol. 4643] ADVERTISING COSTS

Year	Advertisements £	Exhibitions £	Total £
1933	4,887	523	5,410
1934	5,552	965	6,517
1935	7,236	461	7,697
1936	7,871	309	8,180
1937	7,888	577	8,465
1938	8,142	386	8,528

6. For the purpose of shewing the manner in which the Applicant Company has used the Trade Mark "Timken" in the course of its trade in the goods in respect of which

these Applications are made there are now produced and shewn to me marked respectively "M.B.U.D.1", "M.B.U.D.2", "M.B.U.D.3" and "M.B.U.D.4" examples of the bearings and the cartons in which the same are marketed each bearing the Trade Mark "Timken" and there is now produced and shewn to me a bundle of advertising literature marked "M.B.U.D.5" issued by the Applicant Company at about the dates respectively marked thereon.

7. As stated in paragraph 4 of this Declaration to the best of my belief, the Trade Mark "Timken" alone has been used in this Country exclusively by the Applicant Company throughout the whole of the period of its existence except as hereinafter mentioned. Throughout that time, however, business arrangements have existed between the Applicant Company and the American and French Associated Companies under which the American and French manufacturers of vehicles and other machines have imported into this country completed vehicles and other machines which have contained as component parts thereof bearings made by the American or the French Associated Company as the case may be and purchased by the said [fol. 4644] manufacturers from the American or the French Associated Company as the case may be. Bearings manufactured by the American and the French Associated Companies have also been imported into this country to serve as replacement parts for the said imported vehicles and machines. The bearings imported from the U.S.A. and France under the said business arrangements have always been marked with the words "Timken made in U.S.A." or "Timken made in France" respectively as the case may be except that I have ascertained that in the case of bearings made in France and incorporated in vehicles and machines these are not in all cases marked with the words "made in France". I have however given instructions to the French Associated Company that all bearings made by that Company shall without exception be marked "Timken made in France".

8. Wherever there are associated Companies in different territories manufacturing components under the same name and supplying them to manufacturers of machines within their own territories it is not practicable to prevent the importation of completed machines containing those components or similar parts for replacement purposes from

the territory of one associated Company into the territories of the others as mentioned in the last preceding paragraph of this Declaration, or to furnish particulars as to numbers of machines or bearings imported but in the case of bearings manufactured by the American and the French Associated Companies the number of bearings must be very inconsiderable relatively to the numbers manufactured by the Applicant Company. The practice is well understood by dealers in and users of the machines in question and no confusion arises therefrom. Such dealers and users know that the said components are incorporated in or imported for the foreign machines for which they have been supplied [fol. 4645] and are distinguished by the indication of the country of origin with which such components are marked and I am satisfied from my own experience that evidence can be obtained from traders all over the country including such persons as know of the imported components mentioned in paragraph 7 hereof that to them the Trade Mark "Timken" denotes exclusively the goods of the Applicant Company unless followed by the words "made in U.S.A." or "Made in France". It is the intention of the Applicant Company if and when it obtains registration of its said Trade Mark to seek to take advantage of the provisions of Section 28 of the Trade Marks Act 1938 and to apply to register the American and French Associated Companies as registered users of the said mark in respect of goods imported into this country as component parts of complete machines or as replacement parts for such machines. These Applications are therefore made with the active support of the said associated Companies with a view to protecting the interests of all the said Companies in the said Trade Mark and for the purpose of establishing the position clearly for the benefit of all traders in this country.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at 8 Whittington Avenue, in the City of London, this 9th day of January, 1939. (Sgd) M. B. U. Dewar. Before me, W. F. Murly, A Commissioner for oaths.

(Here follow 2 photolithographs, side folios 4646, 4647)

CLASS 12. (Schedule IV.)

TIMKEN

Advertised before acceptance. Section 18 (1) (proviso).

600,254. Axle boxes and axle bearings for vehicles. BRITISH TIMKEN LIMITED, 85, Cheston Road, Aston, Birmingham, 7. Manufacturers.—9th August, 1938. To be Associated with No. 600,251 (3179) vi and here.

TAYWEL

603,729. Gear for use in launching ships' boats from ships. SAMUEL TAYLOR AND SONS (BRIERLEY HILL) LIMITED, Brettell Lane, Brierley Hill, Staffordshire; Manufacturers.—11th January, 1939. To be Associated with No. 518,607 (2759) xxi.

CLASS 16. (Schedule IV.)

Registration of this Trade Mark shall give no right to the exclusive use of the words "Viney's keep good time".

600,025. Paper and paper articles (except paper hangings), cardboard and cardboard articles not included in other Classes, printed matter, newspapers and periodicals, books, stationery, and playing cards. H. VINEY & COMPANY LIMITED, Strand Road, Preston. Engineers and Forwarding Agents.—28th July, 1938.

KODAPHANE

601,383. Adhesive-coated cellulose ester sheet material prepared as an article of stationery. KODAK LIMITED, Kodak House, Kingsway, London, W.C.2; Manufacturers.—30th September, 1938. To be Associated with No. 541,650 (2884) xxxix and others.

KAR-VIS

603,138. Adhesives (stationery) and transparent cellulose paper. HENRY JOHNSTON, 80, Coulstonholm Road, Pollokshaws, Glasgow. Merchant.—14th December, 1938.

"ICYMON"

603,884. Conical or cylindrical paper containers for ice cream. MONO CONTAINERS LTD., Mono Works, Cumberland Avenue, Park Royal, London, N.W.10. Manufacturers of Paper Containers.—18th January, 1939.

4646

Class 5. (Schedule IV.)—*continued.*

SANISORB

963,841. Toilet paper, paper handkerchiefs, paper towels and paper covers for lavatory seats, all being medicated, and sanitary towels. ST. ANDREW MILLS LIMITED, 34, St. Andrew Road, Walthamstow, London, E.17. Manufacturers.—17th January, 1939.

964,176. Medicated preparations for human use in the treatment of indigestion and similar ailments. JESTS LIMITED, 250, Argyll Avenue, Trading Estate, Slough, Buckinghamshire. Packers and Distributors of Medicinal Products.—27th January, 1939.

Registration of this Trade Mark shall give no right to the exclusive use of the letters "M.V."

964,862. Medicated wines. MED-VET SUPPLIES LIMITED, 45a, South End, Croydon, Surrey. Manufacturers and Merchants.—17th January, 1939.

ASPODEX

964,269. Pharmaceutical preparations. W. J. BUSH & COMPANY, LIMITED, 28, Ash Grove, Hackney, London, E.8. Chemical Manufacturers.—30th January, 1939.

KERITOX

964,278. Preparations for destroying vermin. MILES & COOPER (CHEMICALS), LIMITED, 44, Longbridge Road, Barking, Essex. Manufacturers.—1st February, 1939.

CLASS 6. (Schedule IV.)

TIMKEN

Advertised before acceptance. Section 18 (1) (proviso).

960,251. Balls for anti-friction bearings. BRITISH TIMKEN LIMITED, 65, Cheston Road, Aston, Birmingham, 7. Manufacturers.—9th August, 1938. To be Associated with No. 960,252 (B1790) viii and others.

4647

[fol. 4648] PLAINTIFF'S EXHIBIT No. 181

March 28th, 1939.

Mr. Joseph J. Gravely, Carr & Carr & Gravely, 705 Olive Street, St. Louis, Mo.

DEAR JOE:—

With reference to your letter of March 24th to Mr. Turner, I checked the new Business Agreement. There is, as you say, no change from the old agreements with regard to the clause about assignation of registrations.

In any event, we are agreed with Mr. Dewar that British Timken, after they have been assigned their trademarks, shall aid us in qualifying as sole registered user. This would give us a strong position even if British Timken were unable legally to assign us the trademarks as provided in the agreement. They would still be forced to cease use of the name "Timken" which would leave us the only one able to use it.

Sincerely yours, W. Robert Timken.

WRT
t

cc—Mr. G. H. Turner, Mr. Robert Forsythe

[fol. 4649] PLAINTIFF'S EXHIBIT 182

April 8th, 1939

Mr. A. I. M. Duncan, c/o Stibbards, Gibson & Co. 21, Leadenhall Street, London, E.C.3.

DEAR MR. DUNCAN:

In reply to your letter of March 24th about the course of British trade mark registration, we had simply wished to be sure that everything was going along as agreed upon. It is quite necessary that the closest co-operation between ourselves and British Timken on these matters be maintained. As you are aware, Carr, Carr, & Gravely have been advising us on this type of legal matters for a number of years.

Their English correspondent, Skerrett, who has often been retained by British Timken in an advisory capacity,

wrote Mr. Gravely with some surprise that they had no knowledge of the applications for the British Timken Trade-mark registrations. We have no desire to attempt to choose the best counsel for this job at such a distance, but merely wished to be sure that every possible precaution was being taken to ensure the success of these applications and the subsequent registration of Timken Roller Bearing Company as sole registered licensee.

Please keep us fully informed of the future course of the applications and we will greatly appreciate it.

Sincerely yours, W. Robert Timken

c.c. to Gravely.

[fol. 4650] PLAINTIFF'S EXHIBIT 183

21 Leadenhall St., London, E.C.3.

ENC: 2nd November, 1939.

DEAR MR. TIMKEN:

Timken Trade Mark

I enclose confirmation of cable sent to you to-day. This results from the following course of action:

As I believe I have already advised you, the Registrar of Trade Marks has required us to furnish evidence from eleven districts of the United Kingdom as to the understanding in the Trade with respect to the Trade Mark "Timken" and in addition has required us to furnish a declaration by a responsible official of a commercial organization. The proper organization in this connection is the Society of Motor Manufacturers and Traders, Ltd. and their procedure is to circularise their members before supplying a declaration; when the time for replies to the circular has expired, the matter together with any replies received is brought before the Management Committee who, if it approves, gives authority to the proper Manager to make the declaration. Automotive Products, Ltd. is apparently a member of the Society, and having received the circular, it conceived it to be its duty as representing Timken Detroit Axle Company to communicate with that Company before communicating its decision to the Society. At the same [fol. 4651] time, A.P. Co. Ltd. suggested a meeting, and we had this meeting yesterday.

The whole affair was, as you might expect, entirely friendly, both sides being anxious to meet any reasonable wishes on the part of the other party. As a result of this meeting, I sent you the cable.

Mr. Dewar and Mr. Pascoe, who were present at the meeting, stated that they did not require any protection for the Trade Mark in connection with axle boxes otherwise than for railway and tramway vehicles, and with respect to axle bearings this, I think, can be omitted from the description of goods to which the Trade Mark is to apply in connection with axles bearings being covered under No. 600,254.

I hope that I may receive a reply from you within the next day or two because I wish to get this matter settled and the declaration of the Exhibition Manager of the S.M.M.T. lodged with the other declarations with the Registrar. The time for lodging these expires on 20th inst., but no doubt, if necessary, we shall be able to get a further postponement.

Yours faithfully, A. J. M. Duncan.

W. Robert Timken, Esqre.,

[fol. 4652] PLAINTIFF'S EXHIBIT 184

Timken Roller Bearing Company, Canton, Ohio.

Robert Timken trade marks our letter dated 24th March automotive products agents Timken Detroit axle agree applications fifty one fifty two but request change description fifty four to axle boxes for railway tramway yehicles also request British Timken agree not proceed against them in case bearings supplied for replacement used by purchaser for other purposes stop we propose make Timken Detroit registered user limited to their requirements stop suggest you arrange Timken Detroit cable automotive authority to deal with matter promptly reply.

Stibbard.

2nd Nov. 1939.
12:45 p.m.

[fol. 4653] PLAINTIFF'S EXHIBIT 185

Carr & Carr & Gravely
Attorneys at Law
705 Olive Street

St. Louis, Mo., November 4, 1939.

British Trade-Mark Applications.

The Timken Roller Bearing Co., Canton, Ohio.

Attention: Mr. G. H. Turner

GENTLEMEN:

We regret to note from your letter of November 3, 1939 that Automotive Products Company, British representative of Timken-Detroit Axle has raised certain questions with respect to your pending British applications for registration of the trade-mark "Timken".

In view of the long concurrent user of the mark "Timken" by yourself and Timken-Detroit Axle in this country and by British Timken and Automotive Products in England, it seems to us that you must necessarily recognize that the other people have built up certain rights. Your problem, of course, is to retain your position as the prior and dominating owner of the "Timken" mark.

We see no objection to the suggested change in the description of the goods in application No. 600,254, except that we assume that bearings are to be included in the description and not eliminated as they would be if the cable be taken literally.

[fol. 4654] We see no serious objection to British Timken agreeing not to proceed against Automotive Products in respect of replacement bearings sold by Automotive Products, but used by its customer for other than replacement purposes, always provided that only bearings made by you or British Timken are sold as "Timken bearings". As a practical proposition, we would assume that the situation there would be similar to that in this country, where you have not felt free to proceed against your customers even though they re-sell your bearings or use them in a way not contemplated in the original sale. Automotive Products (and Timken-Detroit) should, of course, undertake in good faith to sell bearings only on a strictly replacement basis and to use reasonable efforts to see that their cus-

tomers do not make an improper use of the bearings. Likewise, they should undertake, as above suggested, to sell as Timken bearings only those bearings which are made by you or British Timken. We are sure that Automotive Products and Timken-Detroit Axle would be willing to agree that a reasonable understanding as to your not objecting to an occasional improper use of replacement bearings sold by them should not be made the excuse for any widespread sale of bearings in competition with British Timken.

[fol. 4655] Our first impression would be that there is no need to make Timken-Detroit (or Automotive Products) a registered user—in fact, that as the applications now stand, it would be hardly possible to make either of them a registered user. It seems to us that the present applications proceed upon the theory that British Timken will register the mark for bearings and railway journal boxes, that is to say, that it will register the mark only for its actual goods. With the cooperation of British Timken, Timken-Detroit Axle (or Automotive Products) would presumably be able to register "Timken" for automobile axles and other products upon the theory that the goods are different from roller bearings, just as both you and Timken-Detroit Axle have your separate registrations in this country.

On the other hand, your British solicitors may feel that the presence of your bearings in axles made by Timken-Detroit Axle, makes it advisable to make Timken-Detroit Axle a registered user in respect of your bearings so incorporated in axles. If so, we believe that you will have to follow the advice of your British solicitor in the matter. The Statute is so new and its working will depend so much upon the peculiarities of British law and practice, that you are necessarily dependent upon British counsel. We [fol. 4656] assume, of course, that you have your own British counsel in the matter who is not also trying to act as counsel for Timken-Detroit Axle.

The Duncan cable infers that Automotive Products understands the situation and has a reasonable attitude in the matter. Accordingly, we are disposed to agree that it would be well to try to induce Timken-Detroit Axle to give Automotive Products a free hand to dispose of the matter, as Mr. Duncan's cable suggests.

As to the method of approach to Timken-Detroit, you know all of the personal and other factors involved and are in the best position to reach a decision. If we understand the situation, it seems to us that the proper procedure is for Henry Timken, Jr. to see Willard Rockwell personally and try to obtain his cooperation. It seems to us that he need only reassure Mr. Rockwell that in Great Britain, as in this country, you will not interfere at all with the proper use by Timken-Detroit Axle of the mark "Timken" on its own line of goods. In case of absolute necessity, he could further point out that failure of you and Timken-Detroit to cooperate in establishing the mark "Timken" in Great Britain for both of you might conceivably result only in the mark losing its trade-mark status entirely. [fol. 4657] Unless necessary, however, we see no point to suggesting such possibilities. On the contrary, it seems to us that you should proceed as far as possible upon the theory that you are admittedly the originator and dominant owner of the "Timken" mark, that you are willing to agree to proper use of the mark by Timken-Detroit and that you expect, in return, proper cooperation from Timken-Detroit in respecting your dominant position.

Yours truly, Carr & Carr & Gravely; By Jos. J. Gravely.

JJG: DM

[fol. 4658] PLAINTIFF'S EXHIBIT 186

Nov. 4th, 1939.

Mr. Walter Rockwell, c/o Timken-Detroit Axle Co., Detroit, Mich.

DEAR WALTER:

You will recall that I wrote you last spring about the British Timken trade mark applications. At that time you were willing to go along. Now, as shown by the enclosed cable, your British agents are in doubt whether they will support one of the applications.

I can readily understand that they might have some hesitance about application 54 because of the broadness of its definition of axle boxes. The cable will show what British Timken suggest.

We have sent this on to Carr, Carr and Gravely for advice in the matter and will get in touch with you when we hear from them. Meanwhile, please have your patent and trademark council go over this and see what you think about it. You will realize, of course, that we want you to be fully protected.

Sincerely yours, W. Robert Timken.

WRT/IL

[fol. 4659] PLAINTIFF'S EXHIBIT 187

November 10th, 1939.

Mr. A. I. Hawkins, Treasurer,
The Timken-Detroit Axle Company,
100-400 Clark Avenue,
Detroit, Mich.

Dear Mr. Hawkins:

Your letter of November 8th received. Thanks for your promptness in taking up this matter. British Timken apparently want to push this matter through as soon as possible.

I talked to Willard Rockwell briefly about this, explaining that we felt there were two alternative methods of settling it. First, the method suggested by Mr. Duncan of putting through the present registrations and then licensing Automotive Products without cost. Second, changing the registration to confine it to axle boxes and bearings for railway vehicles. You could then apply for your own trademarks on other types of axles. I believe either method would be suitable although I have not had time to consult British Timken on the second.

We are having British Timken take out the registrations and then license us as sole registered user. This protects us in case of any disagreement. Duncan is our representative on the Board of British Timken.

The main thing we want to avoid is a contest which might result in refusal of the registration and throw the name open to all comers. This would only hurt everyone concerned. As I said before, we want to protect you as fully as possible. So, if you will let us know your feeling in the

matter, we will pass it on to Duncan and find out what the best solution is.

Sincerely yours, W. Robert Timken.

WRT:t

[fol. 4660] PLAINTIFF'S EXHIBIT 188

The Timken-Detroit Axle Co.
General Offices
100-400 Clark Avenue
Detroit, Michigan

November 22, 1939.

Mr. W. Robert Timken
The Timken Roller Bearing Company
Canton, Ohio

Dear Mr. Timken:

This is regarding your letter of November 17 on British Timken trade mark proce-ding.

We have now received advice from our attorneys and have noted the copies of the letters indicating that British Timken and the Automotive Products Company have agreed on procedure. Their proposal is acceptable to us.

To expedite this matter we suggest that the following cable go out from us to the Automotive Products Company.

"Suggest you agree to British Timken registration No. 600,254 limited to axle boxes for rail vehicles"

If you agree please advise. If not, suggest revision of proposed cable.

Yours very truly, A. I. Hawkins, Treasurer.

N

[fol. 4661] PLAINTIFF'S EXHIBIT 189

Western Union

December 1, 1939.

Mr. A. I. Hawkins
The Timken-Detroit Axle Co.
100-400 Clark Avenue
Detroit, Michigan

Agree your suggested cable to Automotive Products letter of 11/22/39.

W. Robert Timken.

[fol. 4662] PLAINTIFF'S EXHIBIT 190

Stibbard, Gibson & Co.
(Thomas Cooper & Co.)

21, Leadenhall Street,
London, E. C. 3

16th Febry. 1940.

Encs;

Dear Mr. Timken,

Timken Trade Mark

I enclose copies of three Certificates of Registration of the Trade Mark Timken in the name of British Timken, Ltd. It has been a long job to get this registration through.

I shall now be applying for the registration of Timken Roller Bearing Company, Timken Detroit Axle Company and Societe Francaise Timken as registered users, subject to appropriate conditions.

Yours faithfully, A. J. M. Duncan.

W. Robert Timken, Esqre.,
Copy to Carr & Carr & Gravely 3-8-40.

[fol. 4663] Great Britain and Northern Ireland

Trade Marks Act 1938

Timken (Seal)

The Trade Mark shown above has been registered in Part A. of the Register in the name of British Timken Limited (Class 6) (Schedule IV) under No. 600,251 as of

the date 9th August 1938 in respect of Balls for anti-friction Bearings.

Sealed at my direction this 14th day of February 1940.

M. F. Lindley, Registrar.

The Patent Office, Trade Marks Registry,
25, Southampton Buildings,
London, W. C. 2.

Registration is for 7 years from the date first above mentioned and may then be renewed, and also at the expiration of each period of 14 years thereafter.

This certificate is not for use in Legal Proceedings or for obtaining Registration abroad.

Note: Upon any change of ownership of this Trade Mark or change of address, application should At Once be made to the Registrar to register the change.

[fol. 4664] Great Britain and Northern Ireland

Trade Marks Act 1938

Timken (Seal)

The Trade Mark shown above has been registered in Part A. of the Register in the name of British Timken Limited (Class 6) (Schedule IV) under No. 600,251 as of the date 9th August, 1938 in respect of Balls for anti-friction Bearings.

Sealed at my direction this 14th day of February 1940.

M. F. Lindley, Registrar.

The Patent Office, Trade Marks Registry,
25, Southampton Buildings,
London, W. C. 2.

Registration is for 7 years from the date first above mentioned and may then be renewed, and also at the expiration of each period of 14 years thereafter.

This certificate is not for use in Legal Proceedings or for obtaining Registration abroad.

Note: Upon any change of ownership of this Trade Mark or change of address, application should At Once be made to the Registrar to register the change.

[fol. 4665] Great Britain and Northern Ireland

Trade Marks Act 1938

Timken (Seal)

The Trade Mark shown above has been registered in Part A. of the Register in the name of British Timken Limited in (Class 7) (Schedule IV.) under No. 600252 as of the date 9th August 1938 in respect of Anti-friction bearings, Ball Bearings and Roller bearings and rollers therefor, all being parts of machines.

Sealed at my direction this 14th day of February, 1940.

M. F. Lindley, Registrar.

The Patent Office, Trade Marks Registry,
25, Southampton Buildings,
London, W. C. 2.

Registration is for 7 years from the date first above mentioned, and may then be renewed, and also at the expiration of each period of 14 years thereafter.

This certificate is not for use in Legal Proceedings or for obtaining Registration abroad.

Note: Upon any change of ownership of this Trade Mark, or change in address, application should At Once be made to the Registrar to register the change.

[fol. 4666] Great Britain and Northern Ireland

Trade Marks Act 1938

Timken (Seal)

The Trade Mark shown above has been registered in Part A. of the Register in the name of British Timken Limited in (Class 12) (Schedule IV) under No. 600,254 as of the date 9th August 1938 in respect of Axle Boxes for rail vehicles.

Sealed at my direction this 14th day of February 1940.

M. F. Lindley, Registrar.

The Patent Office, Trade Marks Registry.
25, Southampton Buildings, London, W. C. 2.

Registration is for 7 years from the date first above mentioned, and may then be renewed, and also at the expiration of each period of 14 years thereafter.

This certificate is not for use in Legal Proceedings or for obtaining Registration abroad.

Note: Upon any change of ownership of this Trade Mark, or change in address, application should At Once be made to the Registrar to register the change.

[fol. 4667] DEFENDANT'S EXHIBIT No. 1

4, Central Buildings
Westminster S. W. 1.
11th February, 1927

Mr. M. Lowthrop
Timken Roller Bearing Company
Canton, U. S. A.

Dear Mr. Lowthrop:

Since I got back from America I have had so many things on my hands that I have not been able to give the attention to the Timken matter that I desired.

I have, however, now got information regarding the four bearings which we manufacture in the largest quantities and I send all the information herewith.

I should be glad if you could give me for the same bearings the information that you promised me in the same detail and if possible in the same form.

Yours sincerely, (Signed) M. B. Dewar.

[fol. 4668] Copy

DEFENDANT'S EXHIBIT 2

British Timken
Limited

Common Lane, Ward End, Birmingham.

WD/NH.

28th January, 1927.

M. B. U. Dewar Esq., 4, Central Buildings, Westminster, London, S.W.1.

DEAR MR. DEWAR:

Timken Costs

As requested, I have had prepared certain information in regard to the specifications and costs of four of the most popular Bearings which we manufacture, and have pleasure in enclosing same herewith on sheets numbered 1 to 13 as set out below:

Sheet No.	1.	Various explanatory notes.
Sheet No.	2.	Particulars of Factory General Charges and Over-head Charges.
Sheet No.	¾.	Material specification numbers, Year's output, Operations and Costs, of Bearing ..... No. 247/248
Sheet No.	5/6.	do. do. No. 319/313
Sheet No.	7/8.	do. do. No. 26118/26283
Sheet No.	9/10.	do. do. No. 6552/6521
Sheet No.	11/13.	Material specifications.

I understand that it is your intention to forward these particulars to Canton and to ask them to supply us with [fol. 4669] corresponding information of their manufactures. In doing this, will you kindly request them to be good enough to give their particulars *item for item as set out on our sheets* as far as possible, in order that nothing be overlooked.

You will observe that on Sheet 2 I have given a fair amount of details of the Charges—both Factory and Over-heads—which I presume you will wish to send.

Yours sincerely, (signed) Wm. C. Dallow.

[fol. 4670] Copy

DEFENDANT'S EXHIBIT 3

March 30, 1927.

Mr. M. B. U. Dewar, 4, Central Buildings, Westminster, London, S.W.1, England.

DEAR SIR:

We enclose a report showing the major differences between your costs and ours, on three of the bearings for which you submitted data. The fourth bearing we do not make. I would like to make a few general comments.

Nearly half the difference between your cost and ours can be accounted for by the difference in cost of cages and rolls. Should it not be practicable for you to use headers and multiple press dies, it might be possible for us to make you a considerable saving by furnishing you cages and rolls. We will be glad to make definite quotations if you will advise us what sizes and quantities you would be interested in.

Your scrap losses on cones are about three-fourths of our percentage. On cups your scrap was less than half of ours. The same is true of cages. On rolls your scrap losses are more than ours. Your costs for raw material would appear to be slightly higher than market prices for the same material in this country.

As stated in our cable to you, we believe that it is entirely possible for your costs to be reduced 25% or more.

Yours truly, The Timken Roller Bearing Co., ——
——, Secretary & Treasurer.

J. F Strough.BES

Enclosure

[fol. 4671]

Copy

British Cost Comparison

		319			26118			6552
		313			26283			6521
Canton Cost*		$.46½			$.42½			$3.98
British Cost		.95			.95			5.28
Canton List		5.20			4.95			37.05
	85 off	.78			.74		83 off	6.30
British List		5.83			5.34			28.80
	70 off	1.75			1.60			8.64
Canton Gross Profit		.31½			.31½			2.32
			40½%			42½%		37%
British Gross Profit		.80			.65			3.36
			45½%			40½%		39%

801

*Tubing at market.

[fol. 4672] Copy

319 Cone

Your make operation on four spindle Acme requires 325 minutes for 100 pieces; we require 115 minutes. The great difference in production is probably accounted for by the use of bar stock by you, and tubing stock by us.

For face and radius you require 100 minutes; we require 6 minutes. The great difference between your method of facing and radiusing cones is probably accounted for by your making the cone on screw machine with small end out. In this Plant we make the cone with large end out, and form the radium on machine. We chamfer the small end of our cones on four spindle machines at a speed of about 11000 pieces per hour, per operator.

Your internal grinding time is 550 minutes; our time is 49 minutes. The difference is undoubtedly due to the fact that you are using Churchhill grinders where the work must be plug-ed accurately before being removed from chuck. At this Plant we are using the Heald Sizematic grinder, which grindes to a definite size and automatically removes wheel from work, allowing ground piece to be removed from chuck without plugging.

Your time for grinding race is 200 minutes; our time is 39 minutes. We cannot account for the great difference in time on this operation; as we understand you use a machine for this operation which is similar to the one used

in this Plant. The difference must be in the speed and skill of the operators.

Your time for grinding recess is 90 minutes; ours is 26 minutes. This difference in production must also be due to skill of operators, as it is our understanding that your recess grinding machines are similar to the ones used here.

313 Cup

Your time for make operation is 450 minutes; ours is 194 minutes. We cannot account for the great difference in production on this cup, as you must use the same type of Gridley as used by us.

Your time for chamfer is 75 minutes; ours is 6 minutes. This difference is probably due to the fact that we use a four spindle machine for this operation, and you use either lathe or single spindle drill press for chamfering cups.

Your time for grinding top and bottom is 50 minutes; ours is 15 minutes. Where you grind both front and back face of cup, we have been grinding only the back face and are using a grinder of our own design.

Your time for internal grinding is 400 minutes; ours 75 minutes. The difference in production is accounted for by the use of Heald Sizematic machines for this operation. These machines, as in grinding bores of cones, grind I. D. of cup to definite size and wheel is withdrawn from work automatically.

[fol. 4673] Your time for external grinding is 225 minutes; our is 16 minutes. For this grinding operation we are using two types of machines: 1st—Norton Plunge Cut with 9½" wheel; 2nd—Cincinnati Centerless where work is pushed through grinding operation in continuous cycle. We have not definitely decided which is the better machine, but indications point toward the final adoption of the Cincinnati machine.

311-V Cage

We cannot understand the difference in weight of material per hundred cages. You show a weight of 41½ pounds, whereas our weight for 100 cages is 28.79 pounds. It would seem that the same amount of material would be required for cages made by you and by us, except that we notice you use strip steel 4¼" wide, where we use strip steel 3⅝" wide for this cage.

We notice that in the manufacture of this cage you re-

quire nine operations. In this Plant we require but three operations, consisting (1) Flange punch and size; (2) Multiple perforate; (3) Multiple wing and spread. It is of course obvious that we make a considerable saving in operating time and costs. Our total time for the three operations is 12.4 minutes, against your total time for nine operations of 390 minutes.

302 Roll

You use 3.5 pounds of material per 100 rolls, as against 2.14 pounds per 100 rolls which we require for our cold headed roll. This difference is accounted for by amount of scrap which is necessary for you to make in machining roll and the very small amount of scrap which is made in production of headed rolls. There is an enormous difference in production of rolls between the two machines. Where you require 54 minutes to produce 100 rolls, we require only 1.7 minutes.

You show 40 minutes for grinding race. We show 13 minutes for surface grind; 2.4 minutes for end grind. In addition to the grinding, we show 2 minutes for taper gauge, and 1.7 minutes for size gauge. You show no operations such as end grinding, taper, or size gauging.

26118 Cone

On the make operation we show 83 minutes as against your 500 minutes. This difference is probably accounted for to some extent by your use of bar stock. The use of tubing speeds this operation up considerably. On the face and radius operations you show a total time of 75 minutes; we show 6 minutes. This difference is undoubtedly due to the fact that we are using multiple spindle machines for chamfering operation, and are making the radius on cone on original screw machine operation. (For further explanation see reference in #319 cone).

On internal grinding operation you have a total of 550 minutes; we have a total of 47 minutes. (See explanation under 319 cone).

Grinding race you have 150 minutes; we have 43 minutes. (See explanation under 319 cone).

[fol. 4674] Grinding recess you show 90 minutes; we show 28 minutes. (For explanation see 319 cone).

26283 Cup

Your make operation for this cup requires 500 minutes, as against 82 minutes for us. You use a single spindle Gridley Automatic for this operation, and we use either four spindle Cone Automatic or four spindle Acme Automatic.

For chamfer operation you show 50 minutes; we show 6 minutes. (For explanation refer to 312 cup).

For grinding top and bottom you show 50 minutes; we show 15 minutes. (For explanation refer to 312 cup).

For internal grinding you show 425 minutes; we show 67 minutes. (For explanation refer to 312 cup).

For grinding external surface you show 200 minutes; we show 14 minutes. (For explanation refer to 312 cup).

26008 Cage

You require 37 pounds of material for 100 cages, and we require 24.62 pounds. We use .070 gauge and you use .080 gauge. You use 4" strip, where we use 3.375" strip. We make this cage in three operations, as described under 311 cage, in a total time of 12.4 minutes, against your total time of 445 minutes.

2008 Roll

Your material per hundred rolls was 2½ pounds; ours was 1.39 pounds. (See previous explanation.) Your time for making is 50 minutes, plus 4 minutes to clip ends. Our total time is 1.7 minutes.

For grinding race you show 40 minutes; we show 10 minutes.

For grinding ends we show 2.5 minutes; taper gauge 1.8 minutes; size gauge 1.6 minutes.

6552 Cone

Where you make this cone from forging, we use tubing and the cost to make is about the same in both cases.

Your time for grinding top and bottom is 75 minutes. Our time for grinding back face is 32 minutes.

Your time for grinding internal is 2500 minutes, against our time of 209 minutes. For explanation see 319 cone.

[fol. 4675] Your time for grinding race is 625 minutes; our time, 149 minutes. See 319 cone.

Your time for grinding recess is 350 minutes; our time 77 minutes. See 319 cone.

6521 Cup

Your cost up to the point of heat treating is not materially different from ours. You show 100 minutes for grinding top and bottom; we show 32 minutes for grinding back face only.

For internal grinding you show 1600 minutes; we show 200 minutes. For explanation see 312 cup.

For external grinding you show 750 minutes; we show 162 minutes. For explanation see 312 cup.

6511-V Cage

You show a total of 418 pounds per 100 cages. We show 265.08 pounds. You use a strip 9⅜" wide and .156 gauge; we use a strip 8.312" wide, .125 gauge.

Your total time shows 1994 minutes; we show 90 minutes. On this size cage it is necessary for us to add one more operation than used on lighter cages, such as 311. This operation we call "spreading", and it requires about 5 minutes per 100 cages out of the total of 90 minutes.

6003 Roll

You show a total of 24.5 pounds material; we show 16.36 pounds. This difference is caused by the amount of scrap which you must lose in machining rolls.

To make 100 rolls you require 154 minutes; we require 3 minutes.

To grind race you require 100 minutes; we require 29 minutes for surface grind and 7 minutes for end grind.

You have an operation which you call "flash" which is done on external grinders and requires 30 minutes per 100 rolls. We do not understand this operation.

We require 2.5 minutes for taper gauge, and 2.5 minutes for size gauge. You do not show these operations.

[fol. 4676] DEFENDANT'S EXHIBIT 4

Copy

4, Central Buildings, Westminster, S. W. 1.
10th March, 1927.

Mr. Mark Lowthrop, Timken Roller Bearing Co., Canton, U. S. A.

Dear Mr. Lowthrop,

Last week I was elected Chairman of the British Timken Company and I have been examining the position very closely.

I have already sent you some papers dealing with the information which we should like to have. I am most anxious to achieve in some way which is possible over here a reduction in the cost of production of Timken Bearings to compete directly with ball bearings and you kindly promised all your help towards that end.

When I was in Berlin last I took the opportunity of discussing with Krupp the question of them taking up the manufacture of Timken bearings at Essen. Unfortunately they do not want to do so as they are such very large suppliers of steel for anti-friction bearings that they think it would not be well to go into the business themselves. I have consequently resumed negotiations with Herr von Gontard, Chairman of what used to be the D. W. F., and I hope that he will be coming over to London to see me in [fol. 4677] the near future.

As I mentioned to you when I was at Canton I know that the difficulty will arise on the question of Royalty. There is already in Germany a firm who are manufacturing and selling not only in Germany but in Norway and Sweden a bearing, of which I will send you a sample, which is an exact copy of the Timken Bearing, on which of course this manufacturer pays no licence fee of any sort.

I believe that the largest total licence fee which we shall be able to obtain either from Germany or from France or Italy will be 4 per cent, and I would suggest to you that this fee should be divided equally between us. I hope to arrange with von Gontard that we shall continue to manufacture for Germany certain of the bearings which are not required in very large quantities, and also the special

bearings of larger sizes. On these of course you would get the full royalty.

I should be glad if you would let me know in principle whether you would be prepared to accept an arrangement on these lines, as on any other lines it is really not worth our while to make arrangements because we should undoubtedly spend in time and trouble in getting the Germans going a greater sum than we should ever be likely to make in Royalties. At the same time, I think it is essential to start manufacture in Germany as the motor industry, [fol. 4678] owing to the war, is more behind than in any other manufacturing country, but this is bound to right itself shortly and we ought to get in now or not at all. Further, the spirit of Germany will within a short time insist on manufacturing in their country rather than importing from outside. Incidentally the financial position of Germany will aid strongly in this direction.

I am looking forward with great interest to seeing the figures which you will, I hope, send to me, to see where it is that we do not get the best results in cost of production.

I do not know whether you are likely to be in Europe this year, but if you are I should very much like to discuss with you the question of the Timken name in Europe, which is very complicated, and about which I should like to take some action.

There is further the question of the continuation of our existing agreement.

I have also been thinking of making an offer to Vickers for the Timken business as it is so much outside their own lines now that they have so little association with the motor car trade. I fancy that the total capital that would be required to take it over would be about £300,000. I do not know whether your company would care to be interested if I were to make such an offer, either permanently or on [fol. 4679] the basis of the money loaned being repaid out of profits.

With kindest regards to you and your wife, to Mr. Timken and Mr. Straugh.

Yours very sincerely, (signed) M. B. U. Dewar.

[fol. 4680] DEFENDANT'S EXHIBIT 5

Postal Telegraph—Commercial Cables

Cablegram

2H XB 710AM 100
London March 28 1927
WLT Lowthrop
Timken Roller Bearing Co Canton O

Would you be prepared to extend your agreement with British Timken for ten years if I take over the British Company subject to modification of terms of sublicenses from us to other European countries as suggested in my letter stop I have to make up my mind within next ten days stop Should much like to do it but do not think it wise without a ten years arrangement with you stop Should like to have arrangements to Lowe Royalty on very large accounts on same basis as we have with Ford.

Dewar.

[fol. 4681] DEFENDANT'S EXHIBIT No. 6

Western Union

Deferred Cable

Canton Mar 29, 1927.

M. B. U. Dewar, 4 Central Buildings, Westminster S. W. 1, London

Replying your letters and cable we are willing to give consideration to ten-year term of license and reduction in foreign royalty. We also have written you today fully about manufacturing costs. We feel your costs can with our cooperation be reduced twenty-five percent or more. We would be more interested however in joining with you in purchasing company from Vickers and making the necessary investment. Do you plan to give your full time to British Timken. Can you inform us what net earnings have been also total assets and liabilities. If we can come to substantial agreement on major matters could you come here at this time our expense to close deal in case we could not send representative to England?

Timken.

[fol. 4682] DEFENDANT'S EXHIBIT 7

Western Union

Telegram

1927 Mar 30 PM 8 31.

HB645 Cable
London 133/132 1/53
CLT Timken
Canton Ohio

Your telegram twenty-ninth net profits before paying income tax 1922 pounds sterling 33000 1923 33000 1924 37000 1925 43000 1926 63000 last balance sheet 30 September 1926 plant 3000 debtors 39000 stocks 42000 cash 4600 liabilities shares 50000 sundry creditors 18000 profit 63000 works and plant are leased from Wolseley.

[fol. 4683]

Stop Can purchase plant 35000 and suitable works 25000 all installed can purchase complete business 260000 with profit from last September stop Matter extremely urgent other negotiations by Vickers in hand stop Am prepared devote all necessary time to Timken but consider undesirable sever my connections which are material benefit in obtaining orders stop.

[fol. 4684]

What amount are you prepared to invest essential that company has British control of ordinary capital I am prepared to put up approximately half.

Dewar.

[fol. 4685] DEFENDANT'S EXHIBIT 8

Western Union

March 31, 1927.

Cable Letter

M. B. U. Dewar, 4 Central Buildings, Westminster, S. W. London

Replying your cable we are willing to become interested to extent of one-half or more of amount necessary to ac-

quire and reorganize business. We can have representative in England in about ten days authorized to close deal. Shall we send him?

Timken.

[fol. 4686] DEFENDANT'S EXHIBIT 9

Postal Telegraph—Commercial Cables

Cablegram

15H XB 902AM 10 IMP Cable
London April 1 1927
Timken
Canton (Ohio)

Delighted see representative as soon as possible.

Dewar.

[fol. 4687] DEFENDANT'S EXHIBIT 10

Western Union

Telegram

1927 Apr 3 PM 7 41.

HB 161 Cable
London 16
CLT Timken Roller Bearing Co.
Canton, Ohio

Please cable date and steamer your representative leaving.

Dewar.

[fol. 4688] DEFENDANT'S EXHIBIT 11

Western Union

Canton Apr 4, 1927.

Sent CLT

M. B. U. Dewar, 4 Central Buildings, Westminster, S. W. London

Cabled Saturday to Duncan our lawyer with Stibbard Gibson to advise you Ely sailing Friday steamer Homeric and also asked Duncan to begin preliminary negotiations with you,

Timken.

[fol. 4689] DEFENDANT'S EXHIBIT 12

April 4, 1927.

Mr. M. B. U. Dewar, 4, Central Buildings, Westminster, London, S.W.1, England.

DEAR MR. DEWAR:

After notifying you that Mr. Heman Ely is sailing on Friday, the 8th, on the Steamer "Homeric," it occurred to us that you had never met Mr. Ely, although your associates at British Timken will undoubtedly remember him from his previous visit.

Mr. Ely was formerly Vice President & Treasurer of this Company for a great many years, and of course carries with him the proper credentials to represent and act for us in the pending neg-tiations with you and with British Timken.

Mr. Ely is naturally a close personal friend of the writer and of Mr. Lothrop, and we feel sure that you will enjoy your contact with him. (We have assured him that he will enjoy meeting you.)

We hope that Mr. Ely may conclude satisfactory arrangements with yourself and British Timken, and that the new arrangements will be pleasant and profitable to all concerned.

Mr. Lothrop left yesterday on a business trip but asked to be particularly remembered to you, and with my own personal regards, I beg to remain.

Yours truly, —— ——, Secretary & Treasurer.

J F Strough. BES

[fol. 4690] DEFENDANT'S EXHIBIT 13

21 Leadenhall St., London, E.C.3.
11th April, 1927.

DEAR MR. DEWAR:

There are one or two points which I think we might possibly be making some progress with before the representative of the American Company arrives here. I refer to the following:

1. Do you propose to form a new Company or do you propose to work with the existing Company?
2. Will there be any change in the name of the Company?
3. Do you propose a public Company or a private Company?
4. Some alterations in the existing Articles of Association or new A.A. will be needed; which do you propose?
5. What do you propose for the share capital of the new Company?
6. Will all the shares be of one class? If not what will be the preferential rights?
7. *Transfers.* Do you propose to have a simple clause that no transfer can be registered without the consent of the Directors?
8. You have already mentioned to me what you propose in the case of one of the parties wishing to sell his shares as to the other party having the refusal of them at a price to be fixed.

[fol. 4691] 9. What do you suggest as the number of Directors?

10. I presume that you will wish to leave over the final selection of the first Directors until the American Company's representative arrives.

11. Have you any suggestion to make as yet with respect to Directors' remuneration?

12. The same with respect to Directors' qualification.

13. The appointment of Directors will require consideration so as to secure adequate representation for the American Company. Have you any ideas on this subject?

14. There is also the question of retation, retirement and removal.

Yours faithfully, (S.) A. J. M. Duncan.

M. B. Dewar Esq.

[fol. 4692] DEFENDANT'S EXHIBIT 14

Stibbard, Gibson & Company

21 Leadenhall Street

London, E.C.3.

13th April, 1927.

DEAR SIRS:

Mr. Dewar has called here to-day, and we went over with him the points in our letter dated the 11th inst. The following are the notes we made as to his replies:

1. Will work with existing Company.
2. No change.
3. Private Company.
4. No preference.
5. 200,000.
6. All one class.
7. No transfer without consent.
8. Each party to have refusal of the shares of the other party.
9. Five Directors.
10. Will be settled with Mr. Ely.
11. Same.
12. Same.
13. Same.
14. Depends on 13.

Yours faithfully, The Timken Roller Bearing Company.

[fol. 4693] DEFENDANT'S EXHIBIT 15

British Timken Limited

("the Company")

Heads of Agreement

The Timken Roller Bearing Company of Canton Ohio United States of America ("the American Company") and Michael Bruce Urquhart Dewar of Number 4 Central Buildings Westminster ("Mr. Dewar") are proposing to purchase the whole of the issued Share Capital (Fifty-thousand Shares of One Pound each fully paid) of the Company and in connection therewith have agreed to the following terms and conditions:

1. The purchase price for the said Shares One hundred thousand pounds shall be provided Fifty two thousand five hundred pounds by the American Company and Forty seven thousand five hundred pounds by Mr. Dewar and upon the purchase being completed twenty six thousand two hundred and fifty Shares shall belong and be transferred to the former or its nominees and twenty three thousand seven hundred and fifty Shares to the latter or his nominees.

2. The Capital of the Company shall be divided into twenty five thousand issued and twenty five thousand unissued A. Shares and twenty five thousand issued and twenty five thousand unissued B. Shares all ranking pari passu in all respects except as hereinafter mentioned and of the said issued Shares eleven thousand five hundred A. and fourteen thousand seven hundred and fifty B. Shares shall represent the above twenty six thousand two hundred and fifty Shares which will belong to the American Company and its nominees and thirteen thousand five hundred [fol. 4694] A. and ten thousand two hundred and fifty B. Shares shall represent the above twenty three thousand seven hundred and fifty Shares which will belong to Mr. Dewar and his nominees.

3. No alteration shall be made in the share capital of the Company or the rights and interests attaching to the respective classes of shares and no further shares in the Company shall be issued and no loan capital by way of Debentures or otherwise (excluding temporary Bank loans in the ordinary course of business) shall be taken up with-

out the consent in writing of the holders of a majority of the shares of each class for the time being issued. If any further share capital is issued it will be issued in A. and B. Shares to the American Company or its nominees and to Mr. Dewar or his nominees in the same proportions as those respectively specified in the last preceding clause.

4. (a) A shareholder in the Company shall be entitled to transfer any of his shares with the consent in writing of the holders of a majority of the other shares in the Company but otherwise a shareholder shall not be entitled to transfer any share except by a transfer on sale and a shareholder in the Company shall not be entitled to sell any of his shares at any price unless he shall have previously offered them at the same or a less price to the other shareholders in the Company by registered letter and such offer shall not have been accepted in writing within sixty days after the letter containing the offer is posted. Any offer shall state the number of shares offered and [fol. 4695] the price and the offer can be accepted as to all or any of the shares offered. If the offer is accepted to the extent of more shares than are offered the shares offered shall be apportioned amongst the acceptors pro rata according to the number of shares in the Company held by the acceptors but so that the number apportioned to any acceptor shall not exceed the number for which he has accepted the offer. Any shareholder who has made an offer of shares shall be entitled at any time within one month after the result of the offer is communicated to him to sell and transfer any of the shares included in the offer which are not purchased under the offer but subject to the Directors' right to refuse to register the transfer. All offers and acceptances shall be made and given through the Directors of the Company who shall make the apportionment and communicate the offer and the result forthwith to the other shareholders or to the offering shareholder as the case may require.

(b) Each of them the Company and Mr. Dewar agrees that he will not unreasonably stand in the way of the other of them selling or transferring shares during the period of one month hereinbefore mentioned and unless he shall have a reasonable objection to the proposed purchaser or transferee will give any consent and exercise any voting powers in order that the party desiring to sell or transfer may effect such sale or transfer.

5. The Directors of the Company shall have an absolute right to refuse to register any transfer to a non-member without giving any reason except in the case of a transfer with consent as hereinbefore provided.

6. The control of the Company's affairs shall be regulated in the manner and to the extent following:

[fol. 4696] . (a) Control shall belong to the holders of the A. shares until the first Annual General Meeting of the Company at which the accounts of the Company for the financial year submitted at such Meeting shew a net profit before charging income tax or any other tax on profits which shall not amount to Fifteen thousand pounds and at which a dividend of less than twenty five per cent gross shall be declared. If the issued share capital of the Company is increased beyond the present issued share capital of Fifty thousand pounds otherwise than by way of a capitalization of profits the said sum of Fifteen thousand pounds shall be increased by a sum equal to Fifteen per cent upon the amounts received by the Company in respect of the shares issued beyond the present issued share capital including any monies received by way of premium.

(b) After the termination of control belonging to the holders of the A. Shares in manner aforesaid control shall belong to the holders of the B. Shares.

(c) Upon a poll at any meeting of the Company in the case of an ordinary resolution the holders of the class of shares to whom control belongs shall have two votes for each share of that class held and the holders of the other class of shares shall have one vote for every two shares of that class held and in the case of an extraordinary resolution or a resolution confirming an extraordinary resolution as a special resolution every shareholder shall have one vote for each share held by him. Any shareholder may demand a poll at a meeting.

(d) At a Board Meeting of the Directors of the Company if any Director so requires the voting shall be by classes and in such case the decision of the Directors representing [fol. 4697] the class of shareholders to whom control belongs or a majority of them shall have effect as the decision of the Board.

7. The number of Directors shall be not less than three nor more than five or such greater number as may be agreed in writing by the holders of three-fourths of the issued

shares of the Company for the time being. The holders of each class of shares or a majority of the shares of that class shall be entitled from time to time to appoint one or more Directors to represent that class and to cancel any such appointment and make another appointment. If the number of Directors is an even number the holders of each class of shares shall be entitled to appoint one-half of the Directors and if the number is uneven the class to whom control belongs shall be entitled to appoint one more Director than the other class. Upon a change of control if there is a majority of Directors representing the A. shareholders the holders of the B. Shares or a majority of such shares shall be entitled to cancel the appointment of one of the Directors appointed by the holders of the A. Shares.

8. A Director shall be disqualified by bankruptcy lunacy incapacity conviction of a criminal offence or resignation accepted by the Board.

9. Mr. Dewar shall be Managing Director while control belongs to the holders of the A. Shares and shall receive a salary of Three thousand pounds per annum or such larger sum as may be agreed by the American Company, and shall also be an A. Director during his life so long as he holds Twenty per cent of the issued share capital of the Company. He shall undertake the control and manage-
[fols. 4698-4699] ment of the Company's affairs as his principal occupation and shall devote so much time and attention to the Company's business as may be needed for efficient supervision and control.

10. An Agreement shall be entered into between the American Company and the Company extending for Ten years the terms of the existing Agreements between them subject to modifications and generally upon such terms and conditions to be mutually agreed including the following:

(a) Any practicable steps to be taken for the protection of the name Timken and securing the exclusive reversion of the name in all countries to the American Company at the termination of the Agreement.

(b) Arrangements to be made for the formation of Continental Companies for the manufacture and/or sale of bearings subject to a royalty to be divided equally between the American Company and the Company.

(c) The American Company to be at liberty from time to time to authorise any one or more of the four largest Motor Car producers in the United States of America at the time of such authorisation to import into the territory of the Company bearings manufactured by the producer holding such authority in the United States of America but only for incorporation in new cars or as spares in old cars manufactured or assembled by such producer or his subsidiaries in the territory of the Company.

10A. Upon the death of Mr. Dewar or if he shall become incapable for a period of six consecutive calendar months of performing the duties of a Director the Timken Company shall have an option to purchase the shares belonging to him as at the date of such death or the expiration of sick period and such option shall be exercisable by notice in writing given by the Timken Company to Mr. Dewar or his representatives within a period of three months after such death or after the expiration of sick period and the price payable for the said shares shall be in case of difference be settled by a reference to two London Chartered Accountants one to be appointed by each party or a referee to be appointed by the said Accountant and such reference shall for all purposes be deemed to be a reference to arbitration under the British Arbitration Act 1889.

11. These Heads of Agreement will be amplified and with any other terms and conditions which the occasion requires will be embodied in more formal documents so soon as practicable and if any question arises as to the documents required and the terms thereof the same shall be settled [fol. 4700] by a London Solicitor to be nominated in case of difference by the President of the Law Society and the parties hereto will take all necessary steps by voting and otherwise to make such documents effective.

Dated this Sixteenth day of May One thousand nine hundred and twenty-seven.

M. B. U. Dewar; Heman Ely, for The Timken Roller Bearing Company.

Witness: A. J. M. Duncan.

[fol. 4701] Dated: 16th May, 1927

THE TIMKEN ROLLER BEARING COMPANY AND
M. B. U. DEWAR, ESQRE.

Heads of Agreement re British Timken Limited

[fol. 4702] DEFENDANT'S EXHIBIT No. 16

Western Union Telegram

1927 Apr 19 PM 8 00

HB648 101 Cable 1/60
London
CLT Timken
Canton (Ohio)

Dewar Objection to American Control Solely on Account of Restricted Sales Stop Product Made by Foreigners Thos Produced Here Is Unpopular Stop All Letter Heads Must Carry List of Directors and Nationality if Other Than British Stop Under Foreign Controls Feels His Investment in Jeopardy Stop Might Protect Us by Conditional Option on His Stock Have Not Discussed This Stop Dewar [fol. 4703] Willing to Make Entire Investment Personally with Fair Ten Year Contract but Prefers Us as Partners Account Our Interest Thereby in Profits Stop Can Buy Cheaper Than First Figure Given Stop Dewar Apparently Keen on Reducing Cost.

866 12581

[fol. 4704] DEFENDANT'S EXHIBIT No. 17

Savoy Hotel,
London, W.C. 2

The Timken Roller Bearing Co.
Canton, Ohio, U.S.A.
Attention J. F. Strough
Gentlemen,

I have just received your night letter-cable dated yesterday, which is a bit confusing, as it appears to answer only my first cable to you, without referring to the second

cable, which you received shortly after 10 o'clock yesterday morning. However, it does not make much difference.

Vickers have assumed that we would renew their present contract, such being the case, they felt they had something to sell. I have, however, advised them through Mr. Dewar, their Chairman, that we would not consider a renewal without material changes in the contract.

Now Vickers appreciate that a contract with only 18 months to run has no great value, and it makes our trading position, as a prospective buyer in whole or part satisfactory.

I feel that there are three plans that should be given consideration.

1. Our complete control of British-Timken or its successor, without other stock holders, other than qualifying directors' shares, and this is the plan I would recommend if there was available in our organization on the proper person or persons, to spend a year to 2 years re-organizing plant, sales etc. capable of contacting properly in Germany, and starting there a small company, and making entirely new arrangements in France. The present arrangement is most unsatisfactory.

2. Our control with a working minority of British interest. This also requires time in making proper and suitable [fol. 4705] connections and would be probably the best plan, if Mr. Dewar, or a man of his type were available. To my straight question to Mr. Dewar on this set-up, he said "No" without qualification.

3. British control of new Company, only so long as British control operates Company with satisfactory profit and dividends. This is the plan I now recommend, and will cover in more detail.

In connection with the third plan its whole success depends upon the ability of the British control.

This brings us to Mr. Dewar—I have interviewed the London Manager of the National City Bank, and he speaks in the highest terms of Mr. Dewar, and as a man of very marked executive and managerial abilities. He has done many big things since the war.

Mr. Duncan has been getting information on Mr. D. and it parallels the above.

Sir William Letts, Managing Director of the Crossley

Company, I saw yesterday (I have known Sir William for several years). He does not personally know Mr. D. but knows of him and quite favourably. I interviewed after lunch to-day the Right Hon. Reginald McKenna, Chairman of the Midland Bank (Largest in England), and one of England's big men, and he says he can vouch fully for Mr. D's integrity, fairness and honesty, and he has been greatly impressed with his sales ability, not only in England, but in his contacts on the continent, in Russia and the Far East. He has also found him at all times most reasonable, and as Mr. McKenna said, is far from being the proverbial stubborn Briton. On all these points Mr. McKenna leaves nothing to be desired, but Mr. McKenna says frankly he has no knowledge of Mr. D's production ability.

Mr. D's first experience was as a carpet manufacturer, at which he was successful and made money, but did not like the business.

Mr. D's principal recent activity is as one of the three Managing Directors of the Metropolitan, Carriage, Wagon and Finance Company. This Company has works in Spain, Roumania, Belgium and Italy, and a close working arrangement with Krupps in Germany.

[fol. 4706] This Company is the largest producer of railway rolling stock outside of the United States, and has as customers, every railway in England, and their colonial possessions; as well as securing a majority of business on the continent, it also does large business in Japan and China, and has just taken away from American Companies recent South American orders, which American builders secured right after the war. The Metropolitan Company feel that they have regained this market.

Mr. D. is a member of Vickers Industrial Board, which is the operating Committee. Mr. D. is also Chairman of Vickers Committee on Sales throughout the world.

Vickers supply about 70% of all crank shafts and steel used by British motor car companies. I am enclosing a circular listing Vickers activities.

Mr. D. was a member of the Re-organization Committee of Vickers, which has been cleaning up that whole situation, disposing of losing companies and those foreign to their experience. They shrunk their capital two-thirds, and have

apparently done a real job—Vickers are now making money instead of losing millions, as was the case a short time ago.

Mr. D. is a trained engineer and technical graduate, and served his original apprenticeship in the forging business.

Mr. D. advises that he is just a hired man with Vickers, but from all I hear, an able one. He holds no stock in any of their companies. Has accumulated some means and wishes to invest a greater part of this in the new British-Timken Company.

Mr. D. feels that with his connections and business he actually controls, particularly on industrial work, that he can make handsome profits from an aggressive operation of British-Timken, and he is definitely counting on the further fact that costs can be reduced 20 to 25%, as Lothrop advised him.

Subject to your approval we have agreed on major points as follows:

That we will together treat with Vickers for Britsh-Timkens' shares, and it is agreed that we must buy them considerably under the figure first given.

[fol. 4707] That if satisfactory figure is agreed upon, some changes should be made in British-Timkens articles of incorporation to take care of the new deal.

That British-Timken must clear the Timken name in Germany. To do this they will probably have to buy off Prausnitzer.

The proposed capital authorized 200,000
Divided into 100,000 A. Stock
Divided into 100,000 B. Stock.

Both A. and B. Stock are equal as to dividends and in liquidation, and the cost of A. and B. shares shall be the same, but B. Stock is to control the Board and Manage the Company.

If 12½% is not earned and paid in dividends on both stocks for a period of one year, then A. Stock controls Board and Management.

Proposed Division of Stock:

A. Stock 100,000.

Timken takes and pays for 55% of amount issued
Dewar takes and pays for 45% of amount issued

B. Stock 100,000

Timken takes and pays for 45% of amount issued
Dewar takes and pays for 55% of amount issued

Of the total we each then have 50% and our investment would be equal.

So long as 12½% earnings are made and 12½% dividends are paid, B. Stock has three Directors and A. Stock two Directors, for publicity A. Directors should probably be Britons of Timken choosing and representing Timken.

The Company should be a private Company, then earnings are not published.

Neither party shall sell his shares without first offering the other party, at a price agreed to by public accountants appointed by each party, and they failing to agree, by a third accountant chosen by the other two.

[fol. 4708] Timken interest must be safeguarded by fair option on Mr. D's stock, in event of Mr. D's death or incapacity.

Mr. D. desires agreement that he remain a Director as long as he is a stockholder, and this seems fair.

Of course a new ten year license agreement must be drawn, covering complete interchange of ideas, methods, etc. etc. It must cover royalty, make mutually satisfactory arrangements as to the service business, arrange for Timken supplying rolls and cages and many other details that it seemed unnecessary to discuss in detail, until we could agree fully on a new set-up.

As an alternative, if Timken does not wish to be a partner, Mr. D. will put up all the money, provided, of course, a satisfactory ten year contract is agreed upon, and if this should be done, then Mr. D. might form a public company, and sell some preference shares, giving small bonus of common stock, keeping the balance of common stock for himself.

I do not think, however, you would care for this arrangement, and Mr. D. very much wants us as partners, on account of our interest then in the profitable operation of the Company.

The present British-Timken Company is at present more or less asleep. Hall would be let out under the new arrangement, and a new General Manager installed, as well as

considerable reorganizing of the balance of the organization.

I am to meet to-morrow, the man Mr. D. has in mind for General Manager, in actual charge of operations. This man has been associated with Mr. D. in the Metropolitan Company for 7 years, and Mr. D. believes he is very well fitted for the job.

You can see from Mr. D's connections, it would be a mistake to ask him to relinquish these, and devote his sole time to the new Company, and this he refuses to do. He knows his connection will be of great value to the new Company, but I am sure that where his personal dollars are invested will secure first call on his time and attention.

The longer I wait the more information I could send you but feel it important that I get this letter off to you on the "Mauretania" sailing Saturday. You should receive this letter about April 30. Give it some thought May 2 or 3 and cable me May 4, approval or disapproval of general set-up, and will you please ask any questions that occur [fol. 4709] to you, as I am a little hurried in making connections with the boat, so that this letter is not as complete as it otherwise would be.

We now propose a new deal that we hope will be profitable for a long time, and we must take sufficient time to cover the job thoroughly. Mr. D. is obliged to go to the continent the middle of May; but I hope in the ten days preceding we can get the matter concluded.

Tell Charlie Balough that I have nothing yet on E. T. White & Company, but will not overlook it, and am now securing reports on this company, and will interview them when I know their outside standing a little better.

I may run over to Paris for a few days awaiting your cable reply, but will of course cable you if I do.

I almost overlooked giving you information regarding the motor car industry here. I have secured this information from various sources, principally from Sir W. Letts. The largest producer of motor cars here is Morris, next comes Austin, between them they produce about 60% of all the British motor cars. Morris is a close personal friend of Mr. D's, and Mr. D feels sure he can get this business with a small price reduction. Ford is no longer a factor in England and appears to be definitely out of the picture. You

see very few Ford cars on the street, and everyone says the Ford car is a dead one. Morris has taken his business.

There is no interlocking directorates of bearing manufacturers and motor car companies, the market is an open one.

Yours truly,
(Signed) HEMAN ELY

P.S. Am enclosing copies cables 19 and 21st.

[fol. 4710] DEFENDANT'S EXHIBIT No. 18

Western Union Telegram

1927 May 5 PM 8 39

HB643 160 Cable
London 5
CLT Timken
Canton Ohio

Dewar Proposes Leasing Suitable Plant for a Year or Two Until Needs Are Definitely Determined Rental Probably Less Than Present Plant and More Suitable Located in Birmingham District Stop No Definite Opinion Price Vickers Will Accept Until Start Trading Stop Some Additional Investment Necessary Can Better Advise on This After Visit to Birmingham Next Tuesday Stop Morris [fol. 4711] Has Interest in Ransom and Marles but Believe Can Secure Part of Business Stop Dewar Feels Jacobs Unfit for Business on Account Religious Mania Stop I Had Conference Jacobs Yesterday He Is Very Bitter Against Dewar and Damns Him Roundly Am Searching for Any Confirmation of Jacobs Opinion Am Personally Convinced Jacobs Is Religious Fanatic Stop Duncan Might Be Director Will Suggest Other Later Stop Directors Usually Paid by Year Amounts Very Greatly Can Agree [fol. 4712] on Modest Amount I Am Sure Stop Can Arrange for Us to Have Majority Total Stock by Taking Larger Percentage A Stock Without Sharing Savings.

[fol. 4713] DEFENDANT'S EXHIBIT No. 19

London.
12th May, 1927.

Dear Sir Mark Jenkinson,

Referring to our interview with respect to British Timken, Limited, I confirm the offer which I have made to you on behalf of The Timken Roller Bearing Company of Canton, viz: that they are willing to purchase the whole of the shares in British Timken Limited at the price of 2. per share, the shares will pass to the purchasers assets and liabilities as at 30th September, 1926 and also all profits and losses since that date less the dividend of 40,000 paid since the 30th September, 1926. The offer is subject to the following conditions:—

(1) The accounts of British Timken Limited to be examined on behalf of the purchasers and their report to be satisfactory to the purchasers.

(2) An arrangement satisfactory to the purchasers to be made with the German Company and Mr. Prausnitzer.

(3) A more formal contract to be entered into satisfactory to the purchasers Solicitors if required.

(4) The Directors and Secretary to hand in their resignations and the purchasers nominees to be appointed and any other necessary steps to be taken for the transfer of the management and control when required.

Yours truly,

[fol. 4714] Vickers Limited, Vickers House
Broadway, Westminster, London, S.W. 1

12th May, 1927.

Dear Mr. Ely,

I have to thank you for your letter of the 12th inst., and on behalf of Messrs. Vickers Limited I hereby accept your offer to purchase on behalf of the Timken Roller Bearing Company of Canton the whole of the shares held by Vickers Limited in British Timken Limited at the price of 2. per share, the purchasers to have the benefit of any profits earned since the 30th September, 1926, from which date

they are to take over the shares, subject, however, to the retention by Messrs. Vickers Limited of the dividend of 40,000 net declared on the 10th November, 1926.

With regard to the conditions set out in your letter, I understand from Mr. Dewar that you are now prepared to waive condition No. 2. regarding the German Company and Mr. Prausnitzer. The other conditions are satisfactory to us.

I shall be glad to learn when you desire to inspect the accounts and complete the contract.

[fol. 4715] The acceptance of the offer is conditional on the transaction being completed within three weeks of this date.

Yours truly,

Heman Ely Esq.,
Room 708
Savoy Hotel,
W. C.

[fol. 4716] DEFENDANT'S EXHIBIT No. 20

Western Union Telegram

HB642 230 Cable 1/59 1927 May 12 PM 9 31
London 12
CLT Timken
Canton Ohio

Dewar and Our Offer of Two Pounds Per Share for All of British Timken Shares Has Been Accepted Subject to Our Auditors Check Now Being Made Stop Dividend of Forty Thousand Pounds Has Been Paid Since September Thirtieth Covering Profits Previous to That Date Stop We Receive All Profits Since September Thirtieth and [fol. 4717] Today Have Conservatively Seventy Thousand Pounds Assets in Accounts Receivable Inventory Under Priced Cash and Equipment Stop This Leaves Good Will Value Not to Exceed Thirty Thousand Pounds Which Will Be Returned in Profits in Less Than Years Operation Stop Cost of Machinery Equipment Dies Tools Etc. from Wolseley Not Over Thirty Thousand Pounds This Is Fifty Per Cent of Replacement Value Stop We Are Obliged to Buy This and It Can Be Paid for from Cash on Hand Stop

Additional Funds Require Later for New Equipment [fol. 4718] Motors Fixtures for New Quarters and Cost of Moving Twenty Five Thousand Pounds Stop Old Agreement of Vickers with Prausnitzer Provides for Cancellation and Surrender of Name Which Solicitors Feel Can Be Accomplished with Slight if Any Cost Dewar and We Undertake This Stop Dewar Will Devote Ninety Per Cent of Time to British Timken Taking Active Management and Moving His Residence to Birmingham District Stop Our [fol. 4719] Directors Will Be Temporary Until I Can Discuss with You in Person Fast Cable Reply Details Transfer Funds to Me.

[fol. 4720] DEFENDANT'S EXHIBIT No. 21

British Timken Limited

Common Lane, Ward End, Birmingham

Our reference WD/NH
14th May, 1927.

H. Ely Esq.,
Savoy Hotel,
London.

Dear Mr. Ely,

As requested by Mr. Dewar, I enclose Inventory of Plant which it is proposed should be purchased from the Wolseley Company, showing the year of purchase.

The original cost of this Plant (excluding the Mill Gearing and Loose Tools which are included in the Inventory) was, so far as I can ascertain, £77,000, and had been written down in the Wolseley Books to £21,500. In the writing down, the Pre-War Plant had been written off entirely and the War Plant subjected to very heavy depreciation, which accounts for the low book figure.

Calculating on a 5% rate of depreciation and assuming an average age of 17 years for Pre-War, 11 for War, and 5 for Post-War, the value would stand at approximately £36,000.00.

The Presses and Capstans in the large Press Shop employed on Cage production, in the latter figure (£36,000) would be included at £3,000.

[fol. 4721] Nothing is included in the above figures for Mill Gearing including Pulleys, Belts, Shafting, Countershafting, and also the Loose Tools, although these are in the Inventory.

The present day cost of the Machines, etc., has not been taken out, but I think a fair conclusion as to its value can be determined from the above information.

Yours sincerely,

/s/. WM. DALLOW

Encl: 902.

[fol. 4722]

Copy

Sheets 1/7.

(Private)

Inventory of Plant, Etc.

agreed by Mr. Dallow and Mr. Boden to be included in purchase by the Timken Company from Wolseley

March 31st, 1927.

(also Plant the property of Timken Co.)

[fol. 4723]

Copy

List of Plant as Balance Sheet at 30th Sept./1926.

Fixed Plant.

Plant No. 1.	1-No. 2 Cincinnati Grinder "Churchill"	848.14. 0
" No. 2.	1-10" Internal Grinder "	369. 0. 0
" No. 3.	1-10" " " "	369. 0. 0
" No. 4.	1-10" " " "	369. 0. 0
" No. 7.	1-No. 2 Cincinnatti Centreless Grinder.	1559.18. 3
		£3515.12. 3
	Less Depreciation @ 7½%, Sept. 30/1926.	263.13. 5
		£3251.18.10

Electric Driving Plant.

Plant No. 5.	1-15 HP. Motor 1814 x 440 volt.	61.18. 0
" No. 6.	1-2. HP. " 1520 x 1500 volt.	20.12. 0
		£ 82.10. 0
	Less Depreciation @ 10%, Sept. 30/1926.	8. 5. 0
		£ 74. 5. 0

List of Plant Purchased Year 1926-1927.

Plant No. 8.	1-No. 3 Cincinnati Centreless Grinding Machine.	1591.17. 0
	1-10. H. P. 440. volt D. C. Motor with starter.	46.13. 2
	Equipment for No. 1008 Roller	39. 7. 6
	" 3008 "	39. 7. 6
	" 302 "	21. 7. 6
		1738.12. 8
	-ditto-	1738.12. 8
		£3477. 5. 4

Summary.

at 30th Sept/1926.	£3,326. 3.10.
Year 1926-1927.	3,477. 5. 4.
	£6,803. 9. 2.

A

[fol. 4724]

Timken Dept.—Automatics.

Copy

Size	Makers Name	Date Purchased	No. of Machines	Machine Numbers
No. 52 Auto	Acme	1912	2	
" "	"	1913	2	
" "	"	1915	3	
" "	"	1917	3	
No. 53 Auto	"	1913	2	
" "	"	1915	7	
" "	"	1917	1	
No. 54 Auto	"	1915	5	
55 "	"	1913	1	
" "	"	1913	1	
" "	"	1915	2	
No. 56 "	"	1912	1	
" "	"	1913	2	
" "	"	1915	4	
No. 72 "	"	1912	1	
" "	"	1913	7	
No. 73 "	"	1912	1	
" "	"	1913	1	
" "	"	1917	1	
No. 74 "	"	1912	1	
No. 75 "	"	1917	1	
No. 76 "	"	1913	1	
"	Gridley Autos.	1913	13	
3¼" "	Gridley	1919	12	
4¼" "	"	1919	10	
No. 6 "	P. & J. Auto.	1917	4	
No. 6A "	"	1920	2	
6" "	Cleveland Auto.	1913	1	

[fol. 4725]

Timken Dept.—Grinders.

Copy

Size	Makers Name	Date Purchased	No. of Machines	Machine Numbers
No. 1 Grinder	B. & S.	1913	2	
No. 1 "	" Ext.	1913	5	
No. 1 "	" Surface.	1913	2	
No. 1 "	Landis Int.	1913	1	
No. 1½ "	" "	1913	6	
No. 1½ "	" "	1918	10	
No. 1½ "	" "	1917	1	
No. 1½ "	" "	1918	4	
No. 1½ "	" Universal.	1918	1	
No. 2 "	B. & S. Surface.	1913	1	
No. 2 "	" "	1916	1	
No. 2 "	" "	1920	1	
No. 2 "	" Int.	1920	1	
No. 2 "	Osterlein.	1919	2	
No. 3 "	B. & S. D./E.	1920	1	
No. 8 "	Ott. Plain.	1918	1	
No. 11 "	B. & S. Ext.	1918	1	
3" "	Plain Cutter.	1913	1	
3" "	" " (Herbert)	1913	2	
5" "	C. C. & Co. Int.	1913	2	
6" "	" "	1913	2	
10" "	" "	1918	6	
12" "	Vert. Surface.	1913	1	
4x24	Surface.	1913	1	
" "	C. C. & Co. Ext.	1918	3	
6x32 "	Norton.	1918	2	
6x34 "	C. C. & Co. Plain	1913	1	
" "	" Surface.	1913	2	
" "	" Plain Surface.	1913	1	
" "	" Ext.	1913	1	
" "	C. C. & Co.	1918	2	
" "	" Plain.	1918	1	
6x48 "	" Int.	1913	2	
8x18 "	Modern Plain.	1918	1	

[fol. 4726]

Timken Dept.—Grinders

Copy

Size	Makers Name	Date Purchased	No. of Machines	Machine Numbers
10x20 Grinders	Landis.	1918	1	
20x24 "	White Universal.	1918	7	
" "	" "	1919	23	
" "	C. C. & Co.	1919	1	
14x1½ "	Pfect. Co. Tool Grinders	1913	1	
14x2 "	Wards.	1914	1	
22x2½ "	"	1913	1	
" "	C. C. & Co. Universal	1920	2	
" "	D. E. Bench.	1920	2	
" "	"	1915	1	
" "	Blanchard Vertical Surface	1918	2	
" "	" Vertical	1919	1	
" "	P. & W. Vertical Surface	1913	1	
" "	Jones & S. Bench Grinder.	1914	1	
" "	B. & S. Grinder.	1920	1	
" "	Face Grinder.	1913	1	

The Following Machines Are Timken Property O

O No. 2 Centerless Cincinatti Grinder	1926	1	
O No. 10" Internal Grinder	1926	3	
O No. 3 Centreless Cincinnati Grinders	1926	2	
O No. 2 Centreless Cincinnatti	1926	1	

Timken Dept.—Lathes.

No. 3 Lathe	Foster Geared.	1915	5
5" "	P. & W.	1920	1
6" "	Pollick & MacN.	1915	1
6½" "	Wards Capstans.	1914	2
6½" "	" "	1915	2
6½" "	Taylor Cpt.	1915	1
7" "	P. & W.	1920	3
7½" "	Ungeared Capstan.	1913	1
10" "		1913	2
13" "	Gisholt.	1915	1

[fol. 4727]

Timken Dept.—Lathes

Copy

Size	Makers Name	Date Purchased	No. of Machines	Machine Numbers
13" Lathe	Gisholt.	1916	2	
13½" "	"	1918	2	
15" "	Ward G. K.	1915	2	
16" "	G. K.	1918	3	
6"x4 ft.	Lathe	1913	1	
8"x8 ft.	" Flathers.	1914	1	
17"x6 ft.	" G. K.	1915	1	
	" Reed Prentice.	1920	1	
	" Reed	1920	1	
	" Taylor D. E. Polishing.	1916	2	

Timken Dept.—Drillers.

2 Drillers	Jones & S. Spdl.	1915	2	
2 "	Ward "	1913	1	
6" "	" S. S.	1914	1	
6½ "	Seas Ward S. S.	1914	1	
7" "	Ward S. S. Vert.	1914	1	
" "	" " "	1914	1	
11" "	" " "	1914	1	
	Jones & S. S. S.	1915	1	

Millers.

2A Miller	B. & S.	1920	1	
	"	1920	1	
	Rockford Universal.	1915	1	

Timken Dept.—Presses.

No. 1 Hand Press	S. & B.	1915	4	
" "	"	1916	2	
" "	"	1917	1	
" "	" S. S.	1915	2	
No. 2 "		1920	1	
" "	S. & B.	1917	2	
" "	"	1910	1	
" "	"	1915	1	
" "	" S. S.	1913	1	
" "	Greenard Arbor	1915	1	

[fol. 4728]

Timken Dept.—Presses

Copy

Size	Makers Name	Date Purchased	No. of Machines	Machine Numbers
No. 3 Hand Press	S. & B.	1916	1	
" "	"	1917	4	
" "	"	1913	1	
" "	"	1920	1	
No. 10 "	"	1913	1	
" "	"	1916	1	
3½" Press	Arbor	1920	1	
"	Herberts Setting.	1914	1	
"	" Straightening.	1920	1	

Timken Dept.—Miscellaneous.

Cut off Machine	Garvin.	1915	1	
Hack Saw Fortuna.		1915	2	
42" Extractors	Broadbents.	1918	2	
Oil Separator L. Waste.		1918	1	
15" Shaper	P. & J.	1920	1	
20" "	Hardy.	1918	1	
Demagnetiser	Walkers.	1919	1	
Testing Machine.		1913	2	
" "	Brindell	1915	1	
Hydraulic Pump	Hollings & G.	1915	1	
Tapping Machine	J. Collis Geared.	1917	1	
" "	" "	1917	1	
No. 17 Muffles	American Gas Co.	1910	2	

Sundry Plant—Timken.

Description			
Revergen Oven Furnace	1920	..	3502
" " "	1920	..	3503
" " "	1920	..	3504
" " "	1920	..	3505
Rotary Furnaces (own make)	1926	6	
Grading Machines.	1926	4	
10C Platform Scales—Avery.	1915	..	W1648
7C " "	1917	..	V285
10C " "	1915	..	V83
Capstan Headstock.	1913	..	663
400 Light Gas-Meter—Parkinson	1918	..	W2285

437002/1/0/1 (?) H. P. and 2 H. P. Motors Timken Property.

[fol. 4729]

Copy.

List of Presses & Capstan Lathes In Use
On Ordnance Side in Connection with British Timken Work.

	Machine No.	Description.	Maker.
	V. 2	Blanking & Cupping Press	Taylor & Challen.
	W837	24K Knuckle Joint Embossing Plant.	Bliss.
	W833	23K " " "	"
	W832	23K " " "	"
	W829	No. 1 Press	"
	W844	20B Power Press	"
	W840	No. 737 " "	"
	W847	20B " "	"
	W846	" " "	"
	WM1107	Ferracute Power Press	Ferracute
	W843	20B Power Press	Bliss
	W842	20 " "	"
(Weak!)	(W848	39B Special Flywheel Press	") (Handwriting which
Really	W849	" " "	") is not legible)
Require	W864	No. 3 Stiles Press	"
two	W865	" " "	"
more)	W861	No. 4 " "	"
	W863	No. 5 Press "WARD"	"
	WM3508	6½ Geared Capstan Lathe	Ward.
	1998	6½" " " "	"
	W1509	6½" " " "	"
	W1508	6½" " " "	"
	V340	6½" " " "	"
	V342	6½" " " "	"
	V344	6½" " " "	"
	W170	6½" Ungeared "	"
	W1519	6½" Geared " "	"
	W66	6½" Ungeared "	"
(Also	1691	6½" Geared "	"
Bliss	V. 9	D. S. Press 10" Stroke.	Taylor & Challen.
V 45 &	W763	No. 2 S. S. Hand Press	Sweeney & Blocksidge.
T & C	W764	No. 2 " " "	" "
V 9)	W765	No. 2 " " "	" "
	W713	Sand Blast Apparatus with Compressor & pr. of Rotary Barrels.	

Volume IV

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SUPREME COURT, U.S.

Vol. IV

TRANSCRIPT OF RECORD

(Pages 1753 to 2304)

Supreme Court of the United States

OCTOBER TERM, 1950

No. 352

THE TIMKEN ROLLER BEARING COMPANY,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

FILED OCTOBER 11, 1950.

SUPREME COURT OF THE UNITED STATES

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

VOL. IV

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JAN. 24, 1951.

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135—Cable, May 31, 1935, Hess to Duncan	5119	2093
136—Letter, Feb. 18, 1930, Seward to Hess	5120	2094
137—Cable, March 4, 1930, Hess to Seward	5121	2094
138—Cable, March 5, 1930, Seward to Hess	5122	2095
139—Letter, December 16, 1929, Seward to Timken R. B. Co. and enclosures	5123	2095
140—Letter, May 30, 1930, French Timken to T.R.B. Co. and enclosure	5127	2097
141—Memo., "Date Rec'd from British Timken"	5138	2104
142—Letter, December 2, 1930, T.R.B. Co. to British Timken	5141	2106
143—Letter, January 9, 1931, British Timken to Hess	5142	2107
144—Letter, June 26, 1931, American Timken to French Timken	5143	2108
145—Letter, August 24, 1931, TRB Co. to Mr. Dallow and enclosure	5144	2109
146—Letter, January 5, 1931, Seward to T.R.B. Co. and enclosure	5146	2111
147—Letter, July 7, 1931, Seward to T.R.B. Co.	5157	2119
148—Letter, July 18, 1933, French Timken to T.R.B. Co. and enclosure	5158	2120
149—Letter, July 1, 1933, French Timken to T.R.B. Co. and enclosure	5161	2123
150—Summary re employees, French Timken, December, 1933	5162	2124
151—Letter, October 6, 1927, T.R.B. Co. to British Timken	5165	2127
152—Letter, January 4, 1933, T.R.B. Co. to Dewar	5166	2127
153—Letter, November 28, 1932, Dewar to Hess	5167	2128
154—Letter, March 21, 1933, Dewar to Hess	5168	2128
155—Letter, April 6, 1933, T.R.B. Co. to Dewar	5169	2129
156—Letter, April 20, 1933, Dewar to Hess	5170	2130
157—Collection of material re bearing applications for South Australia Railway	Physical	
158—List of blueprints furnished to British Timken from 1928	Physical	
159—Photostats, blueprints, etc.	Physical	
160—Blueprints and data	Physical	
161—Blueprints and data	Physical	
162—List of machine tools	5171	2131
162A—List of machine tools	5175	2134
162B—List of machine tools	5178	2135
163—Industrial Engineering Department report	5184	2141
163A—Industrial Engineering Department report	5189	2146
164—Tabulation of work for British Timken	5196	2153
165—Engineering journals	Physical	

Record from U. S. D. C., Northern District of Ohio—Continued

	Original	Print
Defendant's exhibits—Continued		
166—Blueprints and data	Physical	
167—Sloan report, European trip, 1929	5202	2158
168—Sloan report, French Timken trip, 1930	5216	2172
169—Copies of reports (Shuler)	5230	2185
170—Timken engineering journal (German)	Physical	
171—Sumary table re clearing and payments agreements	5270	2213
172—Charts from Department of Commerce Bulletin	5271	2214
173—October '34 report of U. S. Tariff Commission	5280	2223
174—Document of U. S. Tariff Commission "Regulation of Imports by Executive Action", etc.	5294	2237
175—Compilation re international trade in antifriction bearings in 1934 and 1938	5296	2238
176—Table re value of U. S. exports of bearings	5310	2256
177—Table re imports to U. S. of bearings	5311	2256
178—Table re value of production of ball and roller bearings in U. S.	5312	2257
179—Sheet of United Kingdom production for 1924 and 1930, and sheet of Swedish Production for 1930-31-32	5313	2257
180—Tariff schedules showing rates in 1947	5315	2259
181—Reprint from Foreign Commerce weekly re import license and exchange control regulations on principal foreign countries	5337	2281
182—Schedule of import duties of the U. S., June, 1946	5339	2283
183—Excerpts from U. S. Tariff Commission study re bearings	5342	2287
184—Tariff Commission report on metals manufacturers	5346	2291
185—Tabulation of bearing sizes	5351	2296
186—TRB investments in British, French and German Timken	5353	2298
187—Tabulation of dividends	5356	2301
188—Advertising material	5357	2302

[fol. 4730] Sundry Plant—British Timken Limited

Description	Year
Counting Machine	1921
Trays, Pulley Blocks, etc.	1921
Hemp Slings	1921
Developing Tank	1923
Iron Trays	1924

All Pyrometers and Instruments which are directly connected to the Rotary and Revergen Furnaces.

Mill Gearing

All Pulleys, Belts and Shafting and Countershafting at present used with the Steel work carrying countershafting on present stanchions. With the exception of the Motors, Switch Gear, and Pulleys and Belts for same.

Tools

All existing Press Tools and Capstan Tools and all Gauges for Cage making as at present in use and in Stores.

All loose Cutting Tools and Gauges in Timken Department used in connection with the production of Bearings or Universal Joints.

(Also:—

Tool hardening Furnace (on Vickers side)
Planer (" " ")

[fol. 4731] DEFENDANT'S EXHIBIT No. 22

London.
16th May, 1927.

Dear Sir Mark Jenkinson,

I have your letter dated the 12th instant. I am now prepared to waive the first three conditions in my letter of the same date and to complete the purchase forthwith so that it will only rest with Messrs. Vickers to give effect to the fourth condition when required.

Yours faithfully,

(sgd) HEMAN ELY

Sir Mark Jenkinson

[fol. 4732]

Vickers Limited

Vickers House

Broadway, Westminster, London, SWI

16th May 1927

Heman Ely Esq.,

Messrs. The Timken Roller Bearing Company,
of Canton, Ohio, U.S.A.

Dear Sir,

We beg to acknowledge receipt of your letter of even date, addressed to Sir Mark Webster Jenkinson, waiving the first three conditions stated in your letter of the 12th May 1927, with which we are in agreement.

Yours faithfully,

FOR VICKERS LIMITED,
(Signed) G. G. Sim
Secretary

[fol. 4733] Defendant's Exhibit No. 23

Dated: 1st January, 1928

The Timken Roller Bearing Company and
British Timken Limited

Agreement

[fol. 4734] This agreement executed as of the..... First day of January One thousand nine hundred and twenty-eight BY and BETWEEN The Timken Roller Bearing Company, a Corporation organized under the laws of the State of Ohio and having its principal office in the City of Canton Ohio in the United States of America (hereinafter for convenience called "The American Company") and British Timken Limited a joint stock company incorporated under the laws of the United Kingdom of Great Britain and Ireland and having its registered office at

Birmingham in the Kingdom of England (hereinafter for convenience called "the British Company")

Witnesseth:

Whereas the American Company manufactures anti friction bearings (hereinafter called "bearings") in the United States of America and has a very special experience in the manufacture of bearings

And whereas the American Company is or may be or become the owner of Patents in the United Kingdom of Great Britain and Northern Ireland and in various other parts of the world covering inventions relating to bearings and improvements therein

Now the parties hereto AGREE as follows:—

1. For the purposes of this Agreement the United Kingdom of Great Britain and Northern Ireland and all other countries of Europe and all colonies or dependencies of said United Kingdom and European countries except in or adjacent to North or South America shall be deemed to be the territory of the British Company and the rest of the world shall be deemed to be the territory of the American Company.

2. (a) Each of the parties hereto will as fully and [fol. 4735] freely as its patent and contractual rights and obligations permit and free of expense to the other party except as to out-of-pocket expenses inform the other party as to all inventions, discoveries, improvements and practices useful in connection with the manufacture of bearings whether patented or not.

(b) The American Company will so far as its patent and contractual rights and obligations permit and free of expense to the British Company except as to out-of-pocket expenses license the British Company to operate, manufacture and sell bearings in the territory of the British Company during the life of this Agreement under any Letters Patent or other patent rights now or hereafter from time to time owned by the American Company and pertaining to the manufacture or sale of bearings in the territory of the British Company.

(c) The British Company will so far as its patent and contractual rights and obligations permit and free of expense to the American Company except as to out-of-

pocket expenses assign absolutely and for all time to the American Company all Letters Patent or other patent rights now or hereafter from time to time owned by the British Company and pertaining to the manufacture or sale of bearings in the territory of the American Company.

(d) Provided however that nothing in this Agreement contained shall obligate either party to acquire or enlarge its interest in any Letters Patent or other patent rights.

3. (a) Each of the parties hereto will use its best endeavours to maintain the distinctive character of the Trade Mark "Timken" and refrain from any act calculated to prejudice the rights of the parties hereto in respect thereof as now existing.

[fol. 4736] (b) The British Company if and when requested by the American Company will join with the American Company in an application for concurrent registration of the trade mark "Timken" in accordance with the rights aforesaid.

(c) The British Company upon the termination of this Agreement if and so far as it may be requested in writing by the American Company will cause the name "Timken" to be eliminated from its corporate name and from the name of any person, firm or Company controlled by it and will refrain and will cause any person, firm or Company controlled by it to refrain from using the name "Timken" as part of or in connection with his, their or its name or as a trade mark or trade name or otherwise and from any act calculated to prevent or delay any concurrent right which the American Company may then possess in respect of the said name from becoming a sole and exclusive right and so far as practicable will assign or cause any person, firm or Company controlled by it to assign to the American Company or as it may direct any trade mark or other rights in respect of the said name.

4. (a) The American Company will from time to time advise and instruct the British Company in the manufacture of bearings and particularly in connection with the quality of the steel used and its composition and analysis the method of case hardening the machinery and processes for grinding gauging sizing quenching die working forging upsetting forming sorting plating and other opera-

tions and in connection with any special tools and machinery.

(b) The British Company will carefully and faithfully follow such advice and instructions so far as the same shall be economically practicable under the circumstances of the business of the British Company.

[fol. 4737] (c) The British Company's manufacturing operations shall at all reasonable times be open to inspection by the American Company or its representatives.

5. (a) The British Company by itself or its sub-licensees approved by the American Company will manufacture bearings in such quantities and in such States within the British Company's territory and will exercise all such rights in connection with the manufacture of bearings as shall be required to maintain all Letters Patent from time to time owned by the American Company in any State or States within the British Company's territory.

(b) If the British Company desires to be relieved of the obligation contained in paragraph (a) of this section with respect to any State it shall be entitled to give notice in writing to the American Company that it excludes such State from the British Company's territory and thereupon such State shall be withdrawn from the British Company's territory and shall be added to the American Company's territory.

(c) For the purposes of this clause a State shall mean a territorial area in which there is a separate jurisdiction for patent purposes.

6. Except with the consent of the American Company the British Company shall not manufacture, sell or deal in any bearings except under and in accordance with the terms and provisions of this Agreement and under the Trade Mark "Timken".

7. During the life of this Agreement the American Company shall not directly or indirectly make or sell or license [fol. 4738] others to make or sell bearings in the British Company's territory or in the American Company's territory knowing them to be for shipment into the British Company's territory save and except as follows to wit:

(a) The American Company may make or sell or license others to make or sell in its territory bearings

for delivery or shipment into the British Company's territory as assembled component parts of completed articles of manufacture manufactured in its territory or as assembled component parts of completed units of manufacture manufactured in its territory for incorporation into such completed articles of manufacture.

(b) The American Company in its territory may accept and execute orders for bearings for ultimate destination in the British Company's territory for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorise sales to or known to be destined for manufacturers in the British Company's territory and the American Company from time to time shall notify the British Company of the details of the sales authorised under this paragraph and shall pay to the British Company an amount equal to ten per centum (10%) of the net sale price thereof.

(c) The American Company may authorise not more than four manufacturers or producers of vehicles in the United States of America to import into the British Company's territory bearings manufactured by said producers in the American Company's territory for incorporation in new products or for bearing replacement purposes for products previously manufactured or assembled by said manufacturers or producers or their subsidiaries in the British Company's territory provided that they are not stamped or identified by the name Timken.

[fol. 4739] (d) For the purposes of this section a holding Company as for instance General Motors Corporation and its constituent and subsidiary Companies shall be deemed to be one manufacturer or producer.

(e) The parties hereto recognize and approve the mutual licensing agreement entered into between the American Company and International Harvesters Company dated the Thirty first December One thousand nine hundred and twenty seven of which a copy has been supplied by the American Company to the British Company.

8. During the life of this Agreement the British Company shall not directly or indirectly make or sell or license others to make or sell bearings in the American Company's territory or in the British Company's territory knowing them to be for shipment into the American Company's territory save and except as follows to wit:

(a) The British Company may make or sell or license others to make or sell in the British Company's territory bearings for delivery or shipment into the American Company's territory as assembled component parts of completed articles of manufacture manufactured in its territory or as assembled component parts of completed units of manufacture manufactured in its territory for incorporation into such completed articles of manufacture.

[fol. 4740] (b) The British Company in the British Company's territory may accept and execute orders for bearings for ultimate destination in the American Company's territory for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorise sales to or known to be destined for manufacturers in the American Company's territory and the British Company shall from time to time notify the American Company of the details of the sales authorised under this paragraph and shall pay to the American Company an amount equal to ten per centum (10%) of the net sale price thereof.

9. (a) Subject to the approval in writing of the American Company as to both terms and personnel to be exercised at its absolute discretion but not otherwise the British Company may from time to time grant sub-licenses to others to make, use and vend bearings in the British Company's territory and may communicate to such sub-licensees any information with respect to inventions, discoveries, improvements and practices whether patented or not received from the American Company.

(b) Every such sub-license shall be deemed to be a license granted by the American Company and all royalties payable thereunder shall belong to the American Company and shall be made payable direct to the American Company accordingly.

(c) All the terms and conditions establishing the business and other relations between the British Company and any sub-license within the British Company's territory shall be submitted to and approved in writing by the American Company before the same are agreed to by the British Company and no alteration shall be made therein without the like approval.

[fol. 4741] (d) If the British Company shall acquire any stocks shares securities or other interest in any Company or Association manufacturing or selling bearings in the British Company's territory the British Company shall not sell or dispose of such stocks shares securities or interest without the consent in writing of the American Company.

10. (a) During the life of this Agreement the British Company shall pay to the American Company a royalty equal to four per centum (4%) of the net invoice prices after deduction of all bearings manufactured or sold by the British Company less amounts equal to one-half (½) of the royalties paid directly to the American Company by sub-licensees pursuant to the last previous Section thereof.

(b) Provided however that no royalties shall be paid hereunder by the British Company in respect to (1) completed bearings purchased by the British Company from the American Company or (2) bearings manufactured by the British Company and sold by it to sub-licensees appointed under the authority of the last previous Section hereof which are owned or controlled jointly by the American Company and Michael Bruce Urquhart Dewar of Number 4 Central Buildings Westminster London, England or (3) bearings upon which the royalties are paid directly to the American Company by sub-licensees pursuant to the last previous Section hereof.

(c) In the case of bad accounts written off by the British Company the American Company shall refund to the British Company royalties paid in respect to bearings giving rise to said accounts.

[fol. 4742] 11. The said royalties shall be paid on the First days of January April July and October of each year or within thirty days thereafter for the bearings sold during the quarter-year prior to said respective dates.

12. (A) The remittance of said royalties shall be accompanied by statements shown in detail:

(a) The number of bearings made during the preceding quarter-year.

(b) The number of bearings sold during the preceding quarter-year.

(B) The statements in respect thereto furnished during January of each year shall also be accompanied by a certified statement prepared by the Auditors of the British Company or its sub-licensees as the case may be based upon an actual examination of the books and records of the British Company or its sub-licensees giving the same data as above required in respect of sales made during the year prior to said month of January and said January statements shall if required by the American Company be further verified by Statutory Declaration of the Secretary for the time being of the British Company or its sub-licensees.

(C) The American Company may once in each year at its own expense employ a Chartered Accountant who shall have the privilege of examining the books, records and plant of the British Company and its sub-licensees with a view to determining how many bearings the British Company and its sub-licensees shall have made and sold up to the time of such examination and to whom and when and for what prices.

13. (a) The American Company shall pay all renewal fees required to maintain and keep on foot all Letters [fol. 4743] Patent in respect to bearings owned by the American Company in the British Company's territory which it shall desire to maintain and keep on foot.

(b) Provided however that if the American Company shall elect to discontinue or refrain from maintaining any such Letters Patent it will give not less than four (4) months' written notice to the British Company and during the said interval the American Company if requested so to do shall assign to the British Company at the expense of the British Company any of said Letters Patent which it shall so elect to discontinue or refrain from maintaining.

(c) The American Company at its own cost shall defend every action of proceeding instituted for the purpose of

revoking any Letters Patent in respect to bearings owned by the American Company which it desires to maintain.

(d) Provided however that if any of said Letters Patent shall be revoked solely on some ground which would not have been available if the British Company had duly performed its obligations under this Agreement then and in any such case the American Company in addition to any other rights which it might have against the British Company shall be entitled to recover from the British Company all costs charges and expenses reasonably incurred in such defense.

14. Upon the termination of this agreement whether under any of the provisions hereof or otherwise howsoever the British Company for a period of six (6) months thereafter shall have the privilege of completing and selling its stock of bearings on hand at the date of said termination upon the terms which would have ruled if this Agreement had not been so terminated and subject to the payment of royalties as herein provided.

[fol. 4744] 15. (a) In the event of liquidation (except for the purpose of capital reorganization) of the British Company this Agreement shall immediately terminate and cease.

(b) The rights and privileges of the British Company hereunder shall be assignable only with the consent in writing of the American Company.

16. This Agreement unless otherwise terminated as herein provided for shall continue in full force and effect for a period of ten (10) years from the First day of January One thousand nine hundred and twenty-eight and if the American Company shall desire to extend the life of this Agreement for a further period of ten years and of such desire shall give notice in writing to the British Company before the First day of January One thousand nine hundred and thirty-seven then and in such case this Agreement shall be read and take effect as if the said period of ten years had been a period of twenty years.

In witness whereof The Timken Roller Bearing Company by the authority of its Board of Directors has caused these presents to be executed in duplicate by its Secretary and its corporate seal to be hereto affixed and British Timken Limited under the authority of its Board of Directors has

caused its Common Seal to be affixed hereto in duplicate as of the day and year first above written.

THE TIMKEN ROLLER BEARING COMPANY,
By

Secretary.

The Common Seal of British Timken Limited was hereunto affixed in the presence of:

Directors,
Secretary.

[fol. 4745] DEFENDANT'S EXHIBIT No. 24

An Agreement made the 20th day of April, 1928, between British Timken Limited (hereinafter called "the Company") of the one part and Michael Bruce Urquhart Dewar (hereinafter called "Mr. Dewar") of the other part.

Whereas Mr. Dewar is the present Managing Director of the Company and it is desired to define the terms upon which he is to continue to hold that office.

And whereas the expression "the first control period" as hereinafter used is intended to bear the same meaning as such expression is defined to have by the by-laws of the Company as to voting adopted by resolution of the Company passed on the 20th day of April, 1928, a copy of such definition being contained in the Schedule hereto.

Now it is Hereby Agreed as follows:

1. Mr. Dewar shall be the Managing Director of the Company and so long as he holds office as such no other Managing Director shall be appointed without his previous consent in writing.

2. There shall be entrusted to Mr. Dewar as Managing Director the general supervision and management of the Company's business and affairs which Mr. Dewar shall regard as his principal occupation and to which he shall devote so much of his time and attention as shall be necessary for the proper and efficient conduct thereof.

3. In the performance of his duties and exercise of his powers as Managing Director Mr. Dewar shall have regard and conform to any reasonable instructions or regulations given or made by the Board of Directors of the Company

and subject to any such instructions or regulations Mr. Dewar shall manage and conduct the Company's business and affairs in such manner as he may consider most beneficial to the Company and shall have and be entitled to [fol. 4746] exercise for this purpose all powers conferred upon the Directors generally by the Company's Articles of Association. In particular Mr. Dewar shall be entitled to exercise all the powers of the Directors under the Articles as regards the borrowing raising and securing of money and the appointment remuneration terms of service and dismissal of all managers and employees of the Company shall be in his discretion.

4. Subject as hereinafter provided Mr. Dewar shall hold office as Managing Director during his life or until he shall resign such office by not less than six months' notice in writing to the Company.

5. Should Mr. Dewar at any time be incapacitated by ill-health or otherwise from performing his duties as Managing Director for a continuous period of six months the Company may at any time whilst such incapacity continues by notice in writing to Mr. Dewar determine his appointment as Managing Director.

6. Mr. Dewar's appointment as Managing Director shall *ipso facto* cease and determine:

(a) On the termination of the first control period or

(b) If Mr. Dewar vacates office as a Director of the Company.

7. Mr. Dewar shall be paid by the Company remuneration for his services as Managing Director at the rate of £3,000 per annum (such remuneration to commence as from the 1st May 1927 and to be payable monthly on the last day of each month) or at such higher rate if any as shall from time to time be fixed by the Directors with consent in writing under the hands of the holders of a majority of the "B" shares of the Company for the time being issued.

8. Mr. Dewar shall also be entitled to be recouped by the Company all travelling and other expenses incurred by him in or about the performance of his duties as Managing Director.

In witness whereof the Company has caused its Common Seal to be hereunto affixed and Mr. Dewar has hereunto

set his hand and Seal the day and year first above written.
[fols. 4747-4748] The Schedule above referred to.

The expression "the first control period" shall mean the period from the 20th day of April 1928 until the date in or after the year 1929 of the holding of an ordinary meeting of the Company at which for the first time either (i) accounts of the Company are submitted which show that during the financial year or period covered by such accounts the net profits earned by the Company for such year or period (before charging income tax or any other tax on profits) have been at a rate which is less than £15,000 per annum plus £15 per annum in respect of every sum of £100 paid up (whether by way of capital or premium) on any shares issued after the date of the adoption of these by-laws otherwise than by way of capitalisation of profits (hereinafter referred to as "the minimum rate of profits") or (ii) no dividend is declared on any shares of the Company or the dividend or dividends declared (including as dividends declared or part thereof any interim dividends already paid in respect of that year or period) are at a rate which does not require for the payment thereof (in the gross and subject to deduction of tax) a sum equal to five-sixths of the minimum rate of profits for such year or period.

The Common Seal of British Timken Limited was hereunto affixed by order of the Board in the presence of
Wm. Dallow,
A. J. M. Duncan,
Directors.

R. O. Squire,
Secretary.

Signed, Sealed and Delivered by the above named Michael Bruce Urquhart Dewar in the presence of
M. B. U. Dewar.
A. A. Hill,
42, Anderton Road,
Sparkbrook,
Birmingham.

[fol. 4749] DEFENDANT'S EXHIBIT No. 25

New York, N. Y., June 7, 1929.

Mr. M. B. U. Dewar,
New York, N. Y.

Dear Sir;

In view of the proposed enlarged activities of French and German companies operating under license agreements from British Timken Ltd. and in view of your increased responsibilities in connection with the supervision of such operations, we propose to you as follows:

1. The existing license agreement between the Timken Roller Bearing Company and British Timken Ltd. shall be amended to the effect that such agreement shall continue in force for 15 years instead of 10 years as now provided and with an option in the Timken Roller Bearing Company to extend such period for an additional 15 years.

2. Your compensation from British Timken Ltd. now provided by contract to be £3,000 per year shall, as of January 1, 1929, be increased to £5,000 per year.

Your approval hereof by notation hereon will constitute agreement between us.

Very truly yours,
THE TIMKEN ROLLER BEARING COMPANY,
By (signed) M. T. Lothrop, *President.*

Approved: June 7, 1929.
(signed) M. B. U. Dewar.

[fol. 4750] DEFENDANT'S EXHIBIT No. 26

BRITISH TIMKEN.

The original arrangements for the taking over of British Timken Ltd. from Vickers Ltd. were made in 1926.

We have now had seven years working based on agreements made in the years 1926 and 1927.

We feel that a stage has been reached at which, in the light of experience we can review these agreements and, I hope, agree on modifications.

In 1927 this company was making about 6,000 bearings a week, it is today making nearly 50,000 bearing a week. During these seven years the Timken Roller Bearing Co., on an original investment of $255,510 have received in Royalties and Dividends (after deduction of British Income Tax) a sum of $461,000 and their share of British Timken, as shown on the memorandum you have already seen, can be valued at $1,171,000.

This increase in the value of B. T. and the increase of $915,490 on T.R.B.'s share has been achieved by retaining in the business the profits made.

This increase in value has been achieved in spite of an unprecedented world depression.

The rate of increase of the assets of B. T. is not likely to be so rapid in the future, owing to the fact that now our product is far from being unique.

The general position and the increasing competition in the Taper Roller bearing market causes me to raise the following points:

1. Royalties.
2. Possibility of putting B. T. shares on the market, so as to permit T.R.B. and myself to convert some of our assets into cash.
3. Control.

1. Royalties

The following are the points which I suggest should now be taken into consideration.

[fol. 4751] (a) There are in Europe no Timken bearing patents.

(b) The name Timken has ceased to have its former great value owing to the growth of competition not only in Europe but also in the U. S. A.

(c) Bearing makers can now obtain all details of the manufacture of Taper Roller Bearings from Machine Tool makers.

(d) Technical assistance now does not give B. T. the advantage over its competitors which it did in the past and further, manufacturing problems in England and U. S. A. are different.

(e) The right to certain territories is not today as valuable as when the U. S. A. was the largest exporter of automobiles equipped with Timken Roller Bearings.

Not only has the demand for service bearings fallen off but also the prices are being depressed by R.I.V. by Fischer and now even by the T.R.B. themselves.

The question of Royalties has often been discussed and I consider the time is opportune to ask for a revision of Royalties to the point of cancellation.

2. Placing B. T. Shares on the Market

This question has a definite relation to the Royalty question.

I am getting no younger, and, as the B. T. profits have not been distributed, I should welcome, as I daresay you would too, the possibility of cashing some of my investment.

This could be done, as I have shown in a short memorandum, by the T. R. B. and myself selling shares on the British Market, while the control of the company could still remain between the T. R. B. Co., and myself through the formation of a holding company, holding say 51% of B. T. share capital.

[fol. 4752] The price at which the shares could be sold would depend on the state of the market and on the results of the trading of B. T. in the past and particularly during the present year.

The price should be such as to capitalize B. T. at a minimum of £300,000.

B. T.'s average profits for the last seven years amount to £45,560 per annum, but the last two years only to £17,000.

Consequently 1934 must show good profit figures to enable a high rate of capitalization to be obtained.

If Royalties are cancelled this year the average profit will be much higher and if they are added back to the results of the last few years, these results would show such profit figures as should result in a capitalization high enough to allow the T. R. B. to compensate themselves to a considerable extent for loss of Royalties by the higher price they would obtain for their shares.

We have already asked as a first step, that the capital of B. T. should be increased to £200,000. We hope that the

difficulties of your tax position will be overcome, as we consider that this step should be taken at once.

3. Control.

If the above scheme is carried out, I suggest that I can justifiably ask that the present conditions as to control should be cancelled. I would suggest that control through the proposed holding company should remain with my shares as long as these shares are controlled by myself or Mr. Pascoe.

[fol. 4753] S. A. F. T.

The position of S. A. F. T. as at the end of 1933 was that available for a total share and loan capital of 21,714,000 frs. there was a surplus of 12,273,756 frs.

Whinny Murray Company's report shows a surplus of only 559,756 frs. as in this report the I. B. I. loan is not regarded as capital.

The share and loan capital of S.A.F.T. is 21,714,000 frs. but in order to arrive at the actual amount subscribed by T.R.B. and (Dewar to a small extent) it is reasonable to deduct interest and half the royalties which were received by T.R.B. either inscript or cash amounting to 2,884,488 frs. We then arrive at a figure of 18,829,512 frs. as the amount of capital actually found in cash of which 6,079,037 frs. has been lost.

Owing to the exchange position and the appreciation of the franc in terms of the dollar, the present value of the surplus is $818,250 (at 15 frs. to dollar) against a total share and loan capital actually invested of $868,560 (at 25 frs. to dollar).

The actual position of S.A.F.T. as shown by the latest accounts is that 9,440,244 frs. have been lost and should be replaced by earnings before dividends can be paid, although it might be argued that a certain proportion of this sum, as shown in the balance sheet under the heading of formation expenses and development accounts, might be carried in that balance sheet as goodwill, thus permitting the payment of dividends subject to capital requirements before the whole of the 9,440,244 frs. are replaced out of earnings.

The above is a summary of the present position without making any attempt to give reasons or explanations for the

losses as these are well known to the T. R. B. Co., and ourselves.

My agreements definitely show that the control to I.C.I. of the French company can now pass into your hands.

[fol. 4754] 1. Under our agreements regarding the S.A.F.T. the control of that Company should now pass into your hands.

2. Bearing in mind that the personnel at Canton may change at any time, we do not feel that this situation is a very happy one under which to carry on.

3. Consequently we should welcome a decision by the T.R.B.Co., either to assume control at once or to make some arrangement such as an agreement with Mr. Pascoe and myself to exercise control for a period of years.

4. Further reference to the control situation is made under the heading of I.C.I.

[fol. 4755] I.C.I. Under our agreement T.R.B. and myself have undertaken to set aside out of dividends received from BT. each year an amount equal to one-third of the profits to take up common stock in I.C.I.

Owing to the fluctuating exchange position, it has been agreed in the past not to implement this arrangement.

Owing to intense competition during the past two years, B.T. profits have only been at the rate of £15,000 a year instead of between £50,000 and £60,000 which was the case when the agreements were made.

Another consideration is that owing to capital requirements of B.T. it was not possible to distribute as dividends the amounts originally contemplated.

As a private individual, I frankly feel it hard only to receive a dividend of approximately £4,500 with the obligation to put half of it aside for a further investment in the anti-friction bearing industry in Europe.

Consequently I ask for and would suggest a settlement on the lines of cancellation of the present agreements with a new agreement as to a definite sum to be invested by me in I.C.I.

As regards to control of I.C.I. and through I.C.I. of the French Company, we are quite prepared to settle this matter in any way that you wish.

[fol. 4756] D. T. G.

The accounts of the German Company as at December 31, 1933, show a surplus of 239,527 R.M. available for a total loan and share capital of 1,013,930 R.M.

The difficult position in Germany, both financially and politically, under the present regime, leaves no doubt that the only course to pursue is to shut down completely in Germany and to realize the remaining assets as soon as possible.

This is the plan we are adopting.

[fol. 4757]

SUMMARY OF T. R. B.

European Investments in dollars.

	Investment	Present Value	Royalties, Interest Divs. Rec'd.
British Timken	255,510	1,171,573	461,000
S.A.F.T.	868,560 (25 frs. to $)	818,250 (15 frs. to $)	.....
D. T.	253,482	59,874	
	1,377,552	2,049,697	461,000

[fol. 4758] DEFENDANT'S EXHIBIT No. 27

Dated, 28th November, 1938

The Timken Roller Bearing Company, British Timken Limited and Societe Francaise Timken.

Business Agreement

Stibbard, Gibson & Co.,
21, Leadenhall Street,
London, E.C.3

[fol. 4759] An Agreement made the Twenty-eighth day of November one thousand nine hundred and thirty-eight between The Timken Roller Bearing Company a Corporation organized under the Laws of the State of Ohio in the United States of America and having its principal office in the City of Canton in the said State (hereinafter for convenience called "the American Company") of the first

part British Timken Limited a Joint Stock Company incorporated under the Laws of the United Kingdom of Great Britain and Ireland and having its principal office in the City of Birmingham in the United Kingdom of Great Britain and Northern Ireland (hereinafter for convenience called "the British Company") of the second part and Societe Francaise Timken a Societe Anonyme incorporated under the Laws of France and having its principal office in Asnieres in the Department of Seine France (hereinafter for convenience call "the French Company") of the third part.

Whereas

(A) The American Company in the United States aforesaid the British Company in the United Kingdom of Great Britain and Northern Ireland and the French Company in France carry on business as manufacturers of anti-friction bearings (hereinafter called "bearings") and the American Company in the United States aforesaid also carries on business as manufacturers of steel used in the manufacture of bearings.

(B) The Companies parties hereto for their mutual advantage and convenience in working have agreed to make arrangements for an interchange between them of information and facilities and in connection therewith to define their respective territories and for other purposes in manner hereinafter appearing.

(C) A Company party to this Agreement covenating agreeing or undertaking with or to the other Companies parties to this Agreement or either of them is hereinafter sometimes referred to as a covenantor Company and the Companies or Company with or to which the covenanting Company covenants agrees or undertakes are hereinafter sometimes referred to as covenantee Companies or a covenantee Company.

Now

The Companies parties hereto agree as follows:

1. For the purpose of this Agreement

(A) The territory of the French Company means the territories of the Republic of France on the Continent of Europe and its Dominions Colonies Dependencies and

[fol. 4760] Mandatory Territories in any part of the world except in or adjacent to North or South America.

(B) The territory of the British Company means the United Kingdom of Great Britain and Northern Ireland Eire and all countries other than France on the Continent of Europe and all Dominions Colonies Dependencies and Mandatory Territorities of the United Kingdom aforesaid and other European countries except France in any part of the world except in or adjacent to North or South America but does not include any part of the terrifory of the French Company.

(C) The territory of the American Company means the rest of the world outside the territories of the French Company and the British Company.

(D) The foregoing territories and the corresponding meanings shall be subject to alteration from time to time by agreement between the parties hereto by letter or other writing.

2. (A) Each of the Companies parties hereto as fully and freely as its patent and contractual rights and obligations permit and free of expense to the other Companies parties hereto except as to out of pocket expenses will inform the other Companies parties hereto as to all inventions discoveries improvements and practises useful in connection with the manufacture of bearings whether patented or not.

(B) The British Company in its territory and the French Company in its territory shall be at liberty during the life of this Agreement to manufacture and sell bearings under any Letters Patent or other patent rights now or hereafter from time to time owned by the American Company or in the case of the French Company by the British Company and pertaining to the manufacture or sale of bearings so far as the owning Company's patent and contractual rights permit and free of expense except as to out of pocket expenses.

(C) Each of them, the British Company and the French Company as a covenantor Company so far as its patent and contractual rights and obligations permit and free of expense except as to out of pocket expenses will assign absolutely and for time to the American Company or the British Company as a covenantee Company all Letters

Patent or other patent rights now or hereafter from time to time owned by the covenantor Company and pertaining to the manufacture or sale of bearings in the territory of the covenantee Company.

(D) The French Company as a covenantor Company if and when requested by the British Company as a covenantee Company and each of them the British Company and the French Company as a covenantor Company if and when requested by the American Company as a covenantee Company and in each case at the expense of the covenantee Company will execute and do or cause to be executed and done all deeds acts and things which the covenantee Company may consider to be necessary or desirable in order that any inventions discoveries improvements or practices useful in connection with the manufacture of bearings which may come to the knowledge of the covenantor Company and which such Company shall be entitle to communicate to the covenantee Company for this purpose may be protected by Letters Patent or other patent rights in such parts of the territory of the covenantee Company and in such names as the covenantee Company shall specify with a view to such patent rights being assigned to or otherwise vested in the covenantee Company or its nominees in accordance with the provisions hereinbefore contained.

[fol. 4761] (E) Each of the covenantor Companies hereinbefore mentioned hereby irrevocably appoints the covenantee Company with power of substitution to be its Attorney for and in its name and on its behalf but at the expense of the covenantee Company to execute and do all deeds acts and things which the covenantee Company or its substitutes from time to time may consider to be necessary or desirable for the purpose of giving effect to the agreements on the part of the covenantor Company contained in this clause.

(F) Provided however that nothing in this Agreement contained shall obligate any party to acquire or enlarge its interest in any Letters Patent or other patent rights.

3. (A) Each of the Companies parties hereto will use its best endeavours to maintain the distinctive character of the trade mark "Timken" and refrain from any act calculated to prejudice the rights of the parties hereto in respect thereof as now existing.

(B) Each of them, the British Company and the French Company as a covenantor Company upon the termination of this Agreement if and so far as it may be requested in writing the British Company by the American Company as a covenantee Company or the French Company by the American Company or the British Company as a covenantee Company and if and so far as the provisions of this clause are binding upon the covenantor Company will cause the name "Timken" to be eliminated from its corporate name and from the name of any person firm or company controlled by it and will refrain and will cause any person firm or company controlled by it to refrain from using the name "Timken" as part of or in connection with his their or its name or as a trade mark or trade name or otherwise and from any act calculated to obstruct or delay the covenantee Company in any steps which it may take with a view to establishing the exclusive right of the covenantee Company to the said name in the territory of the covenantor Company and so far as practicable the covenantor Company will assign or cause any person firm or company controlled by it to assign to the covenantee Company or as it may direct any trade mark or other rights in respect of the said name in its ownership or control and in the meantime after the termination of this Agreement will authorise the covenantee Company to use the name Timken in any way in the territory of the covenantor Company.

4. From time to time during the life of this Agreement so long as the British Company or the French Company shall be actually engaged in the manufacture of bearings the American Company will give advice to the British Company or the French Company and the British Company will give advice to the French Company as the case may require with respect to the manufacture of bearings and particularly in connection with the quality of steel used and its composition and analysis the method of case hardening the machinery and processes for grinding gauging sizing quenching die working forging upsetting forming sorting plating and other operations in connection with any special tools and machinery.

5. (A) Each of them the British Company in the British Company's territory and the French Company in the French Company's territory as a covenantor Company by

itself or others if and when required the British Company by the American Company as a covenantee Company and the French Company by the American Company or the British Company as a covenantee Company will manufacture bearings in such quantities and in such States within the territory of the covenantor Company and will exercise all such rights in connection with the manufacture of bearings as shall be required to maintain all Letters Patent from time to time owned by the covenantee Company in any State or States within the territory of the covenantor Company.

[fol. 4762] (B) If the covenantor Company desires to be relieved of the obligation contained in paragraph (A) of this clause with respect to any State it shall be entitled to give notice in writing to the covenantee Company that it excludes such State from the territory of the covenantor Company and thereupon for the purposes of this clause such State shall be withdrawn from the territory of the covenantor Company and shall be added to and included in the territory of the covenantee Company.

(C) For the purposes of this clause a State shall mean a territorial area in which there is separate jurisdiction for patent purposes.

6. Each of the Companies parties hereto as a covenantor Company hereby covenants with each of the other Companies parties hereto as a covenantee Company that during the life of this Agreement the covenantor Company will not directly or indirectly make or sell or authorise others to make or sell bearings in the territory of the covenantee Company or in the territory of the covenantor Company knowing them to be for shipment into the territory of the covenantee Company save and except as follows to wit:

(A) The covenantor Company may make or sell or authorise others to make or sell in its territory bearings for delivery or shipment into the territory of the covenantee Company as assembled component parts of completed articles of manufacture manufactured in the territory of the covenantor Company or as assembled component parts of completed units of manufacture manufactured in the territory of the covenantor Company for incorporation into such completed articles of manufacture.

(B) The covenantor Company in its territory may accept and execute orders for bearings for ultimate destination in the territory of the covenantee Company for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorise sales to or known to be destined for manufacturers in the territory of the covenantee Company or sales at prices in conflict with the wishes of the covenantee Company and the covenantor Company from time to time will notify the covenantee Company of the details of the sales authorized under this paragraph and will pay to the covenantee Company an amount equal to five per centum of the net sale price received under any sales so authorized not being sales made through or at the request of the covenantee Company.

(C) The American Company may authorise not more than four manufacturers or producers of vehicles in the United States of America to import into the territory of the covenantee Company bearings manufactured by the said producers in the territory of the American Company for incorporation in new products or for bearing replacement purposes for products previously manufactured or assembled by the said manufacturers or producers or their subsidiaries in the territory of the covenantee Company Provided that they are not stamped with or identified by the name Timken.

(D) For the purposes of this clause a holding Company as for instance General Motors Corporation and its constituent and subsidiary Companies shall be deemed to be one manufacturer or producer.

(E) The parties hereto recognize and approve the mutual licensing Agreement entered into between the American Company and International Harvesters Company dated the thirty-first day of December one thousand nine hundred and twenty-seven and the American Company when requested will supply to the British Company or the French Company a copy of the said Agreement.

[fol. 4763] 7. Notwithstanding anything in this Agreement the American Company shall be at liberty to authorise manufacturers to make and sell in the territory of the British Company or the French Company steel and/or

tubes under Patents or according to methods and processes belonging to the American Company provided always that the American Company will make arrangements so that any royalty or charge which may be payable by any such authorised manufacturer in respect of steel and/or tubes supplied to the British Company or the French Company shall be credited to the British Company or the French Company as the case may be.

8. (A) Each of the Companies parties hereto as a covenantor Company during the life of this Agreement will pay all renewal fees require to maintain and keep on foot all Letters Patent with respect to bearings in the territory of the covenantor Company which are owned by either of the other Companies parties hereto as a covenantee Company and of which particulars from time to time have been supplied to the covenantor Company by the covenantee Company.

(B) Provided however that if the covenantor Company shall desire to discontinue or refrain from maintaining any such Letters Patent the covenantor Company shall be at liberty to give not less than three months written notice to the covenantee Company and upon the expiration of the said period of three months the Letters Patent to which such notice relates shall belong to and be at the disposal of the covenantee Company free from any rights of the convenantor Company under this Agreement and the covenantor Company shall be under no obligation to maintain and keep on foot such Letters Patent.

(C) The covenantor Company at its own cost will defend every action or proceeding instituted for the purpose of revoking any Letters Patent with respect to bearings in the territory of the covenantor Company owned by the covenantee Company so long as such Letters Patent is being maintained and kept foot by the covenantor Company under the provisions of this Agreement.

(D) If any of the said Letters Patent shall be revoked solely on some ground which would not have been available if the covenantor Company had duly performed its obligations under this Agreement then and in any such case the covenantee Company in addition to any other rights which

it might have against the covenantor Company shall be entitled to recover from the covenantor Company all costs, charges and expenses reasonably incurred by it in defending the action or proceeding in which such Letters Patent is revoked.

9. Upon the termination of this Agreement so far as regards any of the Companies parties hereto whether under the provisions hereof or otherwise howsoever such Company shall be at liberty to complete and sell its stock of bearings on hand at the date of the said termination upon the terms which would have ruled if this Agreement had not been so terminated.

10. In the event of liquidation of the British Company or the French Company (except for the purpose of capital reorganization) or the appointment of a Receiver of the undertaking of either of these Companies this Agreement except the last previous clause hereof shall immediately terminate and cease as between such Company and the other Companies parties hereto.

[fol. 4764] 11. This Agreement unless otherwise terminated as herein provided shall continue in full force and effect for a period of twenty-seven years from the first day of January one thousand nine hundred and thirty-eight.

12. If for any reason this Agreement shall be terminated during the said period of twenty-seven years as regards any of the Companies parties hereto such termination shall not affect the continuance of this Agreement as regards the other Companies parties hereto.

13. This Agreement shall be construed and take effect according to English law.

In witness whereof The Timken Roller Bearing Company by the authority of its Board of Directors has caused these presents to be executed in triplicate by its Secretary and its Corporate Seal to be thereto affixed all in Canton Ohio United States of America British Timken Limited by the authority of its Board of Directors has caused its Common Seal to be affixed to these presents in triplicate and two of its Directors and its Secretary to execute the same all in Birmingham England and Societe Francaise Timken under the authority of its Board of Directors has caused these

presents to be signed in triplicate by its Managing Director all in Paris France the day and year first above written.

THE TIMKEN ROLLER BEARING COMPANY
William E. Umstattd, *President*
R. C. Brower, *Secretary*

Signed and Sealed by or on behalf of The Timken Roller Bearing Company in the presence of
Bessie E. Stokey,
Canton, Ohio, U. S. A.
Clerk.

The Common Seal of British Timken Limited was hereunto affixed in the presence of
Directors
Secretary.

Witness to the signature of Michael Bruce Urquhart Dewar for and on behalf of Societe Francaise Timken.

M. B. U. Dewar,
Adinistrateur Delegue,
S. A. Francaise Timken.

[fol. 4765] DEFENDANT'S EXHIBIT No. 28

Dated 20th November, 1938

The Timken Roller Bearing Company M. B. U. Dewar, Esq. and British Timken Limited

Supplemental Business Agreement

Stibbard, Gibson & Co.
21, Leadenhall Street,
London, E.C.3.

[fol. 4766] This agreement is made the Twenty-ninth day of November one thousand nine hundred and thirty eight

between the Timken Roller Bearing Company a corporation organized under the Laws of the State of Ohio in the United States of America and having its principal Office in the City of Canton in the said State (hereinafter for convenience called "the American Company") of the first part Michael Bruce Urquhart Dewar of No. 10, Mayfair Place in the County of London (hereinafter for convenience called "Mr. Dewar") of the second part and British Timken Limited, a Joint Stock Company incorporated under the Laws of the United Kingdom of Great Britain and Ireland and having its Registered Office at Birmingham in the United Kingdom of Great Britain and Northern Ireland (hereinafter for convenience called "the British Company") of the third part

Whereas:

(A) The American Company in the United States aforesaid the British Company in the United Kingdom of Great Britain and Northern Ireland and Societe Francaise Timken a Company incorporated under the Laws of France and having its Principal Office in Asnieres in the Department of Seine France (hereinafter for convenience called "the French Company") carry on business as manfacturers of anti-friction bearings (hereinafter called "bearings").

(B) Under an Agreement (hereinafter called "the Business Agreement") made the Twenty-eight day of November one thousand nine hundred and thirty eight between the American Company (1) the British Company (2) and the French Company (3) these Companies have made business arrangements for an interchange between them of information and facilities for defining their respective territories and for other purposes.

(C) The parties hereto desire to supplement the provisions of the Business Agreement in manner hereinafter appearing.

Now the parties hereto agree as follows:—

1. This Agreement is supplemental to the Business Agreement and the expressions defined in the Business Agreement shall have the meanings so defined in this Agreement.

2. If the Business Agreement shall be terminated so far as regards the French Company before it is terminated as between the American Company and the British Company then during the remainder of the life of the Business Agree-

ment the territory of the French Company shall be added to and included in the territory of the British Company for all purposes as between the American Company and the British Company and the Business Agreement shall operate and take effect accordingly.

3. (A) Each of the parties hereto will use his best endeavours to maintain the distinctive character of the Trade Mark "Timken" and refrain from any act calculated to prejudice the rights of the parties hereto in respect thereof as now existing.

(B) It is intended that if the American Company shall so request then the British Company in its territory and if the American Company or the British Company shall so request then the French Company in its territory shall join with the requesting Company in an application for concurrent registration of the Trade Mark "Timken" if and so far as such registration is possible in the territory of the requested Company.

[fol. 4767] (C) It is intended that if and when the Business Agreement shall be terminated so far as regards the British Company or the French Company the British Company in the former case if and so far as it may be requested in writing by the American Company and the French Company in the latter case if and so far as it may be requested in writing by the American Company or the British Company shall cause the name "Timken" to be eliminated from its corporate name and from the name of any person firm or Company controlled by it and shall refrain and cause any person firm or Company controlled by it to refrain from using the name "Timken" as part of or in connection with his their or its name or as a Trade Mark or Trade Name or otherwise and shall refrain from any act calculated to obstruct or delay the requesting company in any steps which it may take with a view to establishing the right of the requesting company to the use exclusively so far as practicable of the said name in the territory of the requested Company and so far as practicable shall assign or cause any person firm or Company controlled by it to assign to the requesting Company or as it may direct any Trade Mark or other rights in respect of the said name in its ownership or control.

4. (A) It is intended that so long as the British Company or the French Company is actually engaged in the manufacture of bearings the British Company shall follow any advice given by the American Company or the British Company with respect to the manufacture of bearings pursuant to the Business Agreement so far as the same shall be economically practicable under the circumstances of the business of the Company advised.

(B) It is also intended that the manufacturing operations of the British Company and the French Company shall at all reasonable times be open to inspection in the former case by the American Company and in the latter case by the American Company and the British Company or the representatives of the Company desiring such inspection.

5. It is intended that the British Company and the French Company shall not manufacture sell or deal in bearings except under and in accordance with the terms and provisions of the Business Agreement and this Agreement and under the Trade Mark "Timken" unless in the former case the American Company and in the latter case the American Company and the British Company shall consent in writing to such manufacture sale or dealing and that the French Company shall not commence to manufacture sell or deal in any other products except with the consent in writing of the British Company and the American Company.

6. (A) Subject to the approval in writing of the American Company as to both terms and personnel to be exercised at its absolute discretion but not otherwise the British Company may from time to time authorise others to make use and vend bearings in the territory of the British Company and may communicate to the parties so authorised any information with respect to inventions discoveries improvements and practices whether patented or not received from the American Company.

(B) Every such authorisation shall be deemed to be granted by the American Company and to be personal to the party authorised and shall contain a provision to that effect similar to the provision in that behalf contained in this Agreement and all royalties payable thereunder in respect of tapered roller bearings shall belong to the American Company and shall be made payable to the American Company accordingly."

(C) All the terms and conditions establishing the business and other relations between the British Company and any party so authorised within the territory of the British Company shall be submitted to and approved in writing by the [fol. 4768] American Company before the same are agreed to by the British Company and no alteration shall be made therein without the like approval.

(D) If the British Company shall acquire any stocks, shares, securities or other interest in any Company or Association manufacturing or selling bearings in the territory of the British Company the British Company shall not sell or dispose of such stocks shares securities or interest without the consent in writing of the American Company.

(E) It is intended that the foregoing provisions of this clause except as to royalties shall operate and take effect as between the American Company and the French Company as if the French Company were referred to in the place of the British Company and the territory of the French Company were referred to in the place of the territory of the British Company.

7. (A) During the life of the Business Agreement the British Company shall pay to the American Company a royalty equal to one half of one per cent (½%) on the net invoice prices after deduction of all discounts of all Tapered Roller Bearings manufactured or sold by the British Company less amounts equal to one half (½) of the royalties actually received directly by the American Company under the provisions of the last previous clause hereof.

(B) Provided however that no royalties shall be paid hereunder by the British Company in respect of (1) completed Taper Roller Bearings purchased by the British Company from the American Company or (2) Tapered Roller Bearings manufactured by the British Company and sold by it to the French Company or to parties authorised under the provisions of the last previous clause hereof or (3) Tapered Roller Bearings upon which royalties are paid directly to the American Company pursuant to the last previous clause hereof.

(C) Provided also that when quoting or selling Tapered Roller Bearings manufactured by it to the French Company the British Company will give to the French Company the benefit of the said royalty which is not payable as hereinbefore provided in respect of the bearings sold by way of

an equivalent discount or other allowance from the price to be paid for such bearings.

(D) In the case of bad accounts written off by the British Company the American Company shall refund to the British Company royalties paid in respect to bearings giving rise to such accounts.

8. The said royalties shall be paid on the first days of January April July and October of each year or within thirty days thereafter for the bearings sold during the quarter year prior to the said respective dates.

9. (A) The remittance of the said royalties shall be accompanied by statements showing in detail:

(1) The number of bearings made during the preceding quarter year.

(2) The number of bearings sold during the preceding quarter year.

(B) The statements in respect thereto furnished during January of each year shall also be accompanied by a certified statement prepared by the Auditors of the British Company or the parties authorised by it as aforesaid as the case may be based upon an actual examination of the [fol. 4769] books and records of the British Company or the parties authorised as aforesaid giving the same data as above provided in respect of sales made during the year prior to the said month of January and the said January statements if required by the American Company shall be further verified by Statutory Declaration of the Secretary for the time being of the British Company or the parties aforesaid.

(C) The American Company may once in each year at its own expense employ a Chartered Accountant who shall have the privilege of examining the books records and plant of the British Company and the partiest authorised by it as aforesaid with a view to determining how many Tapered Roller Bearings the British Company and the parties authorised by it as aforesaid shall have made and sold up to the time of such examination and to whom and when and for what prices.

10. It is intended that the American Company shall be entitled once in each year at his own expenses to employ

a Chartered Accountant who shall have the privilege of examining the books of account and records of the French Company and any parties authorized by the French Company under the preceding clause in that behalf and taking notes or extracts therefrom.

(A) If at any time during the life of the Business Agreement there are Companies or Associations engaged in the manufacture or sale of bearings in the territory of the British Company which are authorised by the British Company under the preceding clause in that behalf to make use and vend bearings in the territory of the British Company either immediately or at one or more removes (such Companies or Associations being hereinafter for convenience referred to as "subsidiary Companies") each of them the American Company and the British Company shall have the right to have at least one representative on the Board having the chief authority over a subsidiary Company whatever may be the functions or description of such Board whether Directorial Administrative Supervisory or otherwise so long as the American Company or the British Company as the case may be shall hold any stocks shares securities or other proprietary interests in such subsidiary Company.

(B) If either of the Companies parties hereto shall at any time hold any stocks shares securities or other proprietary interest in a subsidiary Company either in its own name or in the name of a nominee (i.e., a bare Trustee for such Company) such Company shall be entitled at its own will and pleasure to transfer or cause to be transferred the said stocks shares securities or other proprietary interest or any part thereof from itself to a nominee or from a nominee to itself or another nominee as such Company may decide.

(C) Neither of the said Companies shall sell or transfer any stocks shares securities or other proprietary interest in a subsidiary Company belonging to it (except as aforesaid) without first offering the same to the other Company.

(D) Every such offer shall be made by notice in writing specifying the interest to which it relates and shall remain open for acceptance by the other Company for thirty days after it is received by the other Company and any acceptance of an offer shall be signified by notice in writing to the offering Company.

(E) If any such offer is duly accepted the price payable

for the interest specified in the offer shall be determined and the sale and transfer of the interest specified in the offer shall be completed in the manner and at the time which shall be fixed under the provisions hereinafter contained.

[fol. 4770] (F) The said companies will give any consents and exercise any voting powers and execute and do any other deeds acts or things which may be necessary for the purpose of giving effect to this Agreement or any Award made in an Arbitration under this Agreement.

(G) If any question shall arise between the said Companies with respect to the price aforesaid or the completion of any such sale or transfer or any matter or thing to be done under this Agreement in connection with such sale or transfer every such question is default of agreement shall be settled by arbitration under the English Arbitration Act 1889 or any statutory modification or re-enactment thereof for the time being in force.

(H) It is intended that the foregoing provisions of this clause shall operate and take effect as between the American Company and the French Company as if the French Company were referred to in the place of the British Company and the territory of the French Company were referred to in the place of the territory of the British Company.

12. (A) The provisions of this clause shall take effect notwithstanding anything to the contrary contained in the Business Agreement or this Agreement and the other provisions of this Agreement shall be deemed to be modified accordingly.

(B) It is intended that during the life of this Agreement and so long as the French Company or any other French Company acquiring and carrying on the business now carried on by the French Company shall carry on the said business the French Company which from time to time is carrying on the said business shall be at liberty in France and the Dominions Colonies and Dependencies of France to make and sell bearings in and for use in the French territories aforesaid under any French Patents from time to time belonging to the American Company or the British Company and to make use of the name Timken in connection with its business without payment of any royalty or other charge and the British Company subject to the approval of the American Company shall enter into any Agree-

ment or Agreements with any French Company which may be necessary for this purpose.

(C) During the life of this Agreement each of them the American Company and the British Company shall be at liberty to sell bearings for delivery and use in Russia without reference to the other of them but they shall keep each other advised with full details of all enquiries negotiations and orders and generally consult with one another in regard to Russian business whether with the Government Authorities in Moscow or with or through any of the Russian Agencies or Trading Companies and if the American Company or the British Company shall secure any orders for or in connection with bearings for delivery and use in Russia a commission of two per cent upon the net moneys received in respect of such orders shall be paid by the Company executing the orders to the other Company and all expenses incurred by either Company in negotiating or securing orders for or in connection with bearings for delivery and use in Russia with the approval of the other Company shall be borne and paid by the two Companies in equal shares and no royalty or other charge under the other provisions of this Agreement shall be payable in respect of bearings in respect of which the said commission of two per cent is payable. The details above mentioned shall include blue prints statistical reports and other data. The prices and terms at or upon which offers are made and orders are accepted shall so far as practicable be mutually agreed from time to time but nevertheless either of the two Companies shall be at liberty to quote and accept orders at low prices and extended times for payment without the consent of the other Company after having first submitted the prices and other terms to the other Company for its consideration and remarks provided that any such quotation or acceptance shall not involve under cutting some quotation already made by the other Company.

[fol. 4771] 13. With respect to the provisions of this Agreement expressing the intentions of the parties hereto each of the parties hereto will give effect to such intentions so far as the same entail performance or observance by such party and so far as the same entail performance or observance by the French Company each of the parties hereto by himself or itself and by or through any Company firm or person under his or its control will give any consents and

exercise any voting powers and execute and do any other deeds acts or things which may be necessary for the purpose of giving effect to such intentions.

14. This Agreement shall be read and carried into effect in conjunction with the Business Agreement.

In Witness whereof the Timken Roller Bearing Company by the authority of its Board of Directors has caused these presents to be executed in triplicate by its Secretary and its Corporate Seal to be thereto affixed all in Canton Ohio United States of America and Michael Bruce Urquhart Dewar has executed these presents in triplicate in Paris France and British Timken Limited by the authority of its Board of Directors has caused its Common Seal to be affixed to these presents in triplicate and two of its Directors and its Secretary to execute the same all in Birmingham England the day and year first above written.
Signed and Sealed by or on behalf of

The Timken Roller Bearing Company by —— ——,
President. —— ——, Secretary.

Signed and sealed by or on behalf of the Timken Roller Bearing Company in the presence of Bessie E. Stokey, Canton, Ohio, U.S.A., Clerk.

Signed, sealed and delivered by the above named Michael Bruce Urquahrt Dewar in the presence of the common seal of British Timken Limited was hereunto affixed in the presence of —— ——, —— ——, Directors. —— ——, Secretary.

[fol. 4772] DEFENDANT'S EXHIBIT No. 29

An agreement made as at the sixteenth day of June One thousand nine hundred and twenty-eight between British Timken Limited a Joint Stock Company incorporated under the Laws of the United Kingdom of Great Britain and Ireland and having its principal office in the City of Birmingham England (hereinafter for convenience called "the British Company") and Societe Francaise Timken, a Societe Anonyme incorporated under the Laws of France and having its principal office in the Town of Asnieres in

the Department of Seine France (hereinafter for convenience called "the French Company").

Whereas:

(a) The British Company manufactures anti-friction bearings (hereinafter called "bearings") in England and has great experience in the manufacture of bearings:

(b) The French Company is the registered owner of the trade mark "Timken" in France.

(c) The British Company or the French Company is or may be or become the owner of patents or patent rights in various parts of the world covering inventions relating to bearings and improvements therein.

(d) The Timken Roller Bearing Company of Canton, Ohio, United States of America is hereinafter for convenience called "the American Company."

Now the parties hereto agree as follows:

1. For the purposes of this Agreement:

(a) The territory of the French Company shall mean the territories of the Republic of France on the Continent of Europe and her colonies dependencies and mandatory territories in any part of the world except in or adjacent to North or South America.

(b) The territory of the British Company shall mean the United Kingdom of Great Britain and Northern Ireland and all other countries of Europe and all colonies dependencies and mandatory territories of the United Kingdom and other European countries except in or adjacent to North or South America but shall not include the territory of the French Company.

(c) The territory of the American Company shall mean the rest of the world outside the territories of the French Company and the British Company.

[fol. 4773] (d) The British American territory shall mean the territories of the British Company and the American Company in combination; and

(e) These territories and the corresponding meanings shall be subject to alteration from time to time by agreement between the parties hereto by letter or other writing.

2. (a) Each of the parties hereto as fully and freely as its patent and contractual rights and obligations permit and

free of expense to the other party except as to out of pocket expenses will inform the other party as to all inventions discoveries improvements and practices useful in connection with the manufacture of bearings whether patented or not.

(b) The British Company so far as its patent and contractual rights and obligations permit and free of expense to the French Company except as to out of pocket expenses will license the French Company to operate manufacture and sell bearings in the territory of the French Company during the life of this Agreement under any Letters Patent or other patent rights now or hereafter from time to time owned by the British Company and pertaining to the manufacture or sale of bearings in the territory of the French Company.

(c) The French Company so far as its patent and contractual rights and obligations permit and free of expense to the British Company except as to out of pocket expenses will assign absolutely and for all time to the British Company or its nominees all Letters Patent or other patent rights now or hereafter from time to time owned by the French Company and pertaining to the manufacture or sale of bearings in the British American territory.

(d) The French Company if and when requested by and at the expense of the British Company will execute and do or cause to be executed and done all deeds acts and things which the British Company may consider necessary or desirable in order that any inventions discoveries improvements or practices useful in connection with the manufacture of bearings which may come to the knowledge of the French Company and which the French Company shall be entitled to communicate to the British Company for this purpose may be protected by Letters Patent or other patent rights in such parts of the British American territory and in such names as the British Company shall specify with a view to such patent rights being assigned to or otherwise [fol. 4774] vested in the British Company or its nominees in accordance with the provisions hereinbefore contained.

(e) The French Company hereby irrevocably appoints the British Company with power of substitution to be its Attorney for it and in its name and on its behalf but at the expense of the British Company to execute and do all deeds acts and things which the British Company or its substitutes from time to time may consider necessary or desirable

for the purpose of giving effect to the agreements on the part of the French Company contained in this section.

(f) Provided however that nothing in this Agreement contained shall obligate either party to acquire or enlarge its interest in any Letters Patent or other patent rights.

3. (a) Each of the parties hereto will use its best endeavours to maintain the distinctive character of the trade mark "Timken" and refrain from any act calculated to prejudice the rights of the parties hereto or the American Company in respect thereof as now existing.

(b) The French Company if and when requested by the British Company will join with the British Company or the American Company in an application for concurrent registration of the trade mark "Timken" if and so far as such registration is possible in the territory of the French Company.

(c) The French Company upon the termination of this Agreement if and so far as it may be requested in writing by the British Company or the American Company will cause the name "Timken" to be eliminated from its corporate name and from the name of any person firm or company controlled by it and will refrain and will cause any person, firm or company controlled by it to refrain from using the name "Timken" as part of or in connection with his their or its name or as a trade mark or trade name or otherwise and from any act calculated to obstruct or delay the British Company or the American Company in any steps which it may take with a view to establishing the exclusive right of the British Company or the American Company to the said name in the territory of the French Company and so far as practicable the French Company will assign or cause any person firm or company controlled by it to assign to the British Company or as it may direct any trade mark or other rights in respect of the said name in its ownership or control.

[fol. 4775] 4. (a) The British Company if and when the French Company shall be actually engaged in the manufacture of bearings will from time to time give advice to the French Company with respect to the manufacture of bearings and particularly in connection with the quality of the steel used and its composition and analysis the method of case hardening the machinery and processes for grind-

ing gauging sizing quenching die working forging upsetting form sorting plating and other operations and in connection with any special tools and machinery so long as the French Company follow such advice so far as the same shall be economically practicable under the circumstances of the business of the French Company.

(b) The French Company's manufacturing operations shall at all reasonable times be open to inspection by the British Company and the American Company or their representatives.

5. (a) The French Company by itself or its sub-licensees approved by the British Company if and when required by the British Company or the American Company will manufacture bearings in such quantities and in such States within the French Company's territory and will exercise all such rights in connection with the manufacture of bearings as shall be required to maintain all Letters Patent from time to time owned by the British Company or the American Company in any State or States within the French Company's territory.

(b) If the French Company desires to be relieved of the obligation contained in paragraph (a) of this section with respect to any State it shall be entitled to give notice in writing to the British Company that it excludes such State from the French Company's territory and thereupon such State shall be withdrawn from the French Company's territory and shall be added to the British American territory.

(c) For the purposes of this clause a State shall mean a territorial area in which there is separate jurisdiction for patent purposes.

6. Except with the consent of the British Company the French Company shall not manufacture, sell or deal in any bearings except under and in accordance with the terms and provisions of this agreement and under the trade name "Timken".

7. The British Company undertakes that during the life of this Agreement the American Company and the British Company shall not directly or indirectly make or sell or license others to make or sell bearings in the French Company's territory or in the British American territory knowing them to be for shipment into the French Company's territory save and except as follows to wit:

[fol. 4776] (a) The British Company and the American Company may make or sell or license others to make or sell in the British American territory bearings for delivery or shipment into the French Company's territory as assembled component parts of completed articles of manufacture manufactured in the British American territory or as assembled component parts of completed units of manufacture manufactured in the British American territory for incorporation into such completed articles of manufacture.

(b) The British Company and the American Company in the British American territory may accept and execute orders for bearings for ultimate destination in the French Company's territory for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorise sales to or known to be destined for manufacturers in the French Company's territory and the British Company from time to time will notify the French Company of the details of the sales authorised under this paragraph and will pay to the French Company an amount equal to ten per centum (10%) of the net sale price received under any sales so authorised not being sales made through or at the request of the French Company.

(c) The American Company may authorise not more than four manufacturers or producers of vehicles in the United States of America to import into the French Company's territory bearings manufactured by said producers in the American Company's territory for incorporation in new products or for bearing replacement purposes for products previously manufactured or assembled by said manufacturers or producers or their subsidiaries in the French Company's territory Provided that they are not stamped or identified by the name Timken.

(d) For the purposes of this section a holding company as for instance General Motors Corporation and its constituent and subsidiary companies shall be deemed to be one manufacturer or producer.

(e) The parties hereto recognize and aprove the mutual licensing Agreement entered into between the American Company and International Harvesters Company dated the thirty-first day of December One thousand nine hundred [fol. 4777] and twenty-seven and the British Company

when requested by the French Company will supply to the French Company a copy of the said Agreement.

8. During the life of this Agreement the French Company shall not directly or indirectly make or sell or license others to make or sell bearings in the British American territory or in the French Company's territory knowing them to be for shipment into the British American territory save and except as follows to wit:

(a) The French Company may make or sell or license others to make or sell in the French Company's territory bearings for delivery or shipment into the British American territory as assembled component parts of completed articles of manufacture manufactured in its territory or as assembled component parts of completed units of manufacture manufactured in its territory for incorporation into such completed articles of manufacture.

(b) The French Company in the French Company's territory may accept and execute orders for bearings for ultimate destination in the British American territory for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorize sales to or known to be destined for manufacturers in the British American territory and the French Company shall from time to time notify the British Company of the details of the sales authorised under this paragraph and shall pay to the British Company an amount equal to ten per centum (10%) of the net sale price received under any sales so authorised not being sales made through or at the request of the British Company.

9. (A) Subject to the approval in writing of the British Company as to both terms and personnel to be exercised at its absolute discretion but not otherwise the French Company may from time to time grant sub-licenses to others to make use and vend bearings in the French Company's territory and may communicate to such sub-licensees any information with respect to inventions, discoveries, improvements and practices whether patented or not received from the British Company.

(b) Every such sub-license shall be deemed to be a license granted by the American Company and shall contain a provision to that effect similar to the provision in that behalf contained in this Agreement and all royalties pay-

able thereunder shall belong to the American Company and shall be made payable direct to the American Company accordingly but any amounts payable under the last preced- [fol. 4778] ing clause or any similar provision shall not be regarded as royalties.

(c) All the terms and conditions establishing the business and other relations between the French Company and any sub-licensee within the French Company's territory shall be submitted to and approved in writing by the British Company before the same are agreed to by the French Company and no alteration shall be made therein without the like approval.

(d) If the French Company shall acquire any stocks shares securities or other interest in any company or association manufacturing or selling bearings in the French Company's territory the French Company shall not sell or dispose of such stocks shares securities or interest without the consent in writing of the British Company.

10. (a) During the life of this Agreement the French Company shall pay to the American Company a royalty equal to four percentum (4%) of the net invoice prices after deduction of all discounts of all bearings manufactured or sold by the French Company less amounts equal to one-half (½) of the royalties paid directly to the American Company by sub-licensees pursuant to the last previous section hereof.

(b) Provided however that no royalties shall be paid hereunder by the French Company in respect to (1) completed bearings manufactured by the American Company and purchased from or through the British Company (2) bearings manufactured by the French Company and sold by it to sublicensees appointed under the authority of the last previous section hereof which are owned or controlled jointly by the American Company and Michael Bruce Urquhart Dewar of Number 4 Central Buildings Westminster London England or (3) bearings upon which the royalties are paid directly to the American Company by sub-licensees pursuant to the last previous section hereof.

11. The said royalties shall be paid on the first days of January April July and October of each year or within thirty days thereafter for the bearings sold during the quarter year prior to said respective dates.

12. (a) The remittance of the said royalties shall be accompanied by statements showing in detail:

(1) The number of bearings made during the preceding quarter year.

[fol. 4779] 2. The number of bearings sold during the preceding quarter year.

(b) The statements in respect thereto furnished during January of each year shall also be accompanied by a certified statement prepared by the auditors of the French Company or its sub-licensees as the case may be based upon an actual examination of the books and records of the French Company or its sub-licensees giving the same data as above required in respect of sales made during the year prior to said month of January and said January statements shall if required by the British Company be further verified by sworn declaration of the Managing Director for the time being of the French Company of its sub-licensees.

(c) The British Company and the American Company may once in each year at its own expense employ a chartered accountant who shall have the privilege of examining the books records and plant of the French Company and its sub-licensees with a view to determining how many bearings the French Company and its sublicensees shall have made and sold up to the time of such examination and to whom and when and for what prices.

13. (a) The British Company shall pay all renewal fees required to maintain and keep on foot all Letters Patent in respect to bearings owned by the British Company or the American Company in the French Company's territory which it shall desire to maintain and keep on foot.

(b) Provided however that if the British Company shall elect to discontinue or refrain from maintaining any such Letters Patent the British Company will give not less than three (3) months' written notice to the French Company and during the said interval the British Company if requested so to do shall assign or cause to be assigned to the French Company at the expense of the French Company any of said Letters Patent which the British Company shall so elect to discontinue or refrain from maintaining.

(c) The British Company at its own cost shall defend or cause the American Company to defend every action or

proceeding instituted for the purpose of revoking any Letters Patent in respect to bearings owned by the British Company or the American Company which it desires to maintain.

[fol. 4780] (d) Provided however that if any of said Letters Patents shall be revoked solely on some ground which would not have been available if the French Company had duly performed its obligations under this Agreement then and in any such case the British Company in addition to any other rights which it might have against the French Company shall be entitled to recover from the French Company all costs charges and expenses reasonably incurred in such defence.

14. Upon the termination of this Agreement whether under any of the provisions hereof or otherwise howsoever the French Company for a period of six (6) months thereafter shall have the privilege of completing and selling its stock of bearings on hand at the date of said termination upon the terms which would have ruled if this Agreement had not been so terminated and subject to the payment of royalties as herein provided.

15. (a) In the event of liquidation (except for the purpose of capital reorganization) of the French Company this Agreement shall immediately terminate and cease.

(b) The rights and privileges of the French Company hereunder shall be assignable only with the consent in writing of the British Company.

16. This Agreement unless otherwise terminated as herein provided for shall continue in full force and effect for a period of ten (10) years from the first day of January One thousand nine hundred and twenty-eight.

17. This Agreement is and shall be deemed to be entered into by the British Company on its own account and also for and on behalf of the American Company as a separate party so far as regards any rights benefits or obligations expressly granted reserved or undertaken by or to the American Company and so far as regards such rights benefits and obligations the American Company shall be entitled to claim the benefit and be subject to the burden of this Agreement accordingly.

18. This Agreement is entered into in England and shall be construed and take effect according to English Law.

In Witness whereof British Timken Limited under the authority of its Board of Directors has caused its Common Seal to be affixed to these presents in duplicate and Societe Francaise Timken under the authority of its Board of Directors has caused these presents to be signed by Wil-
[fol. 4781] liam Eric Lou Seward the Managing Director of the French Company in duplicate the day and year first above written.

The Common Seal of British Timken Limited was hereunto affixed in the presence of (Seal)

M. B. U. Dewar
Wm. Dallow — Directors.
R. O. Squire — Secretary.

Witness to the signature of William Eric Lou Seward

A. J. M. Duncan
21 Leadenhall St.
London E. C.

For and on behalf of
SOCIETE FRANCAISE TIMKEN

W. E. L. Seward

[fol. 4782] Dated: 16th June, 1928

British Timken Limited and Societe Francaise Timken
Agreement

[fol. 4783] DEFENDANT'S EXHIBIT No. 30

Western Union Telegram

1927 May 11 PM 8 38

HB644 116 Cable 1/63
London 11
DLT Timken
Canton Ohio

Tuesday in Birmingham Today Active Negotiations Vickers Stop First Conference Solicitors Both Sides Thursday Stop Prausnitzer Matter Complicated Since Rights were Given Under Original Contract and British Company Has Agreed in Supplemental Contracts to Restore

Name which in this Case they are Powerless to do without Prausnitzer Consents Stop Careful Search being made for all Records in the Case Stop

887 12589

[fol. 4784] Western Union Telegram

HB644 2/53

We and Dewar Can Better Treat with Prausnitzer than Vickers if in Accord on Other Items as Prausnitzer Anxious to be a Party to Bigger Business in Germany Stop at Present all Sales to Germany are Made Thro Prausnitzer Stop. Believe He will Release Name for Some Small Prospective Interest in Future Business.

888 12590

[fol. 4785] DEFENDANT'S EXHIBIT No. 31

Report on British Timken

Submitted by D. P. Hess, August 1, 1927.

[fol. 4786] British Timken, Ltd.

Birmingham, England

Manufacturing

Plant

At the present time we are occupying a modern type of one-story building, leased from Wolsely Motors, at an annual rental of $20,000.00. This rental covers the use, not only of the building proper, but also of all the machinery used therein, for the making of our bearings, with the exception of that used for the manufacture of cages. However, we do own in the British Timken name the following machinery, which was purchased during the year 1926:

2—No. 3 Cincinnati Centerless Grinders
2—No. 2 Cincinnati Centerless Grinders
3—10-inch Internal Grinders (Churchill Type)

The Wolsely Motor Company has recently been purchased, in receivership, by Mr. Morris, of Morris Motors, who is planning to continue the manufacture of the Wolsely car, and who requested that we give up our lease on the building we now occupy. This lease has 19 years to run, but we have complied with Mr. Morris' request and are arranging to vacate this property on October 31st of the current year. We have also agreed to purchase from Mr. Morris all of the equipment now covered by the heretofore mentioned yearly rental for a sum of $160,000.00. We have no written agreement nor any definite verbal agreement that we will obtain Mr. Morris' bearing business as a result of taking this equipment off his hands, other than the statement that he would be glad to consider us when we can quote prices of bearings more in accord with the prices he is now paying for ball bearings. Frankly, the purchase of this machinery was a mistake, as, with the exception of 22 Gridley Automatics, the entire list of machinery is obsolete as far as our present practice of manufacturing roller bearings goes. I immediately requested that this deal be held up, but was advised by both Mr. Dewar and Mr. Dallow, who are the executive managers of our British Timken business, that the deal had gone through and could not be changed.

Mr. Dewar stated that it was necessary to purchase the machinery from Mr. Morris in order to keep his good-will and to have a chance for the Morris business, and also that if we did not do this, Mr. Morris might enter the roller bearing business himself. While there may be some substance to the first statement, we must bear in mind, that, in the second regard, anyone using the present equipment for the manufacture of bearings would be at a great disadvantage in cost, and I explained to Mr. Dewar that we could have purchased at least 50 percent of a complete new bearing plant for the amount that was paid for the obsolete equipment from Morris.

[fol. 4787] We have just completed transactions covering a lease for 13 years on the plant originally used by the Electric Ordnance Company, and wherein the manufacture of Timken Bearings originally took place. This plant is known as the Aston Plant, and is located in the heard of Birmingham. It will give us approximately 100,000 square feet of manufacturing space in a three-story plant 35 years

old, and which is not nearly as well suited for our business, but which will give us approximately twice the floor space as the plant we now occupy. This lease provides fer an option to cancel every two years after three years of occupancy, and we are paying an annual rental of $10,000.00: However, we must bear in mind that in our new location we will be forced to carry our own depreciation and other charges which heretofore have been covered in our lease from the Wolsely Motors Company, so that the apparent saving of 50 percent in annual rental does not hold good, as depreciation charges will almost entirely wipe out this difference. This means, in summary, that we shall have obtained for practically the same annual expenditure a building giving us about twice the floor space now occupied, of which we will only need at the present time, one-third of the space available, or, we will use practically all of the entire ground floor. The main drawback to this building is the fact that it must be completely wired for our use, and the estimated cost on this work is about $30,000.00. We shall incur an additional expense in moving, such as re-hanging lineshafts, countershafts and locating machinery, of another $30,000.00 so that at least $30,000.00 will have to be charged into operating expense, which could have been avoided had we maintained our present quarters.

The writer also requested that this transaction be held up, and that a strenuous effort should be made to obtain a modern factory building where electric conduits, etc. were installed. I was advised here again by Mr. Dewar and Mr. Dallow, that they had been searching for such a place for the past three months without being able to find it. This statement does not check with that of Mr. Ellis, Works Engineer, who confidentially advised me that an ideal building about a mile distant from our present plant had been available, but which had since been sold. He flatly states that the move to Aston is not at all desirable, and he opposed it as much as he could. It might be well to state here that Mr. Loader, Shop Superintendent, also stated that, in his opinion, we could have found much better plant facilities, and also that it was a grave mistake to purchase the equipment from Wolsely Motors. This plant at Aston which we have purchased, was formerly occupied and owned by a subsidiary of Vickers, Limited, known as the Blick Works, who manufactured porcelain insulators, and who

used only a small part of this plant. Mr. Dallow, our director at Birmingham, is also a director of the Blick Works, and while he is very enthusiastic over the splendid deal that he made in leasing so large a plant for so little money, it is the writer's opinion that he was entirely too conscientious in seeing the Blick Works plant have a tenant. Please bear in mind that both Dewar and Mr. Dallow are very familiar with the writer's criticism of these two transactions.

[fol. 4788] At the present time our British Plant is making both "V" type and "F" type cones, but only approximately 15 percent is changed over to "F" type production. This is due to the fact that they have never been sold on the "F" type bearing, and as a result have been unwilling to adopt it. The writer was successful, however, in showing them the advantages of this type of bearing, and they have agreed to make a complete changeover by January 1st, 1928. Furthermore, the present design of the "F" type was not satisfactory, in the sense that they had departed from the location of the undercut as we use it, taking this undercut entirely on the rib itself, thus decreasing the rib area very noticeably. This was also changed at the writer's request, and they will follow our method in exact detail.

British Timken have also departed from us in the taper of their rolls, with the corresponding changes in cone tapers, but they have retained the same cup tapers that we use. The idea in this was to standardize and decrease the variety of rollers from the taper standpoint, and their present practice compares with ours as follows:

BRITISH MODIFICATIONS TO ROLLERS MAKING CONSTANT ANGLE

Existing Cups Unaltered

Number	American	New B, T. Standard	Series
202	3° 4′	3° 10′	200
302	3° 8′	3° 10′	300
2003	3° 4′	3° 10′	2300–2700 inc.
3003	3° 8′	3° 10′	3300–3700 "
5003	3° 14′	3° 10′	5300–5700 "
6003	3° 35′	3° 34′	6300–6500 "

Rolls Unaltered

Nos. 40–103–402–502–702–902–1008–2005–2008–2009–3008–4004–Ford

It was decided that in view of the complications such as would be incurred in changing back to our taper design, and its effect on the "F" type program completion, that

British Timken will continue to use the tapers they have set up insofar as possible, and the limiting factor will be the ability of the hardened rolls that we send them, to clean up in the grinding operation. In other words, if our rollers will not clean up with their tapers, they will change over and follow our tapers in every detail. A rather hurried study of this problem indicates that there is sufficient stock on our rollers to clean up practically all part numbers.

[fol. 4789] Cages

The cages are now purchased complete from Wolsely Motors, and the equipment is owned and operated by Wolsely Motors in their own shops. However, we have since purchased this equipment, but, regardless of this fact, British Timken will purchase all cages from us at our cost plus 75 percent. These cages will in all probability carry a 33⅓ percent duty, as it was the opinion of British Timken that the spreading operation was not of sufficient importance to have cages lacking this operation, placed in the classification of "Raw and Process Steel".

Summary of Product

Summarizing this individual part situation, we shall receive purchase orders from British Timken for approximately eight and one-half million hardened rolls annually, and about eight hundred thousand finished cages annually. This will save British Timken about 30 percent in their present cost of rolls and cages.

Material

At the present time British Timken are using four different kinds of steel, viz.,

(a) Low carbon chrome alloy
(b) High carbon chrome alloy, direct hardening
(c) Low carbon mild steel
(d) Stainless steel

The major part of their production is made from the first classification, low carbon chrome alloy, but about 25 percent of the rollers are made from direct hardening steel. This is due to the fact that several years ago they were having considerable trouble with defective material in

rollers, and at that time changed over to direct hardening steel for several of their customers. This practice is still in use. The low carbon mild steel is used for the Ford bearings now manufactured, and the stainless steel is used in a few instances for customers requesting this kind of material.

They are paying the following prices for their materials:

BRITISH TIMKEN MATERIAL COSTS

	British Coast	Canton Cost
Tubing	$.12 per lb.	$.06 per lb.
Bars (Cups & Cones)	.08 per lb.	.055 per lb.
Bars (Rolls)	.09 per lb.	
Cage Stock	.065 per lb.	.031 per lb.
Gas (460 B.T.U.)	.54 per 1,000 cu. ft.	.45 per 1,000 cu. ft. (1000 B.T.U.)
Electricity	.015 per k.w.h.	.0075" k.w.h.
Fuel (Coal)	5.00 per ton	3.75 per ton
Fuel (Oil)	.075 per gallon	.05 per gallon
Water	.01 per 1,000 gallons	.02 per 1,000 gallons

(Note: Matters in second column shown in red on original.)

[fol. 4790] During the year 1926 the following material was consumed:

Bars—for cups and cones	100 tons
Bars—for rollers	140 "
Tubes—for cups and cones	300 "
Forgings	300 "

In order to facilitate the heat treating problem and the various other problems entailed in the handling of four different grades of steel, it was decided to standardize on one kind of steel, viz., low carbon chrome alloy, and use this for everything. It was further decided to purchase all tubing from us, at a price of $.095 F.O.B. Canton, or approximately $.105 Birmingham. As will be noted, this is a direct saving of approximately 10 percent, but will be a much greater saving, as we can supply tubing where forgings are now being used. Details will be given later in this report. So far, they have been unable to purchase or even get prices on our nickel molybdenum steel, for the reason that it is apparently very difficult to obtain molybdenum in England, and also is very costly. The writer explained the qualities of this particular type of steel and its superiority over the chrome alloy in roller bearing use, and this had additional influence on their deciding to purchase all tubing from us.

Production

At the present time British Timken are manufacturing 3,000 bearings a day, with a force of 460 people in the plant and 70 people on their office payroll, including Sales and Engineering Departments. This production is the highest they have ever attained and is 50 percent greater than the average 9 months' production from October 1, 1926 to June 30, 1927, amounting to 2,000 pieces daily. This increased production has been warranted almost entirely by increased sales in the commercial vehicle and motorcycle field. Details of these matters will be given under the "Sales" heading later in this report.

Screw Machines

At the present time our British Plant is using Acmes and Gridley Automatics for their bar and tube work, and Potter & Johnson and Gisholt Chucking Machines for their forging work. Production on all of this equipment is very much slower than ours, as evidenced by the following figures:

SCREW MACHINE COMPARISONS

	Part No.	Type Machine	Pieces per hour
Canton	14120	Acme No. 56	60 (120 on 2" Acme)
[British Timken	14120	Acme No. 56	29]
Canton	419	Gridley 3¼"	17
[British Timken	419	Gridley 3¼"	12]
Canton	09074	Acme No. 56	67 (180 on 2" Acme)
[British Timken	09074	Acme No. 56	33]
Canton	412	Gridley 4¼"	21
[British Timken	412	Gridley 4¼"	10]

(Note: Matters in brackets shown in red on original.)

[fol. 4791] The quality of work is about on a par with ours. A large part of the slowness of British production is explained by the fact that they are considerably handicapped, due to inadequate raw material. All part numbers up to and through the 200 series are made from bars and tubes are used for the larger sizes. However in order to keep raw material inventories down to the extent of limiting sizes of tubing for different cups and cones, it is the practice to make a large number of cups and cones from the same size of tubing, with the result that in many cases a great deal of excess stock is removed.

I was further advised that the quality of tubing is very uncertain, and ranges in hardness from 150 Brinnell to 250 Brinnell, and that, as a result of this condition, they slow down the machines to keep the tools in a fairly satisfactory operating condition. Mr. Leader, Superintendent, stressed this point very much, and stated that if he were given material similar to the kind we were using, that he could equal our unit production in almost all cases, but that his general overall efficiency in the Screw Machine Department would be lower than ours, on account of the great number of changes he was called upon to make. As an indication of this latter problem, the writer made a study of the product sold from October 1st, 1926 to June 30th of the current year, and finds that during this interval 38 percent of the cones sold were in quantities of less than 50 pieces for the entire period. This of course, complicates the manufacturing problem at British Timken, particularly in the Screw Machine Department; and the remedy for this will be dealt with later in this report.

All automatic screw machines, both multiple and single spindles, are operated on a basis of a man and a helper to 6 machines. The Potter & Johnson chucking machines are operated on a similar basis; the Gisholts are operated one man per machine. At the present time 31 different parts are made from forgings on these chucking machines, and machine times compare with ours as follows:

CHUCKING WORK

	Part No.	Type Mach.	Pieces per hour
Canton (2 operations)	6552 cone	Gridley	4
British Timken (3 operations)	6552 cone	P & J	2
Canton (2 operations)	6520 cup	Gridley	5 (4 mach. to 1 man)
British Timken (3 operations)	6520 cup	Gisholt	2 (1 machine to 1 man)
Canton (from tubing)	5520 cup	Cleveland	10 (4 mach. to 1 man)
British Timken (from forging)	5520 cup	Gisholt	2 (1 machine to 1 man)

British Timken has just purchased the following used machinery from Wolsely Motors:

6 Potter & Johnson Automatics at $1,500.00 each	$9,000.00
3 Gisholt Lathes at $1,000.00 each	$3,000.00
Total	$12,000.00

[fol. 4792] These machines are now being rebuilt at an estimated cost of $200.00 each. Here again it would have been far more advisable to have purchased modern ma-

chinery, such as Gridley Single Spindles with the necessary tooling, and for the amount invested we could have purchased four of this type of machines, which would have handled, with adequate forgings, more production that the heretofore mentioned Potter & Johnson and Gisholt equipment. This was explained to Mr. Dallow, who of course had no knowledge of this type of equipment, but with which Mr. Loader, Shop Superintendent, was acquainted.

The writer discussed with Mr. Loader the question of speeding up present Acme Automatics, as they were cutting a very thin chip and seemed to be under no handicap due to the material situation heretofore described. Mr. Loader was quite reluctant to do this, but with the help of Mr. Drissner, of the National Acme Company, we finally persuaded him to try one machine. This was done, and after four days' operating conditions he was satisfied that all of this type of equipment could be speeded up 30 percent, and he further agreed to do this at the earliest possible moment. Mr. Loader is very enthusiastic about using our tubing, and feels confident that he can reach our productive times on various part numbers as soon as he has a complete supply of our materials.

The methods now used for the machining of forgings are very obsolete, and we can, through the use of tubing, replace forging now used on 23 part numbers. However, in order to do this, at least 2 large, single spindle automatic machines of 6½" to 7" capacity should be purchased. They now have one 6" Cleveland Automatic, but in order to take advantage of tubing in place of forgings, they will need two additional machines. Furthermore, two single spindle chucking machines of the Gridley type should be purchased, one for the inside operations and one for the outside operations. The commercial vehicle end of our business is growing very rapidly, and it can be readily seen from the figures heretofore submitted, that their present method of making these cones and cups on Potter & Johnsons and Gisholt lathes is simply throwing money away. Furthermore, one small 2" fast automatic of the Cone or Acme type should be purchased for the manufacture of the smaller bearings, such as the 09070 series and the 1100 series which is used on motorcycle work. We have been unable to obtain the Ford replacement business, due to high costs; and it is the writer's opinion that with adequate

screw machines of a modern type we can materially reduce our costs in this operation. Details of this matter will be given under "Sales".

Summarizing the general screw machine situation, the following action should be taken:

All Acme Automatics on cups and cones should be speeded up at least 30 percent.

The following equipment should be purchased:

2—Cleveland Single Spindle Automatics, 6½" to 7" capacity, approximate cost $2,500.00 each. Total	$ 5,000.00
[fol. 4793]	
1—2" Cone or Acme Automatic, approximate cost	5,000.00
2—4¼" Single Spindle Gridley Automatic Chucking machines, approximate cost $3,000.00 each. Total	6,000.00
Total investment	$16,000.00

In the manufacture of rollers they are now using roll automatics similar to ours, but it was decided to purchase all rollers from us, in a hardened condition, and I quoted a price of our cost plus 75 percent F.O.B. Canton. No duty will be incurred, as this class of material will come under the classification of "Raw and Process Materials". However, sufficient material is on hand and on order to cover their roll needs until approximately January 1st, 1928.

Carburising

Our British Plant is using at present eight pot type carburizing furnaces, four of which are fired by gas, and the remaining four by coke. These furnaces are used on cups and cones, with bone-meal as an energizer in the ratio of one part new meal to three parts old meal. The time of product in the furnaces is about the same as ours for this type of work, but there was considerable variation in quali. The writer examined fractures from day to day, in which this variation reached a strong 1/32, and in a few cases reached 3/64. This part of their work was not receiving the attention it deserved, and I requested that this be given better supervision, which was done, and will be described a little later on in this report. Roll carburizing is done with small gas type furnaces, similar in general design to our furnaces, but built very crudely by British Timken many years ago. These furnaces hold 100 pounds each, and the product was being quenched in water from

50 to 70 degrees Fahrenheit. Fractures also showed considerable variation here, and I was told that these small gas furnaces were not very satisfactory. At my request, the quenching medium was changed to oil. Due to the fact that Mr. Morris, when he takes over the present plant, does not wish to give up the carburizing furnaces, it was necessary for us to place orders for new furnaces. As a result, six pot type furnaces were ordered and are to be installed at the Aston Plant by October 1st. These furnaces are approximately the same as our- (costing $800.00), but will be gas-fired and of a modern design. I requested that they be made high enough so that our obsolete nichrome carburizing pots could be used. This was not possible, except by breaking off the legs or our nichrome pots, which will be done if we decide to sell them our pots.

Due to the fact that the gas available in Birmingham has a B.T.U. content of 460 to 480, it is impossible to use gas carburizing furnaces.

[fol. 4794] Hardening

Cup and cone hardening is done on a stationary hearth type of furnace, a good deal like the standard heating furnace used in a forge shop. Four of these furnaces are in use, all gas-fired, and with pyrometric control. Quenching is done in exactly the same way we used ten years ago, viz., using a tank with a hand-operated quenching plate, on which are inserted plugs of the cast iron type. They also have two roll-retort furnaces which are used for roll hardening. However, due to the lack of equipment, rolls are receiving only one treatment, and only fair results are being obtained.

Following is a comparison of cup and cone hardening times:

	Part No.	Furnace	Pcs. per hour
Canton	5720 cup	Rotary Hearth	120
British Timken	5720 cup	Stationary Hearth	27
Canton	319 cone	Rotary Hearth	185
British Timken	319 cone	Stationary Hearth	40

The writer was very much disturbed by the inefficiency of the entire Heat Treating Department, and especially of the fact that practically no fractures were being made from the hardening furnaces. The first two days I was there,

only three fractures had been made, and only one of these fractures showed even a fairly good satisfactory heat treatment. Supervision of this department is not good, and has been handled by the Wolsely Motors through their metallurgists. Our Superintendent, Mr. Leader, disclaimed all responsibility except that for the past 60 days, and it is very evident he knows practically nothing about this branch of the business, other than the labor element. I explained to both Mr. Dewar and Mr. Dallow that we were in real trouble in this department, and that intelligent supervision must be installed at once. As a result, a metallurgist by the name of Evans was hired from Wolsely Motors, and I was pleased to find he is thoroughly familiar with our work, and also he realized our wretched practice in this department. He promised me that if I would obtained permission for him to spend all of his time in the Heat Treating Department he would materially improve it, even with its present poor equipment, within 30 days time. I obtained this permissions from Mr. Dewar, and, as a result quality should be somewhat better in the very near future. To give an indication of this department, we are heat treating approximately 6,500 cups and cones and 40,000 rolls a day, on a three 8-hour shift basis, using a total of 30 men.

The following equipment should be installed in this department at once, and upon such a basis I am very confident this force can operate one shift, with a maximum number of ten men:

6—Carburizing furnaces (now ordered) at $800.00 each	$ 4,800.00
2—Rotary hearth furnaces at $1,000.00 ea.	2,000.00
1—Rotary retort furnace, cup and cone plug type	3,000.00

[fol. 4795]

Carried Forward	$ 9,800.00
1—Rotary retort furnace, cup and cone drop type	$ 3,000.00
3—Quenching machines at $700.00 each	$ 2,100.00
Total	$14,900.00

This department will be greatly aided in its operation, first by the elimination of four different kinds of steel which are now being used, which will be done at once, and secondly, by the use of our nickel molybdenum steel with its resulting heat treating practice, and third, by eliminating all roll hardening due to obtaining hardened rolls from us.

Back Face Grinding

Due to the demands of the British trade, our cups and cones are ground on both faces on a vertical type of machine, similar in design to the Heald Grinder used in our tool-room. The quality of the work is very good with regard to the flatness, although the surface finish is inclined to be slightly rougher than ours. Production times compare as follows:

BACK FACE GRINDING

	Part No.	Type Mach.	Piece per hr.
Canton	419 cone	Own design	300 (each face)
[British Timken	419 cone	P & W (Vert. surf. gr.)]	200 (each face)]
Canton	3320 cup	Own design	300
[British Timken	3320 cup	P & W	143]

Internal Cone Grinding

The present method of grinding cone bores is to use machines similar to our old B & S and Modern types. Quality is very good, as all bores are held to .0006 and my inspection showed that they seem to have very little trouble with either a "bell mouth" or "taper" condition. Men are used to operate these machines, but production is very slow, as will be noted in the following comparative figures:

INTERNAL CONE GRINDING

	Part No.	Type Machine	Pcs. per hr.
Canton	419	Heald	87
[British Timken	419	B & S	7]
Canton	09074	Heald	95
[British Timken	09074	B & S	15]

(Note: Line in brackets shown in red in original.)

External Cone Grinding

This operation is done on machines similar again to our B & S External Grinder, and here again production is very [fol. 4796] slow, but surface finish is good, and I saw no chatter whatever in this operation.

Comparison of production is as follows:

EXTERNAL CONE GRINDING

	Part No.	Type Machine	Pcs. per hr.
Canton	419	Own design	124
British Timken	419	B & S	17
Canton	09074	Own design	195
British Timken	09074	B & S	40

Rib Grinding

Rib Grinding is done on a very light machine, using a solid non-expanding arbor, and while eccentricity limits are .011, I found approximately 10 percent of the product ran as high as .0015 in eccentricity. Production here is also slow, in accordance with the following comparisons:

RIB CONE GRINDING

	Part No.	Type Machine	Pcs. per hr.
Canton	419	Own design	150 (F type)
British Timken	419	Churchill	40 (V type)
Canton	09074	Own design	150 (F type)
British Timken	09074	Churchill	67 (V type)

I advised British Timken that as soon as we had developed a satisfactory external cone and rib machine we would send a machine to them for trial and observation.

Only one inspection is used at British Timken, and this is done after the rib grinding operation. Scrap figures for the month of May, compared with our practice, show the following results:

COMPARISON OF SCRAP

(All Operations)

	Cones			Total
Canton	"To man" 5.4%	"Not to man" ...	1.7%	7.0%
British Timken	"To man" 4.0%	"Not to man" ...	.3%	4.3%

When I rrached Birmingham an order had already been placed for one Internal Heald Cone Grinder, at the price of $5,000.00. Three more of these machines were optioned at the same figure, which I advised was entirely too much to pay for these machines. The sales representatives for the Heald Company were called in, and after considerable negotiating they reduced the price of the machines on option, $500.00 each, but refused to reduce the price of the machine now on order. At my request they cabled the Heald Machine Company to equip the machine on order with Timken Bearings, and all machines in the future will be so equipped. Delivery of this machine was promised for September 1st-15th, and in order to avoid the delay which would have been incurred through British Timken [fol. 4797] experimenting with spindles, etc., the writer cabled the Canton Plant to forward one internal cone machine completely set up, with extra emery wheels and spindles. This made a decidedly good impression on Brit-

ish Timken, and Mr. Dewar in particular was very grateful for our help in this regard.

In the Cone Grinding Department we should order the following machinery at once:

3—Internal cone grinders @ $4,500.00 each—$13,500.00 (Now on option)

These three machines for internal cone grinding, will, in conjunction with the two machines available, be sufficient for all of British Timken's present production on one shift, provided they can reach our production figures on this operation. This, in my opinion, is quite possible.

Internal Cup Grinding

This operation is done on machines similar to our Moderns and B & S, with resulting slow production, as evidenced by the following figures:

INTERNAL CUP GRINDING COMPARISON

	Part No.	Type Machine	Pcs. per hr.
Canton	1730	Heald	90
British Timken	1730	B & S	24
Canton	3320	Heald	53
British Timken	3320	B & S	9

Surface finish is very good, and all cups are held to a stand of .006 high and .000 low.

British Timken were not familiar with our Heald Internal Cup Grinders, and as a result, the writer cabled for one of these machines to be shipped to them. This will be put into production as soon as it arrives. For this operation the following equipment should be ordered at once:

4—Heald Sizematic Internal Cup Grinders @ $4,500.00 each—$18,000.00

With this quantity of machines it is felt all of British Timken production can be handled on one shift. Reasons for not operating two shifts will be given later in this report.

External Cup Grinding

This operation is done on Landis External Grinders at a slow production rate, but with fairly good quality and

the surface finish is good, and limits for size and out-of-round are held to .001. At the present time British Timken have one O. D. Centerless Cup Grinder in use, which is operating very satisfactorily. Production time on these "O. D." machines is as follows:

[fol. 4798]

EXTERNAL CUP GRINDING COMPARISON

	Part No.	Type Machine	Pcs. per hr.
Canton	1730	Cinci. Centerless	400 (4-pass)
British Timken	1730	Cinci. Centerless	120 (5-pass)
Canton	3320	Norton	300
British Timken	3320	Landis	21

They are giving their cups five passes, and the examination of the product showed that all of these cups were being held within a .0006 limit, and that the surface finish was fairly satisfactory; the only objection in this latter regard being a slight roughness, which of course was of no great importance. British Timken had ordered an additional external cup grinder from Cincinnati Centerless, at a price of $7,800.00, compared with our price for a similar machine of $6,500.00.

This additional machine will give British Timken, so I was advised, sufficient equipment to handle all of their cup production on one shift. The writer does not agree with them on this point, as they will have considerable changes to make, with a resulting decrease in machine efficiency. However, no recommendations for further equipment of this kind will be made, in view of the heretofore mentioned British statement.

At this point it should be stated that the writer was very blunt in his criticisms, both to Mr. Dewar and Mr. Dallow, of the British Timken purchasing policy with reference to machine tools. I requested that in the future no purchases should be made of any kind of machinery without first discussing it with us and ascertaining in particular the prices we pay for such equipment. It apparently is not the British attitude to be what we term "close buyers", and I spent a great deal of time getting this idea across to them. In most cases it was not possible to go back over past transactions, but I was assured by Mr. Dallow that he would be very careful in this regard in the future, and both Mr. Dewar and Mr. Dallow agreed to purchase absolutely nothing of a major nature without consulting with us in advance.

Only one cup inspection is used, and results compare with ours as follows:

COMPARISON OF SCRAP

(All Operations)

	Cups		Total
Canton	"To man" 3.4%	"Not to man" .. 3.5%	6.9%
British Timken	"To man" 4.7%	"Not to man" 1%	4.8%

Roll Grinding.

The present method of grinding rolls is on machines somewhat similar to our old roll grinders, and these machines are of a semi-automatic nature, operated by girls, so that one girl is required for each machine. Production [fol. 4799] is very slow, and surface quality is about the same as ours. The taper on the rolls I examined was very good, but "out-of-round" ran from .0002 to .0004. This type of machinery is obsolete with British Timken, as they are now using three Cincinnati Centerless Grinders for this operation. All rolls are given two passes at a production rate of 60 and 45 per minute. At present two girls are operating these three machines, with the aid of a lineman. Quality of product is practically identical with ours, to the extent that they are having a difficult time in overcoming a slight chatter; but "out-of-round" and taper was very good. I was unable to obtain any definite figures with regard to rejections for taper, as all of the rolls were being mixed with similar rolls ground on both types of machines; but the total taper rejections were .5 percent. British Timken have placed orders with the Cincinnati Centerless Grinder Company for the following additional equipment.

3—No. 2 Centerless Grinders for rolls @ $5,375.00 each —$16,125.00

Delivery about September 1st, 1927.

This compares with our price for similar equipment of $4,400.00 each. This equipment will be sufficient to handle all British roll production on one shift, according to Mr. Loader. I explained to him in this regard that he would probably have to operate two shifts, as the hardened rolls that we would supply him would be made on the headers and have about .025 to remove, whereas his present rolls have only .010 to .012. He said he thoroughly understood this, and was prrpared to make any necessary changes in

his production plan, even to the extent of giving additional passes should he feel the same was necessary. No recommendations will be made for the purchase of any additional roll grinding equipment, as the writer feels the present equipment is ample.

The end grinding of rollers is done on a very small machine, similar to the Woods Grinder we formerly used, where the roll is placed in a collet and fed up to the emery wheel. This applies both to the "V" type and the "F" type roll now in use. British Timken are very desirous of obtaining a Keller Grinder from us, but the writer explained to them that this machine was obsolete with us, and as soon as our new machine had progressed far enough along, we would be glad to forward one to them.

[fol. 4800] Scrap rejections for rolls are running as follows:

ROLLS

(All Operations)

			Total
Canton	"To man—0.0%	"Not to man"—0.1%	0.1% (a)
British Timken ..	"To man—2.4%	"Not to man"—1.0%	3.4%

(a) Covers past three months—centerless grinders, 3-pass roll.

Here again it was not possible to separate the rejections for the centerless ground rollers from the other rolls, but I was told that centerless rejections were materially less, and Mr. Loader stated that he would have his total rejections so that they would compare very favorably with ours.

Inspection

British Timken inspection methods are quite thorough, but rather badly managed as far as organization of the Inspection Department goes. For example, their Inspection Department consists of 38 girls and 19 men. A careful analysis by the writer convinced me that this work could be done with approximately 30 people, of which 90 percent would be girls. This information and details were given Mr. Dallow, our director at Birmingham, who assured me that he would take the necessary action to accomplish this end. They do not use any cone hole gauging machines or cup stand machines nor O. D. cup gauge machines, but sufficient equipment along this line will be built at once. Cones are not size-gauged, but this operation is eliminated due to the very slow external grinding, where uniform cone sizes are

obtained. Roll inspection for taper is done on a small hand gauge at the same time the rolls are given visual inspection. Roll gauging for size is done on a home-built machine, with the principle of passing the roll automatically between two hardened and ground plates, reaching an apex. Drawings of this machine are in our hands, and a detailed explanation can be given by the writer.

Production on these gauging machines runs about 600 pieces per hour, and in view of our contemplated changes in gauging practice, the writer made no recommendations covering a change in this equipment.

Assembly, Testing, Packing

British Timken use men on the assembly bench, and at present, assemble 3,000 cones daily with 9 men. Their assembly practice differs from ours, to the extent that the rolls and cages are assembled and immediately closed in on small hand presses by the assembler, who also places the equivalent cup with the assembled cone. The product is then passed through a very crude sound testing machine, which is nothing more than a small drill press operated by a boy. No test pieces were available, and this boy's judgment, backed by Mr. Loader, are the limiting elements for this test.

[fol. 4801] Assembled cones are measured for stand in cup by one man, who in turn passes them, still accompanied by the cups, to a girl, who slushes and sends them to the Shipping Department. All product is shipped in individual containers, and in boxes which compare in size with ours, to the extent of being just twice as heavy, and considerably over-built with regard to re enforcement pieces, etc. It might be well to remark here that there is no reason in the world why this assembly cannot be done by girls, as well as the succeeding inspection operation, and I was assured by Mr. Dewar that this change would be made when we move to the new plant at Aston. Furthermore, the earnings of these assemblers are out of all proportion to the rest of the plant, as will be noted later on in this report, under the heading of "Payroll and Wages". Stocks of finished non-assembled cones and assembled cones are handled in exactly the same manner as ours, with the exception heretofore mentioned, that all single cones are packed individually with the corresponding cups.

Payroll and Wages

At the present time British Timken shop payroll is running $40,000.00 monthly, and shows an average hourly earning rate of $.36. The general office and departmental payroll, including the Sales Department, but excluding the salaries of Mr. Dewar, Managing Director, and Mr. Dallow, Director at Birmingham, runs $6,700.00 monthly. All major departments are operating three shifts. The day shifts operate on a 47-hour a week basis, at the rate of 8 to 9 hours per day. The night shift operates on a 45-hour basis at the rate of 9 hours per day. The Heat Treating Department operates three 8-hour shifts six days per week. All major operations are on piece-work, and payroll figures show that approximately 65 percent of the shop force is on a wage incentive basis of some kind, and develop an average hourly rate of $.40 per hours.

The wage situation in England is controlled by the unions to the extent that hourly rates are set up for each occupation, and to which all manufacturers agree. The unions also set and control conditions of employment along the line that 47 hours is the normal working week, and any time over this is considered extra time and paid on a varying scale, such as time and a half and double time, which in turn is controlled as follows:

All time after 5:45 must be paid at the rate of time and one-half, and all Saturday afternoon or Sunday time is considered overtime and is paid at the rate of double time. All night shift operators are paid at the rate of time and one-third. (This makes night shift operation very expensive and to be avoided.)

Piece-work is permitted and used in England, under the condition that all piece-work rates shall develop earnings at least 33⅓ percent higher than the union hourly rate for such occupation or work in which the piece-work is used. Furthermore, no changes in the piece-work rates can be made, unless there is a definite change in the method of manufacture. As an example, to change the camming and the tooling on an automatic to speed up the work is not consid- [fol. 4802] ered a definite change in method, and no change in a piece-work price is permitted. However, if the product was originally made, for example, on a No. 56 Acme and changed over and manufactured on a 2-inch Acme, this would be considered a change in method, and the resulting decrease in piece-work rates could be made. There is still standing in

British union labor agreements a clause to the effect that men will not earn over a certain amount, but this is no longer in force, and everyone earns all he can.

There is now in use in England a plan of wage payment which is an outgrowth of the war, known as the National Wage Advance, hereinafter referred to as "N. W. A." It appears that during the war these N. W. A.'s were made periodically by the government in the form of a certain amount to be added to the weekly wages of each employee. No varying amount was given, based on a 47-hour week for day workers (and amounts to approximately $3.15 per week to night workers), regardless of the amount of earnings made in their regular routine work. As a result, for the lower-paid workers this so-called bonus amounts to approximately 30 percent of their wages, and drops down for the higher-paid workers to about 20 percent. Please understand that the employer has no control over this particular feature of wage payment. Just before the writer left England, the engineering unions, which we would call in our country "machinists unions", had succeeded in obtaining an increase amounting to $.50 per week. They had originally asked for a $5.00 per week increase, but were vigorously fought by the manufacturers, who finally compromised on the 50-cent rate increase. This takes effect August 1st.

Labor unions are accepting the use of production machinery, and while they still cling in principle to the old theory of limited production per man, I was advised everywhere in England that this had been abandoned, but had not been officially abandoned in any published statements up to this time. However, the situation in Birmingham, not only in our plant, but in two others that the writer visited, viz., the Hardy-Spicer Universal Joint people and the Wolsely Motors people, all stated that production machinery was accepted by the unions in every regard. This same statement was made at the Gillette plant, which is located 20 miles south of London, and in which plant all American machinery and American methods are now in use.

However, in our British Timken plant the method used when installing new machinery, is to place the new machines in a separate room away from the general production routine, where all tests are conducted and piece-rates are figured. After an interval of from three to six months the machines are then transferred to the production line and immediately accepted by the employees, regardless of

the fact of how many are dropped from the payroll as a result of the higher rate of production per machine.

[fol. 4803] One of the outstanding labor situations in England is the wide employment of boys and young girls. Anyone reaching 14 years of age can go to work, but it was my observation that enforcement of this regulation was very lax, and it seemed to me that boys of 10 and 12 years of age working in plants, was very common. It is a very distressing sight to see little, slight, slender lands trying to lift heavy pans, etc., and our plant at Birmingham is no exception to the rule. Of course, this has a very decided advantage in low labor costs, as evidenced by figures set forth a little later on in this report. All of these boys, incidentally, are used for secondary operations, such as chamfering, etc., whereas girls are used both on roll surface and roll end grinding, and in the usual Inspection Departments, etc.

Following is a table showing comparison of British rates as compared with Canton rates:

COMPARISON OF WAGE RATES

Department	British Timken		Canton	
	Hourly rate	Av. Earned rate	Hourly rate	Av. Earned rate
Automatic operator (c)	.24 (a)	.59	.47 (b)	.91
Automatic helper	.18	.45	.42	.55
Chamfering, etc. (boys) (d)	.12	.16	.40	.52
Heat Treating (fireman)	.22	...	.55	...
Heat Treating (operator)	.20	...	.45	...
Cone grinders (lineman)	.24	.52	.65	.78
Cone grinders (operator)	.19	.51	.50	.76
Cup grinders (lineman)	.24	.52	.65	.78
Cup grinders (operator)	.19	.51	.50	.76
Roll grinders (lineman)	.24	.52	.65	.77
Roll grinders (female oper.)	.14	.21	.50 (e)	.77
Inspectors (male)	.21	...	.44	...
Inspectors (female)	.14	...	.29	...
Assemblers (male)	.20	.65	.25 (female)	.40
Storekeepers, stockmen	.18	...	.50	...
Toolmakers	.24	.50	.65	1.05
Laborers	.16	...	.40	...
Millwrights	.24	...	.50	...
Electricians	.24	...	.55	...
Pipefitters	.24	...	.55	...
Office clerks (male)	65.00 per mo.		115.00 per mo.	...
Office clerks (female)	35.00 per mo.		60.00 per mo.	...
Stenographers (female)	40.00 per mo.		85.00 per mo.	

(a) Earnings per hour include day rate plus N.W.A. award plus piece-work earnings.

(b) Earnings per hour represent departmental average.

(c) All automatic operators are capable of setting up jobs. No linemen are used.

(d) Fluctuating wage scale for boys and girls, based on age of employee. Eighteen-year wage scale used.

(e) Represents male operator.

[fol. 4804] There is no question but that we can reduce British Timken costs 20 percent, and the writer is convinced that if they will use just a little American aggressiveness in the handling of indirect labor, they can increase this figure to 25 percent. During my visit with them we made a very thorough study of this factor, and made detail costs of the following part numbers:

Cones	Cups	Cages	Rolls
419	412-A	411-V	402
365	363-A	361-L	302
1351	1330	1311-L	1003
740	742	741-L	702
537	532	531-L	502
247	243	241-L	202
5356	5320-A	5311-L	5003
2687	2620	2611-V	2003
26118	26283	26008	2008
09074	09194	09001-L	1003
09075-6	09194	09001-L	1003
14120	14273	14001-L	1003
6552	6521	6511-L	6003

In setting up these costs we used revised manufacturing practices in the following manner:

Our screw machine times were used, but discounted 25 percent to make up for the various changes necessary in British Timken production. This condition can be aided materially by British Timken purchasing from us, if we care to sell, cones made in the green, in the sizes where they have only small requirements. This will be done by British Timken if we so decide.

Carburizing and hardening times used were those of present British Timken practice, which as heretofore stated, can be materially reduced at least 33⅓ percent. In the grinding operations our productive times were again used, less 25 percent for all internal operations on both cups and cones; and the present British productive times for centerless cup grinding were used, but no change was made in the present British productive time on the O. D. and rib grinding operations of cones. The prices quoted by the writer for both cages and hardened rolls were used, and the centerless roll grinding times used, were predicated on the 3-pass principle, but with productive time 25 percent slower than ours. The saving incurred by using our raw material to the extent of 10 percent lower price per pound was taken into consideration, but we did not take into consideration the fact that the screw machines can be materially speeded

up using our material, and further, no consideration was made of the fact heretofore mentioned, that tubing can be used for 23 parts now manufactured from forgings. The [fol. 4805] part numbers set up herewith, represent over a nine months period, 20 percent of the total production, and are fairly indicative by size, so that the writer feels that, when we say we can reduce British costs by 20 percent, I am very conservative, and that this figure can be increased to between 25 and 30 percent by making machinery investments heretofore recommended, but which will be summarized a little later on.

British Timken methods of computing costs are done on the usual shop order basis, that is, the cost of these shop orders is figured individually. Mr. Dallow is a very keen cost man, and keeps well-posted on any variation, etc. up or down, in their costs. Overhead charges are now running around 130 percent, and administrative, including sales overhead, runs 20 percent, but include our royalty, which will run from 10 to 12 percent of the administrative charges. Details with reference to the computation of British costs are in the writer's possession, but are too voluminous to set up in this report.

Personnel

Mr. Dewar, as Managing Director of the British Timken Company, has his headquarters in London, and spends, so far as I was able to determine, one day each week at Birmingham. He advised me that in the very near future he will have terminated all his other connections and will be in a position to spend all of his time in the development of the Timken business. There is no question but that Mr. Dewar is tied up with a very powerful industrial group in England, headed by Mr. Dudley Docker. This group controls and manages a great variety of industries, ranging from street railway companies to paint works, and is also connected all over the world through the export sales of the Metropolitan Carriage, Wagon & Finance Company, builders of railroad cars. It is my impression that Mr. Dewar is Mr. Docker's "right-hand" man, and I know positively that Mr. Docker will be interested financially in the Timken Company, and may even ultimately be on the Board of Directors. Mr. Dewar is trying to arrange this at the present time. Naturally, the influence in our behalf which

can be expended by Mr. Docker, should prove very beneficial to us. The writer's impressions of Mr. Dewar were that he is very capable along the sales lines, and has considerable more agressiveness than the average Britisher. He is a keen thinker, and his only drawback in my opinion is that his judgment is not of the best, especially in the expenditure of money. All the time I spent with him, he endeavored to impress me with the fact that he wanted to go very slow in the expenditure of funds, but at the same time, as heretofore outlined in this report, his past actions do not bear out these statements. He is exceedingly optimistic as to our prospects, and states that there should be no question but that we can sell 2,000,000 bearings in England, with a decrease of 15 to 20 percent in our selling price. Generally summarizing Mr. Dewar's capabilities, I would say that we are very well represented, and our British Timken interests will be more capably managed than at any time in its history. However, we must be prepared to watch this very closely and keep thoroughly in touch, particularly with its financial and purchasing divisions.
[fol. 4806] Mr. Dallow, who Mr. Dewar has appointed as a Director at Birmingham, was formerly an accountant, and is very capable along lines of cost work and general detailed expenditures. He knows very little about the bearing business, and as a result, is considerably handicapped. He does not have the vision or aggressiveness of Mr. Dewar, and, in the writer's opinion, is not capable of handling the management of our business if Mr. Dewar should die or become seriously ill. Upon inquiry, I gave this same statement to Mr. Dewar, and he assured me that I was in error, but that, to give us a feeling of protection, he would agree to have Mr. Docker take over the active management temporarily of our affairs if anything should happen to him. While I was still in England, Mr. Docker agreed to do this.

Mr. Loader, Shop Superintendent, is of course well-known to us, and is a good mechanic; but he is typically British, slow-moving and of egotistical nature. He feels he has a severe grievance against the British Timken Company, to the extent that none of his recommendations were ever followed, and that from the remuneration point of view he has been sadly neglected. I was quite successful during the time I was with him, in changing his attitude

in these respects, and before I left he assured me that he felt very much better and would start anew to put Timken Bearings, as far as he was concerned, to the point of meeting American practice in every regard, and exceeding it in many cases.

Mr. Wood, Automotive Engineer, has been with the British Timken Company for 14 years, and is fairly capable as far as the writer could judge, but at the same time I feel that we would be greatly benefited by having a considerably higher grade type of man in this particular place. Mr. Dewar does not agree with me in this respect, and feels Mr. Wood is quite capable.

Mr. Ellis, Works Engineer, has been with the British Timken Company for 9 years, and has charge of all shop engineering, as well as industrial work. While he is very slow-moving and positive in his actions, I feel he is a good man as far as the shop is concerned, but that he is entirely unsuited to handle the industrial engineering from any other standpoint than from that of merely checking and approving layouts. He has no sales ability whatsoever.

Mr. Hobley, Sales Manager, has been with the company approximately 10 years, and is thoroughly versed in taper bearing conditions in England. He is not blessed with a very quick or active mind, but at the same time, I feel he has a better knowledge and insight regarding our business, than any other man in the organization. I further believe that with the right kind of leadership, Mr. Hobley will develop very rapidly, and will make us a valuable man.

Summarizing the general attitude of the entire British Timken staff, I would say that it is rather disorganized, due to the entire lack of leadership during the past 2 years; but that they all have great confidence in Mr. Dewar, and all like him very much. There still is considerable diver-
[fol. 4807] gence of opinion in the organization as to policies, etc., but this, I think, is a natural outgrowth of the heretofore mentioned lack of strong leadership, and I believe this condition will be capably corrected by Mr. Dewar.

Manufacturing Summary

Summarizing the entire manufacturing practice at British Timken, we face the following conditions:

1. British Timken will purchase all hardened rollers and cages from us, starting about January 1st, 1928. The

reason for this delay in starting is due to the fact that materials are now on order and in process covering their production for the balance of the year.

2. British Timken will purchase all tubing from us, at a price of $.095 Canton, which will give them a net saving in raw material costs of at least 10 percent annually ($20,000.00). This will be greater, dependent on the use of tubes replacing bars as heretofore described. Purchase orders will start coming through at once for tubing, but only in small quantities, as practically all material needed for the balance of the year is now on order with English manufacturers.

3. The following equipment should be purchased at the earliest possible moment and put in operation in our British plant:

2—6½" Cleveland Single Spindle Machines at $2,500.00 each	$5,000.00
2—4¼' Gridley Forging Machines at $3,000.00 each	6,000.00
1—2" Acme or Cone Automatic Screw Machine	5,000.00
2—Rotary Hearth Furnaces at $1,000.00 each	2,000.00
1—Rotary Retort Furnace (Drop Type)	3,000.00
1—Rotary Retort Furnace (Plug Type)	3,000.00
3—Quenching Machines at $700.00 each	2,100.00
4—Internal Heald Cup Grinders at $4,500.00 each	18,000.00
1—Internal Heald Cup Grinder (coming from Canton)	4,500.00
1—Internal Heald Cone Grinder (coming from Canton)	4,500.00
Total	$53,100.00

Equipment now on order:

2—No. 2 Centerless Roll Grinders at $5,375.00 each	$16,125.00
1—No. 3 Centerless Cup Grinder	7,800.00
1—No. 72 Heald Internal Cone Grinder	5,000.00
3—No. 72 Heald Internal Cone Grinders (option only) at $4,500.00 each	13,500.00
6—Pot Type Carburizing Furnaces at $800.00 each	4,800.00
Total	$47,225.00

[fol. 4808] Financial

At the present time our financial situation is fairly satisfactory, but by the end of November we shall be overdrawn at the bank approximately $136,000.00. It is the practice in England to overdraw rather than to have credit extended through the use of commercial paper, etc. This large overdraft is developed through unusual charges in October amounting to the following:

Purchase of roller bearing equipment from Wolsely Motors	$129,600.00
Machine tool purchases (This also includes motors for the Aston Plant)	60,000.00
Dividends	60,000.00
Total	$149,600.00

Mr. Dewar has made the necessary arrangements at our bank to carry this overdraft as long as necessary, and he expects to pay a rate of 4¾ percent. However, we face an income tax payment in February of 1928 for approximately $77,000.00. Furthermore, we have made no provision under these circumstances for the purchasing of any machine tools other than those on order and on option. As explained previously in this report, an investment of $53,000.00 is badly needed along this line, to aid in the reduction of our costs.

The entire financial situation was discussed at length with Mr. Dewar and Mr. Dallow, and I explained to them our attitude of incurring "overdraft" obligations without discussing the matter with us, and that we were not at all in favor of having "overdrafts" at any time.

Summarizing the financial situation, it is recommended that we pass payment of the dividend due in October, amounting to $60,000.00 on the condition that this entire fund be re-invested in machinery for the plant. Mr. Dewar is entirely satisfied with such an arrangement, and the matter is up to us for consideration at this time.

With the investment for this equipment, we shall be in a position to start aggressively at once, widening our market in England, details of which will be given under "Sales".

Sales

Automotive Production

At the present time there are being built in England annually about 200,000 pleasure cars and about 25,000 commercial vehicles, and 500,000 motorcycles. Total registration in the United Kingdom is approximately 1,000,000 [fol. 4809] automotive vehicles. Like in our country, production of cars is gradually being centralized in strong hands, so that at the present time the three largest builders in England are as follows:

Morris and allied interests (Wolsely	73,000 annually
Austin	50,000 annually
Clyne	10,000 annually

These three manufacturers represent approximately 65 percent of the total production of pleasure and commercial vehicles, and unfortunately our bearings are used in only 8,000 of this total, being in the Wolsely car, which has just been purchased by Morris.

Prices

Our sales problem in obtaining this volume business is dependent first on reduced costs, and second, the consideration of Mr. Morris to abandon the use of ball bearings in his cars regardless of the fact that he is an active director in Ransom & Marels, ball bearing manufacturers.

With reference to the first condition, it has been our practice in the main to quote bearings at 70 percent off list, as compared with ball bearing manufacturers quoting 85% off list. I was advised that these list prices are practically identical in the popular sizes. We do have taper competition in England, both from SKF and Bock. Up to six months ago Mr. Dewar had a price agreement with SKF to the effect that we would both quote the same prices on bearings; but this was cancelled by Mr. Dewar. In the writer's judgment this was a very wise cancellation, as SKF in England make both ball and roller bearings, and while on the one hand they would maintain prices on the taper bearings, they would quote ball bearings at such prices as to prohibit the use of taper bearings. They have since tried to renew this agreement twice with Mr. Dewar,

but have been unsuccessful. Bock competition is practically dead, and we have not met it for some little time.

Bearing Application

The British Timken sales and engineering policy has not been very aggressive along the lines of laying in small taper bearings to replace ball bearings; and while I was given very many reasons why this was impossible, it is my personal observation that our efforts have not been successful for the main reason that we were laying in entirely too large a type of bearing to replace ball bearings, rather than to sell the manufacturer on the idea of changing his layouts and using smaller taper bearings. This matter was discussed at great length with Mr. Dewar, Mr. Hobley, Sales Manager, and Mr. Wood, Automotive Engineer, and it was decided to start anew in this regard, and the writer forwarded to our Canton Engineering Department full drawing details covering installations in both the Morris and Austin cars for modernized taper bearing installations. [fol. 4810] British Timken are very anxious to have our suggestions in this regard, and Mr. Dewar in particular feels that in the case of the Austin we can surely get this business if we can show them where they can install taper bearings even for the same price as ball bearings. The Morris situation is pretty complicated, due largely to his connection heretofore mentioned, with the ball bearing manufacturer, but we do have some leverage in this respect, in view of the fact that we have purchased all our roller bearing equipment from him. Just how strong this leverage will prove to be is very uncertain, but Mr. Dewar feels if we can quote the same prices as ball bearings, we shall get this business. The question of obtaining Clyne business is dependent entirely on price, and with lower manufacturing costs with resulting lower sales prices, we should be able to obtain all of this business.

Sales Analysis

The following figures will give some indication of British Timken Sales for 1925 and 1926:

ANALYSIS OF BRITISH TIMKEN SALES

	Bearings	Value	Per Bearg	Oct. 1, 1925 to Sept. 30, 1926	Corresponding period 1924-1925
Automobile manufacturers	256,568	$538,305.60	$2.40	38½%	49%
Motorcycles	103,529	49,119.00	.54	16%	5%
Home service	74,180	141,170.40	2.16	11%	17%
Overseas	216,629	380,007.60	2.01	33%	25%
Industrial	9,308	17,526.60	2.16	1½%	4%
	660,214	$1,126,129.20			

From the analysis given above, it will be noticed that Home Service Sales Service has fallen 6 percent during the year 1926. Our Sales Department was unable to explain this, but it is the writer's opinion that some of this drop in sales can be attributed to the rather long prices we are getting in our service business. Discounts quoted in the past have never exceeded 40 percent, and there is no question but that competition has gotten a foothold, not only in England proper, but in English territory.

When I arrived in England it was both Mr. Dewar's opinion and Mr. Hobley's that we in Canton were making a great mistake in selling service bearings at 50 percent off list, and they were quite resentful of the fact that we had been selling bearings at such prices into British territory. This problem proved quite a serious one, and British Timken were flatly unwilling to make any changes in discounts to their dealers, being entirely satisfied with the present progress of service sales.

Upon receipt of Mr. Browers' letter, showing that Bock, during 1926 had sold approximately $50,000.00 worth of products in British territory, the complexion of the situation entirely changed, and it was decided to change discounts to British dealers from 40 percent to 50 percent, and in some cases 55 percent off list.

[fol. 4811] It was further agreed in this matter that British Timken would revise their list prices to correspond with our list prices. It so happens in this regard that on the smaller popular sizes their list is higher than ours, but on the larger sizes where they have no competition what-

soever, their list is lower than ours. This point was quickly grasped by Mr. Dewar, and they will follow our practice in every respect along this line.

A general picture of the use of Timken Bearings in both pleasure cars and commercial vehicles is set up as follows:

Total pleasure cars manufactured	200,000	
Cars manufactured using Timken Bearings in both front wheels	29,000	or 14%
Cars manufactured using Timken Bearings throughout	23,000	or 11%
Cars manufactured using Timken Bearings in either front or rear wheels	19,000	or 9%
Commercial vehicles manufactured	25,000	
Commercial vehicles using Timken Bearings in both front and rear wheels	20,000	or 80%
Commercial vehicles using Timken Bearings throughout	5,000	or 20%

The figures set forth herewith cover only wheel and rear drive installations, and do not take any transmission installations into consideration, as we have made no installations in transmissions.

Bearing Manufacture

At the present time there are being manufactured in England approximately 7,500,000 bearings of all types, such as ball, straight roller and tapered roller bearings. Of this total we manufacture 660,000 or 8½ percent.

The three largest makers of bearings are as follows:

Hoffman Manufacturing Co., Ltd.	3,000,000
Ransome & Marles Bearing Co., Ltd.	2,000,000
Skefke Ball Bearing Co., Ltd.	1,500,000

It should be understood that all of the heretofore mentioned figures, not only with relation to bearing manufacture, but to automotive manufacture, are estimates furnished by the British Timken Sales Department. There are no statistics covering the automotive industry in England, other than those showing total registration.

[fol. 4812] During 1927 our business in the commercial vehicle field and the motorcycle field has improved, and at the time I was in England we were having great difficulty in making deliveries for truck bearings. I was advised by Mr. Hobley, Sales Director, that he felt our business in 1927 along this line would be double that of 1926, but he was unable to give me any definite figures in this regard.

The motorcycle business in England is very large, 500,000 being produced annually, and, if we can lower our

selling prices we shall get the bulk of this business, as apparently ball bearings, especially in larger motorcycles, do not stand up.

The Ford replacement business has been largely obtained by SKF, and we recently lost an order for 5,000 sets of bearings, due to higher prices. Here again, lower selling prices, which can be made with lower manufacturing costs, should get this business for us.

British export sales, classed heretofore as overseas sales, will be even greater in 1927 than in 1926, the particular reason for this being that we have considerably broadened our sales in Germany. Details of this will be given later in this report under the heading "Germany".

Industrial

The industrial sales activity in England has been rather negligible up to this time, as evidenced by figures heretofore set forth, showing such sales as one and one-half percent of our total for the year 1926. However, during the past six months interest in this line has greatly increased, and Mr. Ellis, Engineer in charge of this work, is now keeping three men busy making layouts, etc. He is handicapped considerably in this regard, due to lack of industrial bearing experience, and we must supply them with every possible aid, based on our past five years experience in industrial work. The entire British Timken organization has an entirely new feeling about industrial work, which, up to the time I arrived, was being considered as a very small sideline. I explained to them our progress along this line, and our future prospects, with the result that they plan to go aggressively after everything in this respect.

Railway

The railroad field in England has shown practically no interest in our bearings, but great interest has been shown in Germany, and which will be dealt with later on in this report.

Apparently the limiting factor in the use of our bearings in England is the typical British reluctance to try anything new. The freight cars in England are practically nothing more than wagons, weighing 12 and 18 tons. These cars cost approximately $500.00 each, and I was advised by Mr. Dewar that they only are in transit about one and one-

[fol. 4813] half percent of the time. All of the other time is used at terminals or as storage vans on sidetracks. The passenger coach situation, so I was advised by Mr. Dewar, is complicated by the fact that in all of the larger cities, such as London, Birmingham and Manchester it will be impossible to lengthen the station platform to use longer trains, and that he did not feel he could at this time show sufficient advantage in savings to obtain any orders. The writer does not agree with Mr. Dewar in this respect, and I believe that he will become more enthusiastic when he sees our progress when he comes to this country in October. We have, however, obtained an order to equip six underground (subway) railway cars in London, with our bearings as soon as we are in position to do so. British Timken are now preparing layouts which they will forward to us for approval and suggestion in the very near future.

Summary

Summarizing the sales situation now existing at British Timken, the following recommendations are made:

First—Reduce selling prices to automotive manufacturers by quoting discounts of 80 to 85 percent off list, so that we can get volume production, even at a narrower margin of profit. Mr. Dewar concurred in this idea, and it should be understood that with the new manufacturing equipment now on order and to be purchased, we can still maintain a very good margin of profit, even revising our discounts as herein outlined.

Second—Supply to British Timken at the earliest possible moment, experienced automotive engineering counsel.

Third—Send to British Timken an experienced man from our Sales staff, who is capable of organizing in conjunction with Mr. Hobley, a strong Sales staff, not only in England, but on the continent as well, covering both automotive and industrial sales. This may not be necessary if Mr. Hobley will, in his visit in September, assimilate American methods to such an extent that he can train his own staff.

[fol. 4814] INDEX

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[fol. 4815] DEFENDANT'S EXHIBIT 32

Report on Timken Representation in France

Submitted by D. P. Hess, August 1, 1927.

[fol. 4816] FRANCE

Representation

At the present time our bearings are being manufactured by the S M G Company, who are the second largest ball bearing makers in France, and who, at this time, are making approximately 100 taper bearings daily.

Their plant is a quite modern four-story affair, and they manufacture wherever possible, cups and cones with the trepanning method from direct hardening steel. Machining times which the writer has available, show that their practice is in many cases 20 percent better than the present British practice, and there is no question in my mind but that they are more aggressive, particularly from a manufacturing standpoint, than British Timken.

The quality of their bearings seems excellent, with the exception that they do not grind the end of rollers.

Labor

The labor situation in France is about the same as in England, as far as wages paid are concerned, but there is no union domination in any respect. The general practice in France is to run either one or two 9-hour shifts, and girls are used on all classes of machines in conjunction with men. Usually 10 percent additional wage is paid to night-shift operators.

Sales

Sales for the past two and one-half years have been as follows:

	1925	1926	1927(*)
(S M G)—manufacturing	$22,150.00	$22,000.00	$25,300.00
service	48,300.00	70,236.00	63,000.00
Total	$70,450.00	$92,236.00	$88,300.00

(*) Based on first 6 months.

It will be noted from the foregoing that this year's sales show a slight decrease in the service division, but this was explained by Mr. Wineberg, Sales Manager, as being due to a falling off in service demands from American manufactured trucks.

The S M G Company have made practically no attempt to develop industrial sales, and they advise me that their

reason for this is they have no information from British Timken along this line.

Costs & Prices

The writer found it very difficult to get any information from them. I spent considerable time with Mr. Almy, the [fol. 4817] President, Mr. Weinberg, Salesmanager, and Mr. Durignier, Works Manager. Upon asking for their costs, etc., I was given their manufacturing costs by Mr. Durignier, showing a shop overhead of approximately 400 percent on direct labor. I questioned this fact, but was told that the same overhead used for ball bearings is used in the computation of tapered bearing costs, but in a careful study of their plant I was unable to find wherein any such overhead was developed. Upon asking Mr. Almy for a verification of this figure, he claimed that he did not know what it was. He also declined, upon the same basis, to give me any figures at all as to their sales expenses. I requested this same information from Mr. Wineberg, who told me that they did not care to give us this information at the present time, but would be glad to discuss it with us at the time the contract was renewed. I questioned Mr. Wineberg particularly as to the prices quoted for tapered bearings, as compared with ball bearings, and was given the following figures:

319-313	Tapered bearings price each	$1.32
	Ball bearing price each	.76
339-333	Tapered bearing price each	$1.52
	Ball bearing price each	.88
357-353	Tapered bearing price each	$1.60
	Ball bearing price each	.84
344-333	Tapered bearing price each	$1.48
	Ball bearing price each	.84

At the present time the only French competition we have is supplied by the S K F Company, who have a plant in France, but who are doing very little at this time. I was unable to obtain any figures with reference to their production.

The French situation as regards British Timken is in bad shape. The feeling toward British Timken is very bitter, and one must understand the French nature to be able to find any ground for such a feeling. The S M G Company

blame their lack of development in tapered bearing sales entirely onto the fact that British Timken has failed to supply them with information relative to the latest and newest methods of manufacture, and that they deliberately withhold from them every possible amount of data relative to sales development work. While the writer does admit that British Timken have been very lax in their transactions with the S M G Company, I also feel that the present French feeling is largely uncalled for.

The French company have never received any drawings or data relative to the "F" type of bearing, nor any information with reference to the use of centerless roll grinders, Heald internal grinders, etc. All of this information has come to them from machine tool representatives, and of course they resent this fact considerably. At the present time in their plant they are using a few "Terromatic" internal grinders on ball bearings, and also have one internal Heald cone grinder on which they started to grind cone bores a few days before I reached there. They also have one centerless cup grinder which they are using on ball bearing cups at the present time. They plan to try this machine on tapered cups at the earliest possible moment.

[fol. 4818] They are very anxious to obtain all possible data with relation to our methods of manufacture, but the writer was forced in every way possible to avoid giving any detailed information. This is due to the fact that our contract expires next year, and Mr. Dewar feels it will be very unwise to renew it with S M G. The writer is inclined to agree with him in this regard, as the manufacture and sale of tapered bearings and ball bearings do not mix, and the only successful way to handle this situation is, in my opinion, to manufacture our own bearings in France. Whether this will be feasible or not, must be thoroughly studied, as considerable depends on the French tariff situation, which changes almost daily. To give an example of this condition, while I was in Paris I was given three different tariff rates by the S M G Company, and received still a different rate in England.

At the present time Mr. Dewar is investigating the possibilities of cancelling the French agreement at once, so that we shall not lose an entire year's time in getting started making our own bearings in France. As is probably known, the S M G Company have written a letter asking for

a renewal of the contract on their own terms, which incorporate a much smaller royalty, etc. They also expressed the opinion that they might undertake the manufacture of tapered bearings themselves, and of course this is a possibility.

The writer wishes to recommend the following:

First: That the present French contract with British Timken be not renewed, and

Second: That we be prepared to invest, through British Timken, whatever may be necessary to at least perform finishing operations in France, should be present tariff situation be in effect at the time the contract expires. Or, if a contrary tariff is in effect, to prepare to manufacture completely in France at least the popular sizes in bearings.

[fol. 4819] DEFENDANT'S EXHIBIT 33

Report on Timken Representation in Germany

Submitted by D. P. Hess, August 1, 1927.

[fol. 4820] Germany

Sales Representation

At the present time, all business done in Germany is handled by Deutsche Timken Geselleschaft, which is located in Berlin, and which is exclusively a sales organization operating under the direction of a certain Mr. Prausnitzer. All bearings sold in Germany are made in England and quoted f.o.b. Birmingham to Mr. Prausnitzer, who is turn adds on the usual charges for freight and tariff, which, as he explains, amounts to 15 percent. He then further stated that he adds 15 percent for his profit. Unfortunately, the writer found upon investigation that this is not always done, and in one instance I checked and found the profit ran as high as 25 percent, and in still another instance only 10 percent had been added for freight and tariff. It should be understood that British Timken exercises no supervision over and have no knowledge of the prices quoted by Mr. Prausnitzer to our German customers. He makes no reports as to the sales he loses, and he has no records along this line.

This gentleman is about 55 years old, and his experience has been of rather a varied nature along the following lines:

He formerly sold machine tools for the Gridley people, and has the occupation of a consulting engineer. During the war he acted in this capacity for the German government, in the manufacture of all vehicles, airplanes and such allied articles. His ability seems above the average as far as the selling of Timken Bearings is concerned, as he was very anxious to advise me, and there is no question but that he has done so far a splendid job, as will be shown later on in this report.

He is very well acquainted with a certain Mr. von Gontard, who is the head of the D W F Company, manufacturers of ball and tapered bearings; and he was quite enthusiastic in describing to me a plan he had worked out for the D W F Company to act as selling agents for Timken Bearings. His ideas were very visionary, and I believe originated in the mind of Mr. von Gontard. I told him that we were not very keen about such an arrangement, but that the entire matter would be handled by Mr. Dewar.

Mr. Prausnitzer was very anxious to have me look over several sites for establishing manufacturing operations in Berlin, which I accordingly did; but it so happened that three of the plants I was taken to, were owned by the D W F Company, and I was quoted rental prices of approximately $2.50 per square foot, which I explained to them was nothing but nonsense. I told them that we would probably consider paying $.25 per square foot, and furthermore, that we would under no consideration manufacture in old, worn-out buildings such as Mr. Prausnitzer and the D W F people had been offering. They further stated that they were convinced that they could get a plant such as we de- [fol. 4821] sired, for the price we wanted to pay, if I would take the time to spend another day with them, which I declined to do.

As is probably known, the Timken name is registered in control of Mr. Prausnitzer, and while he has a contract to give up his rights to this name under certain conditions, I was advised by Mr. Dewar that in his opinion this contract cannot be enforced, and he would have to come to some terms with him.

Mr. Prausnitzer is inclined to be very talkative, and based on the contact I had with him, there is some question

in my mind as to his veracity and honesty of character under certain conditions.

He has made a proposition to Mr. Dewar to relinquish his rights to the Timken name under the following conditions:

A German Timken Company to be organized, with a capital stock of $50,000 of which he is to be given in stock $12,500.00. He is to be the managing director of this company, on an annual salary of $3,000.00 plus a bonus of 3 percent of total sales. It is further agreed that in any increase in capitalization up to $100,000.00 he is to be given his pro-rata share on a 24 percent basis. It is the writer's personal feeling that these terms are entirely too high, and while I feel that we are in a way at the mercy of Mr. Prausnitzer, I also feel very confident that the proposition herewith set forth is merely an asking proposition, and that we can do considerably better. Mr. Dewar is planning to discuss this with us upon his visit to this country.

Mr. Dewar claims that Mr. Prausnitzer is very well regarded in Germany, but from my personal contact with him, I am inclined to think that he must be watched very carefully, and I so advised Mr. Dewar.

Automotive

Figures given me by Mr. Prausnitzer show that there are approximately 225,000 cars now being built in Germany annually. From what information I could get from other sources, this figure is high, and the production figure is probably nearer 150,000. There are approximately 319,000 cars registered in Germany at this time. The largest builder is Opel, building 60,000 cars annually, and the next largest builder is Damler-Benz, building 30,000 cars annually.

Both of these concerns are using F & S tapered bearings in the front wheels, and a mixture of straight roller bearings and ball bearings in the rear wheels and rear drive applications. It was impossible to obtain from Mr. Prausnitzer any idea in detail as to prices that we would have to make to further broaden our sales in Germany. However, I did obtain the list prices quoted by the F & S Company, together with their discounts, which were reputed to be given to manufacturers and service dealers. A rather hasty comparison of their lists with British Timken lists

shows them to be low in the popular sizes to an extent of 10 percent.

[fol. 4822]

ANALYSIS OF GERMAN SALES

(Through British Timken)

	1925	1926	1927 (")
Manufacturing	$33,000.00	$12,000.00	$53,000.00
Service	7,300.00	6,000.00	17,300.00
Total	$40,300.00	$18,000.00	$70,300.00

(") Based on first 6 months.

Mr. Prausnitzer made very broad statements as to our possibilities, should we reduce our selling prices 20 percent, but the writer does not feel it advisable to set forth any of these statements, as I am inclined to believe he is over-optimistic and cannot be relied upon along this line.

The decrease in sales in 1926, I was told, was due to two things. First, the demoralization of German industry, and secondly, Mr. Prausnitzer was seriously ill for six months; and as he has no assistants or sales representative, our sales fell off considerably.

Competition

It must be born in mind that we face very severe competition in Germany. At the present time the following manufacturers are making roller bearings exactly similar to ours:

F & S—production 4,000 daily (Estimated by Mr. Prausnitzer)
S K F—production 3,000 daily (Estimated by Mr. Prausnitzer)
D W F—production 1,000 daily (Estimated by Mr. Prausnitzer)

While the above figures look very high, and there is no doubt they can be discounted at least 30 percent, we should understand that this production has been developed with the past two years, and is being aggressively pushed at this time. British Timken has very materially felt the competition of F & S in export sales, and we have heard of some of their sales in our South American territory. All of these manufacturers make ball bearings as well, and I was told are very well fixed financially.

Mr. Dewar has told me that our severest competition will come from the F & S Company, who are very well equipped to manufacture and sell on a very lost cost basis.

Labor

It might be well to state that the labor situation is quite different in Germany than anywhere else. Everyone is working and there is no question about how long anyone shall work or any union domination.

Labor rates are approximately 15 percent lower than in England.

[fol. 4823]

German Manufacture

The writer was very much impressed with the layouts and organization of the D W F factory, located just outside of Berlin through which I was taken. I was refused permission to go through the F & S plant in the south of Germany, and neither was I permitted to see the ball or roller manufacturing in the D W F plant. Mr. Prausnitzer stated that the German manufacturers have not the slightest fear of British or French competition, and have set their goal to stop American competition, particularly in exports. This statement the writer believes to be true, because nowhere in England or on the Continent did I meet such a very evident feeling of duplicating and copying American practices as in Germany. From my observations there are more American motor cars in Berlin than there are in London and Paris added together, and everywhere you go you receive the most kindly attention from the German people.

Industrial Sales

The industrial sales field in Germany is developing very rapidly, and British Timken during the time I spent with them, received 10 inquiries from Germany along this line. I was advised by Mr. Prausnitzer that our competitors in Germany have not as yet attempted to sell the industrial field with tapered bearings, being entirely content to sell ball bearings. This means that we have an opportunity at present to develop this field, but it cannot be done by one man, and Mr. Dewar has arranged to employ a young German engineer at British Timken for a period of three months training, and then send him back to Germany as a sales representative. While this idea is good, the writer feels an older man with at least some selling experience should be obtained, as time is an important element and three months is not very long for a total stranger to learn our product from the industrial standpoint.

The railroad field in Germany has a real future, as evidenced by the fact that the S K F Company recently received an order for $500,000.00 worth of bearings to be used on fast freight car service between Berlin and Cologne. We had presented a bearing for test some six months before, but, according to British Timken, this bearing, No. 942-933, failed in test due to defective grease. This information was not given me originally by British Timken, but was developed while I was in Berlin with Mr. Prausnitzer, who in turn was unable to give me any details whatever as to the length of service, loads, etc. He did say, however, that in obtaining the order the S K F Company guaranteed the bearing for two years without lubrication. It was also impossible to ascertain what price was paid for them, although I asked Mr. Prausnitzer, if at all possible, to get this information.

It might be well to state that in order to obtain this business it would be necessary for us to at least perform the finishing operation on such bearings in Germany.

[fol. 4824]

Summary

Summarizing the German situation, the writer does not wish to make any recommendations other than to straighten out the sales situation to the extent that British Timken will, at the earliest possible moment, quote direct selling prices to German customers through Mr. Prausnitzer, and that they will exercise detailed control and supervision over him.

The question of manufacturing bearings in Germany is very complicated, due to two things:

First, our increasing sales seem to show that we can manufacture in England and still pay the prevailing tariff rates with fairly good success.

Second, should we manufacture in Germany, we will be called upon in all probability to join the association of German ball and roller bearing interests, who have interlocking price agreements, and who pool all patents and methods. Should we refuse to join this association, we of course face the possibility of having to fight very strenuously to maintain our standing which we now have.

The writer is planning to make a very careful study of the tariff situation, but it is necessary to obtain considerable further data before this can be done, as the information supplied by Mr. Prausnitzer must be thoroughly checked.

[fol. 4825]

CAPITAL EXPENDITURE

Year	Totals	
1927	62,506	
1928	29,114	
1929	70,663	
1930	16,900	
1931	16,693	
1932	52,550	
1933	19,346	
1934	15,554	
1935	4,965	
1936	23,504	
1937	21,527	
1938	78,478	
1939	51,933	
1940	32,685	
1941	15,384	
1942	18,576	
1943	15,734	
1944	33,567	
1945	64,974	
1946	188,138	
1947	168,800	Estimated

[fol. 4826]

TURNOVER OF TAPERED, ROLLER and BALL BEARINGS

Year	—	Value £	
1921		219,000	
1922		152,800	
1923		185,700	
1924		161,100	
1925		176,100	
1926		271,200	
1927		322,300	
1928		319,200	
1929		452,500	
1930		394,700	
1931		378,700	
1932		255,000	
1933		348,000	
1934		415,000	
1935		430,500	
1936		519,000	
1937		621,000	
1938		705,200	
1939		753,700	
1940		985,800	
1941		1,307,400	
1942		2,036,200	
1943		2,398,000	
1944		2,483,300	
1945		1,981,400	
1946		1,984,802	
1947		2,750,900	Estimated

[fols. 4827-4828] EMPLOYEES—WORKS AND STAFF

Year	Weekly Average No. Employees	Weekly Average Staff
1928	475	110
1929	650	110
1930	475	125
1931	525	140
1932	450	150
1933	625	170
1934	750	170
1935	700	180
1936	725	200
1937	850	225
1938	1180	248
1939	1420	375
1940	1470	430
1941	1800	436
1942	2475	520
1943	2933	525
1944	3039	530
1945	2350	525
1946	1980	524
1947	1963	527

[fol. 4829]

S. A. FRANCAISE TIMKEN

5/11, Quai Aulagnier, Asnières (Seine).

Number of Workpeople and Staff employed 1928 to 1947 (December 31st each year).

	Workpeople	Staff	Total
1928	4	10	14
1929	99	32	131
1930	125	51	176
1931	208	50	258
1932	177	51	228
1933	133	51	184
1934	138	53	191
1935	145	57	202
1936	204	69	273
1937	234	88	322
1938	212	86	298
1939-40	212	74	286
1941	334	112	446
1942	395	102	497
1943	330	95	425
1944	296	90	386
1945	300	106	406
1946	359	112	471
1947	396	114	510

[fol. 4830]

S. A. FRANCAISE TIMKEN
5/11, Quai Aulagnier, Asnières (Seine)

Expenditure on Plant and Equipment, 1928 to 1947.

		Equivalent in $	
		Rate	Amount
1928	Fcs. 1.544.646,81	25	$ 61.785
1929	3.678.600,93	25	147.144
1930	2.590.317,36	25	103.612
1931	2.163.521,66	26	83.212
1932	1.371.222,40	26	52.739
1933	877.593,29	16	54.849
1934	767.925,19	15	51.195
1935	625.039,40	15	41.669
1936	689.974,44	21	32.856
1937	2.598.185,38	29	89.592
1938	377.947,74	38	9.946
1939	1.267.669,19	44	28.810
1940	4.003.011,97	44	90.977
1941	5.940.025,31	44	135.001
1942	6.899.584,22	44	156.809
1943	6.159.357,71	50	123.187
1944	1.259.484,93	50	25.190
1945	1.247.450,95	50	24.949
1946	9.817.744,67	119	82.502
1947	8.508.513,60	119	71.500

Note.—The rate of exchange (Francs, Dollars) taken for the conversion of the above represents the rate of exchange in force at December 31st of each year.

[fols. 4831-4832]

S. A. FRANCAISE TIMKEN

5/11, Quai Aulagnier, Asnières (Seine)

Sales for Years 1928 to 1947

		Equivalent in $	
		Rate	Amount
1928	Fcs. 75.226,85	25	$ 3.009
1929	5.362.727.20	25	214.509
1930	7.940.564,—	25	317.622
1931	12.593.552,40	26	484.367
1932	10.161.582,39	26	390.830
1933	10.904.313,58	16	681.519
1934	9.525.687,14	15	635.045
1935	11.460.985,37	15	764.065
1936	14.555.631,41	21	693.125
1937	20.083.098,60	29	692.520
1938	26.154.264,60	38	688.270
1939	35.159.186,20	44	799.072
1940	34.576.624,21	44	785.832
1941	38.535.368,83	44	875.803
1942	46.193.130,74	44	1.049.843
1943	56.124.274,93	50	1.122.485
1944	46.695.381,52	50	933.907
1945	90.634.892,80	50	1.812.697
1946	178.458.713,56	119	1.499.653
1947	270.692.063,88	119	2.274.723

Note.—The rate of exchange (Francs, Dollars) taken for the conversion of the above, represents the rate of exchange in force at December 31st of each year.

[fol. 4833]

S. A. FRANCAISE TIMKEN, PARIS

Purchases from the Timken Roller Bearing Co., Canton 1933 to 1946.

Years	Bearings & parts	Machines, etc.	Steel	Total
1933	3.415.16	272.72		3.687.88
1934	10.166.61	338.06		10.504.67
1935	16.343.26	253.98		16.597.24
1936	62.332.26	1.163.99		63.496.25
1937	51.544.68	680.69		52.225.37
1938	86.702.38	752.29		87.454.67
1939	113.954.41	2.252.02	4.343.30	120.549.73
1940	77.095.96	53.578.75	127.501.13	258.175.84
	$421.554.72	59.292.50	131.844.43	612.691.65
1946				
Paid in Francs to the Impex.		2.160.649,—	14.376.849,—	16.537.498,—
To be paid	11.417.845,—		7.771.515,—	19.189.360,—
Fcs.	11.417.845,—	2.160.649,—	22.148.364,—	35.726.858,—
= (Approximate)	$95.148.—	18.005.—	184.569.—	297.722.—

[fols. 4834-3835]

Quantites et Valeur Des Roulements et Constituants Importes De Canton

Importations 1945 : Néant

Importations 1946 : Néant

Importations 1947	Roulements	Constituants	Valeur $	Valeur Francs
recues au 31/12/47	82.648	768	208.701,76	24.898.206,80
en cours de route au 31/12/47	97.112	36.139	161.863,79	19.423.156,54
			370.565,55	44.321.363,34

4 ex.

23.1.48

DEFENDANT'S EXHIBIT 37

RÉPUBLIQUE FRANÇAISE

MINISTÈRE DE LA PRODUCTION INDUSTRIELLE

SERVICE DE LA PROPRIÉTÉ INDUSTRIELLE

MARQUES DE FABRIQUE ET DE COMMERCE.

~~TIMKEN No. 24214 Civil~~
DEFENDANT'S EXHIBIT
No. 37

CERTIFICAT D'IDENTITÉ.

16.223

La marque de fabrique et de commerce ci-contre est de couleurs et de dimensions variables et s'applique de toute façon convenable sur nos produits, ainsi que sur nos lettres, factures, prospectus, emballages...

The Trade Mark as below, is made of colours and sizes of various dimensions and applied on all our products as well as our note paper, cheques, prospectuses and wrappings

GREFFE DU TRIBUNAL DE COMMERCE DE PARIS- N° 205.223

Dépôt du 14 octobre 1921 à 4 heures

de la Société de Mécanique de GENNEVILLIERS, ayant son siège 12, rue d'Aguesseau, à Paris, représentée par Monsieur Fernand BRICOUT, 17, Boulevard de la Madeleine, à Paris, ayant charge et pouvoir enregistré et annexé le 17 février 1921.

Registered at the Commercial Court of Paris - N° 205.223 - deposit 9 October 1921 at 4 p.m. from the Société de Mécanique de Gennevilliers, having its registered office at 12 bis d'Aguesseau Paris represented by Mr Bricout.

TIMKEN

Mark

Destinée à désigner la charronnerie, carrosserie, maréchalerie, automobiles et vélocipèdes, pneumatiques, et tous roulementsdestinés à diminuer le frottement et en particulier les roulements à rouleaux coniques
(Classe 25)

Applying to Wheelwright ironwork, wheeling, Farriery, automobile engineering, bicycle tyres and all bearings to be used for lessening friction and in particular the taper roller bearings

Signature du déposant: BRICOUT Fernand

Signature du Greffier: FOURNIER

Signature du déposant: BRICOUT Fernand

Signature du Greffier: FOURNIER

Extract from description entered in the Journal Registered for Trade Marks on the 30th January 1929 it appears that the ownership of the above Trade Mark was transferred to the Société Anonyme Française Timken, having its registered office located at Asnières, (Seine) 5 quai Aulagnier. - Paris the seventh of January 1948

D'une inscription portée sur le registre spécial des Marques le 30 janvier 1929 il résulte que la propriété de la marque ci-contre a été transférée à la Société anonyme Française TIMKEN, ayant son siège à Asnières (Seine, 5, Quai Aulagnier

Exemplaire certifié conforme :

Paris, le sept Janvier mil neuf cent quarante-huit.

Paris, le sept Janvier mil neuf cent quarante-huit.

Le Chef du Service de la Propriété Industrielle,

Vu pour la légalisation de la signature du Chef de Service de la PROPRIÉTÉ INDUSTRIELLE
Paris, le 8 JAN 1948
Le Chef du Bureau d'Ordre

4836

DX-37 Civil CX-37

1819

300-646-1. M. 60533. [30683]

DEFENDANT'S EXHIBIT D-34

Vu pour la légalisation de la signature apposée ci-dessus de M. Raby

Mme Production Industrielle

À PARIS, le 8 JAN. 1946

Signé: VERRONS

POUR LE MINISTRE ET PAR DÉLÉGATION

50 FRANCS

Republic of France
Department of Seine
City of Paris
Embassy of the United States

ss:

JAN 1 1946 194

Ministry of Foreign Affairs

Vice-Consul of the United States of America at Paris, France, duly commissioned and qualified

By

United States of America

France

1850

4837

DEFENDANT'S EXHIBIT 38

7 et 10 août 1928

EN 91331

CESSION ENTRE LES SOCIETES
par la Sté de Mécanique de Gennevilliers
à la Sté TIMKEN

Case No. 24274 Civil
DEFENDANT'S EXHIBIT
NO. 38

Case No. 24274 Civil
PLAINTIFF'S EXHIBIT
NO. 35

PARDEVANT Me Albert Jean CONSTANTIN et Me Albert PERE, tous deux notaires à Paris, soussignés - -

A COMPARU :

Monsieur Amédée Marie Joseph ALBY, ingénieur demeurant à Paris, Boulevard Lannes n° 55 - - - - - - -

Agissant au nom et comme l'un des administrateurs délégués de la société de Mécanique de Gennevilliers; société anonyme au capital actuel de quatorze millions de francs, dont le siége est à Paris, rue du Colisée n° 40 - - - - - - - - - - - - - - - -

Ladite société régulièrement fondée et constituée sous la dénomination " Société de Mécanique de Précision " au capital initial de un million de francs avec siége social à Clichy (Seine) Quai de Clichy n° 18, ainsi qu'il résulte - - - - - - - - - - - - - - - - -

De statuts dressés suivant acte [illegible] en date du trente et [illegible] dénommée, dont [illegible] -tion " [illegible] à [illegible] 12 [illegible] signé, [illegible] minutes de [illegible] le premier juin mil neuf cent [illegible]

D'un acte de déclaration de souscription et de versement reçu par le même notaire le même jour - - - - - - - - - - - - - -

Et de deux assemblées générales extraordinaires constitutives des actionnaires en date des deux juin et neuf juin mil neuf cent onze, dont copie des procès verbaux sont demeurées annexées à la minute d'un acte en constatant le dépot reçu par ledit Me PERE, le douze juin mil neuf cent onze - - - - - - - -

Le tout régulièrement déposé et publié ainsi que le constatant les pièces déposées au rang des minutes dudit Me PERE, le

trente et un aout mil neuf cent onze - - - - -

Dont la dénomination est devenue société mécanique de Gennevilliers en vertu d'une délibération générale extraordinaire du vingt quatre juillet mil neuf cent quinze dont copie du procés verbal a été déposée au rang des minutes dudit Me PERE, le douze aout mil neuf cent quinze - - - - - - - - - - - - -

Le tout régulièrement publié ainsi qu'il résulte des piéces déposées au rang des minutes dudit Me PERE le seize septembre mil neuf cent vingt cinq - - - - - - - - - -

Dont le siége a été transféré à Paris rue d'Aguesseau n° 12 en vertu d'une délibération du conseil d'administration en date du quatorze janvier mil neuf cent dix huit dont un extrait est demeuré annexé à un acte en constatant le dépot reçu par Me PERE, l'un des notaires soussignés, le quatre février mil neuf cent dix huit - - - - - - - - - - - - -

Lequel transfert de siége a été régulièrement déposé et publié ainsi qu'il résulte des pièces deposées au rang des minutes de Me PERE, le treize mai mil neuf cent dix huit -

Dont le siége a été transféré à Pari rue du Colisée n° 40, en vertu d'une délibération du conseil d'administration en date du vingt cinq juin mil neuf cent vingt cinq dont un extrait est demeuré annexé a un acte en constatant le dépot reçu par ledit Maitre PERE, lesept octobre mil neuf cent vingt cinq

Lequel transfert de siége a été régulièrement déposé et publié ainsi qu'il résulte des pièces déposées au rang des minutes du dit me PERE, le neuf décembre mil neuf cent vingt cinq - - - - - - - - - - - - - - - - - - -

Enfin dont le capital social a été porté en premiére fois au capital actuel de quatorze millions de francs - - - - - - - - - -

Le tout regulierement déposé et publié ainsi que Monsieur ALBY le déclare - -

1853

EN 91332

Et spécialement connu ayant les pouvoirs nécessaires aux fins des présentes, en vertu d'une délibération du conseil d'administration en date des vingt février mil neuf cent dix huit, et neuf juin mil neuf cent vingt six, dont un extrait certifié véritable est demeuré ci-annexé après mention d'annexe.

Lequel conseil d'administration est - investi , aux termes de l'article vingt des statuts sus-énoncés, des pouvoirs les plus étendus, pour la gestion des affaires sociales avec droit notamment, de céder, et acquérir tous biens et droits mobiliers , ou immobiliers . -

LEQUEL en sa dite qualité, a, par ces présentes vendu, cédé et transporté en obligeant la société qu'il représente à toutes les garanties ordinaires et de droit.

A la société anonyme française "TIMKEN" société anonyme au capital de un million de francs dont le siège social est à Asnières (Seine) quai Aulagnier N°5 - - - -

Ladite société régulièrement constituée ainsi qu'il résulte - - - - - - - - - - - - - -

1°- de ses statuts établis suivant acte sous signatures privées en date à Paris du seize Juin Kil neuf cent vingt huit.

2°- d'une déclaration de souscription et de versement reçue par Me CONSTANTIN, l'un des notaires soussignés, le seize Juin mil neuf cent vingt huit - - - - - - - - - - -

3°- et d'une assemblée générale constitutive des actionnaires, tenue le seize Juin Kil neuf cent vingt huit, dont copie du procès verbal a été déposée au rang des minutes de Me CONSTANTIN, notaire soussigné; le même jour - - - - - - - - - - - - - - - - - -

Le tout régulièrement publié et déposé conformément à la loi. - - - - - - - - - -

Ce qui est accepté au nom de la dite société par Monsieur William Eric Louis SEWARD, industriel, demeurant à Londres W. 128 Piccadilly - - - - - - - - - -

Parlant et comprenant le français - - - - - -

4840

Agissant au nom et comme administrateur délégué de la société "TIMKEN" fonction à laquelle il a été nommé aux termes d'une délibération du conseil d'administration de la dite société, en date du seize juin Mil neuf cent vingt huit, dont copie est demeurée annexée à un acte en constatant le dépôt reçu par Me CONSTANTIN, l'un des notaires soussignés le même jour - - - - - - - - - - - - - - - - - -

Monsieur SEWARD à ce présent et qui accepte au nom de la dite société - - - - - - - -

La marque de fabrique " TIMKEN" telle qu'elle résulte de son enregistrement à l'Office National de la propriété industrielle à Paris, déposée le quatorze octobre Mil neuf cent vingt et un sous le N° 205.223 et enregistrée comme suit au Bulletin Officiel de la propriété industrielle et commerciale, feuille du dix novembre mil neuf cent vingt et un sous le N° 18.825

" M. P ... désigner de la charronnerie, carosserie, maréchalerie, automobiles et vélocipèdes, pneumatiques et tous roulements destinés à diminuer le frottement et en particulier les roulements à rouleaux coniques, déposée le quatorze octobre mil neuf cent vingt et un à seize heures au Greffe du Tribunal de commerce de la Seine N° 6205.223 par la société de mécanique de Gennevilliers, 12 rue d'Aguesseau à Paris, - - - - -

PROPRIETE - JOUISSANCE

La société acquéreuse aura la propriété de la marque de fabrique ci-dessus désignée à compter de ce jour par le fait même des présentes, elle en aura la jouissance également à compter de ce jour - - - - - - -

A l'effet de quoi Monsieur ALBY au nom de la société de mécanique de Gennevilliers met et subroge la société TIMKEN acquéreuse, ce qui est accepté pour elle par M. SEWARD dans tous les droits de la société venderesse relatifs à ladite marque de fabrique.

CONDITIONS

La présente cession est faite à la charge par la société TIMKEN ainsi que l'y oblige Monsieur SEWARD

1°- D'exécuter aux lieu et place de la so - ciété cédante toutes les clauses et obligations auxquelles pourrait donner lieu la marque de fabrique présentement vendue -

2°- et de payer les frais et honoraires des présentes -

P R I X

En outre la présente cession est faite consentie et acceptée moyennant le prix principal de DOUZE MILLE FRANCS que M. SWARD a versé à l'instant même en bonnes espèces de monnaie et billets de la Banque de France acceptés pour numéraire comptés et délivrés à la vue des notaires soussignés à Monsieur ALBY, qui le reconnait et en donne quittance à la société acquéreuse.

DONT QUITTANCE

F O R M A L I T E S

La société acquéreuse fera enregistrer une expédition des présentes à l'Office National de la propriété industrielle - - - - - - - - - - - - - - - - - - -

Pour faire enregistrer les présentes et les faire mentionner partout ou besoin sera tous pouvoirs sont donnés au porteur d'une expédition ou d'un extrait des présentes -

D O M I C I L E

Pour l'exécution des présentes domicile est élu pour les parties aux sièges respectifs des sociétés dont s'agit -

LECTURE DES LOIS

Avant de clôturer conformément à la loi me CONSTANTIN, de l'un des notaires soussigné a donné lecture aux comparants des articles douze et treize de la loi du vingt trois août mil-huit cent soixante et onze, sept de la loi du vingt sept février mil neuf cent douze sept et huit de la loi du dix huit avril mil neuf cent dix huit, et trois cent soixante six du Code Pénal reprimant les dissimulations.

Les parties affirment sous les peines édictées par l'article huit de la loi du dix huit avril mil neuf cent dix huit que le présent acte exprime l'intégralité du prix convenu. - - - - - - - - - - - - - - - - -

Les notaires soussignés ont en outre affirmé qu'à leur connaissance le présent acte n'a été modifié ni contre dit par aucune contre lettre contenant une augmentation du prix ci-dessus fixé. - - - - - - - -

DONT ACTE

Fait et passé à Paris, rue Boissy d'Anglas numéro 9. -

En l'Etude de Me CONSTANTIN, pour Monsieur SEWARD et Place des Petits Pères pour Monsieur ALBY et l'Etude de Me PERE, notaire - - - - - - - - - - - - - - -

L'an mil neuf cent vingt huit - - - - - - - - -

Les sept et dix août - - - - - - - - - - - - - - -

Et lecture faite les comparants ont signé avec les notaires -

Suivent les signatures - - - - - - - - - - - - -

Ensuite est écrit :

" Enregistré à Paris, quatorzième notaires.

" Le treize août mil neuf cent vingt huit.

" Volume 42 B, folio 153 case 4

" Reçu : sept cent quatre vingt douze francs - - - - - - - - - - - - - - - - - - -

(signé) illisible.

est demeurée annexée la pièce dont la teneur suit -

SOCIETE DE MECANIQUE DE GENNEVILLIERS

- - - - - - - - - - - - - - - - - - - -

Société anonyme au capital de 14.000.000 de francs -

Siège social à Paris 40 rue du Colisée

Extrait de la délibération du conseil d'administration en date du vingt février 1918,

. . . . . .

Sont présents : Messieurs LE CESNE, Président BRAULT, MITRANGA, G. ROBERT, ALBY, Mario CONSTANT - - - -

Messieurs Amédée ALBY, Camille BRAULT, et Pierre SELIGMANN, pourront chacun séparément, passer les traités et marchés de toute nature, prendre tous brevets au nom de la société, se rendre cessionnaire de tous brevets déjà pris et de toutes licences. - - - - - - - - - - -

Faire toutes acquisitions, ventes et échanges de biens, droits et valeurs mobiliers, passer tous contrats, d'amodiation, baux et locations - - - - - - - - - - -

Recevoir toute somme pouvant être dûe à la société par quelque administration publique ou privée que ce soit, en donner tous acquist, quittances et décharges, opérer ou autoriser la souscription et la négociation de tous traités et de tous effets de commerce et lettres de change -

Représenter la société en justice, tant en demandant qu'en défendant, traiter, transiger, compromettre sur tous les intérêts de la société - - - - - - - - - -

Concourir à toutes adjudications, et d'une façon générale, il leur est délégué tous pouvoirs pour l'expédition, et la bonne gestion des affaires de la société -

Messieurs AL ALBY C. BRAULT, et L. SELIGMANN ont les pouvoirs ci-dessus avec faculté de les substituer.

Extrait de la délibération du conseil d'administration en date du 9 Juin 1926

. . . . . .

Le conseil d'administration de la S.M.C. s'est réuni le 9 Juin 1926 à l'issue de l'assemblée générale, au siège social, 40, rue du Colisée - - - - - - - -

Etaient presents : M.M. LE CHENE, Président honoraires ALBY Président du conseil SELIGMANN Administrateur délégué, BRUDELOT , COURVOISIER, Frédéric NOMAU, BIROS de GRAILLY, LITSRANGA, LORILLON Max ROBERT - - - - ; .....Le conseil renouvelle dans les termes de leurs précédents mandats les pouvoirs qui ont été conférés à MM. A. ALBY et Pierre SELIGMANN, par délibération du conseil en date du 20 février 1918 et renouvelés une première fois au cours de la séance du 29 Avril 1920.

Certifié conforme - - - - - - - - - - - - - - - - -

Parisle 7AOut 1928 - - - - - - - - - - - - - - - - -

Le Président du conseil d'administration - - - -

1858

DEFENDANT'S EXHIBIT D-35A 35A

Vu pour la légalisation de la signature apposée ci-dessus de M. Bourquet
Paris, le - 9 JANV 1948
Par délégation du Garde des Sceaux
Ministre de la Justice,
Le Chef de Bureau

signé Alby - - - - - - - - - -
ensuite est écrit - - - - - - - -
Certifié sincère et véritable par Monsieur ALBY soussigné et annexé à la minute d'un acte reçu par Me CONSTANTIN et Me FERE notaires à Paris, soussignés, les sept et dix aout mil neuf cent vingthuit
signé Alby - - - - - -
signé Constantin - -
Enregistré à Paris 14é notaires - - - - - - - - - - - - - - - - -
le treize aout mil neuf cent vingt huit - - - - - - - - - - -
volume 42 B - folio 153
case 4 - - - - - - - - - - - - - - - -
reçu : vingt deux francs cinquante centimes - - - - - - - - -
signé illisible - -
---------- POUR EXPEDITION - -

Expédition délivrée sur quatre rôles ne contenant aucune autre ratur

Vu pour la légalisation de la signature apposée ci-dessus de M. Bergeret
Un Juge
A PARIS, le - 9 JAN 1948
POUR LE MINISTRE ET PAR DÉLÉGATION
Signé: VERRONS

Vu par Nous Thermes, Juge pour la vérification de la signature de Jean Conet Autenr
du 19

Republic of France
Department of State
City of Paris
Embassy of the United States of America
JAN 9 - 1948
The Minister of Foreign Affairs and the Secretary of State are requested to
DE FOLLENAY
Vice-Consul of the United States of America at Paris, France

4845

[fol. 4846] DEFENDANT'S EXHIBIT 39

7th and 10th of August 1928

Assignment of a Trademark

By the Société de Mécanique of Gennevilliers to the Société Timken

Before Me Albert Jean Constantin and Me Albert Pere, undersigned, both notaries in Paris.

Appeared

Monsieur Amédée Marie Joseph Alby, engineer, residing in Paris Boulevard Lannes No. 55,

Acting on behalf of and as one of the Managing Directors of the Societe de Mecanique of Gennevilliers, A French Joint Stock Company with a capital for the time being of fourteen million francs whose Registered Office is in Paris, rue de Colisée No. 40.

The aforesaid Company duly created and constituted under the name "Société de Mecanique de Précision" with a capital originally of one million francs and with a Registered Office at Clichy (Seine) Quai de Clichy No. 18, as appears

From its Articles of Association drawn up according to a private deed dated May 31st nineteen hundred and eleven of which one of the original copies bearing the following mention: "Registered in Paris, fourth office, book 678, Folio 42 square 5, on the second day of June nineteen hundred and eleven, collected three francs seventy five cents. signed illegible" has been filed among the records of Me Pere, one of the undersigned notaries on the first day of June nineteen hundred and eleven.

From a deed of application for shares and payment taken by the aforesaid notary on the same day

And from two Constitutive Extraordinary General Meetings of Shareholders on the days of June second and ninth nineteen hundred and eleven, of which a copy of the minutes has been affixed to the records of an act proving the filing thereof with the records of the aforesaid notary Me Pere on the twelfth day of June nineteen hundred and eleven.

All which duly filed and published as proved by the docu-

ments filed among the records of the above mentioned Me Pere on the thirty first day of August nineteen hundred and eleven

Whose name has become Societe de Mecanique de Gennevilliers in pursuance to an extraordinary General resolution on the twenty fourth day of July nineteen hundred and fifteen, of which a copy of the minutes has been filed among the records of the above mentioned Me Pere on the twelfth day of August nineteen hundred and fifteen.

All of which being regularly published as shown by the documents filed among the records of the above mentioned Me Pere on the sixteenth day of September nineteen hundred and twenty five.

Whose Registered Office has been transferred to Paris rue d'Aguesseau no. 12 in pursuance to a Resolution of the Board of Directors on the fourteenth day of January nineteen hundred and eighteen of which an excerpt has been affixed to an act proving the filing thereof with the records of Me Pere one of the undersigned notaries on the fourth day of February nineteen hundred and eighteen.

[fol. 4847] Which transfer of Registered Office has been duly filed and published as shown by the deeds filed among the records of Me Pere, on the thirteenth day of May nineteen hundred and eighteen.

Whose Registered Office has been transferred to Paris rue de Colisee No. 40 in pursuance to a resolution of the Board of Directors on the Twenty fifth day of June nineteen hundred and twenty five, of which a excerpt has been affixed to a act proving the filing thereof with the records of Me Pere one of the undersigned notaries on the seventh day of October nineteen hundred and twenty five.

Which transfer of Registered Office has been duly filed and published as shown by the deeds filed among the records of Me Pere on the ninth day of December nineteen hundred and twenty five.

Lastly whose nominal capital had been first raised to the present capital of fourteen millions francs.

All of which being duly filed and published as declared by Monsieur Alby.

And specially known as having the necessary powers to the effect of these presents in pursuance to a resolution of the Board of Directors on the days of the twentieth of February nineteen hundred and eighteen and the ninth of June nineteen hundred and twenty six of which an excerpt

certified to be genuine has been hereto affixed after mention of affixation.

Which Board of Directors is vested, in accordance with the section twenty of the abovementioned articles of Association with the widest authorities for the management of the Company's activities with the right in particular to dispose of and buy any kind of personal or real property and rights.

Who in his abovementioned capacity, has, by these presents sold, assigned and set over, binding the company whom he represents to hold ordinary and legal guarantees.

To the French Joint Stock Company "Timken" a Joint Stock Company with a capital of one million francs whose Registered Office is situated in Asnières (Seine) Quai Aulagnier No. 5.

The above mentioned Company duly constituted as results

1°) From its Articles of Association drawn up according to a privately signed agreement dated in Paris June sixteenth nineteen hundred and twenty eight.

2°) From a deed of application for shares and payment taken by Me Constantin one of the undersigned notaries on the sixteenth of June nineteen hundred and twenty eight.

3°) And From a Constitutive General Meeting of the Shareholders held on the sixteenth day of June nineteen hundred and twenty eight of which a copy of the minutes has been filed among the records of Me Constantin, undersigned notary on the same day as above mentioned.

[fol. 4848] All which duly filed and published pursuant to the law.

Which is accepted on behalf of the above mentioned Company by Mr. William Eric Louis Seward, Manufacturer, residing in London W. 128 Picadilly.

Speaking and comprehending the French language.

Acting on behalf of and in the capacity of Managing Director of the Societe Timken, a duty to which he was appointed according to a resolution of the Board of Directors of the above mentioned Company on the sixteenth day of June nineteen hundred and twenty eight, a copy of which has been affixed to an act proving the filing thereof with Me Constantin one of the undersigned notaries on the same day as above mentioned.

Mr. Seward present thereto and agreeing on behalf of the Company.

The Trademark "Timken" as resulting from its registration at the Office Nationale de la Propriété Industrielle Paris filed on the fourteenth day of October nineteen hundred and twenty one under the No. 205.223 and registered as follows in the Bulletin Officiel de la Propriété Industrielle et Commerciale, issue of the tenth of November nineteen hundred and twenty one under No. 18.225.

"M.P. Wheelwrighting, coachwork, farriery, motor cars and bicycles, tyres, and all bearings intended to diminish friction and in particular conical roller bearings, filed on the fourteenth day of October nineteen hundred and twenty one with the Registrar's Office of the Commercial Court of the Seine, at four p.m. under number 205.223 by the Société de Mecanique de Gennevilliers situated in Paris rue d'Aguesseau No. 12.

Property and Use

The Purchasing Company will have the property of the trademark hereinabove described to date from this day in pursuance to the presents and it will equally have the use thereof to date from this day.

To this effect Monsieur Alby on behalf of the Société de Mecanique de Gennevilliers substitutes and subrogates in its place the Purchasing Timken Company, which is accepted on its behalf by Mr. Seward in all the rights of the Vendor Company referring to the abovementioned trademark.

Conditions

The present assignment is taking place subject to compliance by the Timken Company, as it has been bound by Mr. Seward with the conditions set forth as follows:

1°) To fulfil in the place and stead of the abovementioned Vendor Company all the stipulations and obligations which could proceed from the Trademark sold hereby.

2°) And to pay all the costs and fees of these presents.

[fol. 4849] Price

Moreover the present assignment is carried out, consented and accepted in consideration of the principal sum of twelve thousand francs which Mr. Seward paid at this

same instant in authentic coins and notes of the Banque de France, accepted as legal tender, counted and delivered before the undersigned notaries, to Monsieur Alby who acknowledges it and a receipt for it to the Purchasing Company is given. . . . Of which receipt —— ——.

Formalities

The purchasing Company will cause a copy of these presents to be registered at the Office Nationale de la Propriété Industrielle.

To register these presents and to see that they are mentioned every place where it be necessary, complete authority is given to the bearer of a copy or an excerpt of these presents.

Domicile

For the execution of these presents the contracting parties took up domicile at the respective Registered Offices of the companies concerned.

Reading of the Laws

Before concluding and pursuant to the law Me Constantin one of the undersigned notaries gave reading to the appearing parties of the sections twelve and thirteen of the law of the twenty third of August eighteen hundred and seventy-one, section seven of the law of the twenty seventh of Febuary nin-teen hundred and twelve, sections seven and eight of the law of the eighteenth of April nineteen hundred and eighteen and section three hundred and sixty six of the Code Penal concerning and punishing the concealments.

The contracting parties affirm on pain of being punished according to the section eight of the law of the eighteenth of April nineteen hundred and eighteen that the present deed expresses the integrality of the agreed price.

The undersigned notaries have more-over affirmed that, to the best of their knowledge and belief, the present deed has not been modified or gainsaid by any defeasances containing an increase of the price hereinabove agreed to.

Wherefore This Deed

Drawn up and dated in Paris, rue Boissy d'Anglas no. 9.

In the office of Me Constantin for Mr. Seward, and in the office of Me Pere notary, Place des Petits Pères for Monsieur Alby.

In the year nineteen hundred and twenty eight.

The seventh and tenth of August.

[fol. 4850] After perusal of this deed the contracting parties have signed with the notaries.

Follows the signatures.

Then is written:

"Registered in Paris, fourteenth of notaries.

"The thirteenth of August nineteen hundred and twenty eight.

"Book 42 B, Folio 153 square 4.

"Collected seven hundred and ninety two francs.

(Signed) Illegible.

Is affixed hereto the deed the contents of which are as follows.

Societe de Mecanique de Gennevilliers

Joint Stock Company with a nominal capital of fourteen million francs.

Registered Office in Paris 40 rue de Colisee.

Excerpt of the Resolution of the Board of Directors on the twentieth day of February nineteen hundred and eighteen.

Are present: Messieurs Le Cesne, President, Brault, Mitranga, G. Robert, Alby, Mario Constant.

Messieurs Amédée Alby, Camille Brault, et Pierre Seligmann, can each one separately conclude any deals and agreements of any character, take any patents on behalf of the Company, become assignee of any patent already taken and of all licenses.

Purchase, sell and exchange all personal property rights and valuables, conclude any and all agreements of leasing leases and hiring.

Receive any sum which might become due to the Company by any public or private administration of any description, tender all receipts, discharges and acknowledgements, perform or authorise the subscription and negociation of all agreements bills of commerce and letters of exchange.

Represent the Company in Justice either as the Plaintiff or Defendant, negociate, transact, compromise in anything concerning the company's interests.

Take part in any auction and in a general manner complete authority for the execution and proper management of the Company's business is conferred upon them.

Messieurs A. Alby, C. Brault, and P. Seligmann have the above mentioned authorities with the right to substitute.

Excerpt of the resolution of the Board of Directors on the ninth of June nineteen twenty six.

The Board of Directors of the S.M.G. held a Meeting on the ninth of June nineteen twenty six, following the General Meeting, at the Registered Office rue de Colisee No. 40.

[fol. 4851] Were present: Messieurs Le Cesne, Honorary President Alby, President of the Board, Seligmann, Managing Director, Baudelot, Courvoisier, Fredric Moreau, Giros de Grailly, Mitaranga, Morillon, Max Robert— —.

The Board of Directors renew in the terms of their precedent mandates the authorities which have been conferred upon Messieurs A. Alby and Pierre Seligmann by a resolution of the Board of Directors on the twentieth day of February Nineteen hundred and eighteen and renewed for the first time during the Meeting of the twentyninth of April nineteen hundred and twenty ——.

A true Copy— —.

Dated In Paris the seventh of August nineteen hundred and twentyeight— —.

The President of the Board of Directors— —.

Signed Alby— —.

Then is written——.

Certified to be sincere and genuine by Monsieur Alby undersigned and affixed to the record of an act taken by the undersigned Me Constantin and Me Pere, notaries in Paris the seventh and tenth of August nineteen hundred and twenty eight— —.

Signed Alby— —.

Signed Constantin— —.

Registered in Paris, fourteenth Notaries— —.

The thirteenth of August nineteen hundred and twenty eight— —.

Book 42B—Folio 153 Square 4— —.

Collected: Twentytwo francs fifty centimes.

Signed illegible— —.

A true copy

(signed) J. Constantin (The Seal)

Seen by Us, Thermes, Judge for legalisation of the signature of Mr. Jean Constantin, the President of the Tribunal being engaged otherwise.

Paris this 8th of January 1948
(signed) Thermes (The Seal)

Seen for legalisation of the signature of Mr. Thermes affixed below. Paris this 9th (ninth) of Jan. 1948
By delegation of the Keeper of the Seals
Minister of Justice
The Head of Office (signature) (The Seal)

[fols. 4852-4853] Seen for legalisation of the signature of Mr. Bergeret of the Ministry of Justice, affixed above.
At Paris this 9th of January 1948.
For the Minister and by delegation
(signed) Verrons (The Seal)

Next thereafter appears the legalisation of the Embassy of the United States of America at Paris.

I, the Undersigned, N. N. Gourot, Sworn-Translator, Ex-translator to the French Supreme Command (Intelligence Service otherwise 2eme Bureau) make oath and certify that the foregoing translation was made by me and that the same is a true, correct and entire transcript of its relative French Original visaed by me "ne varietur" sub No. 23169

Paris this 14th of January 1948

MINISTÈRE
DE LA
PRODUCTION INDUSTRIELLE

SERVICE
DE LA
PROPRIÉTÉ INDUSTRIELLE

RÉPUBLIQUE FRANÇAISE

MARQUES DE FABRIQUE ET DE COMMERCE.

CERTIFICAT D'IDENTITÉ. N° 40.

309.658

La marque ci-dessous peut être employée indépendamment de toutes formes distinctives.

Renouvellement du dépôt N° 205.223 du 14 Octobre 1921, dont la Société est devenue propriétaire par acte notarié enregistré à l'Office National de la Propriété Industrielle le 30 Janvier 1929, sous le N° 7.550.

TIMKEN

GREFFE DU TRIBUNAL DE COMMERCE DE PARIS
N° 330.118

Dépôt du 31 janvier 1940 à 2 h.9

au nom de la Société dite: "SOCIETE ANONYME FRANCAISE TIMKEN" 5 à 11, Quai Aulagnier, ASNIERES, Seine, France., représentée par Me. Dauphin, attachée au Cabinet SIMONNOT & RINUY, 49, rue de Provence Paris, mandataire suivant pouvoir s.s.p. enregistré et annexé.

Destinée à
de la charronnerie, carrosserie, maréchalerie, automobiles et vélocipèdes, pneumatiques, et tous roulements destinés à diminuer le frottement et en particulier les roulements à rouleaux coniques.

Classes 22 et 25.

Signature du déposant: DAUPHIN

Signature du Greffier: H.SENECHAL

Signature du déposant: DAUPHIN

Signature du Greffier: H.SENECHAL

Exemplaire certifié conforme :

Paris, le Sept janvier mil neuf cent quarante-huit.

Le Chef du Service de la Propriété Industrielle,

Vu pour la légalisation de la signature
du Chef de Service
de la PROPRIÉTÉ INDUSTRIELLE
Paris, le 8 JANV 1948
Le Chef du Bureau d'Ordre

4854

2981

1

...u pour la légalisation de la signature apposée ci-dessus de M. le Préfet

...Procureur Général

à PARIS, le 8 JANV. 1948

POUR LE MINISTRE ET PAR DELEGATION

Signé: VERRONS

AFFAIRES ÉTRANGÈRES — 50 FRANCS

Republic of France
Department of Seine
City of Paris
Embassy of the United States } ss:

JAN 1 8 1948 19

Ministry of Foreign Affairs

Certificate

Vice Consul of the United States of America at Paris, France, duly commissioned and qualified

BY ... FOR ... States

Consul ... Paris, France

of America

2 STAMP

DEFENDANT'S EXHIBIT D-36

4855

J./R.C.

(D.G.)

MINISTÈRE
DE
L'ÉCONOMIE NATIONALE
ET DES FINANCES.

Direction générale
des Douanes.

1 ° Division.

2 ° Bureau.

N° 737

T A RI F.

Objet.

Paris, le 04 JUIN 1947 194

Messieurs,

Objet : Droits de douane sur les roulements et pièces détachées de ces roulements.

Référence : Votre lettre Ce 47/5.416 AG/GP du 11 Janvier 1947.

En réponse à votre lettre rappelée en référence, j'ai l'honneur de vous remettre ci-joint, après l'avoir fait vérifier et contrôler par mes services, le relevé que vous avez bien voulu me soumettre au sujet du taux des droits de douane qui ont frappé certains roulements et leurs pièces détachées depuis l'année 1928.

Agréez, Messieurs, l'assurance de ma considération distinguée.

L'Administrateur,

ADMINISTRATION DES DOUANES · BUREAU CENTRAL

Société Anonyme TIMKEN
5 à 11 Quai Aulagnier
ASNIERES
(Seine).

4856

6781

TARIF DE LA DOUANE FRANCAISE POUR LES ROULEMENTS ET LES PIECES DETACHEES DE ROULEMENTS IMPORTES d'AMERIQUE

TARIFF OF THE FRENCH CUSTOMS FOR BEARINGS AND BEARING COMPONENTS IMPORTED FROM THE U.S.A

	POIDS / WEIGHT	JANVIER 1928 EN KILOGRAMMES / JANUARY 1928 KILO	AOUT 1928 EN KILOGRAMMES / AUGUST 1928 KILO	DECRET du 2/10/36 REDUCTION de 15% EN KILOGRAMMES / LAW OF 2/10/36 CUT DOWN 15% KILO	JANVIER 1937 LE KILOG. / JANUARY 1937 KILO	SEPTEMBRE 1937 LE KILOG. / SEPTEMBER 1937 KILO	JANVIER 1938 LE KILOG / JANUARY 1938 KILO	OBSERVATIONS / REMARKS
		TARIF INTERMEDIAIRE U.S.A. / U.S.A INTERMEDIATE TARIFF	TARIF MINIMUM U.S.A / U.S.A. MINIMUM TARIFF					
		Frs	Frs	Frs	Frs	Frs	Frs	
533 SEPTIES A								
Roulements simples, à billes pour tous usages	25 gr et moins	40 - coefficient 5 soit : 200	100	85	87,20	99,40	100	Le tarif de 1938 est toujours en vigueur mais les droits de douane sont suspendus depuis le mois d'OCTOBRE 1943.
Single row ball bearings for all applications	25 à 50 gr	30 " " 150	75	63,80	65,40	74,55	75	The 1938 tariff is still in force but custom duties are note applicable since OCTOBER 1943
	50 à 100 gr	16,80 " " 84	42	35,70	36,70	41,85	42	
	100 à 200 gr	11,20 " " 56	28	23,80	24,50	27,95	28	
	200 à 500 gr	6,40 " " 32	16	13,60	14	15,95	16	
	500 à 1000 gr	5,40 " " 27	13,50	11,50	11,80	13,45	13,50	
	1000 gr et plus	4 " " 20	10	8,50	8,75	9,95	10	
533 SEPTIES B								
Roulements simples à rouleaux à galets	moins 25 gr	40 " " 200	100	85	87,20	99,40	100	
	25 à 50 gr	30 " " 150	75	63,80	65,40	74,55	75	
	50 à 100 gr	18,40 " " 92	46	39,10	40,20	45,85	46	
Single row roller bearings	100 à 200 gr	7,20 " " 36	18	15,30	15,70	17,90	18	- d°-
	200 à 500 gr	5,20 " " 26	13	11,10	11,40	12,95	13	
	500 gr à 1000 grs	4,40 " " 22	11	9,35	9,60	10,95	11	
	1000 grs et plus	3,20 " " 16	8	6,80	7,--	7,95	8	
533 SEPTIES C								
Roulements à double rangée et roulements portant les charges axiales et radiales (à billes)	moins 25 gr	44,80 " " 224	112	95,20	97,70	111,35	112	
	25 à 50 gr	33,60 " " 168	84	71,40	73,30	83,55	84	
	50 à 100 gr	18,80 " " 94	47	40	41	46,75	47	
Double row ball bearings and bearings withstanding radial and thrust loads	100 à 200 gr	12,54 " " 62,70	31,35	26,70	27,40	31,25	31,35	- d°-
	200 à 500 gr	7,16 " " 35,80	17,90	15,30	15,70	17,85	17,90	
	500 à 1000 grs	6,04 " " 30,20	15,10	12,90	13,20	15,05	15,10	
	1000 gr et plus	4,48 " " 22,40	11,20	9,52	9,80	11,15	11,20	
- d°- à rouleaux ou à galets	moins 25 gr	44,80 " " 224	112	95,20	97,70	111,35	112	
	25 à 50 gr	33,60 " " 168	84	71,40	73,30	83,55	84	
Double row roller bearings	50 à 100 gr	20,60 " " 103	51,50	43,80	45	51,30	51,50	
	100 à 200 gr	8,06 " " 40,30	20,15	17,20	17,60	20,05	20,15	- d°-
- d°-	200 à 500 gr	5,82 " " 29,10	14,55	12,40	12,70	14,50	14,55	
	500 à 1000 gr	4,92 " " 24,60	12,30	10,50	10,80	12,25	12,30	
	1000 gr et plus	3,58 " " 17,90	8,95	7,61	7,85	8,90	8,95	

DEFENDANT'S EXHIBIT 41

4857

DX-41

Vu et certifié exact
Paris le 24 juin 1947
L'administrateur des douanes

TARIF DE LA DOUANE FRANCAISE POUR LES ROULEMENTS ET LES PIECES DETACHEES DE ROULEMENTS IMPORTES d'AMERIQUE

TARIFF OF THE FRENCH CUSTOMS FOR BEARINGS AND BEARING COMPONENTS IMPORTED FROM THE U.S.A

	POIDS / WEIGHT	JANVIER 1928 LE KILOGRAMME / JANUARY 1928 KILO		AOUT 1928 LE KILOGRAMME / AUGUST 1928 KILO	DECRET du 2/10/36 REDUCTION de 15% LE KILOGRAMME / LAW OF 2/10/36 CUT DOWN 15%	JANVIER 1937 LE KILOG. / JANUARY 1937 KILO	SEPTEMBRE 1937 LE KILOG. / SEPTEMBER 1937 KILO	JANVIER 1938 LE KILOG. / JANUARY 1938 KILO	OBSERVATIONS / REMARKS
		TARIF INTERMEDIAIRE U.S.A / U.S.A. INTERMEDIATE TARIFF		TARIF MINIMUM U.S.A / U.S.A MINIMUM TARIFF					
		Frs		Frs	Frs	Frs	Frs	Frs	
533 SEPTIES B									
Billes de roulements / Bearing balls	moins de 2m/m	40 - coefficient 5 soit :	200	100	85	87,20	99,60	100	Le tarif de 1938 est toujours en vigueur mais les droits de douane sont suspendus depuis le mois d'OCTOBRE 1943. The 1938 tariff is still in force but custom duties are not applicable since OCTOBER 1943
	2 à 3m/m	30 - coefficient 5 soit :	150	75	63,80	65,40	74,55	75	
	3 à 3,5m/m	6,40 - coefficient 5 soit :	32	16	13,60	14	15,95	16	
	3,5 à 5m/m	4,40 - coefficient 5 soit :	22	11	9,35	9,60	10,95	11	
	5m/m et plus	3,20 - coefficient 5 soit :	16	8	6,80	7	7,95	8	
533 SEPTIES E									
Rouleaux et galets / Bearing rollers		5,20 - coefficient 5 soit :	26	13	11,10	11,40	12,95	13	- d°-
533 SEPTIES F									
Pièces détachées de roulements et de butées									
a) Couvercles - Pièces brutes		2,80 - coefficient 5 soit :	14	7	5,95	6,15	6,95	7	
b) Pièces travaillées	I à 25 gr	20 - coefficient 5 soit :	100	50	42,50	43,60	49,70	50	- d°-
	25 à 50 gr	12 - coefficient 5 soit :	60	30	25,50	26,20	29,90	30	
Journal bearings and thrust bearings components	50 gr et plus	6 - coefficient 5 soit :	30	15	12,80	13,10	14,95	15	
Cover and parts in the green									
Machined parts									

Vu et certifié exact
Paris, le 24 juin 1947
L'Administrateur des Douanes

ADMINISTRATION DES DOUANES

4858-4859

IMPORTATIONS FRANCAISES de 1928 à 1946

FRENCH IMPORTS FROM 1928 TO 1946

ROULEMENTS ANNULAIRES ET BUTEES A BILLES MUNIES OU NON DE LEURS BILLES : ROULEMENTS SIMPLES A BILLES

JOURNAL AND THRUST BALL BEARINGS WITH OR WITHOUT THEIR BALLS : SINGLE ROW BALL BEARINGS

NUMERO de TARIF de la DOUANE FRANCAISE : 533 SEPTIES A

LIST PRICE NUMBER OF THE FRENCH CUSTOMS

DEFENDANT'S EXHIBIT 42

ANNEE / YEARS	ETATS-UNIS / UNITED STATES OF AMERICA	GRANDE BRETAGNE / GREAT BRITAIN	SUEDE / SWEDEN	ALLEMAGNE / GERMANY	SUISSE / SWITZERLAND	ITALIE / ITALY	BELGIQUE et LUXEMBOURG / BELGIUM and LUXEMBURG	AUTRES PAYS / OTHER COUNTRIES	POIDS TOTAL en KILOGRAMMES / TOTAL WEIGHT KILO.	VALEUR en FRANCS / VALUE IN FRANCS
1928		97	350	117		502		84	115.000	5.348.000
1929	57	143	491	228		951		122	197.200	7.891.000
1930	79	99	593	186		644		147	174.800	7.792.000
1931	97		333	314		940	76	154	191.400	6.935.000
1932	35	29	312	147		203	62	31	81.900	2.735.000
1933	40	39	393	216		79		75	84.200	2.951.000
1934	80	68	343	243		67		20	80.100	2.506.000
1935	81	72	302	129				39	62.300	1.963.000
1936	98	85	287	123				24	61.700	2.305.000
1937	190	108	385	107			243	16	104.900	5.333.000
1938	138	77	441				342	114	109.200	6.682.000
1939	121	70	470					68	72.900	5.938.000
1940	120	35	216					44	40.500	5.231.000
1941				105	26			16	14.700	1.908.000
1942			17	428				3	46.800	8.084.000
1943			38	556				3	59.700	13.913.000
1944			2	172					17.400	4.261.000
1945	42	1	55	53	485		1	5	62.200	10.805.000
1946	435	341	147	114	551			18	140.600	48.497.000
	1.403	1.254	5.175	3.218	1.062	3.931	139	983	1.717.500	150.378.000

1873

TIMBRE DE DIMENSION
40
FRANCS

TIMBRE DE DIMENSION
40
FRANCS

4861

IMPORTATIONS FRANÇAISES de 1928 à 1946

FRENCH IMPORTS FROM 1928 TO 1946

ROULEMENTS SIMPLES à ROULEAUX ou à GALETS - BUTEES et ROULEMENTS à ROULEAUX CYLINDRIQUES

SINGLE ROW ROLLER BEARINGS - THRUST BEARINGS AND CYLINDRICAL ROLLER BEARINGS

NUMERO du TARIF de la DOUANE FRANCAISE : 533 SEPTIES B

LIST PRICE NUMBER OF THE FRENCH CUSTOMS

ANNEE / YEARS	ETATS-UNIS / UNITED STATES OF AMERICA	GRANDE BRETAGNE / GREAT BRITAIN	SUEDE / SWEDEN	ALLEMAGNE / GERMANY	SUISSE / SWITZERLAND	ITALIE / ITALY	BELGIQUE et LUXEMBOURG / BELGIUM AND LUXEMBURG	AUTRES PAYS / OTHER COUNTRIES	POIDS TOTAL en KILOGRAMMES / TOTAL WEIGHT KILO	VALEUR en FRANCS / VALUE IN FRANCS
1928	100	97	530	399				47	117.300	3.554.000
1929	379	201	113	454				63	121.000	4.910.000
1930	381	139	275	561				135	149.100	6.089.000
1931	202	84	92	702	252	175		83	159.000	6.762.000
1932	349	8		618		116		65	120.600	4.051.000
1933	331	6	58	606		29		19	115.900	3.544.000
1934	253	0		637		42		31	111.300	3.062.000
1935	317	3		643			101	42	129.600	3.069.000
1936	266	7		518				33	98.400	2.590.000
1937	437	31	46	519	54			38	118.500	4.327.000
1938	266	22	57	478				46	96.900	5.149.000
1939	218	80		229				26	55.300	3.436.000
1940	199	82			58			5	34.400	2.629.000
1941				288	11			20	31.900	2.444.000
1942				1.283				11	129.400	13.661.000
1943			176	917				5	109.800	11.949.000
1944			209	325				2	53.600	4.159.000
1945	1		84	99	21		9	1	21.500	2..25.000
1946	52	84	351	160	135		7	1	79.000	19.476.000
	3.751	1.664	1.991	9.436	531	362	117	673	1.852.500	107.086.000

2
Inscription

2
Annonce à mon Fournisseur
de courtoisie, en date du 12 Juin 1875
Illisible

1875

IMPORTATIONS FRANCAISES de 1928 à 1946

FRENCH IMPORTS FROM 1928 TO 1946

ROULEMENTS OU BUTEES à DOUBLE RANGEE - ROULEMENTS PORTANT LES CHARGES AXIALES et RADIALES

DOUBLE ROW JOURNAL AND THRUST BEARINGS - BEARINGS WITHSTANDING RADIAL AND THRUST LOADS

NUMERO de TARIF de la DOUANE FRANCAISE : 533 SEPTIES C

LIST PRICE NUMBER OF THE FRENCH CUSTOMS

ANNEE / YEARS	ETATS-UNIS / UNITED STATES OF AMERICA	GRANDE BRETAGNE / GREAT BRITAIN	SUEDE / SWEDEN	ALLEMAGNE / GERMANY	SUISSE / SWITZERLAND	ITALIE / ITALY	BELGIQUE et LUXEMBOURG / BELGIUM AND LUXEMBURG	AUTRES PAYS / OTHER COUNTRIES	POIDS TOTAL en KILOGRAMMES / TOTAL WEIGHT KILO	VALEUR en FRANCS / VALUE IN FRANCS
1928	392	97	I.534			385	143	153	270.400	7.977.000
1929	88	860	2.696	243		565		70	452.200	15.136.000
1930		233	I.978			536		218	296.500	10.338.000
1931		191	I.560	173	176	918	259	42	331.900	10.667.000
1932	94	78	I.353			268	303	87	218.300	5.584.000
1933	95	97	2.081	97		120		35	252.500	5.957.000
1934	175	95	2.129	197		136		10	274.200	5.815.000
1935	95	51	I.623	151				51	197.100	4.366.000
1936	116		I.562	110				88	187.600	4.201.000
1937	400		I.436	142		123		133	223.400	8.424.000
1938	191		I.827			141		205	236.400	10.731.000
1939	190		I.581					140	191.100	9.844.000
1940	404	150	I.108					15	168.700	11.279.000
I 41	39			316	37			30	42.200	3.791.000
1942			703	773				57	153.300	14.314.000
1943			338	1.315				17	167.000	16.297.000
1944			38	408	I				44.700	4.717.000
1945			I.158	I	467		18		164.400	19.153.000
1946	442	282	807	328	367		2	13	224.100	44.747.000
	2.721	2.144	25.512	4.154	I.046	3.192	765	I.354	4.096.000	217.379.000

1877

TIMBRE DE DIMENSION 40 FRANCS

TIMBRE DE DIMENSION 40 FRANCS

Georges REINHARD Huissier

3

Jugement

3

Signifié : copie dudit jugement
à Mr Louis Ulrich
Ulcerasd

EXPORTATIONS FRANÇAISES de 1928 à 1946

FRENCH EXPORTS FROM 1928 TO 1946

BILLES de ROULEMENT en METAL COMMUN - CALIBREES

ORDINARY STEEL BEARING BALLS GRADED

NUMERO du TARIF de la DOUANE FRANÇAISE : 533 SECTION D

LIST PRICE NUMBER OF THE FRENCH CUSTOMS

ANNEE / YEARS	ETATS-UNIS / UNITED STATES OF AMERICA	GRANDE BRETAGNE / GREAT BRITAIN	SUEDE / SWEDEN	ALLEMAGNE / GERMANY	SUISSE / SWITZERLAND	ITALIE / ITALY	BELGIQUE et LUXEMBOURG / BELGIUM and LUXEMBURG	AUTRES PAYS / OTHER COUNTRIES	POIDS TOTAL en KILOGRAMMES / TOTAL WEIGHT KILO	VALEUR en FRANCS / VALUE IN FRANCS
1928			1234	1529				76	283.900	6.331.000
1929			934	1672				58	266.400	5.338.000
1930		176	588	771				14	154.900	4.655.000
1931		389	144	586				11	113.000	1.976.000
1932		113	75	226			86	8	50.800	777.000
1933		29	156	200		12		11	40.800	777.000
1934		26	593	251					87.000	1.452.000
1935		66	185	192				10	41.300	783.000
1936			111	508				30	64.900	916.000
1937			341	735				55	113.100	2.499.000
1938			60	402				12	47.400	1.760.000
1939			71	211				26	30.800	1.558.000
1940	15	55	22		13	10		3	12.600	1.238.000
1941				672				6	67.800	4.184.000
1942				1.684					168.400	10.237.000
1943				1.169					116.900	7.738.000
1944				30					3.000	279.000
1945			79	1					8.000	510.000
1946	6	123	58	173					36.000	6.016.000
	21	977	4.651	11.012	13	30	86	320	1.711.000	56.657.000

Mr. Edward Everett
Boston
Mass.

IMPORTATIONS FRANÇAISES de 1928 à 1946

FRENCH IMPORTS FROM 1928 TO 1946

ROULEAUX et GALETS FINIS

FINISHED ROLLERS

NUMERO de TARIF de la DOUANE FRANÇAISE : 53 bis TER E

LIST PRICE NUMBER OF THE FRENCH CUSTOMS

ANNEE / YEARS	ETATS-UNIS / UNITED STATES OF AMERICA	GRANDE BRETAGNE / GREAT BRITAIN	SUEDE / SWEDEN	ALLEMAGNE / GERMANY	SUISSE / SWITZERLAND	ITALIE / ITALY	BELGIQUE et LUXEMBOURG / BELGIUM and LUXEMBURG	AUTRES PAYS / OTHER COUNTRIES	POIDS TOTAL en KILOGRAMMES / TOTAL WEIGHT KILO	VALEUR en FRANCS / VALUE IN FRANCS
1928		82						9	9.100	603.000
1929		213		35				24	27.200	1.263.000
1930	25	129		127				6	28.700	1.350.000
1931	33	67	50	84	23		32	2	29.100	1.127.000
1932	28	212		107			27	23	38.900	1.144.000
1933	56	321		22				12	41.100	1.098.000
1934	34	30	25	34		19		1	14.900	378.000
1935	46	57	147	253					50.500	986.000
1936		90	304	248				50	77.200	1.339.000
1937		154	475	339				104	107.000	3.042.000
1938	97		707	89				97	103.000	4.068.000
1939	104		563	173				60	78.600	3.459.000
1940	62		224					13	29.900	1.495.000
1941			115	213				4	33.200	2.342.000
1942			411	88					47.900	3.565.000
1943			122	74					19.600	2.125.000
1944				46					4.800	105.000
1945			119						11.900	811.000
1946	7	38	672	66	4		13	60	89.800	15.732.000
	404	1.413	3.458	1.896	27	19	72	423	842.400	46.032.000

4868

1881

TIMBRE DE DIMENSION
40
FRANCS

TIMBRE DE DIMENSION
40
FRANCS

IMPORTATIONS FRANÇAISES de 1928 à 1946

FRENCH IMPORTS FROM 1928 TO 1946

PIÈCES DÉTACHÉES de ROULEMENTS ANNULAIRES à BILLES ou à CAGES ou ROULEAUX, PIÈCES DÉTACHÉES de BOÎTES en MÉTAL COMMUN (à l'exclusion des billes, rouleaux et galets) ; COUVERCLES et PIÈCES à l'ÉTAT BRUT

JOURNAL AND THRUST BALL BEARING COMPONENTS ORDINARY STEEL THRUST BEARING COMPONENTS (EXCLUDING BALLS AND ROLLERS) UNMACHINED COVERS AND PARTS IN THE GREEN

NUMÉRO de TARIF de la DOUANE FRANÇAISE : 533 SEPTIES Fa

LIST PRICE NUMBER OF THE FRENCH CUSTOMS

ANNÉES	ETATS-UNIS	GRANDE BRETAGNE	SUÈDE	ALLEMAGNE	SUISSE	ITALIE	BELGIQUE et LUXEMBOURG	AUTRES PAYS	POIDS TOTAL en KILOGRAMMES	VALEUR en FRANCS
YEARS	UNITED STATES OF AMERICA	GREAT BRITAIN	SWEDEN	GERMANY	SWITZERLAND	ITALY	BELGIUM and LUXEMBURG	OTHER COUNTRIES	TOTAL WEIGHT KILO	VALUE IN FRANCS
1928		2	10	11					2.300	92.000
1929			15	18				5	3.800	185.000
1930			19			160		10	18.900	171.000
1931				4	8	79		14	10.500	77.000
1932	3	6	1	1	12		9		3.200	57.000
1933	1	6	2	5	2	4			2.000	106.000
1934	3	2	1	24					3.000	122.000
1935	1			32					3.300	114.000
1936	3			37	1				4.100	180.000
1937		3		20				2	2.500	173.000
1938	13			28				4	4.100	241.000
1939	8			6					1.400	140.000
1940	9				1				1.000	24.000
1941				189				2	19.100	410.000
1942			725	522					124.700	1.354.000
1943			120	12	2				13.400	444.000
1944										24.000
1945										
1946			14						1.400	55.000
	61	19	907	905	26	243	9	33	218.700	3.969.000

4870

4871

1883

IMPORTATIONS FRANCAISES de 1928 à 1946

FRENCH IMPORTS FROM 1928 TO 1946

PIECES DETACHEES de ROULEMENTS ANNULAIRES à BILLES OU à GALETS OU ROULEAUX, PIECES DETACHEES de ROTULES EN METAL COMMUN (à l'exclusion des billes, rouleaux et galets) PIECES TRAVAILLEES

BALL AND ROLLER JOURNAL BEARING COMPONENTS ORDINARY STEEL THRUST BEARING COMPONENTS (EXCLUDING BALLS AND ROLLERS) MACHINED PARTS

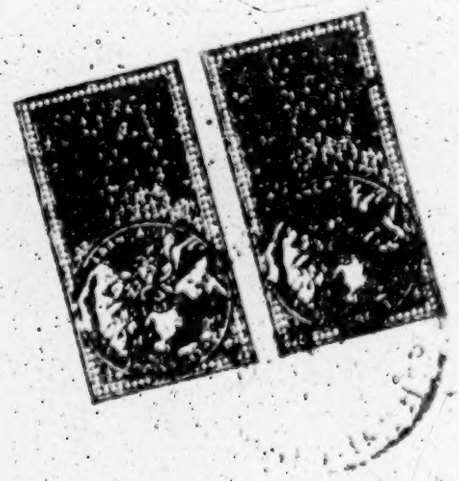
NUMERO de TARIF de la DOUANE FRANCAISE : 533 SEPTIES Fb

LIST PRICE NUMBER OF THE FRENCH CUSTOMS

ANNEE / YEARS	ETATS-UNIS / UNITED STATES OF AMERICA	GRANDE BRETAGNE / GREAT BRITAIN	SUEDE / SWEDEN	ALLEMAGNE / GERMANY	SUISSE / SWITZERLAND	ITALIE / ITALY	BELGIQUE et LUXEMBOURG / BELGIUM AND LUXEMBURG	AUTRES PAYS / OTHER COUNTRIES	POIDS TOTAL en KILOGRAMMES / TOTAL WEIGHT KILO	VALEUR en FRANCS / VALUE IN FRANCS
1928	265		602					71	93.800	3.321.000
1929	600	181	992			31		43	144.700	4.395.000
1930	547	113	179					50	88.900	2.400.000
1931	304	44	116	130		23		51	66.800	2.126.000
1932	109	36	76	41		31		19	51.200	1.270.000
1933	46	29	72	109				17	47.300	998.000
1934	48	32	121	56				3	26.000	849.000
1935	45		143	69				14	27.100	867.000
1936	67	32	223	41	1				36.400	986.000
1937	211		328	52				46	63.700	2.511.000
1938	240		385					69	69.200	3.850.000
1939	120		308					40	46.800	3.274.000
1940	199		103					9	31.100	2.402.000
1941			24	171				14	20.900	2.159.000
1942			111	71				8	19.000	1.920.000
1943			45	207					25.200	2.622.000
1944	3		29	147					17.900	1.626.000
1945	1		110		7				11.800	1.466.000
1946	12	55	332		12		6	2	41.900	15.980.000
	2.817	522	3.897	1.094	20	85	6	456	889.700	55.022.000

4872

4873



1885—1886

DEFENDANT'S EXHIBIT D-38

[fol. 4874] DEFENDANT'S EXHIBIT 43

"STATISTIQUE MENSUELLE DU COMMERCE EXTERIEUR DE LA FRANCE"

Published monthly by the "Imprimerie Nationale" (a state owned printing works) Paris, under the auspices of the French Ministry of Finance, Palais du Louvre, Paris. (Direction generale des Douanes).

[fol. 4875] Proces—Verbal de Constat

L'an mil neuf cent quarante sept, et le Douze Juin.

A la requête des Etablissements Timken, société anonyme dont le siège est à Asnieres, 5 Quai Aulagnier agissant poursuites et diligences de ses directeur et administrateurs y domiciliés.

Il m'a été exposé par Monsieur Gautrot représentant ladite société:

Que la Maison Timken await fait dresser un certain nombre de tableaux statistiques présentés et établis d'après les tarifs de la douane francaise tels qu'ils figurent aux documents statistiques conservés dans les bureaux de la direction des douanes, 7 Rue Euler à Paris.

Qu'en vue de certifier l'exactitude des chiffres portés aux dits tableaux et leur conformité avec ceux des registres tenus à la disposition du public, la société requérante me requérait de me transporter sur place, dans les bureaux de la direction des Douanes, d'accord avec cette administration pour procéder à toutes vérifications utiles.

Déférant à cette réquisition,

[fol. 4876] Je, Georges Bernard, Huissier près le Tribunal Civil de la Seine, séant à Paris, y demeurant 27 Boulevard des Italiens, soussigné;

Me suis transporté ce jour à Paris, 7 Rue Euler, à la direction du Service des Douanes, et là étant à Quatorze Heures Trente de relevée, sur l' autorisation expresse que m'a accordée le sous-chef du service rèmplaçant le chef de service empêché, j'ai procédé comme suit:

Monsieur Gautrot m'a remis une première série de sept tableaux contenant les chiffres relatifs aux importations françaises de 1928 à 1946.

J'ai compulsé l'une après l'autre les publications correspondant aux dits tableaux et j'ai constaté que les chiffres

inscrits dans les tableaux préparés par la société Timken sont rigoureusement conformes à ceux des publications que j'ai compulsés; observation est faite toutefois en ce qui concerne l'année 1946, les chiffres de la direction des Statistiques sont inscrits à la main et ne sont pas définitifs.

Les sept tableaux relatifs aux importations sont annexés au présent procès-verbal sous le numéro 1 à 7.

Ensuite, Monsieur Gautrot m'a représenté une série de [fol. 4877] sept autres tableaux concernant les exportations.

Mêmes observations qu'en ce qui concerne les importations, et mêmes remarques en ce qui concerne l'année 1946, lesdits tableaux sont annexés au présent procès-verbal sous le numéro 1 à 7, avec la mention exportation dans le coin de chaque feuille.

Ces constatations faites, ma mission terminée, je me suis retiré.

Et, de tout ce que dessus, j'ai fait et dressé le présent procès-verbal de Constat pour servir et valoir ce que de droit.

Cout: (illegible).

[fol. 4878] REPORT OF ASCERTAINMENT

In the year nineteen hundred and forty seven on the twelfth day of June.

(1) At the request of Etáblissements TIMKEN, French Joint Stock Company, the head office of which is in ASNIERES, 5 Quai Aulagnier, acting proceedings and diligences of its manager and directors domiciled there.

Mr. GAUTROT, representative of the said Company stated to me that:

The firm TIMKEN had drawn up a certain number of statistic tables shown and established according to the tariffs of the French Customs such as they appear in the statistical documents in safekeeping in the offices of the Customs management at seven rue Euler, PARIS.

That with a view to certifying the accuracy of the figures shown in the said tables and their conformity with those of the registers kept at the disposal of the public, the applicant company requested me to proceed to the offices of the Customs management, with the consent of that

administration in order to proceed to all useful verifications.

Acceding to that request

I, Georges BERNARD, court officer attached to the Civil Tribunal of the Seine, sitting in Paris, residing there at number 27, boulevard des Italiens, undersigned;

I proceeded this day to No. 7 rue Euler, to the management of the Customs Department and being there at fourteen hours thirty, upon the express authorization granted [fol. 4879] to me by the assistant head of the department replacing the head of the department, otherwise engaged, I effected the following operations:

Mr. GAUTROT handed me a first series of seven tables made up of figures relative to French importations for the years 1928 to 1946.

I examined, one after the other, publications corresponding to the said tables and I ascertained that the figures entered in the tables prepared by the Company TIMKEN are in strict conformity with those of the publications I examined; the remark is made however in connection with the year 1946 that the figures of the Statisties Department have been entered in writing and are not final.

The seven tables connected with importations are annexed to the present report under numbers 1 to 7.

Mr. GAUTROT then handed me a series of seven tables connected with exportations.

The remarks are the same as those for importations also those for the year 1946; the said tables are annexed to the present report under numbers 1 to 7 with the mention exportation in the corner of each sheet.

When those ascertainments were ended, my mission being over, I withdrew.

Concerning all the foregoing I have made out and drawn up the present Report of Ascertainment to be of use and of value as shall be rightful.

Cost four thousand nine hundred and twenty five francs including stamps of annexe. Signed Georges Barnard. Registered in Paris, Third Huissiers, 16th June 1947. Folio 96 Square 33 dues sixty francs. Sgd. Illegible. Attached to the said report are the fourteen sheets referred to in the said report.

(2) Ministry of National Economy and Finances Manage-

ment General of Customs, 1st Division 2nd Bureau No. 737, TARIFF. PARIS, 14th June 1947. Gentlemen, *Object* Customs dues on bearings and spare parts and components for those bearings *Reference* Your letter Ca 47/5.416 AG/GP of 11th June 1947. In reply to your letter mentioned as reference I have the honor to remit you attached, after having had it verified and checked by my services, the statement you submitted to me concerning the rates of Customs dues that have been levied on certain bearings and their component parts since the year 1928. I remain, Yours truly, The Director Sgd. Illegible (the stamp). The statement referred to is attached to that letter and bears the certification of the Customs Director dated in Paris on the 14th June 1947.

(3) Societe Anonyme Francaise TIMKEN (French Joint Stock Company) Tapered Roller Bearings Head Office 5 to 11 Quai Aulagnier ASNIERES (Seine) Capital Frs eleven million entirely paid up. REPORT CONCERNING THE STEPS AND APPLICATIONS TO BE MADE IN ORDER TO OBTAIN, IN FRANCE, IMPORTATION LICENCES FOR BEARINGS, SPARE PARTS AND COMPONENT PARTS FOR BEARINGS.

1. Make out an application, in six copies, for an Importa-[fol. 4880] tion authorization, on the special printed form supplied by the French Exchange Control.

This application is transmitted, by the Importer, to the Exchange Control at 8, rue de la Tour-des-Dames, PARIS where it is registered and, within a period of about eight days, the Control informs the Importer as to the number under which the application has been registered.

2. The application for authorization to import is then sent, by the Exchange Control, to the Ministry for Industrial Production, Management of Electrical Mechanical Industries Precision Mechanics Department, at 41, Avenue Hoche, PARIS which is in charge of the "BEARINGS" Section.

According to the credits allotted monthly by the MINISTRY of FINANCE to that Department, so does the latter grant or refuse a favorable reply to the applications for licenses.

3. The Precision Mechanics Department sends the application for license authorization, to the Exchange Control with the reply.

4. If the Department has given a favorable reply, the Exchange Control authorizes delivery of the license, send-

ing such license to the Importer, within fifteen days after the Ministry of Industrial Production has made its decision.

In the most favorable cases, that is to say, when the Ministry of Industrial Production has adequate credits, an Importation license is granted within a period of approximately two months.

5. Should the Ministry of Industrial Production be unable to give a favorable reply, through lack of credits, the Exchange Control returns the refused application for a license, to the Importer. It sometimes happens that a license is granted for only a part of the requested value; this compels the Importer to submit a fresh application for the difference, thus incurring a further delay of about two months.

(4) Report on the French Production of Bearings

In France, the total consumption of steel for bearings, monthly, is round about *1,600 tons* (French steel and imported steel).

Taking into account the fact that for the Société Anonyme Francaise Timken, consumption of steel for bearings is about: *150 to 160 tons a month* the approximate percentage of the production of Société Anonyme Francaise Timken, in proportion to the total French production, is therefore around 10%.

I, the undersigned, N. N. Gourot, Sworn Translator to the French Law Courts, Ex-translator to the French Supreme Command (Intelligence Service, otherwise Second Bureau) fully qualified to translate from French into [fol. 4881] English and vice versa Make Oath and Certify that I have made the foregoing translations which are true, correct and entire transcripts of the relative French originals, visaed by me "ne varietur" sub Number 21856 1. 2. 3. 4.

Paris, this twentieth day of June 1947.

Signature illegible.

DEFENDANT'S EXHIBIT 43

1893

EXPORTATIONS FROM [illegible] 1918 A 1946

PAISES A QUE FUERON EXPORTADOS [illegible] 1918 A 1946

SOLD AND SHIPPED TO [illegible] 1918 TO 1946

[illegible] 1

ANNEE	ETATS-UNIS	PAYS-BAS	SUISSE	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
YEARS	UNITED STATES OF AMERICA	GREAT BRITAIN	SWEDEN	GERMANY	SWITZERLAND	ITALY	BELGIUM AND LUXEMBOURG	OTHER COUNTRIES	[illegible]	[illegible]
1918	31	242		37	370	98	373	1.731	265.200	7.560.000
1919		130	3	34	51	24	593	869	170.400	5.920.000
1930		29	14	41	20		453	713	128.000	4.135.000
1931	15	41		43	19		258	689	70.500	2.465.000
1932	55	21		46	10		219	429	77.700	2.491.000
1933		21		7	30		265	337	76.000	2.552.000
1934					44		110	1.561	171.500	4.271.000
1935					30		196	1.091	131.700	3.013.000
1936		18	54		35		430	1.387	171.400	4.844.000
1937	91	50		154			246	2.021	260.200	8.570.000
1938	110	350		599			180	3.810	507.900	19.618.000
1939		256	93	226	128		283	1.734	288.000	11.172.000
1940		184		172	11		131	1.045	157.300	7.693.000
1941				4.640				514	525.400	38.129.000
1942				11.817				350	1.279.700	101.372.000
1943				2.116				162	227.800	25.586.000
1944				504	3		32	6	54.500	7.695.000
1945							55	175	23.000	5.793.000
1946			14	146	1		196	308	57.500	21.590.000
	306	1.422	158	20.592	570	122	3.830	19.442	4.644.200	284.389.000

4882

4883

1894

RECORD

P.1895-1925

EXPORTATIONS FRANCAISES de 1928 à 1946

FRENCH EXPORTS FROM 1928 TO 1946

ROULEMENTS SIMPLES à ROULEAUX ou à GALETS - BUTEES et ROULEMENTS de ROULEAUX CYLINDRIQUES

SINGLE ROW ROLLER BEARINGS - THRUST BEARINGS AND CYLINDRICAL ROLLER BEARINGS

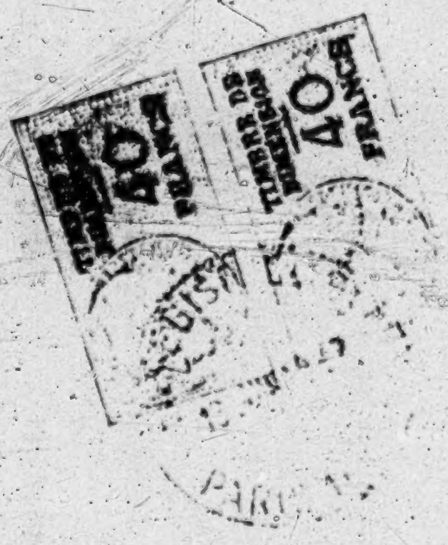
NUMERO de TARIF de la DOUANE FRANCAISE : 533 SEPTIES B

LIST PRICE NUMBER OF THE FRENCH CUSTOMS

ANNEES	ETATS-UNIS	GRANDE BRETAGNE	SUEDE	ALLEMAGNE	SUISSE	ITALIE	BELGIQUE et LUXEMBOURG	AUTRES PAYS	POIDS TOTAL en KILOGRAMMES	VALEUR en FRANCS
YEARS	UNITED STATES OF AMERICA	GREAT BRITAIN	SWEDEN	GERMANY	SWITZERLAND	ITALY	BELGIUM AND LUXEMBURG	OTHER COUNTRIES	TOTAL WEIGHT KILO	VALUE IN FRANCS
1928										
1929										
1930										
1931										
1932										
1933										
1934										
1935										
1936										
1937										
1938										
1939										
1940										
1941										
1942				908				83	99.100	I. .404.000
1943				243			32		27.500	4.499.000
1944					I		4	9	3.400	I.150.000
1945										
1946	29			25	7		58	151	47.000	8.334.000
	29			I.176	8		114	243	157.000	6.287.000

1896

4885



EXPORTATIONS FRANCAISES de 1928 à 1946

FRENCH EXPORTS FROM 1928 TO 1946

ROULEMENTS OU BUTEES à DOUBLE RANGEE - ROULEMENTS PORTANT LES CHARGES AXIALES ET RADIALES

DOUBLE ROW JOURNAL AND THRUST BEARINGS - BEARINGS WITH STANDING RADIAL AND THRUST LOADS

NUMERO de TARIF de la DOUANE FRANCAISE : 533 SEPTIES C

LIST PRICE NUMBER OF THE FRENCH CUSTOMS

ANNEES / YEARS	ETATS-UNIS / UNITED STATES OF AMERICA	GRANDE BRETAGNE / GREAT BRITAIN	SUEDE / SWEDEN	ALLEMAGNE / GERMANY	SUISSE / SWITZERLAND	ITALIE / ITALY	BELGIQUE et LUXEMBOURG / BELGIUM AND LUXEMBURG	AUTRES PAYS / OTHER COUNTRIES	POIDS TOTAL en KILOGRAMMES / TOTAL WEIGHT KILO	VALEUR en FRANCS / VALUE IN FRANCS
1928										
1929										
1930										
1931										
1932										
1933										
1934										
1935										
1936										
1937										
1938										
1939										
1940										
1941										
1942				I.346				I7	I36.300	I8.043.000
1943				I60			I8	6	I8.400	2.973.000
1944							3	20	2.300	417.000
1945				8	3		2	3I	4.600	I.773.000
1946	2			I.5I4	3		23	74	I6I.600	23.206.000
	2									

4887

BIBLIOTHÈQUE NATIONALE R.F. 40 FRANCS

1898

4887

BIBLIOTHÈQUE NATIONALE R.F. 40 FRANCS

1898

EXPORTATIONS FRANÇAISES de 1928 à 1946

FRENCH EXPORTS FROM 1928 TO 1946

BILLES de ROULEMENTS en METAL COMMUN - CALIBREES

ORDINARY STEEL BEARING BALLS - GRADED

NUMERO de TARIF de la DOUANE FRANÇAISE : 633 MODIFIED D

LIST PRICE NUMBER OF THE FRENCH CUSTOMS

ANNEE YEARS	ETATS-UNIS UNITED STATES	GRANDE BRETAGNE GREAT BRITAIN	SUEDE SWEDEN	ALLEMAGNE GERMANY	SUISSE SWITZLAND	ITALIE ITALY	BELGIQUE ET LUXEMBOURG BELGIUM AND LUXEMBURG	AUTRES PAYS OTHER COUNTRIES	POIDS TOTAL en KILOGRAMMES TOTAL WEIGHT KILO	VALEUR en FRANCS VALUE IN FRANCS
1928		26			IC		15	75	[illegible].000	646.000
1929		II				60	17	47	33.500	977.000
1930		5		3	4		4	108	[illegible].400	425.000
1931	26	162			7			78	47.300	648.000
1932		87					4	83	17.400	427.000
1933		7					7	81	9.500	280.000
1934										
1935										
1936										
1937										
1938										
1939										
1940										
1941										
1942										
1943				57				I	5.8[illegible]	590.000
1944				I5			3		[illegible].500	171.000
1945							37		3.700	708.000
1946					I2		I2	I5	3.900	719.000
	26	298		75	33	60	99	688	I27.900	5.59I.000

4889

1900

EXPORTATIONS FRANÇAISES de [illegible] 1946

FRENCH EXPORTS FROM 1928 TO 1946

TOULEAUX et GALETS FINIS

FINISHED ROLLERS

NUMERO de TARIF des DOUANES FRANÇAISES : 533 SEPTIES B

LIST PRICE NUMBER OF THE FRENCH CUSTOMS

ANNEE YEARS	ETATS-UNIS UNITED STATES OF AMERICA	GRANDE BRETAGNE GREAT BRITAIN	SUEDE SWEDEN	ALLEMAGNE GERMANY	SUISSE SWITZERLAND	ITALIE ITALY	BELGIQUE et LUXEMBOURG BELGIUM AND LUXEMBURG	AUTRES PAYS OTHER COUNTRIES	POIDS NET en KILOGRAMMES TOTAL WEIGHT KILO	VALEUR en FRANCS VALUE IN FRANCS
1928					1		3	4	800	12.000
1929				3	2		18	10	3.300	102.000
1930							30	40	7.000	226.000
1931		19		4			17	38	7.800	212.000
1932			5	5			17	50	7.700	197.000
1933							32	65		134.000
1934										
1935										
1936										
1937										
1938										
1939										
1940										
1941										
1942										
1943				191				7	19.800	3.775.000
1944				138			11		14.900	2.498.000
1945							6	7	1.300	584.000
1946			1				6	67	7.400	1.719.000
	19	6	341	3			140	249	75.800	9.459.000

4890

4891

1902

PIECES DETACHEES de ROULEMENTS ANNULAIRES A BILLES EN METAL COMMUN (A L'EXCLUSION DES BILLES, ROULEAUX ET AIGUILLES)

JOURNAL AND THRUST BALL BEARING COMPONENTS ORDINARY STEEL THRUST BEARING COMPONENTS (EXCLUDING BALLS AND ROLLERS) (IN COVERS AND PARTS IN THE GREEN

NUMERO de TARIF de la DOUANE FRANÇAISE : 533 bis Tarif Fa

LIST PRICE NUMBER OF THE FRENCH CUSTOMS

ANNEES / YEARS	ETATS-UNIS / UNITED STATES OF AMERICA	GRANDE BRETAGNE / GREAT BRITAIN	SUEDE / SWEDEN	ALLEMAGNE / GERMANY	SUISSE / SWITZERLAND	ITALIE / ITALY	BELGIQUE et LUXEMBOURG / BELGIUM AND LUXEMBURG	AUTRES PAYS / OTHER COUNTRIES	POIDS TOTAL en KILOGRAMMES / TOTAL WEIGHT KILO	VALEUR en FRANCS / VALUE IN FRANCS
1928										
1929										
1930										
1931										
1932										
1933										
1934										—
1935										
1936										
1937										
1938										
1939										
1940										
1941										
1942										
1943										
1944			50						5.000	I.087.000
1945										
1946										
			50						5.000	I.087.000

4892

6
Exportateurs

4)
Annexe à mon Traité maritime
du courtier en gare de ce jour
12 Juin 1904.

Alliance

4893

1904

EXPORTATION FRANCAISES de 1928 à 1946

FRENCH EXPORTS FROM 1928 TO 1946

PIECES DETACHEES de ROULEMENTS ANNULAIRES à BILLES OU à GALETS OU ROULEAUX, PIECES DETACHEES DE BUTEE en METAL COMMUN (à l'EXCLUSION des BILLES, ROULEAUX et GALETS) PIECES TRAVAILLEES

BALL AND ROLLER JOURNAL BEARING COMPONENTS ORDINARY STEEL THRUST BEARING COMPONENTS (EXCLUDING BALLS AND ROLLERS) MACHINED PARTS

NUMERO DE TARIF DE LA DOUANE FRANCAISE : 533 SEPTIES Fb

LIST PRICE NUMBER OF THE FRENCH CUSTOMS

ANNEE / YEARS	ETATS-UNIS / UNITED STATES OF AMERICA	GRANDE BRETAGNE / GREAT BRITAIN	SUEDE / SWEDEN	ALLEMAGNE / GERMANY	SUISSE / SWITZERLAND	ITALIE / ITALY	BELGIQUE ET LUXEMBOURG / BELGIUM AND LUXEMBURG	AUTRES PAYS / OTHER COUNTRIES	POIDS TOTAL en KILOGRAMMES / TOTAL WEIGHT KILO	VALEUR en FRANCS / VALUE IN FRANCS
1928				51	90			7	14.800	78.000
1929		24		3	3			108	13.800	344.000
1930		23			3		16	39	8.100	271.000
1931		2			7		9	85	4.300	195.000
1932				4	7		18	38	6.700	143.000
1933			3	3			21	50	7.700	209.000
1934										
1935										
1936										
1937										
1938										
1939										
1940										
1941										
1942										
1943				755				3	75.800	8.911.000
1944				572					57.200	10.518.000
1945							3	6	900	322.000
1946		I			I		4	7	I.300	I.613.000
		50	3	I.308	III		71	283	190.600	22.000.000

4895

DEFENDANT'S EXHIBIT D-39

[fol. 4896] DEFENDANT'S EXHIBIT 44

Certified Translation

Notarial Register No. 141, year 1928

Berlin, May 5, 1928.

Before the undersigned Notary in the area of the Court of Appeals at Berlin Counselor at Law Dr. Wilhelm Beutner there appeared this day:

1) the civil engineer Max Prausnitzer of Berlin W.50 Rankestrasse 5.

2) the merchant Michael Bruce Urquhart Dewar, No. 4 Central Buildings, Westminster (England)

3) the merchant William Eric Louis Seward, No. 128 Piccadilly, London (England)

The parties sub (1) and (3) are personally known to the Notary, the party sub (2) identified himself to the satisfaction of the Notary by exhibiting his passport, bearing his photograph, No. 492277, issued by the Foreign Office at London on July 11, 1927.

Mr. Dewar and Mr. Seward declared that they do not understand the German but only the English language. So also the Notary found that Messrs. Dewar and Seward do not understand the German language. For this reason the sworn interpreter of the English language, the American lawyer Ludwig Zeisler, Berlin, W. Friedrichstrasse 59 was called in.

The party sub (1) and the party sub (2) acted in their own behalf; the party sub (3) acted under a power of attorney in behalf of Mr. Henry Timken of Canton, Ohio, U.S.A. and the British Timken Limited, a company located in Cheston Road, Aston, Birmingham, England.

I

The party sub (1), civil engineer Max Prausnitzer is the sole member of Deutsche Timken Gesellschaft mit beschrankter Haftung of Berlin. He herewith holds a general [fol. 4897] meeting of the Deutsche Timken Gesellschaft mit Beschrankter Haftung and resolves:

1

The articles of incorporation of Deutsche Timken Gesellschaft mit beschrankter Haftung are hereby given the wording appearing from the annex hereto in lieu of the previous wording.

2

The capital stock of the company is increased from 5000 Reichsmarks to 400,000 Reichsmarks. Commencing on January 1, 1928 the new shares are entitled to participation in the profits of the company. The taking over of the new shares is provided for by II of this Agreement and is consented to.

II

All of the parties declared:

1

The increased capital stock shall be taken over as follows:

a) Mr. Henry Timken a common share of	RM.	225,000
b) British Timken Limited a common share of	RM.	4,000
and a preferred share of	RM.	1,000
c) Mr. Michael Bruce Urquhart Dewar a common share of	RM.	105,000
d) Mr. Prausnitzer a common share of	RM.	60,000
plus his previous shares of	RM.	4,800
and	RM.	200

Civil engineer Max Prausnitzer pays for his new common share of RM. 60,000 by a transfer of the trademark registered for him in the Federal Patent Office in class 10, No. 225230, file No. 15319. The value of such contribution is fixed at RM. 60,000. In this manner the share of Mr. Prausnitzer of RM. 60,000 is fully paid in. Mr. Timken, British Timken Limited and Mr. Dewar pay for all of their [fol. 4898] shares in cash and are obligated to make one half of their payments prior to the registration of the company.

3

Mr. Prausnitzer continues to be the sole managing director (Geschaftsfuhrer) of the company irrevocably for the period of five years commencing on January 1, 1928 and

ending on December 31, 1932. The detailed provisions governing the employment of Mr. Prausnitzer are contained in a contract of employment.

4

As members of the first Board of Supervisors (Aufsichtsrat) there are hereby appointed:

a) Mr. Henry Timken.
b) Mr. Michael Bruce Urquhart Dewar.
c) Mr. Andrew Jameson Matthews Duncan.
d) Mr. William Eric Louis Seward.
e) Freiherr Trabart von und zu der Tann, Rathsamhausen.

5

Supplemental Agreement

The parties empower Mr. Gert von Natzmer of Berlin-Schmargendorf, 17 Friedrichshallerstrasse, to declare any changes of a formal character which the Commercial Register Judge may require with respect to these declarations or to the annex, with binding effect upon all the contracting parties. To such extent the agent shall be released from the restrictions contained in § 181 of the Civil Code.

III

The parties and their constituents enter into the following agreement:

1

In the event that the capital stock of the company is increased the voting power of the preferred share shall be increased in such manner that in all cases where according [fol. 4899] to the provisions of the German Law a simple majority of the votes is sufficient the preferred share shall be entitled to at least one vote more than the votes pertaining to the entirety of the common shares.

2

Mr. Prausnitzer affirms that, so far as he knows, no protective rights other than the trademark mentioned in Section II, 2 hereof exist with or in connection with the word "Timken" in Germany. Should any protective rights

of such character nevertheless be in existence in Germany, Mr. Prausnitzer agrees, if required by the Deutsche Timken Gesellschaft m.b.H. to use all means within his power to transfer such rights to Deutsche Timken Gesellschaft mit beschrankter Haftung. The foregoing declaration, Mr. Prausnitzer also makes to the Deutsche Timken Gesellschaft mit beschrankter Haftung, with direct effect in favour of such company.

Mr. Prausnitzer guarantees that the balance-sheet as of December 31, 1927, which has been handed by him to the party sub (3) this day, signed by him for the purpose of identification, is correct and especially that the claims and other assets of the Company, exclusive of objects of no material value, will upon realization bring at least the amounts therein stated and that the liabilities of the company do not exceed the amounts therein stated. Mr. Prausnitzer furthermore guarantees that the company had sufficient earnings from December 31, 1927 to March 31, 1928 to cover the amounts of his salary and commission for such period stipulated in his above mentioned contract of employment. In conclusion Mr. Prausnitzer warrants that the stock on hand, cash, outstanding accounts as well as bills payable of the company as per December 31, 1927 are correctly stated in the balance sheet delivered and also that the declaration written at the end of such balance sheet is correct.

[fol. 4900]

IV

All disputes regarding the conclusion, interpretation and performance of this agreement and the annex thereto shall be decided by a board of arbitration, eliminating proceedings before the courts. Each party appoints an arbiter and the arbiters so appointed choose a chairman. If they are unable to agree upon a chairman, the same shall be appointed by the president of the Chamber of Commerce (Industrie- und Handelskammer) of Berlin. The award of the board of arbitration is made by a majority of the votes. In case of a tie the chairman is to give the casting vote.

V

The company will bear the stamp duties of this contract and of the contract of employment to be entered into between the company and Mr. Prausnitzer as well as the

costs of registration of the above resolutions in the Commercial Register.

The notarial costs and the costs incurred by Mr. Prausnitzer for legal advice in connection with the conclusion of the contract are borne by British Timken Ltd.

The record was read, translated to the parties sub (2) and (3) into the English language by the interpreter, approved by the parties and personally signed by them as well as by the interpreter as follows:

Michael Bruce Urquhart Dewar, William Eric Louis Seward, Max Prausnitzer, Ludwig Zeisler, Dr. Beutner, Notary.

Annex I to the notarial record of this day. Notarial Register No. 141, year 1928, Berlin, May 5, 1928.

Dr. Beutner, Notary.

S. 1

The name of the company is:

[fol. 4901] "Deutsche Timken Gesellschaft mit beschränkter Haftung".

The location of the company is in Berlin.

S. 2

The object of the enterprise is the manufacture and sale of anti-friction bearings of all kinds and of component parts of all kinds of machinery fitted with anti-friction bearings.

S. 3

The amount of the capital stock is 400,000 Reichsmarks, divided into common shares of the aggregate amount of 399,000 Reichsmarks (shares A) and a preferred share of 1000 Reichsmarks (share B).

The common shares belong to the following members:

(1) Mr. Henry Timken, RM. 225,000.

(2) British Timken Limited, RM. 4,000.

(3) Mr. Michael Bruce Urquhart Dewar, RM 105,000.

(4) Mr. Max Prausnitzer, RM. 4,800, 200, 60,000, being common shares in the aggregate amount of RM. 65,000.

The preferred share in the amount of RM. 1,000 belongs to British Timken Limited.

The preferred share of RM. 1,000 is indivisible. The transfer of the preferred share or of a common share or part thereof to persons other than members of the company requires the consent of the general meeting. The resolutions of the general meeting are passed by a three quarters majority, the preferred share having ten votes only.

The general meeting is obligated to give its consent in the following cases:

(1) Where evidence of the written consent of shareholders representing at least three fourths of the capital stock of the company is furnished, the general meeting is obligated to consent to a sale and transfer in accordance with such consent.

[fol. 4902] (2) A member of the company may give notice to the chairman of the Board of Supervisors or to his authorized representative of an intention to sell a common share or part thereof. Such notice shall state the price for the share or part thereof and shall empower the chairman of the Board of Supervisors or his representative to transfer the share or part thereof at the price stated to another member of the company. Such declaration is irrevocable without the consent of the chairman of the Board of Supervisors or his representative for a period of 60 days.

A member who upon enquiry made by the Chairman or his representative expresses his willingness within the period above mentioned to take over the share or part thereof at the price stated is entitled upon payment of the price stated to acquire the share or part thereof. Payment of the purchase price to the offering member shall be made in the manner to be determined by the chairman of the Board of Supervisors or his representative not later than 28 days after the purchasing member has declared his readiness to acquire the share or part thereof.

If the chairman of the Board of Supervisors or his representative shall not within 60 days from the date of offer find a member ready to acquire the share or part thereof at the said price he shall give written notice thereof to the offering member. In such case the general meeting is obligated to consent to the sale of the share or part thereof to another party, provided however that the sale and

transfer of the share or part thereof shall be made within one month from the giving of such notice and that it shall not be made at a price below that stated to the chairman of the Board of Supervisors or his representative at the time of offering, nor shall such price be lowered through the medium of rebates, deductions or similar understandings.

The chairman of the Board of Supervisors or his repre- [fol. 4903] sentative shall offer the share or part thereof to all the members of the company upon the terms stated and in the case of several acceptances apportion it among the applicants in proportion to their holdings of common shares.

The assignment of parts of shares does not require any consent other than that above mentioned.

S. 5

If a member owning less than one quarter of the capital stock of the company dies, becomes incapable of disposing, becomes a bankrupt or insolvent, or if Mr. Prausnitzer retires from the company or ceases to be active in behalf of the same, he or the heirs or the legal representative or the trustee in bankruptcy, as the case may be, are obligated to offer his share in the company to the other members for purchase through the chairman of the Board of Supervisors or his representative. If the chairman of the Board of Supervisors or his representative does not within 90 days find a member ready to take over the share, he shall give notice thereof to the heirs of the deceased member or to their legal representative or to the trustee in bankruptcy, as the case may be, and the general meeting is obligated to give its consent to the sale of the share to another person, provided however that the sale shall not be made at a price below that stated to the chairman of the Board of Supervisors or his representative and provided further that it shall not be lowered through the medium of rebates, deductions or similar understandings.

The chairman of the Board of Supervisors or his representative shall offer the share or part thereof to all the members upon the terms stated and in the case of several acceptances he shall apportion same among the applicants in proportion to their holdings of common shares.

[fol. 4904] S.6

In case Mr. Prausnitzer dies, becomes incapable of disposing or ceases to exercise any activity in behalf of the company or becomes a bankrupt he or his heirs or his legal representative or the trustee in bankruptcy, as the case may be, shall receive as the price for his shares an amount to be determined by arbitration, but such amount shall not be smaller than the par value of the share. If there are no members willing to pay such price, the company is obligated to retire such share and to pay to Mr. Prausnitzer or to his heirs the amount calculated in the manner aforesaid.

S.7

The appointment of the managing director as well as the revocation thereof is made by the general meeting. The conclusion of the contract with the managing director is effected by written agreement with the chairman of the Board of Supervisors.

S.8

A Board of Supervisors is formed, composed of at least three individuals. A change of the membership of the Board of Supervisors does not require notice to the Court or publication. The term of office of the members of the Board of Supervisors is one year. Upon the expiration of the term of office the members of the Board of Supervisors continue to hold office until new elections are held. If any member of the Board of Supervisors retires before the expiration of his term, a substitutional election shall be held upon the application of at least two members of the company. The resolutions of the Board of Supervisors are adopted by a majority of the individual votes present at meetings or pursuant to written or telegraphic expressions.

The members of the Board of Supervisors may cause [fol. 4905] themselves to be represented by proxies. A proxy may represent several members of the Board of Supervisors. Any member of the Board of Supervisors may be represented by another member of the Board of Supervisors as proxy. In such case the representing member of the Board of Supervisors may also vote in behalf of the member or members of the Board of Supervisors rep-

resented by him and add the vote of his constituent or constituents to his own vote.

The Board of Supervisors may appoint committees; its responsibility shall not be affected thereby.

S.9

The Board of Supervisors shall settle the subjects to be submitted to the meeting of the members of the company, so also in particular the balance sheet.

The members of the Board of Supervisors except Mr. Seward receive reimbursement of their reasonable cash expenditures and such remuneration as shall be determined by the general meeting by a three quarters majority, the preferred share having 10 votes only. The compensation payable to all of the members of the Board of Supervisors shall not however exceed 10% of the profits of the company for the fiscal year.

S. 10

Each RM. 100 of a common share is entitled to one vote in the general meeting. The preferred share is entitled to 4000 votes in all cases where according to the provisions of the German Law a simple majority of the votes is sufficient; in the case where the law requires an increased majority, be it compulsory or optional, the preferred share is entitled to 10 votes. In lieu of voting at the general meetings votes may be taken in writing or by telegram, addressed to the chairman of the Board of Supervisors [fol. 4906] or his representative, except where the law prescribes notarial authentication of the resolutions of the general meeting. The representation by proxies is permissible.

S. 11

The annual regular meeting of the members of the company shall take place on the second Thursday after the third Monday in March in each year.

S. 12

The fiscal year of the company is the calendar year commencing on January 1st and ending on December 31st.

S. 13

The balance sheet shall be prepared by the managing director during the first two months after the close of a

fiscal year and examined by the Board of Supervisors. The approval of the balance sheet formation of a reserve fund, fixing the dividends and discharge to be granted to the managing director are passed upon by the regular meeting of the members of the company pursuant to proposal of the Board of Supervisors.

The Board of Supervisors is in particular authorised to appoint accountants, who shall examine the books of the company and have access to all books, records and writings of the company at all times. The employes of the company are obligated to give all assistance and information to the accountants so that they may be able to discharge their duties in the best manner possible. A report of the accountants upon the balance sheet and the book keeping shall be submitted to the regular annual meeting of the members of the company.

S. 14

Unless the meeting of the members of the company resolves differently the net profits are distributed among the [fol. 4907] members of the company.

Out of the net profits distributable among the members the preferred share is entitled to a preferred cumulative dividend of five per cent per annum. The remainder of the net profits shall be apportioned pro rata amongst the common shares.

Upon a dissolution of the company the assets remaining after providing for the liabilities shall be distributed among the common shares and the preferred share according to the par value thereof.

(Notary's bill of costs and disbursements)

I hereby certify that the above and foregoing is a correct and complete translation of the German original submitted to me.

Berlin, W.8. May 11, 1928.

Ludwig Zeisler, official translator of the English language in and for the area of the Court of Appeals in Berlin, Germany.

[fol. 4908] CERTIFIED TRANSLATION

Berlin, May 8, 1928.

Before the undersigned Notary in the area of the Court of Appeals at Berlin Counselor at Law Dr. Wilhelm Beutner there appeared this day:

1) the civil engineer Max Prausnitzer of Berlin W. 50, Rankestrasse 5.

2) the merchant Michael Bruce Urquhart Dewar, No. 4, Central Buildings, Westminster, England.

3) the merchant William Eric Louis Seward, No. 128 Piccadilly, London, England.

The parties sub (1) and (3) are personally known to the Notary, the party sub (2) identified himself to the satisfaction of the Notary by exhibiting his passport, bearing his photograph, No. 492277 issued by the Foreign Office at London on July 11, 1927.

Mr. Dewar and Mr. Seward declared that they do not understand the German but only the English language. So also the Notary found that Messrs. Dewar and Seward do not understand the German language. For this reason the sworn interpreter of the English language, the American lawyer, Ludwig Zeisler, Berlin W. Friedrichstrasse 59 was called in.

The party sub (1) and the party sub (2) acted in their own behalf; the party sub (3) acted under a power of attorney in behalf of Mr. Henry Timken of Canton, Ohio, U. S. A. and British Timken Limited, a company located in Cheston Road, Aston Birmingham, England.

The parties declared:

Our declaration made in the notarial proceeding of May 5, 1928—Notarial Register No. 141 of the year 1928 of the officiating Notary—we hereby amend by omitting in Article 4 of the said notarial proceeding the party sub (e), Freiherr [fol. 4909] Trabart von und zu der Tann, Rathsamhausen.

Article 4 will therefore read as follows: "As members of the first Board of Supervisors there are hereby appointed:

a) Mr. Henry Timken,

b) Mr. Michael Bruce Urquhart Dewar,

c) Mr. Andrew Jameson Matthews Duncan,

d) Mr. William Eric Louis Seward."

The record was read, translated to the parties sub (2) and (3) by the interpreter into the English language, approved by the parties and personally signed by them as well as by the interpreter as follows:

Michael Bruce Urquhart Dewar, William Eric Louis Seward, Max Prausnitzer, Ludwig Zeisler, Dr. Beutner, Notary.

Re: Deutsche Timken Gesellschaft mit beschrankter Haftung.

I hereby repeat my notice to the Commercial Register regarding the increase of the capital stock and the amendment of the articles of incorporation of Deutsche Timken Gesellschaft mit beschrankter Haftung of Berlin, made in the notarial declaration of May 5, 1928; so far as legally requisite, I also include in the notice the amendment of the notarial proceeding mentioned in the notarial proceeding of May 8, 1928.

Berlin, May 8, 1928.

Max Prausnitzer.

To the District Court, Berlin-Centre:

I hereby certify that the above and foregoing is a [fol. 4910] correct and complete translation of the German original submitted to me.

Berlin, W. 8. May 11, 1928.

Ludwig Zeisler, Official translator of the English language in and for the area of the Court of Appeals in Berlin, Germany.

[fol. 4911] CERTIFIED TRANSLATION

Contract of Employment

between Deutsche Timken Gesellschaft mit beschrankter Haftung of Berlin and Mr. Max Prausnitzer of Berlin.

1

In accordance with the provisions of this contract Mr. Prausnitzer is made managing director (Geschaftsfuhrer) of Deutsche Timken Gessellschaft mit beschrankter Haftung for a period of five years, that is to say from January 1, 1928 to December 31, 1932. Without his written consent no additional managing director shall be appointed during

such period. Mr. Prausnitzer will regard the conduct and supervision of all the affairs and business of the company as his principal occupation and will devote his entire time and energies thereto. In the execution of his duties and functions Mr. Prausnitzer will be guided by and follow the instructions and orders given to him by the board of supervisors (Aufsichtsrat).

2

This contract terminates,

a) if Mr. Prausnitzer has been unable to fulfil his duties as managing director for a period of six consecutive months,

b) if the turnover of the company (viz. the net amounts of invoices made out by the company in respect of merchandise sold directly or indirectly) does not reach RM. 250,000 in the year 1928, RM.350,000 in the year 1929, RM. 450,000 in the year 1930, RM.900,000 in the year 1931 or RM.1,200,000 in the year 1932 and if for such reason the board of supervisors decides to terminate the contract. The board of supervisors shall however make an appropriate deduction from the above mentioned figures, if the reduction of the turnover has been due to strikes, lock- [fol. 4912] outs, delays in delivery or to any other causes over which Mr. Prausnitzer has no control.

c) if Mr. Prausnitzer becomes a bankrupt, is put under guardianship or resigns from his office with the concurrence of the board of supervisors.

d) if Mr. Prausnitzer dies.

3

In the event mentioned sub (d) the contractual commission and salary of Mr. Prausnitzer shall be paid to his heirs for a period of three months next succeeding his death.

4

The parties hereto regard it as a moral though not a legal obligation that at the end of the five years a further contract shall be entered into between the company and Mr. Prausnitzer, containing such terms and conditions as may be mutually agreed upon, provided that Mr. Prausnitzer will have conducted the business of the company to the satisfaction of the other members of the company.

5

During the life of this contract Mr. Prausnitzer receive a fixed salary of RM.12,000 per year and a commission of 2½% upon the turnover (i.e. the net amounts of invoices collected by the company in respect of merchandise sold directly or indirectly) from January 1, 1928 to the end of the fiscal year 1928; of 2% for the year 1929 up to a turnover of RM.350,000; for the fiscal year 1930 up to a turnover of RM.450,000, for the fiscal year 1931 up to a turnover of RM.900,000 and for the fiscal year 1932 up to a turnover of RM.1,200,000; and of 3% for the fiscal year 1929 and the succeeding fiscal years upon the excess over the foregoing amounts.

[fol. 4913] 6

Mr. Prausnitzer is entitled to receive from the company adequate reimbursement of his proper travelling expenses as well as of other expenses incurred by him in the direct execution of his duties as managing director.

7

Mr. Prausnitzer has the right in each year to take two vacations of not exceeding 4 weeks each, that is to say one in Summer and one in Winter.

8

Without the previous consent of the board of supervisors Mr. Prausnitzer shall not negotiate any of the following transactions:

1) the acquisition sale or encumbrance of real estate,
2) leases running for more than one year,
3) the appointment of procurist,
4) the calling up of amounts unpaid upon shares in the company,
5) the purchase of merchandise exceeding RM.2,000 in any one case.
6 any other transactions which may from time to time be determined by the board of supervisors to be subject to this provision.

The amount expended or caused to be expended by Mr. Prausnitzer for advertising shall not exceed the amount

fixed by the board of supervisors, unless the board of supervisors has previously given its consent. Nor shall Mr. Prausnitzer make any sales upon any basis or at prices other than those fixed from time to time by the chairman of the board of supervisors, unless the chairman of the board of supervisors has previously given his [fol. 4914] express consent.

Mr. Prausnitzer is authorised to employ persons in behalf of the company, whose salaries received by them from the company shall not exceed RM.6,000 per year each. Employes whose aggregate compensation exceeds that amount may be appointed by Mr. Prausnitzer only with the consent of the chairman of the board of supervisors.

Mr. Prausnitzer has the right, with the concurrence of the board of supervisors, to choose suitable persons as procurists. Such procurists may sign only jointly with Mr. Prausnitzer.

The duties of Mr. Prausnitzer as managing director are governed by the provisions of the German law.

9

All disputes regarding the conclusion, interpretation and performance of this agreement shall be decided by a board of arbitration, thus barring proceedings before the regular courts. Each party, that is to say Deutsche Timken G.m.b.H. on the one hand and Mr. Prausnitzer on the other, will appoint an arbiter, the latter will choose a chairman. If they are unable to agree upon a chairman, the latter shall be appointed by the president of the Chamber of Commerce (Industrie-und Handelskammer) in Berlin.

The award of the board of arbitration is made by a majority of the votes.

In the event contemplated in the first paragraph of this article Deutsche Timken G.m.b.H. will be represented by the chairman of its board of supervisors or his substitute.

Berlin, May 5, 1928.

Michael Bruce Urquhart Dewar, William Eric Louis Seward, Max Prausnitzer.

[fol. 4915] The foregoing signatures before me of

1) the merchant Michael Bruce Urquhart Dewar of No. 4, Central Buildings, Westminster, England.
2) the merchant William Eric Louis Seward, of No. 128, Piccadilly, London, England.
3) the civil engineer Max Prausnitzer of 5 Rankestrasse, Berlin W.50.

are hereby authenticated.

Notarial Register No. 142, year 1928. Berlin, May 5, 1928. Dr. Beutner, Notary. (Notarial Seal)

(Notary's Bill of Costs and Disbursements)

I hereby certify that the above and foregoing is a correct and complete translation of the German original submitted to me.

Berlin, W.8. May 15, 1928.

Ludwig Zeisler. Official translator of the English language in and for the area of the Court of Appeals in Berlin, Germany.

[fols. 4916-4917] May, 1928.

Deutsche Timken G.m.b.H.

Copy

Translations of Articles of Incorporation, Agreements, etc.

Stibbard Gibson & Co., 21, Leadenhall Street, E.C.3.

[fol. 4918] DEFENDANT'S EXHIBIT 45

re Deutsche Timken G. M. B. H. (The German Company)

It Is Hereby Agreed between the undersigned Henry Heinzelman Timken of Canton Ohio U. S. A. British Timken Limited of London England Michael Bruce Urquhart Dewar of London England and Max Prausnitzer of Berlin Germany.

1. Each of the parties hereto hereby agrees with each of the other parties hereto that he will forthwith do or cause to be done all things necessary for the purpose of reconstituting the German Company in accordance with the

conditions contained in the Annexure marked A and carrying these conditions into effect and that after such reconstitution he will forthwith do or cause to be done all things necessary for the purpose of securing the completion of an Agreement between Mr. Prausnitzer and the German Company in accordance with the conditions contained in the Annexure B.

2. The Annexures A and B shall be regarded merely as specifying the terms and conditions which are to be embodied in the formal documents to be drawn up in German in accordance with German Law and the formal documents and all the proceedings necessary to give them proper effect in accordance with German Law shall be settled and carried out by or under the supervision of Dr. Wilhelm Beutner of No. 53 Mauerstrasse Berlin after consultation with Mr. Prausnitzer and his lawyer.

3. In particular Dr. Beutner shall settle the terms and conditions of Section 4 of the Annex referred to in Annexure A and for this purpose the following conditions shall apply:

(a) The accounts of the German Company shall be adjusted and a balance sheet showing the financial position of the German Company shall be prepared as at the Thirty-first December One thousand nine hundred [fol. 4919] and twenty seven no allowance being made therein for goodwill trade marks or other like intangible assets and the amount if any owing by Mr. Prausnitzer to the Germany Company or vice versa shall be shown therein apart from his common share of R. M. Five thousand and for this purpose all profits or losses down to the said date shall be credited or debited as the case may be to Mr. Prausnitzer.

(b) Any amount found to be owing to Mr. Prausnitzer in respect of salary for the year One thousand nine hundred and twenty seven shall be paid to him in cash and any further amount found to be owing to Mr. Prausnitzer shall be credited to him in part payment of his new common share and any amount owing by him shall be forthwith paid by him to the German Company in cash.

(c) Mr. Prausnitzer guarantees the accuracy of the said Balance Sheet at the Thirty first December One

thousand nine hundred and twenty seven and that the book debts and other assets of the German Company exclusive of the intangible assets aforesaid will produce and the liabilities of the German Company will not exceed the respective amounts shown in the said Balance Sheet. Mr. Prausnitzer further guarantees that the German Company has since the Thirty first December One thousand nine hundred and twenty seven down to the date hereof earned a profit sufficient to pay his salary and commission for that period under the Agreement in Annexure B.

(d) Mr. Prausnitzer further guarantees that the stocks cash and book debts of the Germany Company [fol. 4920] at the Thirty first December One thousand nine hundred and twenty seven will shew a surplus of not less than RM. 25,899.20 over the liabilities of the German Company at that date inclusive of any amount owing to him in respect of salary for the year One thousand nine hundred and twenty seven but exclusive of any other amount owing to him and exclusive of his common share of R. M. Five thousand.

(e) The aforesaid guarantee can be established by a separate private Agreement collateral to the formal documents if this will be in order.

Dated this Thirteenth day of March One thousand nine hundred and twenty eight.

Henry Heinzelman Timken, by J. F. Strough, Agent.
British Timken Ltd., by M. B. U. Dewar, Director.
M. B. U. Dewar, Max Prausnitzer.

[fol. 4921] Annexure A

Before the undersigned Notary in the area of the Court of Appeals in Berlin there appeared:

1) The Civil Engineer Max Prausnitzer.
2)
3)

The parties are acting

The parties declared:

The party sub 1), civil engineer Max Prausnitzer, is the sole member of "Deutsche Timken Gesellschaft mit beschrankter Haftung" of Berlin (The Company)

The parties hereby agree that the constituents of the party sub 2) viz.

1) Mr. Henry Heinzelman Timken of Canton, Ohio, U. S. A.

2) British Timken Limited of London, England.

3) Mr. Michael Bruce Urquhart Dewar of London, England, shall become members of the Company.

For such purpose they enter into the following agreement:

1) Mr. Prausnitzer will procure the Articles of Incorporation of the Company to have the wording contained in Annex hereto in substitution for and to the exclusion of all existing Articles.

2) The capital stock shall be increased from RM.5,000 to RM.400,000, and is hereby taken over as follows:

a) Mr. Timken a common share of	RM.225,000
b) British Timken Limited a common share of	RM. 4,000
and a preferred share of	RM. 1,000
c) Mr. Dewar a common share of	RM.105,000
d) Mr. Prausnitzer another common share of	RM. 60,000
in addition to his existing common [fol. 4922] share of	RM. 5,000
	RM.400,000

If the capital stock of the Company is increased, the voting power of the preferred share shall be increased in such manner that in the cases mentioned in S.10 of the Articles of Incorporation the preferred share shall be entitled to one more vote than the entirety of the common shares.

3) Mr. Prausnitzer continues to be the sole Managing Director (Geschaftsfuhrer) of the Company without recall for a period of Five years from the 1st January 1928 i. e. until the 31st December 1932. The terms and conditions of employment of Mr. Prausnitzer are laid down in a special contract of employment.

4) As members of the first Board of Supervisors there are appointed herewith:

a) Mr. Henry Heinzelman Timken

b) Mr. Michael Bruce Urquhart Dewar,

c) Mr. Andrew Jameson Matthews Duncan

d) Mr. William Eric Louis Seward

e) Freiherr Trabart von u Zu der Tann Rathsamhausen.

5) Mr. Prausnitzer affirms that no protective rights other than the trade mark mentioned in S.4 of the accompanying Articles of Incorporation exist in Germany. Should any protective rights of such character nevertheless be in existence in Germany, Mr. Prausnitzer agrees to assign or cause to be assigned the same to the Company without cost.

6) All disputes regarding the conclusion, interpretation and performance of this Agreement and the annexes thereto [fol. 4923] shall be decided by a board of arbitration, it being understood that regular legal proceedings are excluded. Each party appoints an arbitrator and the arbiters so appointed choose a chairman, if they do not agree. If they are unable to agree upon a chairman, the same shall be appointed by the President of the Chamber of Commerce (Industrieund Handelskammer) of Berlin. The award of the board of arbitration is made by a majority of the votes. In the event of any equal number of votes, the chairman is to have the casting vote.

Annex

S.1

The name of the Company is "Deutsche Timken Gesellschaft mit beschrankter Haftung".

The location of the Company is in Berlin.

S.2

The object of the enterprise is the manufacture and the sale of anti-friction bearings of all kinds and of component parts of all kinds of machinery fitted with anti-friction bearings.

S.3

The amount of the capital stock is 400,000 reichsmarks divided into common shares of the aggregate amount of 399,000 reichsmarks (shares A) and a preferred share of 1,000 reichsmarks (share B)

The common shares belong to the following members:

[fol. 4924] 1) Mr. Timken	RM. 225,000
2) British Timken Limited	RM. 4,000
3) Mr. Dewar	RM. 105,000
4) Mr. Prausnitzer	RM. 65,000
The preferred share in the amount of belongs to British Timken Limited	RM. 1,000
	RM. 400,000

S.4

Mr. Prausnitzer pays for his new Common Share of RM. 60,000 by assigning the trade mark registered for him in the Imperial Patent Office in Clause 10, No. 225,230., file No. 15-319. The value of such contribution is fixed at such amount and the balance making up the sum of RM.60,000 is paid by Mr. Prausnitzer by means of such consideration as shall be specified herein by Dr. Beutner after consultation with Mr. Prausnitzer and his lawyer so that without involving Mr. Prausnitzer in any further contribution in cash the share of Mr. Prausnitzer of RM.60,000 is fully paid for. Mr. Timken, British Timken Limited and Mr. Dewar pay for all of their shares in cash and agree to make one-half of such payments prior to the registration of the Company.

S.5

The preferred share of RM.1,000 is indivisible. The transfer of the preferred share and the transfer of a common share or part thereof is permissible only with the consent of a General Meeting. The resolution of the General Meeting in the aforesaid case must be passed by three quarter majority, the preferred share only having ten votes.

The General Meeting is obligated to give the consent in [fol. 4925] the following cases:

1) where evidence of the written consent of all the members of the Company is furnished.

2) where a member of the Company has given previous notice to the Chairman of the Board of Supervisors or to his representative of an intention to sell a common share (which includes a part share). Such notice shall state the price for the share and shall empower the Chairman of the

Board of Supervisors or his representative to transfer the share at the price stated to another member of the Company. Such declaration is irrevocable without the consent of the Chairman of the Board of Supervisors or his representative for a period of 60 days.

A member who upon enquiry made by the Chairman or his representative within the period above mentioned expresses his willing-ness to take over the share at the price stated is entitled upon payment of the price stated to acquire the share of the retiring member. The General Meeting is obligated to consent to the transfer and payment of the purchase-price shall be made in the manner to be determined by the Chairman of the Board of Supervisors or by his representative not later than 28 days after the member has declared his readiness to take over the share.

If the Chairman of the Board of Supervisors or his representative shall not within sixty (60) days from the offering date find a member ready to take over the share, he shall give written notice thereof to the offering member. In such case the General Meeting is obligated to consent to the sale and transfer of the share to another party, provided however, that the sale and transfer shall [fol. 4926] be made within one month of the giving of such notice and shall not be made at a price below that stated to the Chairman of the Board of Supervisors or representative at the time of offering, nor shall such price be lowered through the medium of rebates, deductions or similar understandings.

The Chairman of the Board of Supervisors or his representative shall offer the share to all the members upon the terms stated and in the case of several acceptances he shall apportion it among the applicants in proportion to their holdings of common shares.

S. 6

In case of the death lunacy or bankruptcy of any member of the Company holding less than one quarter of the Common Shares his heirs or representatives are obligated to offer his share for purchase to the other members through the Chairman of the Board of Supervisors or his representative. If the Chairman of the Board of Supervisors or his representative does not within 90 days find a member ready

to take over the share he shall give notice thereof to the heirs of the deceased member and the Board of Supervisors and the Company are obligated to give their consent to the sale and transfer of the share to another person provided however, that the sale shall not be made at a price below that stated to the Chairman of the Board of Supervisors or his representative nor shall it be lowered through the medium of rebates deductions or similar understandings. The Chairman of the Board of Supervisors shall offer the share to all the other members upon the terms stated and in the care of several acceptances he shall apportion same [fol. 4927] among the applicants in proportion to their holdings of common shares.

In the case of Mr. Prausnitzer's death, lunacy, bankruptcy or retirement from the office of Managing Director he or his heirs or representatives, as the case may be, shall receive as the price of his share an amount to be determined by arbitration, but such amount shall not be smaller than the par value of the share. If there are no members of the Comapny willing to pay such price the Company is obligated to retire such share and to pay to Mr. Prausnitzer or his heirs or representatives the amount calculated in the manner aforesaid.

S. 7

The appointment of a Managing Director as well as the revocation thereof are made by the General Meeting.

S. 8

A Board of Supervisors is constituted, composed of at least three (3) persons. A change of the membership of the Board of Supervisors does not require notice to the Court or publication. The term of office of the members of the Board of Supervisors is one year. Upon the expiration of the term the members of the Board of Supervisors continue to hold office until new elections are made. If any member of the Board of Supervisors retires before the expiration of his term, a substitutional election shall be held upon application of at least two members of the Company. The resolutions of the Board of Supervisors are adopted by a majority of the votes, either in meetings, or pursuant to written or telegraphic expressions. The Members of the Board of Supervisors may cause themselves to

[fol. 4928] be represented by proxies and any member of the Board may be appointed as proxy for another member and shall be entitled to vote in respect of the member or members by whom he has been appointed as proxy and any vote given as proxy shall be additional to his own vote. The Board of Supervisors is entitled to form subcommittee without however thereby reducing its own responsibility.

S. 9

The Board of Supervisors shall furthermore settle the subjects to be submitted to the meeting of the members of the Company for their action thereon, expecially also the Balance Sheet.

The members of the Board of Supervisors (except Mr. Seward) receive reimbursement of their reasonable cash expenditures and such remuneration as shall be decided by a three quarter majority of a General Meeting but so that the amount of such remuneration for any year shall not exceed Ten per cent of the profits of the Company for such year. The preferred share only having ten votes.

S. 10

Each RM. 100 of a common share is entitled to one vote. The preferred share is entitled to 4,000 votes in all cases where according to the provisions of the German Law a simple majority of the votes is sufficient; In the cases however in which the law requires an increased voting power, be it compulsory or optional, the preferred share is entitled to ten votes. The votes may be taken in writing or by telegram addressed to the Chairman of the Board of Supervisors or his representative except where the law prescribes Notarial authentications of the resolutions of the corporate meeting.

[fol. 4929] S. 11

The Balance Sheet shall be prepared by the Managing Director during the first two months after the close of a fiscal year and examined by the Board of Supervisors. The approval of the Balance Sheet, formation of a reserve fund fixing the dividends and discharge to be granted to the Managing Director are passed upon by the regular

meeting of the Company pursuant to proposal of the Board of Supervisors.

S. 12

Unless the meeting of the members of the Company resolves differently the net profits are distributed among the members of the Company.

Out of the net profits subject to distribution the preferred share is entitled to a preferred dividend of 5%. The remainder of the net profits is divided equally among the common shares according to the holdings.

Upon a liquidation of the Company the assets remaining after providing for the liabilities shall be distributed among the common shares and the preferred share according to the par value thereof.

S. 13

The fiscal year of the Company shall be the calendar year from the 1st January to the 31st December.

S. 14

The regular annual meeting of the Company shall be held on the second Tuesday after the third Monday in March in each year.

S. 15

The Board of Supervisors shall appoint Auditors who [fol. 4930] shall audit the accounts of the Company and shall have access at all times to all the books, records and documents of the Company and every Officer of the Company shall give to the Auditors all assistance and information required to enable them to perform their duties and at every regular annual meeting of the Company a Balance sheet and Profit and Loss Account for the last previous fiscal year together with a report by the Auditors with respect to such Balance Sheet and Account shall be submitted to the Meeting.

[fol. 4931]

ANNEXURE B

HEADS of AGREEMENT

between

Mr. MAX PRAUSNITZER

and the

DEUTSCHE TIMKEN GESELLSCHAFT m.b.H.

1. Subject as hereinafter mentioned Mr. Prausnitzer shall be Managing Director of the Deutsche Timken Gesellschaft M.B.H. for a period of Five Years from the first January 1928 i.e. until the 31st December 1932 and so long as he holds office as such no other Managing Director shall be appointed without his consent in writing.

2. Mr. Prausnitzer shall regard the supervision and management of the Company's business and affairs as his principal occupation to which he shall devote the whole of his time and attention. In the performance of his duties and the exercise of his powers as Managing Director Mr. Prausnitzer shall have regard and conform to any instructions or regulations given or made by the Board of Supervision of the Company.

3. This contract shall be terminated:

(a) If Mr. Prausnitzer cannot perform his duties as Managing Director for a period of six consecutive months.

(b) If the turnover of the Company (i.e. the nett invoice price encashed of all goods sold directly or indirectly by the Company) does not amount in the year 1928 to RM. 250,000, in the year 1929 to RM. 350,000, in the year [fol. 4932] 1930 to RM. 450,000, in the year 1931 to RM. 900,000 or in the year 1932 to RM. 1,200,000. and the Board of Supervisors decide that this contract shall be terminated. Provided always that if the turnover shall be reduced by strikes lockouts default in the delivery of supplies or other causes beyond the control of Mr. Prausnitzer a fair allowance shall be made by the Board of Supervisors.

(c) If Mr. Prausnitzer should become bankrupt lunatic or should resign with the consent of the Board of Supervisors.

(d) If Mr. Prausnitzer should die.

In the case (d) the commission and salary payable under this contract shall be paid to Mr. Prausnitzer's legal personal representative for the period of three months immediately subsequent to his death.

4. It is to be an honourable but not legally binding agreement between the parties that at the end of the period of Five years if Mr. Prausnitzer's administration of the Company has proved satisfactory to the other members of the Company a further contract for a period of Three years on terms to be agreed on shall be entered into.

5. During the continuance of this contract Mr. Prausnitzer shall receive a fixed salary at the rate of RM.12,-000.—per annum and a commission of 2½% on the turnover as hereinbefore defined from the 1st January 1928 until the end of the year 1928, 2% on the turnover as hereinbefore defined for the year 1929 up to RM. 350,000 for the year 1930 up to RM. 450,000, for the year 1931 up [fol. 4933] to RM. 900,000 and for the year 1932 up to RM. 1,200,000 and 3% on the turnover as hereinbefore defined for the year 19 .9 and any subsequent year or period in excess of the amounts aforesaid.

6. Mr. Prausnitzer shall also be entitled to be recouped by the Company all reasonable travelling and other expenses incurred by him in or about the performance of his duties as Managing Director.

7. Mr. Prausnitzer shall be entitled to take two vacations annually of not more than four weeks each one in Winter and one in Summer.

8. Mr. Prausnitzer shall not conclude any transaction of the nature following without the previous approval of the Board of Supervisors:

1. The acquisition sale or mortgage of real estate.
2. The grant or acceptance of leases for more than one year.
3. The appointment of holders of procuration.
4. The calling up of money uncalled upon shares.
5. Purchases of goods in excess of RM. 2,000. in any one case.
6. Any other transactions to be specified from time to time by the Board of Supervisors.

The amount to be expended or authorised for advertising during any period by Mr. Prausnitzer shall not exceed the

sum agreed with the Board of Supervision unless express sanction is first obtained. Mr. Prausnitzer shall not sell or cause to be sold goods at prices other than on the basis or at the amount fixed from time to time by the Chairman of the Board of Supervision unless express sanction is [fols. 4934-4935] first obtained.

Mr. Prausnitzer shall have the right to engage employees whose total remuneration from the Company does not exceed RM. 6,000. per annum each. Employees whose total remuneration exceeds that amount shall only be engaged with the consent of the Board of Supervision.

Mr. Prausnitzer shall have the right to grant procuration to suitable persons to sign jointly with him subject to the approval of the Chairman of the Board of Supervision.

Mr. Prausnitzer's duties as Managing Director so far as not laid down in this or any other contract between the parties shall be regulated in accordance with German Law.

[fol. 4936] DEFENDANT'S EXHIBIT 46

Certificate

I herewith certify that the following shareholders are holding shares of Deutsche Timken Gesellschaft mit beschränkter Haftung, the capital stock of which amounts to 400,000 RM (Fourhundred Thousand Reichmarks), in the following amounts:

(a) Mr. Henry Timken a common share of	225,000 RM
(b) British Timken Limited a common share of	4,000 RM
a preferred share of	1,000 RM
(c) Mr. Michael Bruce Urquhart Dewar a common share of	105,000 RM
(d) Mr. Prausnitzer common shares in the amount of	65,000 RM

Berlin, September 29, 1928.

—— ——, Notary Public.

[fol. 4937] DEFENDANT'S EXHIBIT 47

This Agreement executed as of the first day of January One thousand nine hundred and twenty-eight by and Between British Timken Limited a Joint Stock Company incorporated under the Laws of the United Kingdom of Great Britain and Ireland and having its registered office in the City of Birmingham England (hereinafter for convenience called "the British Company") and Deutsche Timken Gesellschaft mit beschrankter Haftung incorporated under the Laws of the German Reich and having its registered office in the City of Berlin Germany (hereinafter for convenience called "the German Company").

WITNESSETH:

Whereas the British Company manufactures anti-friction bearings (hereinafter called "bearings") in England and has great experience in the manufacture of bearings.

And Whereas the German Company is the registered owner in Germany of the trade mark "Timken".

And Whereas the British Company or the German Company is or may be or become the owner of patents or patent rights in various parts of the world covering inventions relating to bearings and improvements therein.

And Whereas the Timken Roller Bearing Company of Canton Ohio U. S. A. is hereinafter for convenience called "the American Company."

Now the parties hereto Agree as follows:—

1. For the purposes of this Agreement:—

(a) The territory of the German Company shall mean the German Reich.

(b) The territory of the British Company shall mean the United Kingdom of Great Britain and Northern Ireland and all other countries of Europe except the German Reich and all colonies or dependencies of said United Kingdom and European countries except in or adjacent to North or South America.

(c) The territory of the American Company shall mean the rest of the world outside the territories of the German Company and the British Company.

(d) The British American territory shall mean the territories of the British Company and the American Company in combination and

(e) These territories and the corresponding meanings shall be subject to alteration from time to time by agreement between the parties hereto by letter or other writing.

2. (a) Each of the parties hereto will as fully and freely as its patent and contractual rights and obligations permit inform the other party as to all inventions discoveries im- [fol. 4938] provements and practices useful in connection with the manufacture of bearings whether patented or not.

(b) The British Company will so far as its patent and contractual rights and obligations permit license the German Company to operate manufacture and sell bearings in the territory of the German Company during the life of this Agreement under any Letters Patent or other patent rights now or hereafter from time to time owned by the British Company and pertaining to the manufacture or sale of bearings in the territory of the German Company.

(c) The German Company will so far as its patent and contractual rights and obligations permit assign absolutely and for all time to the British Company or its nominees all Letters Patent or other patent rights now or hereafter from time to time owned by the German Company and pertaining to the manufacture or sale of bearings in the British American territory.

(d) The German Company if and when requested by and at the expense of the British Company will execute and do or cause to be executed and done all deeds acts and things which the British Company may consider necessary or desirable in order that any inventions discoveries improvements or practices useful in connection with the manufacture of bearings which may come to the knowledge of the German Company and which the German Company shall be entitled to communicate to the British Company for this purpose may be protected by Letters Patent or other patent rights in such parts of the British American territory and in such names as the British Company shall specify with a view to such patent rights being assigned to or otherwise vested in the British Company or its nominees in accordance with the provisions hereinbefore contained.

(e) The German Company hereby irrevocably appoints the British Company with power of substitution to be its Attorney for it and in its name and on its behalf but at the expense of the British Company to execute and do all

deeds acts and things which the British Company or its substitutes from time to time may consider necessary or desirable for the purpose of giving effect to the agreements on the part of the German Company contained in this section.

(f) Provided however that nothing in this Agreement contained shall obligate either party to acquire or enlarge its interest in any Letters Patent or other patent rights.

3. (a) Each of the parties hereto will use its best endeavours to maintain the distinctive character of the trade mark "Timken" and refrain from any act calculated to prejudice the rights of the parties hereto or the American Company in respect thereof as now existing.

(b) The German Company if and when requested by the British Company will join with the British Company or the American Company in an application for concurrent registration of the trade mark "Timken" if and so far as such [fol. 4939] registration is possible in the territory of the German Company.

(c) The Germany Company upon the termination of this Agreement if and so far as it may be requested in writing by the British Company or the American Company will cause the name "Timken" to be eliminated from its corporate name and from the name of any person, firm or company controlled by it and will refrain and will cause any person firm or company controlled by it to refrain from using the name "Timken" as part of or in connection with his, their or its name or as a trade mark or trade name or otherwise and from any act calculated to obstruct or delay the British Company or the American Company in any steps which it may take with a view to establishing the exclusive right of the British Company or the American Company to the said name in the territory of the German Company and so far as practicable the German Company will assign or cause any person, firm or company controlled by it to assign to the British Company or as it may direct any trade mark or other rights in respect of the said name in its ownership or control.

4. (a). The British Company if and when the German Company shall be actually engaged in the manufacture of bearings will from time to time advise the German Company in the manufacture of bearings and particularly in connection with the quality of the steel used and its com-

position and analysis the method of case hardening the machinery and processes for grinding, gauging, sizing, quenching, die working, forging upsetting, forming, sorting, plating and other operations and in connection with any special tools and machinery so long as the German Company follows such advice and instructions so far as the same shall be economically practicable under the circumstances of the business of the German Company.

(b) The German Company's manufacturing operations shall at all reasonable times be open to inspection by the British Company and the American Company or their representatives.

5. (a) The German Company by itself or its sub-licensees approved by the British Company if and when required by the British Company or the American Company will manufacture bearings in such quantities and in such states within the German Company's territory and will exercise all such rights in connection with the manufacture of bearings as shall be required to maintain all Letters Patent from time to time owned by the British Company or the American Company in any state or states within the German Company's territory.

(b) If the German Company desires to be relieved of the obligation contained in paragraph (a) of this section with respect to any state it shall be entitled to give notice in writing to the British Company that it excludes such state [fol. 4940] from the German Company's territory and thereupon such state shall be withdrawn from the German Company's territory and shall be added to the British-American territory.

(c) For the purposes of this clause a state shall mean a territorial area in which there is separate jurisdiction for patent purposes.

6. Except with the consent of the British Company the German Company shall not manufacture, sell or deal in any bearings except under and in accordance with the terms and provisions of this Agreement and under the trade mark "Timken."

7. The British Company undertakes that during the life of this Agreement the American Company and the British Company shall not directly or indirectly make or sell or license others to make or sell bearings in the German Company's territory or in the British-American territory

knowing them to be for shipment into the German Company's territory save and except as follows to wit:

(a) The British Company and the American Company may make or sell or license others to make or sell in the British-American territory bearings for delivery or shipment into the German Company's territory as assembled component parts of completed articles of manufacture manufactured in the British-American territory or as assembled component parts of completed units of manufacture manufactured in the British-American territory for incorporation into such completed articles of manufacture.

(b) The British Company and the American Company in the British-American territory may accept and execute orders for bearings for ultimate destination in the German Company's territory for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorise sales to or known to be destined for manufacturers in the Germany Company's territory and the British Company from time to time will notify the German Company of the details of the sales authorised under this paragraph and will pay to the German Company an amount equal to ten per cent (10%) of the net sale price received under any sales so authorised not being sales made through or at the request of the German Company.

(c) The American Company may authorise not more than four manufacturers or producers of vehicles in the United States of America to import into the German Company's territory bearings manufactured by said producers in the American Company's territory for incorporation in new products or for bearing replacement purposes for products previously manufactured or assembled by said manufacturers or producers or their subsidiaries in the German Company's territory Provided that they are not stamped or identified by the name "Timken."

[fol. 4941] (d) For the purposes of this section a holding company as for instance General Motors Corporation and its constituent and subsidiary companies shall be deemed to be one manufacturer or producer.

(e) The parties hereto recognise and approve the mutual licensing agreement entered into between the American Company and International Harvesters Company dated the thirty-first day of December One thousand nine hundred and twenty-seven and the British Company when requested by the German Company will supply to the German Company a copy of the said Agreement.

8. During the life of this Agreement the German Company shall not directly or indirectly make or sell or license others to make or sell bearings in the British-American territory or in the German Company's Territory knowing them to be for shipment into the British-American territory save and except as follows to wit:

(a) The German Company may make or sell or license others to make or sell in the German Company's territory bearings for delivery or shipment into the British-American territory as assembled component parts of completed articles of manufacture manufactured in its territory or as assembled component parts of completed units of manufacture manufactured in its territory for incorporation into such completed articles of manufacture.

(b) The German Company in the German Company's territory may accept and execute orders for bearings for ultimate destination in the British-American territory for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorise sales to or known to be destined for manufacturers in the British-American territory and the German Company shall from time to time notify the British Company of the details of the sales authorised under this paragraph and shall pay to the British Company an amount equal to ten per cent (10%) of the net sale price received under any sales so authorised not being sales made through or at the request of the British Company.

9. (a) Subject to the approval in writing of the British Company as to both terms and personnel to be exercised at its absolute discretion but not otherwise, the German Company may from time to time grant sub-licenses to others to make use and vend bearings in the German Company's

territory and may communicate to such sub-licensees any information with respect to inventions discoveries improvements and practices whether patented or not received from the British Company.

(b) Every such sub-license shall be deemed to be a license granted by the American Company and shall contain a provision to that effect similar to the provision in that behalf contained in this Agreement and all royalties payable thereunder shall belong to the American Company [fol. 4942] and shall be made payable direct to the American Company accordingly but any amounts payable under the last preceding clause or any similar provision shall not be regarded as royalties.

(c) All the terms and conditions establishing the business and other relations between the German Company and any sub-licensee within the German Company's territory shall be submitted to and approved in writing by the British Company before the same are agreed to by the German Company and no alteration shall be made therein without the like approval.

(d) If the German Company shall acquire any stocks shares, securities or other interest in any company or association, manufacturing or selling bearings in the German Company's territory the German Company shall not sell or dispose of such stocks, shares, securities or interest without the consent in writing of the British Company.

10. (a) During the life of this Agreement the German Company shall pay to the American Company a royalty equal to four per cent (4%) of the net invoice prices after deduction of all discounts of all bearings manufactured or sold by the German Company less amounts equal to one-half (½) of the royalties paid directly to the American Company by sub-licensees pursuant to the last previous section hereof.

(b) Provided however that no royalties shall be paid hereunder by the German Company in respect to (i) completed bearings manufactured by the American Company and purchased from or through the British Company (ii) bearings manufactured by the German Company and sold by it to sub-licensees appointed under the authority of the last previous section hereof which are owned or controlled jointly by the American Company and Michael Bruce Urquhart Dewar of Number 4 Central Buildings, West-

minster, London, England or (iii) bearings upon which the royalties are paid directly to the American Company by sub-licensees pursuant to the last previous section hereof.

(c) The royalties hereby made payable to the American Company are part consideration for the advantages and benefits to be enjoyed by the Germany Company under Sections 2 and 4 of this Agreement and the other provisions of this Agreement in favour of the German Company the American Company having been nominated by the British Company to receive such royalties.

(d) The portion of the said royalties forming part of the consideration for patent rights granted to the German Company under this Agreement is nominal there being no patent rights belonging to the British Company or none of any value now in existence and the grant of patent rights being reciprocal.

11. The said royalties shall be paid on the first days of January, April, July and October of each year or within thirty days thereafter for the bearings sold during the quarter-year prior to said respective dates:

[fol. 4943] 12. (a) The remittance of the said royalties shall be accompanied by statements showing in detail:

(i) The number of bearings made during the preceding quarter-year.

(ii) The number of bearings sold during the preceding quarter-year.

(b) The statements in respect thereto furnished during January of each year shall also be accompanied by a certified statement prepared by the Auditors of the German Company or its sub-licensees as the case may be based upon an actual examination of the books and records of the German Company or its sub-licensees giving the same data as above required in respect of sales made during the year prior to said month of January and said January statements shall if required by the British Company be further verified by sworn declaration of the Managing Director for the time being of the German Company or its sub-licensees.

(c) The British Company and the American Company may once in each year at its own expense employ a chartered accountant who shall have the privilege of examining the books, records and plant of the German

Company and its sub-licensees with a view to determining how many bearings the German Company and its sub-licensees shall have made and sold up to the time of such examination and to whom and when and for what prices.

13. (a) The British Company shall pay all renewal fees required to maintain and keep on foot all Letters Patent in respect to bearings owned by the British Company or the American Company in the German Company's territory which it shall desire to maintain and keep on foot.

(b) Provided however that if the British Company shall elect to discontinue or refrain from maintaining any such Letters Patent the British Company will give not less than three (3) months' written notice to the German Company and during the said interval the British Company if requested so to do shall assign or cause to be assigned to the German Company at the expense of the German Company any of said Letters Patent which the British Company shall so elect to discontinue or refrain from maintaining.

(c) The British Company at its own cost shall defend or cause the American Company to defend every action or proceeding instituted for the purpose of revoking any Letters Patent in respect to bearings owned by the British Company or the American Company which it desires to maintain.

(d) Provided however that if any of said Letters Patent shall be revoked solely on some ground which would not have been available if the German Company had duly performed its obligations under this Agreement then and in any such case the British Company in addition to any other rights which it might have against the German Com- [fol. 4944] pany shall be entitled to recover from the German Company all costs, charges and expenses reasonably incurred in such defence.

14. Upon the termination of this Agreement whether under any of the provisions hereof or otherwise howsoever the German Company for a period of six (6) months thereafter shall have the privilege of completing and selling its stock of bearings on hand at the date of said termination upon the terms which would have ruled if this Agreement had not been so terminated and subject to the payment of royalties as herein provided.

15. (a) In the event of liquidation (except for the purpose of capital reorganization) of the German Company this Agreement shall immediately terminate and cease.

(b) The rights and privileges of the German Company hereunder shall be assignable only with the consent in writing of the British Company.

16. This Agreement unless otherwise terminated as herein provided for shall continue in full force and effect for a period of ten (10) years from the first day of January One thousand nine hundred and twenty-eight.

17. This Agreement is and shall be deemed to be entered into by the British Company on its own account and also for and on behalf of the American Company as a separate party so far as regards any rights, benefits or obligations expressly granted reserved or undertaken by or to the American Company and so far as regards such rights, benefits and obligations the American Company shall be entitled to claim the benefit and be subject to the burden of this Agreement accordingly.

18. This Agreement is made in England and shall be construed and take effect according to English Law.

In Witness whereof British Timken Limited under the authority of its Board of Directors has caused its Common Seal to be affixed to these presents in duplicate and Deutsche Timken Gesellschaft mit beschrankter Haftung under the authority of its Board of Supervisors has caused these presents to be signed by Max Wrba its General Manager in duplicate as of the day and year first above written.

The Common Seal of British Timken Limited was hereunto affixed in the presence of —— ——, Directors.

—— —— Secretary.

[fols. 4945-4946] Witness to the signature of Max Wrba, —— ——.

For and on behalf of Deutsche Timken kesellschaft mit Geschrankter Haftung.

(Here follow 2 photolithographs, side folios 4947, 4948)

Timken Experience In Applying Bearings Covers Every Kind Of Equipment—Wherever Wheels And Shafts Turn

Aeroplanes
- Aeroplane Wheels
- Carburetors
- Controls
- Retractable Landing Gears
- Engine Rocker Arms

Amusement Devices
- Dodgem Cars
- Ferris Wheels
- Merry-Go-Rounds
- Playground Swings
- Roller Coasters
- Whip Cars

Automotive Vehicles
- Automobiles
- Busses
- Motorcycles
- Motor Trucks
- Tractors
- Trailers

Bowling, Bottling, Packing and Packaging Machinery
- Beer Barrel Washers
- Bottle Cappers
- Bottling Equipment
- Can Making Machinery
- Canning Machinery
- Carton Wrapping Machines
- Drum and Barrel Washers
- Ice Cream Packaging Machinery
- Nut Machinery
- Packing House Equipment
- Seaming Machines
- Viners and Snippers

Clay Working Machinery
- Auger Machines
- Brick Machines
- Brick and Tile Cutters
- Brick Trucks and Barrows
- Clay Riddles
- Dry Pans
- Feeders
- Mixing Machines
- Pottery Jiggers
- Pug Mills
- Sand Pans
- Vacuum Extrusion Machines

Conveyors
- Box Car Loaders
- Conveyors
- Idlers
- Mould Conveyors
- Pallet Wheels
- Pan Conveyors

Electrical Machinery
- Arc Welders
- Circuit Breakers
- Control Apparatus
- Controllers
- Converters
- Electric Car Drives
- Electric Motors
- Geared Motors
- Generators
- Magnetic Clutches
- Motor Generator Sets
- Pantograph Trolleys
- Switchboard Trucks
- Switches
- Transformer Truck Wheels
- Trolley Bases
- Trolley Harps and Wheels
- Voltage Regulators

Elevators
- Door Opening Devices
- Dumb Waiters
- Elevator Drives
- Elevator Drums
- Elevator Idler Sheaves
- Escalators
- Orchestra Elevating Platforms
- Safety Cable Shackles

Engines
- Diesel Engines
- Drilling Engines
- Gas Engines
- Governors for Engines
- Marine Engines
- Oil Engines
- Outboard Motors
- Steam Engines

Fans, Blowers and Compressors
- Blowers
- Compressors
- Fans
- Furnace Cleaners
- Thermo Exhausters
- Vacuum Cleaners

Farm Machinery and Dairy Equipment
- Bag Cleaner Fans
- Balers
- Churns
- Combines
- Corn Cutters
- Corn Huskers
- Corn Pickers
- Corn Shellers
- Cultivators
- Cutter Fans
- Disc Harrows
- Disc Plows
- Dusters
- Ensilage Cutters
- Farm Wagons and Trailers
- Feed Grinders
- Feed Mixers
- Fertilizer Distributors
- Flax Harvesters
- Grain Grinders
- Hammer Mills
- Milk Pasteurizers and Coolers
- Mowing Machines
- Pea Viners
- Plows
- Potato Diggers
- Reapers
- Rotary Plows
- Roughage Grinders
- Seeders
- Spray Pumps and Sprayers
- Terracing Machines
- Threshers
- Tillers
- Tractors
- Wind Mills
- Wind Power Units

Gear Reduction Units
- Herringbone
- Hypoid
- Single Helical
- Spiral Bevel
- Straight Bevel
- Worm

Glass Making Machinery
- Bottle Making Machinery
- Glass Conveyors
- Glass and Lens Grinders
- Glass Making and Rolling Machines
- Glass Polishers

Grain Processing Machinery
- Bag Cleaner Fans
- Cereal Mills
- Cereal Roasting Machines
- Flour Mills
- Grain Blowers
- Grain Elevators
- Grain Mills
- Gyratory Cleaners
- Roller Machines
- Sifters

Grocery, Bakery and Meat Machinery
- Ballers
- Bone Cutters
- Bread Slicers
- Butchers' Saws
- Coffee Grinders
- Cookers
- Dishwashers
- Dough Mixers
- Meat Choppers, Grinders, Slicers
- Peanut Grinders
- Potato and Vegetable Peelers
- Refuse Grinder

Household Appliances
- Air Conditioning Equipment
- Clothes Dryers
- Lawn Mowers
- Oil Burners
- Refuse Grinder
- Stokers
- Vacuum Cleaners
- Washing Machines

I-Beam Trolleys, Hoists and Cranes
- Aerial Cable Tramways
- Aeroplane Hangar Doors
- Chain Blocks
- Crane Scales
- Cranes
- Derrick Sheaves
- Hoists
- I-Beam Trolleys
- Lift Jacks
- Logging Cranes
- Marine Sheaves
- Power Control Units
- Sheave Blocks
- Winches
- Windlasses

Ice and Ice Cream Making Refrigerating Machinery
- Compressors
- Freezers
- Homogenizers
- Ice Cream Machines
- Ice Scoring Machines
- Refrigerator Car Drives

Laundry Machinery
- Centrifugal Extractors
- Ironers
- Laundry Drives
- Laundry Dryers
- Laundry Washers
- Tumbling Machines

Lawn Mowers
- Golf Course Tractors
- Lawn Mowers

Leather Working Machinery
- Cut-Out Presses
- Leather Finishers
- Leather Rollers
- Shaving Machines
- Shoe Machinery

Locomotives
- Electric Locomotives
- Fireless Locomotives
- Gas Locomotives
- Geared Locomotives
- Industrial Locomotives
- Mine Locomotives
- Railway Locomotives

Logging Equipment
- Incline Rollers
- Logging Arches
- Logging Blocks
- Logging Donkeys
- Logging Hoists
- Logging Tractors
- Lumber Carriers
- Main Slope Rollers
- Side Rollers
- Skidder and Logging Carriages
- Skyline Carriers

Machine Tools
- Automatics
- Bench Lathes
- Boring Mills
- Buffing Machines
- Chamfering Machines
- Chucking Machines
- Cut-Off Machines
- Die Sinkers
- Drill Presses
- Drilling Machines
- Duplicators
- Engine Lathes
- Flexible Shaft Units
- Gear Generators
- Gear Grinders
- Gear Hobbers
- Gear Shavers
- Grinders
- Honing Machines
- Household Wood and Metal Working Tools
- Lapping Machines
- Lathe Centers
- Milling Machines
- Planers
- Polishers
- Profile Cutting Machines
- Radials
- Reamers
- Saws
- Shapers
- Sharpeners
- Shears
- Surfacers
- Swaging Machines
- Tapping Machines
- Turret Lathes
- Upsetting and Forging Machines

Mine and Quarry Cars
- Mine and Ore Cars

Mining Machinery
- Ball Mills
- Classifiers
- Coal Cutters
- Coal Derry
- Filters
- Flotation Cells
- Locomotives
- Loaders
- Mine Cars
- Mine Drum Hoists
- Mucking Machinery
- Ore Cars
- Portable Coal Mining Compressor Trucks
- Rope Haulers
- Slate Cutters
- Tipple Equipment

Miscellaneous
- Brewery Mixers
- Centrifugal Extractors
- Chemical Mixers
- Concrete Working Machinery
- Condenser Winding Machines
- Cork Roll Grinders
- Dredges
- Dryers
- Earth Boring Machines
- Floor Scrubbers and Polishers
- Foundry Equipment
- Fur Cutting Machines
- Garbage Collectors
- Gate Rollers
- High Pressure Washers
- Lead Kettles
- Malt Dryers
- Meters
- Mixers
- Oil Expellers
- Operating Tables
- Pipe Casting Machines
- Pipe Threading Machines
- Plating Equipment
- Rail Benders
- Rotary Display Racks
- Sand Blast Machines
- Sand Handling Plants
- Sewage Screens
- Sugar Centrifugals and Disintegrators
- Tug Boat Drives
- Tumbling Barrels
- Valves
- Wagon Drill Loaders
- Welding Machines

Motorcycles and Side Cars
- Motor Bikes
- Motorcycles
- Side Cars for Motorcycles

Oil and Gas Mining Equipment
- Blowout Preventers
- Center Iron Bearing
- Crown or Traveling Blocks
- Compressors
- Draw Works
- Drilling Engines
- Drilling Rigs
- Engines
- Hooks
- Mud Pumps
- Oil Well Countershafts
- Oil Well Reduction Units
- Pitmans
- Pumping Jacks
- Pumping Units or Powers
- Reverse Clutches and Sheaves
- Rotaries
- Sand and Bailing Reels
- Screens (Mud)
- Swivels

Paper Making Machinery
- Agitator Drives
- Barkers
- Beaters
- Calender Stacks
- Chip Screens
- Chippers
- Couch Rolls
- Consistency Regulators
- Dryer Rolls
- Filters
- Film Machines and Dryers
- Fourdrinier Rolls
- Hogs
- Jordan Engines
- Paper Machines
- Press Rolls
- Pulp Grinders
- Pulp Screens
- Pulpers
- Refiners
- Roll Coaters
- Screw Presses
- Stock Pumps
- Bleach Towers

Printing, Paper Processing and Binding Machinery
- Binder Rigs
- Corrugated Box Machines
- Creasing and Slotting Machines
- Cutters and Folders
- Moulding Press Pump Drives
- Paper Box Machines
- Paper Folding and Embossing Machines
- Paper Roll Feeders
- Printing Presses
- Rotary Plate Shavers
- Sales Book Machines

Pulverizing and Screening Equipment
- Air Separators
- Ball Mills
- Cement Coolers
- Cement Mills
- Coal Pulverizers
- Flat Screens
- Foundry Pulverizers
- Hogs
- Jaw Crushers
- Lime Stone Pulverizers
- Mixers
- Pulverizers
- Ring Mills
- Rock Pulverizers
- Roll Crushers
- Screenerators
- Screens, Vibrating or Shaker
- Sifters
- Stamp Mills

Pumps
- Deep Well Pumps
- Diesel Pumps
- Household Pumps
- Piston Pumps
- Pumps (All Types)
- Spray and Car Washer Pumps

Railway Equipment
- Ballast Cleaners
- Car Lighting Drives
- Dump Cars
- Locomotives
- Rail Cars
- Rail Car Engines
- Rail Grinders
- Railroad Air Conditioning Equipment
- Railroad Tie Drillers
- Railway Freight Cars
- Railway Mowers
- Railway Passenger Cars
- Section Cars
- Street Car Journals
- Street Car Drives
- Speed Recorders
- Train Control Devices

Road Building and Construction Machinery
- Asphalt Mixers
- Backfillers
- Bulldozers
- Concrete Mixers
- Concrete Surfacers
- Contractors' Wagons
- Crawler Type Wagons
- Dirt Movers
- Ditch Diggers
- Drag Lines
- Excavators
- Four Wheel Crawler Trailers
- Highway Mowers
- Mechanical Spreaders
- Portable Rock Drills
- Power Control Units
- Rippers
- Sharpeners
- Road Graders
- Road Maintainers
- Road Pavers
- Road Rollers
- Scarifiers
- Shouldering Machines
- Shovels
- Snow Plows
- Street Cleaners or Sweepers
- Sub-soilers
- Tar Kettles and Tar Buggies
- Trenchers
- Trenchmixers
- Wheel Scoops

Rolling Mill Machinery
- Bar and Tube Turning Machines
- Billet Chargers
- Charging Box Cars
- Clay Guns
- Cutters
- Coil Conveyors
- Cold Saws
- Cranes
- Edgers
- Forming Mills
- Hot Metal Mixers
- Hot Saws
- Ingot Cars
- Levellers and Straighteners
- Piercing Mills
- Pinch Rolls and Deflector Rolls
- Pinion Stands
- Power Manipulators
- Reels

Rolling Mill Mach'y. (Cont.)
- Roll Lathes
- Rolling Mill Drives
- Rolling Mills
- Sand Blast Machines
- Screwdowns
- Shears
- Sheet Scrubbers
- Slitters and Trimmers
- Soaking Pit and Furnace Covers
- Table Rolls
- Tapping Machines
- Tube Mills
- Tube Reducing Mills
- Uncoilers
- Welding Mills
- Wire Forming or Drawing Machines

Rubber Machinery
- Bias Cutter Drives
- Fabric Wind-ups and Turrets
- Mixers
- Rubber Mills
- Rubber Mill Screwdowns
- Rubber Refiners
- Rubber Strainers
- Tire Moulding Machines
- Tire Testing Machines
- Tubing Machines
- Vulcanizer Drives

Saw Mill and Woodworking Machinery
- Boring Machines
- Edgers
- Jointers
- Lumber Hogs
- Molders
- Mortisers
- Planer-Matchers
- Portable Drills
- Power Dogs
- Resaws
- Sanders
- Saws
- Surfacers
- Tenoners
- Veneer Lathes
- Wood Turning Lathes

Shop and Industrial Trucks
- Banana Cars
- Cane Cars
- Castor Wheels
- Clay Cars
- Creosote Cars
- Industrial Cars
- Industrial Tractors
- Industrial Trucks
- Kiln Cars
- Lift Trucks
- Mold Carts
- Quarry Trucks
- Shop Trucks
- Tram Cars
- Wheel Barrows

Stokers and Fuel Feeding Equipment
- Oil Burners
- Commercial Stokers
- Domestic Stokers

Textile Machinery
- Cloth Dryers
- Cotton Balers
- Cotton Ginning Machinery
- Hosiery Knitting Machines
- Looms
- Napping Machines
- Rayon Pot Machines
- Sewing Machines
- Textile Calenders
- Textile Machines
- Textile Shears
- Textile Warpers

Tractors
- Crawler Tractors
- Farm Tractors
- Garden Tractors
- General Purpose Tractors
- Industrial Tractors
- Wheeled Tractors

Transmission Machinery
- Belt Drives
- Belt Tightener Pulleys
- Chain Drives
- Clutches
- Friction Cones
- Lineshaft Hangers
- Pillow Blocks
- Variable Speed Drives

1944B

DEFENDANT'S EXHIBIT 53

4948

[fol. 4949] DEFENDANT'S EXHIBIT 60

The Timken Roller Bearing Co.

Canton, Ohio.
5/6/11.

Lynch & Day, City.

GENTLEMEN:

We received a letter from the Birmingham people reading as follows:

"Our principals have decided that their subsidiary Companies will in future give greater prominence to their proprietorship, and we are to use the word "Vickers" in connection with our various manufactures. We propose in future to call your bearing within our territory, "Vickers-Timken Bearings. We trust that this will meet with your approval". Signed by the Electric & Ordnance Accessories Co.

Vickers Son & Maxim are the owners of the above Company together with a dozen more prominent Companies, but the Vickers, while one of the most prominent firms in England, are not bearing manufacturers and are not known as such. Therefore the word "Vickers" to an automobile bearing will have no weight in the eyes of the automobile trade. When the name "Vickers" is put before the name "Timken" then the Timken name becomes secondary and is rather lost sight of. If a hyphenated name were used, it is only natural to drop the second word, and we feel that shortly the bearings would be called the "Vickers Bearings". They might have shown us more courtesy in asking the privilege of calling them the "Timken-Vickers" Bearings".

The point is this. Will you kindly look up the contract and see if you can find in it any clause in which they are obligated to advertise, sell and call our bearing the Timken Roller Bearing.

As we wish to cable them to head them off, ask that you make this investigation and advise us very promptly.

Yours truly, The Timken Roller Bearing Co., W. R. Timken, Vice Prest.

WRT-5.

[fol. 4950] DEFENDANT'S EXHIBIT 61

May 8, 1911.

The Timken Roller Bearing Co., City.

GENTLEMEN:

We have yours of the 6th. repeating part of letter from the Birmingham people indicating their purpose to call your bearings "Vickers—Timken" bearings, and asking if you will approve of the same.

Replying to your request to see what bearing your contract with them has upon the subject, would report that we find the following to be a part of Article Eleven of your Agreement with them, namely; "And it (The Electric & Ordnance Accessories Company) shall use the word "Timken" exclusively in connection with the roller bearings made or sold by it under this Agreement and in connection with the sale of such bearings. Always provided however that the Licensee shall be entitled to describe itself as sole licensee within the said limits."

Yours very truly, —— ——.

AL/HLR.

[fol. 4951] DEFENDANT'S EXHIBIT 62

May 21, 1920.

Messrs. Carr & Carr, Suite 610 Boatmen's Bank Bldg., St. Louis, Mo.

Attention: Mr. James Carr

DEAR MR. CARR:

In connection with the trademark matter which you discussed with the writer yesterday, would appreciate your writing us in some detail as to this situation, so that we can instruct all in our organization clearly in connection with the matter.

If the writer remembers correctly, you strongly recommend a distinctive type for the word "Timken", and have this appear on all packages and packing boxes.

I would also like your detailed advice regarding the use of the name "Timken" as stamped on bearings, by the English and French Companies, just what is involved by

this, and whether we can require that bearings should be so stamped. The writer does not clearly remember all the points you made, and therefore wishes in front of him a record of just the rulings on this whole proposition.

Thanking you for giving this matter your prompt attention, we are.

Very truly yours, The Timken Roller Bearing Co.,
——— ———, Vice Pres. & Treas.

HE.BES

[fol. 4952] DEFENDANT'S EXHIBIT 63

Carr & Carr, Attorneys-at-Law

Suite 610 Boatmen's Bank Building

Patent Law a Specialty

James A. Carr, Thomas Percy Carr, Joseph J. Gravely, Edgar T. Farmer

St. Louis, Mo., May 25, 1920.

Trade-Mark. Case No. 24214. Civil Defendant's Exhibit No. 63

The Timken Roller Bearing Co., Canton, Ohio

Attention of Mr. Ely

GENTLEMEN:

* * * * * * *

The exploitation of your inventions abroad involves some difficulty growing out of the legal proposition that a trade-mark is exclusive property and that the same mark cannot be owned by two different concerns for goods of the same kind. The first exception is based on territorial limitation; for it seems that one concern may own a trade-mark for certain goods in one territory and another concern may own the same trade-mark for goods of the same kind in a different territory. According to this doctrine, your British licensee might acquire ownership of the trade-mark "Timken" in a certain territory and wholly exclude you from selling your trade-marked product in that territory,—unless the matter was taken care of by contract. Second, a

concern is liable to lose its trade-mark by permitting others to use it, unless such permission is coupled with conditions which require the licensee's products to conform to certain standards prescribed by the owner of the trade-mark. In such case, the licensee can be treated as an agent of the owner of the mark and, if proper precautions are taken, the mark used by the licensee or agent will, upon termination of the agency, revert to the original owner of the mark and may be transferred by such owner to a new agent or licensee [fol. 4953] in the same territory. Such precautions should include a promise on the part of your British associate not only to discontinue use of the name "Timken" upon termination of the license or agency but also a promise to assign to you all rights and claims to the trade-mark "Timken."

In this matter of foreign exploitation, it would seem wise to require your British associate to use, in connection with the word "Timken", some identifying matter by which its product can be distinguished from yours.

As for the manner of applying the mark to the goods, you have a wide option. You can stamp the mark directly on the goods, or you can stencil it on the goods or containers, or print it on shipping tags, labels, cartons or other containers. Wherever it is practicable, the word "trade-mark" had better be associated with the word "Timken", as above suggested.

Yours truly, (S.) Carr & Carr.

JAC-L.

[fol. 4954] DEFENDANT'S EXHIBIT No. 64

Offices of DAY, FIMPLE & LYNCH, Rms. 1 to 5 Schaefer Block, Canton, O.

Austin Lynch, David S. Day, John H. Fimple, James K. Lynch, R. J. Bour, Jr.

Case No. 24214, Civil Defendant's Exhibit, No. 64

June 10th, 1920.

Heman Ely, Esq., % Timken Roller Bearing Co., Canton, Ohio

DEAR SIR:

• • • • • • •

The above provisions in your English contracts probably do not meet all the suggestions contained in the letter of Messrs. Carr & Carr for the protection of your name as against parties other than your English Licensees, but it occurs to the writer that it is not advisable to endeavor now to carry in any further changes in the existing agreements with Woseley Motors, for I assume that such matters could be worked out by correspondence.

Might it not be well if Messrs. Carr & Carr would restate in a letter to you such part of their communication of May 25th as would relate to the marking of bearings and the containers, etc. by Wolseley Motors. You can then use their suggestions in a letter addressed to your English Licensee with a view of having them adopt the same or follow such plan as would adequately protect the name against others attempting to use the same.

Yours truly, (S.) Austin Lynch

AL/MM.

[fol. 4955] DEFENDANT'S EXHIBIT 65

Carr & Carr

Attorneys-At-Law

Suite 610 Boatmen's Bank Building

Patent Law a Specialty

St. Louis, Mo., Sept. 4, 1920.

The Timken Roller Bearing Co., Canton, Ohio.

Attention of Mr. Ely.

GENTLEMEN:

We acknowledge receipt of your letter of Aug. 30th and beg your pardon for the neglect of your earlier letter in regard to the word "Timken". Upon taking this matter up for review, we find it desirable for you to send us a copy of your contracts with your British licensees; for we had a look at one of these contracts in Mr. Ely's office and have the impression that it contains clauses that do not deal directly with the matter of trade-marks but indirectly affect your rights.

Our information is that you never effected registration of the word "Timken" in Great Britain as your trade-mark; in fact, it would seem that the word "Timken" was not registrable in Great Britain under the general trade-mark act of that country. However, a new trade-mark act was passed in Great Britain Dec. 23, 1919 which would cover the word "Timken"; and it would seem to be advisable to effect registration in Great Britain under the new law, from which we quote Sec. 2:

[fol. 4956] "Where any mark has for not less than two years been bona-fide used in the United Kingdom upon or in connection with any goods (whether for sale in the United Kingdom or exportation abroad), for the purpose of indicating that they are the goods of the proprietor of the mark by virtue of manufacture, selection, certification, dealing with or offering for sale, the person claiming to be the proprietor of the mark may apply in writing to the registrar in the prescribed manner to have the mark entered as his

registered trade mark in part B. of the register in respect of such goods."

The first question that arises is: Who is the "proprietor of the mark",—you or your British licensees. Ordinarily a trade-mark can not be assigned except in connection with the goodwill of the business; nor can a trade-mark be maintained indefinitely unless it is actually used by the owner or with his direct sanction. Accordingly, it seems highly desirable to ascertain the ownership of the British trade-mark rights in the word "Timken", effect registration of the mark in conformity with the new British trade-mark act, and have a full understanding with your British licensees.

As we have already written, an act of Congress was passed in March, 1920 that entitles you to register the word "Timken" in this country. While this act is extremely obscure in many particulars, we are satisfied that there would be no special difficulty in obtaining registra- [fol. 4957] tion of the word "Timken". Our recollection is that you have only recently begun the practice of stamping the word "Timken" on your product, whereas the right to registration is restricted to marks that have been used more than a year prior to application for registration. It is our recollection that Mr. Ely was going to send us a memorandum of the different products on which the word "Timken" is used as a trade-mark and of the various ways in which said word is stamped or applied to such articles.

It may be well to note that one of the principal ideas underlying both the new British act and the new American act is to establish a basis for registration abroad. This is particularly true with reference to the American act which was primarily intended to carry out the Pan-American Trade-Mark Treaty of 1910 and to enable the citizens of the United States to obtain the benefit of International registration at Havana.

As soon as we receive copy of your contracts with your British licensees, we will give the matter further consideration.

Yours truly, Carr & Carr.

JAC-M

[fol. 4958] DEFENDANT'S EXHIBIT No. 66

Carr & Carr

Attorneys-at-Law

Suite 610 Boatmen's Bank Building

Patent Law a Speciality

James A. Carr, Thomas Percy Carr—Joseph J. Gravely
Edgar T. Farmer

St. Louis, Mo., Oct. 7, 1920.

The Timken Roller Bearing Co., Canton, Ohio.
Attention of Mr. Ely

GENTLEMEN:

* * * * * * *

It would seem advisable, therefore, to revise your supplemental agreement, if feasible, so as to have the licensee definitely recognize your proprietary right in the word "Timken" and to definitely agree that all rights in the word "Timken" will revert to you at the expiration of the agreement or on its termination in any other manner.

We are returning herewith one copy of the supplemental agreement and suggest that you send us a copy of the principal agreement and then we will reconsider the matter on receipt thereof. While the supplemental agreement is entirely silent as to inventions and copyrights, we imagine that these are covered by the principal agreement and that the provisions relative thereto may have a bearing on the trade-mark matter.

Yours truly, (S.) Carr & Carr.

JAC-L
Inc.—1.

[fol. 4959] DEFENDANT'S EXHIBIT 67

Canton, Ohio,
October 16, 1920.

Timken Roller Bearing Co., City.

Attention: Mr. Ely.

GENTLEMEN:

I have your letter of October 13th enclosing letter from Messrs. Carr & Carr of October 7th, with copy of the supplementary agreement entered into by your Company with Wolseley Motors Ltd., both of which I return herewith.

In view of the fact that Messrs. Carr & Carr did not have the use of the *principal agreement* I beg leave to suggest that you return to them this supplementary agreement together with a copy of the principal agreement, as that may enable them to give a more conclusive opinion on the question whether anything further should be done to protect your use of the word "Timken".

This suggestion occurs to me, if Messrs. Carr & Carr (after considering the original and the recent agreement) conclude you can be better protected by an addenda to the supplementary agreement, that they prepare a form of such addenda in order that you may take it up with Mr. Duncan with a view of having him consider same and if deemed advisable try to get the English Company to consent to such amendment of the recent agreement.

Yours truly, Austin Lynch.

AL/MT

[fol. 4960] DEFENDANT'S EXHIBIT No. 68

October 26th, 1920.

Carr & Carr, St. Louis, Mo.

GENTLEMEN:

* * * * * * *

We are quite anxious to have your opinion on the British trade mark question as soon as possible, as we naturally desire better and fuller protection in Great Britain and

in the countries covered by our British agreement than in any other part of the world."

If you have replied to this letter, will you kindly send carbon copy to the attention of the writer.

Yours truly, The Timken Roller Bearing Co.
—— ——, Secretary.

JFS/SM

[fol. 4961] DEFENDANT'S EXHIBIT No. 69

November 20, 1920.

The Timken Roller Bearing Company, Canton, Ohio.
British Trade-Mark "Timken".

Attention of Mr. Ely.

GENTLEMEN:

We have given careful consideration to your two contracts of June 16—July 16, 1909 with Electric & Ordnance Accessories Company Limited, designated as the principal agreement and as the supplemental agreement, and to your supplemental agreement of 1920 with the Wolseley Motors Limited, with a view to determining what rights the respective parties may have in the word "Timken".

* * * * * * *

In a letter of even date herewith we are recommending the filing of an application for registration in Great Britain of the trade-mark "Timken"; and we further recommend that in connection with the preparation of such application, you have a definite understanding with your licensee that whenever the contract shall be terminated by expiration of time or otherwise, your rights and its obligations in respect of the trade-mark "Timken" and in the good-will pertaining thereto shall be the same as set forth in Article 10 of the 1920 Contract in the event of the contract being "rescinded".

Yours truly, —— ——.

JAC-M

[fol. 4962] November 20, 1920.

The Timken Roller Bearing Company, Canton, Ohio.
British Trade-Mark "Timken".

Attention of Mr. Ely.

GENTLEMEN:

* * * * * * *

It is our recommendation that an application for registration be made in the name of The Timken Roller Bearing Company under the Act of 1905 as amended; and that if such application meets with difficulty, it be converted into or replaced with an application in the name of The Timken Roller Bearing Company for registration under the Act of 1919.

In connection with the preparation of an application for registration, there should be a definite understanding that the trade-mark "Timken" is your trade-mark but that your licensee shall have the right to use your trade-mark under your sanction and during the continuance and subject to the conditions of the existing contract, such right to use the trade-mark to terminate with the expiration of the contract and to be limited to products manufactured under your sanction.

Yours truly, —— ——.

JAC-M

[fol. 4963] DEFENDANT'S EXHIBIT 70

November 29th, 1920.

Carr & Carr, 610 Boatmen's Bank Bldg., St. Louis, Mo.

GENTLEMEN:

Mr. Ely has gone over your letters of Nov. 20th, regarding the British Trade-Mark "Timken". We wish to follow out your recommendations and ask that you prepare the necessary papers.

We would also like to have you prepare the agreement to be signed by ourselves and by our British connection, as described in your letter. We can then forward this agreement to our London attorney who has been handling

legal matters between this Company and the British Company.

Yours truly, The Timken Roller Bearing Co., ——
——, Secretary.

JFS/SH

[fol. 4964] DEFENDANT'S EXHIBIT 71

December 8, 1920.

The Timken Roller Bearing Company, Canton, Ohio.

Attention of Mr. Ely.

GENTLEMEN:

Mr. Strough's letter of Nov. 29th was duly received and we note your instructions with reference to the British trade-mark "Timken".

It strikes us that in lieu of a new formal contract, the matter in hand can probably be better handled in the form of a letter to your British licensees; and we suggest that you write them a letter similar to what follows:

> When we were registering the word "Timken" in various countries as our trade-mark for roller bearings, we omitted to apply for registration in Great Britain and the United States because we were advised that, on account of "Timken" being a surname, it was not such a trade-mark as would be registrable under the laws of Great Britain and the United States as they existed at that time. We are now advised, however, that both of these countries have recently amended their laws in such way as probably to entitle us to registration. Accordingly we are filing an application in the United States and we are forwarding to Messrs. Abel & Imray, Chartered Patent Agents, 30 Southampton Buildings, London, a power of attorney to apply for registration in Great Britain.
>
> As we understand the new British law, it will be necessary for us to submit "evidence of distinctiveness" of the word "Timken" as applied to roller bearings, and for this purpose we shall cite the facts that the name is an extremely uncommon surname,

that it has been identified with the business of ourselves and our predecessors, licensees and associates for many years, that it has no meaning apart from [fol. 4965] our business and products, and has never been applied to roller bearings made by others without our license and has been so very extensively and for so long a time advertised that it is recognized throughout the United States and other countries as indicating exclusively the products of ourselves and our licensees and associates.

As your license from us entitles you to the exclusive use in Great Britain of our trade-mark "Timkin" for roller bearings during the continuance of the license agreement, we will expect you to assist us, so far as you can, in obtaining favorable action on our application for registration in Great Britain. We do not know in what manner or to what extent your assistance may be required; but if Messrs. Abel & Imray have occasion to call on you for assistance in the prosecution of the application, we will appreciate whatever help you give them and will, of course, pay all expenses connected therewith.

Yours truly, —— ——.

JAC—L

[fol. 4966] DEFENDANT'S EXHIBIT 72

December 15, 1920.

The British-Timken Company, Ward End, Birmingham, England.

GENTLEMEN:

When we were registering the word "Timken" in various countries as our trade-mark for roller bearings, we omitted to apply for registration in Great Britain and the United States because we were advised that on account of "Timken" being a surname, it was not such a trade-mark as would be registrable under the laws of Great Britain and the United States as they existed at that time. We are now advised, however, that both of these countries have recently amended their laws in such way as probably to entitle us to registration. Accordingly we are filing an ap-

plication in the United States and we are forwarding to Messrs. Abel & Imray, Chartered Patent Agents, 30 Southhampton Buildings, London, a power o attorney to apply for registration in Great Britain.

As we understand the new British law, it will be necessary for us to submit "evidence of distinctiveness" of the word "Timken" as applied to roller bearings, and for this purpose we shall cite the facts that the name is an extremely uncommon surname, that it has been identified with the business of ourselves and our predecessors, licensees and and associates for years, that it has no meaning apart from our business and products, and has never been applied to roller bearings made by others without our license and has been so very extensively and for so long a time advertised that it is recognized throughout the United States and other countries as indicating exclusively the products of ourselves and our licensees and associates.

As your license from us entitles you to the exclusive use in Great Britain of our trade-mark "Timken" for roller bearings during the continuance of the license agreement, we will expect you to assist us, so far as you can, in obtaining favorable action on our application for registration in Great Britain. We do not know in what manner or to what extent your assistance may be required; but if Messrs. Abel & Imray have occasion to call on you for assistance in the prosecution of the application, we will appreciate whatever help you give them and will, of course, pay all expenses connected therewith.

Yours truly, The Timken Roller Bearing Company,
—— ——, Vice Pres. & Treasurer.

ME/SM

[fol. 4967] DEFENDANT'S EXHIBIT No. 73

British Timken Limited

Ward End, Birmingham, 19th January, 1921.

Messrs. The Timken Roller Bearing Co., Canton, Ohio.

DEAR SIRS,

Registering the work "Timken"

We have your letter of the 15th inst. and have carefully noted your remarks.

We sha ll be pleased to assist you where possible in obtaining a favourable action with regard to your application for registration of the word "Timken" in Great Britain, and if Messrs. Abel & Imray have occasion to call on us for assistance you can be assured of our hearty co-operation.

. . . . . .

Again assuring you of our desire to help you in every possible way,

We remain, Yours faithfully, For British Timken Limited, G. H. Rodway, Chief Engineer.

[fol. 4968] DEFENDANT'S EXHIBIT No. 74

Dec. 28, 1920.

Messrs. Abel & Imray, 30 Southampton Buildings, London, W. C. England.

GENTLEMEN:—

The Timken Roller Bearing Company desires to register in Great Britain, under the act of 1905, its trade-mark "Timken"; and we enclose herewith a power of attorney authorizing you to act as its attorneys in the prosecution of the application for registration. We also enclose herewith a blue-print of the drawing filed in connection with the application for registration of this mark in the United States Patent Office; and for your information we also enclose a photograph of an assembled bearing showing the word "Timken" stamped on the end of the cone or inner bearing member.

. . . . . .

In view of the very extensive use of the trade-mark "Timken" and its distinctiveness in fact, it is believed that the mark is registrable under the main trade-mark act. If such registration is refused, it might be advisable to seek to register the mark under the act of 1919.

In a separate letter we are setting out certain facts concerning the relation of The Timken Roller Bearing Company to its British Licensee that we believe you should bear in mind in preparing the application. Please advise us promptly of all developments in connection with the application and call upon us for any additional information that you may require.

Yours truly, —— ——.

JJG—M

[fol. 4969] DEFENDANT'S EXHIBIT 76

Abel & Imray
30 Southampton Buildings, London, W.C.2,
18th January, 1921.

Messrs. Carr & Carr.

DEAR SIRS,

Timken Roller Bearing Co. Trade Mark.

We acknowledge your letter of December the 28th with the enclosures referred to therein. Now, the 1905 trade mark Act, absolutely bars the registration of a surname as a trade mark and we do not think there is any possibility of getting the name "Timken" registered as a trade mark unless we apply under section 9, clause 5, as a special application to the Board of Trade, which is an expensive procedure and probably requires some 20 different declarations from different parts of England, North, South, West and East (and Midlands), from Wales, Ireland and Scotland testifying as to user and as to the name "Timken" being identified with your particular goods.

Now, under the new Act, trade marks are registrable under two parts, A and B, and if one can satisfy the authorities, under B, that the mark has been in use and fully identified in this country for the past two years, one might get registration of such a word and the procedure is much more simple. We therefore think it would be advisable

to apply under part B of the Act of 1919 and in that case we should require a declaration from the Timken Roller Bearing Company as to the date of the first actual user of the name "Timken" by the Applicant Company in this country, and we therefore before we file the application, require your information on this point. It will therefore be necessary for you to give us the date of the contract with Wolseley Motors Limited and to obtain information from them as to when they first used these Timken rollers in this country. • • •

We are sending a copy of this letter to the Wolseley Company asking them if they can supply us with the information to enable us to prepare the necessary declaration for your client Company to sign.

If this mark has been registered in America, please send us three copies of the print of the American registration.

Yours truly, Abel & Imray.

[fol. 4970] DEFENDANT'S EXHIBIT 77

30, Southampton Buildings, London, W.C.2.
January 20th, 1921.
OI/EC

Messrs. Carr & Carr

DEAR SIRS,

Timken Roller Bearing Company—Trade Mark. With further reference to your letter of 28th December and our reply of 18th January, we have received a letter from the Wolsely Motors Limited of which we enclose you a copy, from which you will see that they have not heard from your Clients, that they were not the original Licensees, but that they took over the business of Electric & Ordnance Accessories Company Limited, and that they have since formed a new Company to work this business independently.

Now the idea of the registration of a trade mark is not to protect the proprietor of the mark, but to protect the general public by assuring them that they are obtaining the goods of a particular manufacturer. In the present case the goods actually sold in this country are not manu-

factured by the Timken Roller Bearing Company, but have been manufactured first of all by the Electric & Ordnance Accessories Company Limited, then by Wolseley Motors Limited and now by British Timken Ltd. and if we are to apply under part B of the Act it seems to us that the application should be made in the name of British Timken Ltd. as they would have to prove actual use of the mark for more than two years either by themselves or their Predecessors in business. Now if registered in the name of British Timken Ltd. your Clients would have no rights in this trade mark unless some specific arrangement were made whereby, on the termination of the agreement under which these rollers are at present being manufactured here, the goodwill of the business in respect thereof must revert to the Timken Roller Bearing Company.

You will thus see that the matter is somewhat complicated and requires furthur consideration on the part of your Clients.

Yours truly, Abel & Imray.

[fol. 4971] DEFENDANT'S EXHIBIT 78

The Timken Bearing Co., Canton, Ohio, May 18, 1921.

Carr & Carr, 610 Boatmen's Bank Bldg., St. Louis, Mo.

GENTLEMEN:

Mr. Lothrop has advised the writer that in a recent letter to him, you made the following statement:

> "British registration of the trademark "Timken". Apparently this application will have to be filed in the name of your British licensee, and the application has been held up until a satisfactory arrangement could be made for protecting your rights in the British trade-mark in case your relations with your British licensee should terminate."

We have taken for granted that you are going ahead and taking care of this.

In this connection, further records show that you are still holding copies of our contracts with the British Com-

pany. If you are through with these, please return them for our files. If you are not through with them you should have copies made for your own convenience and return the originals to us.

* * * * * * *

Yours truly, The Timken Roller Bearing Company
J. F. Strough, Secretary

JFS/SM

[fol.4972] DEFENDANT'S EXHIBIT 79

June 28, 1921.

The Timken Roller Bearing Co., Canton, Ohio. Attention of Mr. Ely. British Trade-mark.

GENTLEMEN:—

On my last trip to Canton I intended to discuss with Mr. Ely the matter of your application for registration in Great Britain of the word "Timken" as your trade-mark. I did not, however, get an opportunity to do so.

When we forwarded the application papers we called our correspondent's attention to your contract with Wolseley Motors, Ltd. and stated that you had already written to the Wolseley Company concerning the application. Our correspondents took the matter up with the Wolseley Company and received a letter from them under date of January 19, 1921 saying they had not received any communication from you in this matter and also stating that they had organized the British Timken, Ltd. to handle bearing business.

There are numerous difficulties in connection with the registration of the word "Timken" by reason of its being a surname and also by reason of the fact that it is not you but your licensee that is carrying on the business in Great Britain. Under the circumstances, I am enclosing my correspondence file and I wish you would carefully consider it and return to me with your comments and suggestions. While there would be little difficulty in obtain-[fol.4973] ing registration in the name of your licensee, it does not strike me as the right thing to do, so long as

there is a reasonable chance of obtaining registration in your own name.

Yours truly, —— ——.

JAC—D
Enc.

[fol.4974] DEFENDANT'S EXHIBIT 80

The Timken Roller Bearing Co., Canton, Ohio.

August 22, 1921.

Messrs. Carr & Carr, St. Louis, Mo.

GENTLEMEN:—

We are referring to your letter of June 28th, regarding British registration of "Timken" as a trade mark, and we are returning the correspondence from your files. We have held this matter pending, expecting we would have time to take with you on one of your trips, but it looks as though it will be better to clean this up by correspondence.

Your correspondence with the Wolseley Company was of course an error. You should have written British Timken Limited. We had written British Timken Company under date of December 15, 1920, in accordance with your suggestions, and had their acknowledgment dated January 19, 1921, signed by Mr. G. H. Rodway, Chief Engineer, stating they would assist us wherever possible in getting this registration.

As the only way to get this registration is through our British connection (as suggested by your British attorneys), please go ahead along these lines, and prepare the necessary agreements, providing for the assignment of this registration upon the termination of the present contracts, etc.

In this connection will it not be possible for you to go ahead with this registration in other European countries at this time without waiting for the British matter to be settled?

Please let us hear from you on this.

Yours truly, The Timken Roller Bearing Co., J. F. Strough, Secretary.

JFS/Z

[fol. 4975] DEFENDANT'S EXHIBIT 81

Langner Parry Card & Langner, Liberty Tower, 55 Liberty St., New York, N. Y.

Dec. 9, 1921

Timken Roller Bearing Co., Canton, Ohio

GENTLEMEN:

We beg to advise you that a concern by the name of Societe de Mecanique de Gennevilliers, of Paris, has obtained registration in France of the trade-mark "Timken" to cover "wheels, coaches, farriery, automobiles and velocipedes, pneumatics and all rollings (bearings) destined to diminish friction and in particular rollings (bearings) for conical rollers".

• • • • • • •

Very truly yours, Laugner, Parry, Card & Langner
By Herbert Langner

[fol.4976] DEFENDANT'S EXHIBIT 82

Dec. 12, 1921

Carr & Carr, 610 Boatmen's Bank Bldg., St. Louis, Mo.

GENTLEMEN:

We are enclosing herewith letter just received from Langner, Parry, Card & Langner, New York, stating that the Societe de Mecanique de Gennevilliers has obtained a registration in France of the Trademark "Timken". This is a surprise to us.

You will recall that on June 2nd we requested you to have this trademark registered in all the civilized countries and asked that you take the proper steps at once towards having this done.

What can you advise us about this situation? Where do we stand on this matter with other countries?

Yours truly, The Timkin Roller Bearing Company,
—— ——, Secretary.

JFS/SM

[fol. 4977] DEFENDANT'S EXHIBIT 83

March 25, 1924.

Mr. A. J. M. Duncan, 21, Leadenhall St., London, E. C. 3, England.

DEAR SIR:—

You are familiar with our Contracts with the British Timken Limited. Under these Contracts they originally paid us 15% royalty. Some years ago, at their earnest solicitation, we reduced the royalty to 10%. During the past year they have at various times brought pressure to bear for us to still further reduce our royalty. We felt that if the British Timken Limited would make full use of methods and processes of manufacture that we have developed here, the saving they could make in their costs thereby would far outweigh any possible reduction in royalty.

On receipt of letter from the Wolseley Motors Limited, dated December 14, 1923, of which we enclose copy, we decided to send to England our Works Manager, Mr. M. T. Lothrop, that he might get fully in touch with their operations and bring them up to date on our latest practices of production.

One particular point that we wished Mr. Lothrop to check up was their costs on bearings for the Ford car. We have successfully been selling the Ford Company in this Country front wheel bearings for a number of years; their business is in large volume and profitable to us. We learned from England that a competitor was supplying the Ford Company in England with a competing product, and we were particularly desirous that the British Timken Limited maintain somewhat the same position in England as we do here, particularly with reference to their supplying the Ford Company with front wheel bearings, as we felt this would be a growing business in England and on the Continent and would help to continue and increase our prestige in that territory.

As a result of our pressure on the English Company to give most careful attention to the Ford Company requirements, they have now secured large orders from the Ford Company. They state that in securing this business they

have been obliged to cut the figure of royalty down to about 2½%.

[fol. 4978] Mr. Lothrop has now returned from England, and with his report before us we are ready to discuss with the English people the matter of royalty reduction. There are many reasons why their costs are higher than ours, the principal one being their restricted output. We produce eight to ten times as many bearings, per day, as they do per week. Equipment that we can afford to purchase to produce this large volume they cannot afford, and for many other reasons their costs will always be higher than ours, and we feel that they have a valid claim for asking a reduction in royalty and we are willing to consider giving them a reduction. You must realize in this connection, whereas the royalty new stands at 10%, due to British taxes we only net about 7½%.

However, in granting a reduction of royalty there appear to be other matters which should be cleared at the same time so that we do not grant further concessions without gaining something in return.

The English people gave Mr. Lothrop the impression that we have no right under any condition to the name "Timken". As we read the Supplemental Contract, it seems to us that in view of the fact that British Timken Limited have not produced the minimum number of bearings specified we could, if we wished, rescind our Contract and have the name "Timken" restored to us. They apparently hold otherwise. Could they possibly claim that because of the patent situation (all basic patents having expired) the Agreement is already out of existence and therefore our notice of rescinding is too late and without effect in restoring to us the name "Timken"?

The one thing that we prize over all else is the name "Timken" and we must have entire control of this name. How can we now, in making a revised Agreement, protect ourselves on our ownership and right to the name "Timken"? Would it be possible to have a cancellation clause that either party can cancel by giving the other party one year's notice, and in such event the name "Timken" be restored to us entirely?

In connection with the patent situation, it is true that the original basic patents have expired, and the British patents that we now have cover processes of manufacture and details of production methods. Very few of these are being

used by the British Company, and one which they are using they claim the patent does not cover completely.

The English correspondents of our local patent counsel Messrs. Carr & Carr, of St. Louis, Missouri, are Messrs. Abel & Imray, 30, Southampton Buildings, London, with whom Mr. Lothrop got in touch when he was in England, and we are enclosing herewith copy of their letter of March 6th to Mr. Lothrop, for your information.

We now come to a matter which is confusing to us, and that is that we are receiving the principal correspondence regarding our English Contract from Wolseley Motors Limited; we are also receiving from Wolseley Motors purchase orders. The English people maintain that Wolseley Motors are losing money. British Timken are making money, and therefore by consolidating the operation there will be a saving in taxes. This no doubt is true, but we feel that it is of no price benefit to us, and may be some [fol. 4979] detriment unless they are very careful in seeing that the trade to whom they sell, considers British Timken as an independent Vickers subsidiary. We wish your advice as to how we should handle this correspondence with Wolseley Motors Limited.

We are enclosing a copy of letter just received from Wolseley Motors Limited dated March 10th, this year. This covers many of the points that were recited in theirs of December 14, 1923. One point not common to both is the matter of the 10% extra that we have made in our sales to British Timken Limited over our lowest American prices. The reason for putting this in the Supplemental Agreement was on account of the small volume of their purchases not entitling them to our lowest quantity prices. Their purchases from us however are small, and it makes little difference one way or the other, and we would be perfectly willing to waive this and agree to give them at all times the lowest prices prevailing to any of our American customers.

As to royalty: If the matter of the Timken name can be satisfactorily settled, we feel that a 5% flat royalty on all business should be satisfactory to them, and if they feel that the Ford business cannot stand this much royalty, it is a simple matter of bookkeeping for them to figure a little more royalty on their other business and a little less on the Ford, but handling their accounting with us all on a flat 5% basis.

As a last resort, however, in order to get everything that we desire in clearing the name "Timken", and in having entire control of it, we would consider even down to 2½% on the Ford business only, and 5% on all other business. This must include royalty on all bearings produced, and we can see no reason why the Wolseley Motors Limited should be relieved from payment of royalty any more than any other European user.

You can appreciate in the review of these various matters that we cannot by correspondence handle this matter with the English people to advantage and promptly. We are therefore writing them that you have our wishes on the matter and will get in touch with them to negotiate changes which will be agreeable to both sides; and to cover this we are enclosing copy of letter addressed to the British Timken Limited, which however replies to letters from Wolseley Motors.

We hope you can give this matter prompt attention, and if necessary or wise, please feel free to cable us and we will promptly advise you on any points not clear to you.

Very truly yours, The Timken Roller Bearing Co.,
——— ———, Vice Pres. & Treas.

Heman Ely. B

Enclosures: Copy of Letter from Wolseley Motors Limited, dated December 14, 1923. Copy of letter from Abel & Imray, dated March 6, 1924. Copy of letter from Wolseley Motors Limited, dated March 10, 1924. Copy of letter to British Timken Limited, dated March 25, 1924.

[fol. 4980] DEFENDANT'S EXHIBIT 84

6th November, 1924.

Messrs. The Timken Roller Bearing Co., Canton, Ohio, U. S. A.

For the attention of Mr. Heman Ely

DEAR SIRS:

Messrs Amerikanska Gummi A/B, Stockholm

This firm are our Service Representatives in Stockholm and through their branches in the important centres distribute our bearings throughout the whole of Sweden, and

they are working very hard to educate the motoring public to always specify the Timken bearing in the face of competition from the Bock, Gilliam and Skefko organizations.

A few days ago we were discussing the situation with Mr. Lindqvist, the Managing Director of this company, and he is much disturbed at the number of bearings that are imported from America through export houses who appear to be able to procure their supplies at very low prices. His suggestion to us is that the name "Timken", which you have registered in Sweden, be transferred to them as long as they are associated with us as authorized Timken bearing distributors, when, under Swedish law, they would be able to prevent other firms from selling tapered roller bearings under the name "Timken". As you must realise, the Timken bearing is extremely popular and there is always the possibility of imitations being foisted on an unsuspecting public by dealers who are selling a competitive line.

We realise that this is an unusual request to make but would like to have your views.

Yours faithfully, For British Timken Limited, W. W. Sharpe, General Manager.

[fol. 4981] DEFENDANT'S EXHIBIT 85

November 17, 1924.

British Timken Limited, Ward End, Birmingham, England.

Attention: Mr. W. W. Sharpe, General Manager

DEAR SIR:

We are in receipt of yours of the 6th regarding Messrs. Amerikanska Gummi A/B, Stockholm, and note your suggestion that the name TIMKEN, which we have registered in Sweden, be transferred to them.

We hardly think this is wise, as their connection with you may not be a permanent one, and we do not think it wise for us to lose control of our name in this manner.

We hope that your Swedish distributors will promptly advise you of any Timken imitations, and we will ask that you in turn advise us, giving full details. We of course have somewhat the same problem to meet here, and have been very successful in meeting it up to date. If there

are any flagrant cases of close pirating on the name TIMKEN, you should be fully advised and so should we. Please let us hear further from you if there are any actual cases of this sort.

Very truly yours, The Timken Roller Bearing Co., ——— ———, Vice Pres. & Treas.

Heman Ely. B.

[fol. 4982] DEFENDANT'S EXHIBIT 86

27th November, 1924.

Messrs. The Timken Roller Bearing Co., Canton, Ohio, U. S. A.

For the attention of Mr. Heman Ely

DEAR SIRS:

This is to acknowledge your favour of the 17th inst., and note that you do not consider it wise to transfer the registration of the name "Timken" to our Dealer in Sweden. In this matter we are in perfect agreement with you, but as we had promised our representative that the matter would be discussed with you, we felt that it was only right to lay the facts before you.

Timken business in Sweden you will appreciate must necessarily be mainly of a service character as there are no motor car vehicles made there to our knowledge, although there is an industrial field where we are trying hard to introduce Timken bearings. The consequence is that the whole country is over-run with motorcar and accessory dealers, and they are all endeavouring in someway or other to get the advantage of the other. This was doubtless in the mind of our Dealer when the request of the transfer of the name was put forward and we think you are quite right in your attitude. We shall in other ways endeavour to satisfy Messrs. Amerikanska Gummi so that we can keep them enthusiastic in the sale of the Timken bearing, and you may rely upon us reporting to you any flagrant imitations that come to our notice.

Yours faithfully, For British Timken Limited, W. W. Sharpe, General Manager.

[fol. 4983]

DEFENDANT'S EXHIBIT 87

Trade-Marks of The Timken Roller Bearing Company Used in the Sale of Anti-Friction Bearings Registered from 1909 to February 20, 1947

TRADE-MARK "TIMKEN" FOR ROLLER BEARINGS

Country	Registration Number	Registration Date	Expiration Date	Remarks	Renewable
Afghanistan	Advertisement	1- 1-44	1- 1-54		
Argentina	Cl. 5 56431	4-30-19	4-30-29		
"	Cl. 5 117804	10-31-29	10-31-39	Renewal of 56431	
"	Cl. 5 186310	11-29-39	11-29-49	Renewal of 117804	
"	Cl. 12 76474	4-30-23	4-30-33		
"	Cl. 12 143694	8-18-33	8-18-43	Renewal of 76474	
"	Cl. 12 214427	9-29-43	9-29-53	Renewal of 143694	Indefinitely
"	191247 All Goods in Cl. 5 except Roller Bearings	9-30-40	9-30-50		Indefinitely
Australia	35103	1- 5-23	1- 5-37		
"	35103	1- 5-37	1- 5-51	Renewal	Indefinitely
Austria	93095	10-10-23	10-10-33		
"	93095	10-10-33	10-10-43	(Renewal. Application (for renewal filed 12-19-46)	
Belgian Congo	155K	10-22-43	Unlimited		
Belgium	27298	12-16-22	12-16-32		
"	42670	2-21-33	Unlimited	Renewal of 27298	
Bolivia	5806C	3- 2-44	3- 2-54		Indefinitely
Brazil	9673	2- 4-24	2- 4-39		
"	60053	6-16-39	6-16-54	Renewal of 9673	Indefinitely
Bulgaria	4264	11- 7-23	11- 7-33		
"	4264	11- 7-33	11- 7-43	Renewal	
"	4264	11- 7-43	11- 7-53	Renewal	Indefinitely
Canada	147/33360	5-12-23	5-12-48		

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TRADE-MARK "TIMKEN" FOR ROLLER BEARINGS (Continued)

Country	Registration Number	Registration Date	Expiration Date	Remarks	Renewable
Chile	18640	9-20-18	9-20-28		
"	43174	2-18-29	2-18-39	Renewal of 18640	
"	61540	2-13-39	2-13-49	Renewal of 43174	Indefinitely
China	6775 Peking	3-21-26	3-21-46	Revalidated at Nanking 10-1-29	
"	7225 Nanking	3-21-26	3-21-46		
"	7225	3-21-46	3-20-66	Renewal	Indefinitely
China	18207	9- 6-18		Temporary	Indefinitely
"	10949 Nanking	4-15-30	4-15-50		
Colombia	Cl. 5 11113	10-20-37	10-20-47		
"	Cl. 5 11113	10-20-47	10-19-52	Renewal	
Costa Rica	7334/5873	12-17-43	12-17-58		Indefinitely
Cuba	58460	9-13-38	9-13-53		Indefinitely
Curacao	1345	9-22-43	9-22-63		Indefinitely
Czechoslovakia	23919	10-16-23	10-16-33		
"	47792	10-16-33	10-16-43	Renewal of 23919 (Appl. for renewal filed 9-2-46)	
Denmark	96-1923	2-10-23	2-10-33		
"	96-1923	2-10-33	2-10-43	Renewal	
"	96-1923	2-10-43	2-10-53	Renewal	Indefinitely
Dominican Republic	5002	3-29-44	3-28-54		Indefinitely
Dutch East Indies	33202	1-14-47	1-13-67		Indefinitely
Dutch Guiana (Surinam)	1234	12-24-43	12-24-63		Indefinitely
Ecuador	15	9-25-43	9-25-63		Indefinitely

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TRADE-MARK "TIMKEN" FOR ROLLER BEARINGS (Continued)

Country	Registration Number	Registration Date	Expiration Date	Remarks	Renewable
Egypt (Alexandria)	7 Fol. 9 Vol. 6	11-27-23	6-21-41		
" (Cairo)	232/49th Yr.	2-22-24	6-21-41		
" (Mansourah)	67/49th Yr.	4- 9-24	6-21-41		
"	450	5- 6-40	4- 6-50		Indefinitely
Ethiopia	Advertisement	3- 4-46	3- 4-56		Indefinitely
Finland	6909	11-20-23	11-20-33		
"	6909	1-27-34	1-27-44	Renewal	Indefinitely
"	20279	11-16-46	1-15-56		
Greece	4473	2-27-26	2-27-36		
"	10358	2-19-36	2-19-46	Renewal of 4473	
"	52366	2-19-46	2-19-56	Renewal of 10358	Indefinitely
Guam	1	4- 3-46	Indeterminate		
Guatemala	5149	11-19-43	11-18-53		Indefinitely
Haiti	55/8	12-27-43	6-21-61		Indefinitely
Hawaii	Unnumbered	7- 1-37	7- 1-57		Indefinitely
Honduras	2906	12-10-43	12-10-53		Indefinitely
Hong Kong	Cl. 13 260/1937	6-30-37	6-30-51		Indefinitely
Hungary	46137	10-24-23	10-24-33		
"	46137	10-24-33	10-24-43	Renewal	
"	66358	12- 9-39	3- 2-43		
"	74337	3- 2-43	3- 1-53	Renewal of 66358	Indefinitely
Iceland	25/1943	11-15-43	11-15-53		Indefinitely
India	59/23	1-10-23	Unlimited	Adv. every 10 years	
Inter-American (1910)	0769	10-31-22	6-21-41		

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TRADE-MARK "TIMKEN" FOR ROLLER BEARINGS (Continued)

Country	Registration Number	Registration Date	Expiration Date	Remarks	Renewable
Inter-American (1923)	1326	9-26-41	6-21-61		Indefinitely
Iran	1517/2595	11- 5-43	11- 5-53		Indefinitely
Iraq	128/7/43	11-24-43	11-24-58		Indefinitely
Italy	24993	12-21-22	(Unlimited		Indefinitely
"			(Application for renewal filed 3-21-47)		
Jamaica	3328	6-11-37	6-11-51		Indefinitely
Japan	102310	4-25-19	4-25-39	Restored 6-9-34	
"	102310	4-25-39	4-25-59	Renewal	Indefinitely
Jugoslavia	3824	6-20-24	6-20-34		
"	3824	6-20-34	6-20-44	Renewal	
"	Cl. 1 11074	3-30-46	3-29-56		Indefinitely
Leeward Islands	Cl. 6 533	11-19-46	11-19-60		Indefinitely
Liberia	440203	12- 8-43	12- 8-58		Indefinitely
Luxembourg	5004	10-10-23	10-10-33		
"	7362	10- 2-33	12- 2-43	Renewal of 5004	
"	9537	9- 7-45	9- 7-55	Renewal of 7362	Indefinitely
Manchukuo	16256 (Rollers)	4- 4-37	4- 3-57		
"	16257 (Roller Bearings)	4- 4-37	4- 3-57		Indefinitely
Mexico	15942	10-10-18	10-10-38		
"	15942	10-10-38	10-10-48	Renewal	Indefinitely
Morocco (French Zone)	6686	8- 9-45	8- 9-65		Indefinitely
Netherlands	45997	12-27-22	12-27-42		
"	86947	12-27-42	12-26-62		Indefinitely

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TRADE-MARK "TIMKEN" FOR ROLLER BEARINGS (Continued)

Country	Registration Number	Registration Date	Expiration Date	Remarks	Renewable
Newfoundland	1200	9-26-33	Unlimited		
Nicaragua	Cl. 37 3940	11-27-43	11-27-53		
"	Cl. 38 4182	9- 4-44	9- 4-54		Indefinitely
Norway	9808	12-22-22	12-22-32		
"	9808	12-22-32	12-22-42	Renewal	
"	Cl. 11 9808	12-22-42	12-22-52	Renewal	Indefinitely
Panama	3159	2-28-39	2-28-49		Indefinitely
Paraguay	14790	6-17-44	6-17-54		Indefinitely
Peru	425	1-27-19	1-27-29		
"	8340	5- 4-29	5- 4-39	Renewal of 425	
"	17958	6-19-39	6-19-49	Renewal of 8340	Indefinitely
Philippine Islands	10988	6-21-32	6-21-62		Indefinitely
Poland	11453	2-11-26	2-11-36		
"	11453	2-11-36	2-11-46	Renewal	
"	11453	2-11-46	2-10-56	Renewal	Indefinitely
Portugal	31831	12-24-24	12-24-34		
"	31831	12-24-34	12-24-44	Renewal	
"	31831	12-24-44	12-24-54	Renewal Extended 9-3-43 to: Angola, Cape Verde Islands, Macao, Mozambique, Portuguese Guiana, Portuguese Indies, St. Thomas & Prince's Island, and Timor.	Indefinitely
Puerto Rico	Cl. 23 4292	12- 8-37	12- 8-47		Indefinitely
Rhodesia (Southern)	2726	3-12-24	3-12-38		
"	2726	3-12-38	3-12-52	Renewal	Indefinitely

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TRADE-MARK "TIMKEN" FOR ROLLER BEARINGS (Continued)

Country	Registration Number	Registration Date	Expiration Date	Remarks	Renewable
Roumania	10124	10-18-23	10-18-38		
"	9754	8-25-38	8-25-53	Renewal of 10124	Indefinitely
Russia	4213	1- 8-32	1- 8-42		Indefinitely
"	2987	9-23-46	9-23-56		Indefinitely
Salvador	4338	2-19-44	2-19-64		
Siam	2518	3-29-32	3-29-42		
"	2518	3-29-42	3-29-52	Renewal	Indefinitely
Spain	48725	10-26-23	10-26-43		
"	48725	10-26-43	10-26-63	Renewal	Indefinitely
Sweden	26792	1-30-23	1-30-33		
"	26792	1-30-33	1-30-43	Renewal	
"	26792	1-30- 3	1-30-53	Renewal	Indefinitely
Switzerland	53381	1-12-23	1-12-43		
"	105479	1-12-43	1-11-63	Renewal of 53381	Indefinitely
Tangier Zone	317	6-25-46	6-24-66		Indefinitely
Trinidad & Tobago	Cl. 6 91 of 1937	10-29-37	10-29-51		Indefinitely
"	Cl. 13 92 of 1937	10-29-37	10-29-51		Indefinitely
Tunis	53	2-10-43	2-10-58		Indefinitely
Turkey	394/355	11-29-23	11-29-38		Indefinitely
"	5901	11-29-38	11-29-53	Renewal of 394/355	Indefinitely
United States	144149	6-21-21	1- 5-48	(Application for (Renewal filed 7/5/47)	Indefinitely
Uruguay	30212	2-23-38	2-23-48		
Venezuela	2337	12-30-18	12-30-48		
"	7288	4-14-30	4-14-40	Reregistration of 2337	
"	12269	6- 6-40	6- 6-55	Renewal of 7228	Indefinitely

1977

[fol. 4989]

TRADE-MARK "TRBCO" IN TRIANGLE FOR BEARINGS

Country	Registration Number	Registration Date	Expiration Date	Remarks	Renewable
Argentina	56430	4-30-19	4-30-29		
"	175073	6-15-38	6-15-48	Renewal	Indefinitely
Australia	Cl. 6 25604	7-31-19	7-31-33		
"	Cl. 7 25605	7-31-19	7-31-33		
"				Application #88827 filed 10-4-46; accepted 6-26-47.	
Austria	80138	1- 8-20	1- 8-30		Indefinitely
"				Application #2627/46 filed 12-11-46	
Bahama Islands	Cl. 6 1495	9- 4-46	9-30-60		Indefinitely
Belgium	20768	6-25-19	6-25-29		
"	60407	9-14-46	Unlimited		
Belgian Congo	224/K	10- 9-46	Indefinite		
Bermuda	Cl. 6 2220	11-20-46	11-19-60		Indefinitely
Bolivia	7648	2- 7-47	2- 6-57		Indefinitely
Brazil	5950	7-31-19	7-31-34		
"	56246	7- 4-38	7- 4-53		Indefinitely
British Guiana	Cl. 6 302	9-15-19	9-15-33		
" "	Cl. 7 303	9-15-19	9-15-33		
" "	Cl. 6 2501-A	9-10-46	9- 9-60		
" "	Cl. 7 2580-A	10-18-46	10-17-60		Indefinitely
British North Borneo				Application filed	
Bulgaria	3170	11-30-20	11-30-30		
"	13109	4- 7-47	4- 6-57		Indefinitely
Burma	867	9-18-19	Unlimited		

[fol. 4990]

TRADE-MARK "TRBCO" IN TRIANGLE FOR BEARINGS (Continued)

Country	Registration Number	Registration Date	Expiration Date	Remarks	Renewable
Canada	100/23817	9-11-18	9- 1-57		Indefinitely
Ceylon	2288	10-17-19	10-17-33		
"				Application filed	
Chile	18639	9-20-18	9-20-28		
"	59863	4-14-38	4-14-48		Indefinitely
China	18208	9-16-18		Temporary	
"	33679	4-16-38	4-16-58		Indefinitely
Colombia	Cl. 5 11114	10-20-37	10-20-47		
"	Cl. 5 11114	10-20-47	10-19-52	Renewal	Indefinitely
Congo Free State				Application filed	
Costa Rica	Cl. 23 9806	2- 6-47	2- 5-62		Indefinitely
Cuba	Cl. 19 58459	9-13-38	9-13-53		Indefinitely
Curacao	1905	10-22-46	10-21-66		Indefinitely
Cyprus	Cl. 6 2269-A	9-17-46	9-16-60		Indefinitely
Czechoslovakia	11397	9-26-19	9-26-29		
"				Application filed 1-6-47	
Denmark	486	7- 5-19	7- 5-29		
"	136/47	1-25-47	1-24-57		Indefinitely
Dominica				Application filed	
Dominican Republic	Cl. 70 5782	9- 9-46	9- 8-56		Indefinitely
Dutch East Indies	33252	2-14-47	2-13-67		Indefinitely
Dutch Guiana (Surinam)	1462	9-11-46	9-10-66		Indefinitely

1979

[fol. 4991]

TRADE-MARK "TRBCO" IN TRIANGLE FOR BEARINGS (Continued)

Country	Registration Number	Registration Date	Expiration Date	Remarks	Renewable
Ecuador	103/47	9-23-46	9-22-66		Indefinitely
Egypt (Alexandria)	80 Fol. 165 Vol. 22	3-31-20	2- 4-39		
" (Cairo)	336/44th Yr.	7-16-19	2- 4-39		
" (Mansourah)	4/44th Yr.	11-13-19	2- 4-39		
"	Cl. 7 179	12-29-38	12-29-48	Renewal	
"	Cl. 33 406	4- 6-40	4- 6-50		Indefinitely
Eritrea				Application filed	
Fiji Islands	Cl. 6 1229	10-18-46	10-17-60		Indefinitely
Finland	4229	7-16-19	7-16-29		
"				Application #1356/46 filed 11-25-46	
France	27019	6-19-19	6-19-34		Indefinitely
"	Cl. 22 52739	9-30-46	9-29-61		Indefinitely
Gambia	Cl. 6 1215	12-21-46	12-20-60		
Germany	243680	1-19-20	1-19-30		Indefinitely
Gold Coast Colony	Cl. 22 3829	11- 2-46	11- 1-60		
Great Britain				Application filed 11-14-46, #653641	
Greece	95	6- 6-19	6- 6-29		
"				Application #14833 filed 12-23-46	
Guam	5	12-20-46	2- 3-59		Indefinitely
Guatemala	Cl. 23 6238	3-20-47	3-19-57		Indefinitely
Haiti				Application filed	
Hawaii	Unnumbered	7- 1-37	7- 1-57		Indefinitely

[fol. 4992]

TRADE-MARK "TRBCO" IN TRIANGLE FOR BEARINGS (Continued)

Country	Registration Number	Registration Date	Expiration Date	Remarks	Renewable
Hong Kong	Cl. 6 168	6- 2-20	6- 2-34		
" "	Cl. 7 169	6- 2-20	6- 2-34		
" "	Cl. 13 259/1937	6-30-37	6-30-51		Indefinitely
Honduras Republic				Application filed	
Hungary	36270	1-13-20	1-13-30		
"				Application #36176 filed 12-30-46	
Iceland	164/1946	12-18-46	12-17-56		Indefinitely
India	1143	8- 8-19	Unlimited	Adv. every 10 years	
Inter-American Bureau (1910)	0474	5-23-21	2- 4-39		
Inter-American Bureau (1923)	1303	3-31-39	2- 4-59		Indefinitely
Iran	Cl. 22 2618/3694	1-25-47	1-24-57		Indefinitely
Iraq				Application filed	
Irish Free State				Application #711/46 filed 9-12-46	
Italy	18076	4-27-21	Unlimited		
"				Renewal filed 12-28-46	
Jamaica	Cl. 6 1223	7-12-19	7-12-33		
"	Cl. 7 1224	7-12-19	7-12-33		
"	Cl. 6 3329	6-11-37	6-11-51		Indefinitely
Japan	101166 Cl. 17 (Conical)	3-11-19	3-11-39	Restored 9-4-24	
"	101166 (Roller Brg.)	3-11-39	3-11-59	Renewal	
"	102311 Cl. 17 (Roller Brg.)	4-25-19	4-25-39	Restored 6-9-34	
"	102311	4-25-39	4-25-59	Renewal	Indefinitely

1981

[fol. 4993]

TRADE-MARK "TRBCO" IN TRIANGLE FOR BEARINGS (Continued)

Country	Registration Number	Registration Date	Expiration Date	Remarks	Renewable
Jugoslavia	257	6-13-21	6-13-31		
"				Application #2056 Z 207/46 filed 10-15-46	
Kenya Colony				Application filed	
Labanon				Application filed	
Leeward Islands	Cl. 6 534	11-19-46	11-19-60		Indefinitely
Liberia	14547/11	12-27-46	12-27-61		Indefinitely
Luxembourg	3410	6-21-19	6-21-29		
"	9919	9- 7-46	9- 6-56		Indefinitely
Malta and Gozo				Application filed	
Mauritius	103	9-19-19	Unlimited		
Mexico	15941	10-10-18	10-10-38		
"	Cl. 23 15941	10-10-38	10-10-48	Renewal	Indefinitely
Morocco (French Zone)	7098	10- 9-46	10- 8-66		Indefinitely
Netherlands	38629	6-28-19	6-28-39		
"	38629	6-14-39	6-14-59	Renewal	Indefinitely
Newfoundland	778	7-12-19	Unlimited		
New Zealand	Cl. 6 15680	7-25-19	7-25-33		
" "	Cl. 7 15681	7-25-19	7-25-33		
" "	Cl. 7 43741	10-16-46	10-16-53		Indefinitely
Nicaragua	4983	11-14-46	11-13-56		Indefinitely
Nigeria				Application filed	
Norway	6063	6-28-19	6-28-29		
"				Application on #41443 filed 12-3-46	

[fol. 4994]

TRADE-MARK "TRBCO" IN TRIANGLE FOR BEARINGS (Continued)

Country	Registration Number	Registration Date	Expiration Date	Remarks	Renewable
Nyasaland Protectorate				Application filed	
Palestine				Application #8311 filed 10-8-46	
Panama	3156	2-28-39	2-28-49		Indefinitely
Paraguay	Cl. 5 17409	11-25-46	11-24-56		Indefinitely
Persia (Iran)				Application filed	
Peru	427	1-27-19	1-27-29		
"	Cl. 22 16399	9-13-37	9-13-47		Indefinitely
Philippine Islands	12727	4-28-38	4-28-68		Indefinitely
Poland	997	8-27-24	8-27-34		
"	Cl. 5 33248	5-16-47	5-15-57		Indefinitely
Portugal	22891	10-11-20	10-11-30		
"				Application #65537 filed 12-17-46	
Portuguese Colonies				Application filed. Angola, Cape Verde Islands, Mozambique, Portuguese Guiana, Macao, Portuguese Indies, St. Thomas & Prince's Island and Timor.	
Puerto Rico	Cl. 23 4293	12- 8-37	12- 8-47		Indefinitely
Rhodesia—Southern	2077	9- 3-19	9- 3-33		
" "				Application filed 1946	
Roumania	2792	3-31-20	3-31-35		
"	9989/46	10-38-46	10-27-61		Indefinitely

1983

[fol. 4995]

TRADE-MARK "TRBCO" IN TRIANGLE FOR BEARINGS (Continued)

Country	Registration Number	Registration Date	Expiration Date	Remarks	Renewable
Russia	446	5-20-38	5-20-39		
"	Cl. 10 1434	5-13-40	2- 4-59	Renewal of 446	Indefinitely
St. Lucia	Cl. 6 44	10-11-46	10-10-60		Indefinitely
St. Vincent	Advertisement	11- 2-46	11- 1-56		Indefinitely
Salvador	413	4-16-47	4-15-67		Indefinitely
Sarawak				Application filed 1946	
Seychelles Islands				Application filed 1946	
Siam	Cl. 13 4694	11- 5-37	11- 5-47		Indefinitely
Sierra Leone	Cl. 13 2013	2-21-47	2-21-61		Indefinitely
South Africa	Cl. 6 789/19	7-15-19	7-15-33		
" "	Cl. 7 790/19	7-15-19	7-15-33		
South African Union	Cl. 13 2662/46	9-16-46	9-15-60		Indefinitely
South West Africa	Cl. 13 1572/46	9-27-46	9-26-60		Indefinitely
Spain	35759	6-14-20	6-14-40	Lapsed 1923	
"				Application #196,541 filed 12-17-46	
Straits Settlements	Cl. 6 384788	3- 5-20	3- 5-30		
" "	Cl. 7 391862	3- 5/20	3- 5-30		
" "				Application filed 1946	
Sudan	Cl. 6 1373	9-25-46	9-24-66		Indefinitely
Sweden	21777	7- 1-19	7- 1-29		
Swaziland Protectorate	Cl. 13 21/46	11-19-46	Unlimited		
Switzerland	44429	6-25-19	6-25-39		
"	95584	4-17-39	4-17-59	Renewal of 44429	Indefinitely

[fol. 4996]

TRADE-MARK "TRBCO" IN TRIANGLE FOR BEARINGS (Continued)

Country	Registration Number	Registration Date	Expiration Date	Remarks	Renewable
Syria	269	9-28-46	9-27-61		Indefinitely
Tanganyika Territory				Application filed 1946	
Tangier Zone	345	10- 8-46	10- 7-66		Indefinitely
Transjordania				Application filed 1946	
Travancore				Application filed 1946	
Trinidad & Tobago	Cl. 6 87	7- 7-19	7- 7-34		
" "	Cl. 7 88	7- 7-19	7- 7-34		
" "	Cl. 6 93 of 1937	10-29-37	10-28-51		
" "	Cl. 13 94 of 1937	10-29-37	10-28-51		Indefinitely
Tunis	174	11-16-46	11-15-61		Indefinitely
Turkey	2447/410	10-29-19	10-29-34		
"				Application #42 filed 1-3-47	
Uganda Protectorate				Application filed	
United States	124351	2- 4-19	2- 4-39		
" "	124351	2- 4-39	2- 4-59	Renewal	Indefinitely
Uruguay	30787	7-20-38	7-20-48		Indefinitely
Venezuela	2336	12-28-18	12-28-48		
"	Cl. 23 10513	11-20-37	11-20-52	Registration of 2336	Indefinitely
Virgin Islands	586	12-10-46	2- 3-59		Indefinitely
Zanzibar	Cl. 6 3/1947	10-31-46	10-30-60		Indefinitely

[fol. 4997]

TRADE-MARK "T" IN OVAL FOR BEARINGS

Country	Registration Number	Registration Date	Expiration Date	Remarks	Term in Years
Argentina	84116	3-28-24	3-28-34		Indefinitely
Canada	150/33896	7-23-23	7-23-48		
Chile	31904	1-17-24	1-17-34		
Inter-American Bureau (1910)	0992	4-28-24	8- 7-43		
Mexico	23199	3-13-24	3-13-44		
United States	171583	8- 7-23	8- 7-23		
United States	171583	8- 7-43	8- 7-63	Renewal	Indefinitely

[fol. 4998]

TRADE-MARK "BOCK" FOR BEARINGS

Country	Registration Number	Registration Date	Expiration Date	Remarks	Term in Years
Australia	33407	6- 7-22	6- 7-36		
Belgium	26384	5- 6-22	Unlimited		
Belgium	42669	2-21-33	2-21-43	Renewal of 26384	
Canada	132/30206	1-20-22	1-20-47		
Canada	132/30206	1-20-47	1-19-72	Renewal	Indefinitely
France	31563	5- 9-22	5- 9-37		
Germany	291018	5- 9-22	5- 9-32		
Germany	291018	5- 7-32	5- 7-42	Renewal	
India	891/22	5-31-22	Unlimited		
Italy	23931	5-57-24	Unlimited		
Japan	155685	8-20-23	8-20-43		
New Zealand	19054	5-29-22	5-29-36		
South Africa	471/22	5-26-22	5-26-36		
Sweden	25997	6-20-22	6-20-32		
Sweden	25997	6-13-32	6-13-42	Renewal	
Switzerland	51900	5-11-22	5-11-42		
Switzerland	65332	9-17-27	9-17-47		
United States	144100	6-21-21	1- 5-48		Indefinitely

[fol. 4999]

TRADE-MARK "GILLIAM" FOR BEARINGS

Country	Registration Number	Registration Date	Expiration Date	Remarks	Renewable
United States	177107	12-11-23	12-11-43		
" "	177107	12-11-43	12-11-63	Renewal	Indefinitely

[fol. 5000]

List of TRADE MARKS and Trade Names used in the Sale of Anti-Friction Bearings and Registered by BRITISH TIMKEN LIMITED from 1928 to November 1947

(1) Country	(2) Registration Number	(3) Title, Design or Description	(4) Registration Date	(5) Expiration Date	(6) Expiration Date of Possible Renewal
Great Britain	600251	Word "TIMKEN" (Class 6)	9th August 1938	9th August 1959	9th August 1973, but again renewable indefinitely.
" "	600252	Word "TIMKEN" (Class 7)	9th August 1938	9th August 1959	9th August 1973, but again renewable indefinitely.
Eire	39696	Word "TIMKEN" (Class 12)	2nd March 1932	2nd March 1960	2nd March 1974, but again renewable indefinitely
"	39697	Word "TIMKEN" (Class 7)	2nd March 1932	2nd March 1960	" " "
South Africa	792/29	Word "TIMKEN" (Class 6)	27th March 1929	27th March 1957	27th March 1971, but again renewable indefinitely.
" "	793/29	Word "TIMKEN" (Class 13)	" " "	" " "	" " "
New Zealand	27183	Word "TIMKEN"	7th December 1928	7th December 1956	7th December 1970, but again renewable indefinitely.
Straits Settlements	7260	Word "TIMKEN" (Class 6)	24th December 1940	24th June 1952	24th June 1966, but again renewable indefinitely.
" "	7261	Word "TIMKEN" (Class 7)	" " "	" " "	" " "
India	275	Word "TIMKEN" (Class 6)	1st June 1942	1st June 1949	1st June 1964, but again renewable indefinitely.

[fol. 5001]

List of TRADE MARKS and Trade Names used in the Sale of Anti-Friction Bearings and Registered by BRITISH TIMKEN LIMITED from 1928 to November 1947 (Continued)

(1) Country	(2) Registration Number	(3) Title, Design or Description	(4) Registration Date	(5) Expiration Date	(6) Expiration Date of Possible Renewal
India	381	Word "TIMKEN" (Class 7)	2nd June 1942	2nd June 1949	2nd June 1964, but again renewable indefinitely.
Basutoland	476	Word "TIMKEN"	9th May 1947	9th August 1959	9th August 1973, but again renewable indefinitely.
Southwest Africa	1682/47	Word "TIMKEN" (Class 6)	29th May 1947	29th May 1961	29th May 1975, but again renewable indefinitely.
" "	1683/47	Word "TIMKEN" (Class 13)	" " "	" " "	" " "
Iceland	72/1947	Word "TIMKEN"	4th July 1947	4th July 1957	4th July 1967, but again renewable indefinitely.
Northern Rhodesia	1307	Word "TIMKEN"	22nd May 1947	9th August 1959	9th August 1973, but again renewable indefinitely.
British Guiana	2634C	Word "TIMKEN"	28th July 1947	9th August 1959	9th August 1973, but again renewable indefinitely.
Gold Coast	3914	Word "TIMKEN" (Class 6)	5th May 1947	5th May 1961	5th May 1975, but again renewable indefinitely.
" "	3915	Word "TIMKEN" (Class 13)	" " "	" " "	" " "

1989

[fol. 5002]

List of TRADE MARKS and Trade Names used in the Sale of Anti-Friction Bearings and Registered by BRITISH TIMKEN LIMITED from 1928 to November 1947 (Continued)

(1)	(2)	(3)	(4)	(5)	(6)
Country	Registration Number	Title, Design or Description	Registration Date	Expiration Date	Expiration Date of Possible Renewal
Persia	3111/4187	Word "TIMKEN"	24th June 1947	24th June 1957	24th June 1967, but again renewable indefinitely.
Bechuanaland	66/47	Word "TIMKEN"	1st May 1947	9th August 1959	9th August 1973, but again renewable indefinitely.

[fol. 5003]

Trade-Mark of Societe Anonyme Francaise Timken Used in the Sale of Anti-Friction Bearings Registered from 1929 to February 20, 1947

TRADE-MARK "TIMKEN" FOR ROLLER BEARINGS

Country	Registration Number	Registration Date	Expiration Date	Renewable
France	330118	January 30, 1929	January 31, 1955	Indefinitely

[fol. 5004] DEFENDANT'S EXHIBIT 88

Agreement made the First day of January One thousand nine hundred and twenty five between the Timken Roller Bearing Company a Corporation organized under the laws of the State of Ohio in the United States of America and having its office and principal place of business in the City of Canton in the State of Ohio aforesaid (hereinafter called "the Licensor Company") of the one part and British Timken Limited a Joint Stock Company incorporated under the Laws of Great Britain and having its registered office at Adderley Park Birmingham in the Kingdom of England (hereinafter called "the Licensee Company") of the other part

Supplemental to:

(1) An Agreement (hereinafter referred to as "the Principal Agreement") dated the sixteenth day of June and sixteenth day of July One thousand nine hundred and nine and made between the Licensor Company of the one part and The Electric & Ordnance Accessories Company Limited of the other part being a Licence for the manufacture and sale of Timken Roller Bearings in the United Kingdom of Great Britain and Ireland and the Isle of Man and

(2) An Agreement (hereinafter referred to as "the Second Agreement") made the sixth day of April One thousand nine hundred and twenty between the Licensor Company of the one part and Wolseley Motors Limited of the other part whereby the terms and conditions of the Principal Agreement were modified.

Whereas the benefits and obligations of the Electric & Ordnance Accessories Company Limited under the Principal Agreement with the consent of the Licensor Company

were assigned by the Electric and Ordnance Accessories Company Limited to Wolseley Motors Limited previous [fol. 5005] to the date of the Second Agreement and since that date have been assigned by Wolseley Motors Limited to the Licensee Company.

And whereas the parties hereto are desirous of further modifying the terms of the Principal Agreement as more particularly hereinafter appears.

Now these presents witness and it is hereby declared and agreed by and between the parties hereto as follows (namely):

1. The Principal Agreement as modified by the Second Agreement shall be further modified so far as necessary in order to give effect to the following provisions of this Agreement.

2. The Royalty payable under Clause 4 of Article 7 of the Principal Agreement shall be equal to Five per cent of the net invoice prices therein mentioned instead of Fifteen per cent except in the case of Roller Bearing delivered to the Ford Motor Company (England) Limited for use on cars manufactured by them in which case the royalty shall be equal to two and a half per cent of the net invoice prices aforesaid instead of Fifteen per cent.

3. This Agreement shall take effect as from the First day of January One thousand nine hundred and twenty four and the Principal Agreement as modified by the Second Agreement and this Agreement shall continue for a term of Five years from the First day of January One thousand nine hundred and twenty four and thereafter unless and until one party shall determine the same at the end of the said term of five years or at any time afterwards by at least six months previous notice in writing to the other party.

[fol. 5006] 4. The name "Timken" shall belong exclusively to the Licensor Company and during the continuance of the Principal Agreement as modified from time to time the Licensee Company shall be deemed to be using the said name as part of the subject matter of the licence contained in the Principal Agreement and shall have the right to use the said name accordingly and upon the expiration or other determination of the Principal Agreement as modified from time to time the Licensee Company will take such steps as may be necessary to change its name and will

otherwise cease to have any right in the said name or to make use of the same in any way and during the continuance and after the expiration or sooner determination of the Principal Agreement as modified from time to time the Licensee Company will execute and do at the expense of the Licensor Company such acts and things as may be reasonably necessary to secure for the Licensor Company so far as practicable an exclusive right to use the said name in connection with bearings and other products dealt in by the Licensor Company and to secure and protect so far as practicable the property and rights of the Licensor Company in respect of the said name and enable the Licensor Company to obtain or preserve the exclusive right aforesaid but nothing herein contained shall in any way affect or restrict the right of the Licensor Company to change its name in any manner during the continuance of this Agreement.

In Witness whereof the respective Common Seals of the [fols. 5007-5008] parties hereto have been affixed the day and year first above written.

Sealed with the Common Seal of The Timken Roller Bearing Cohmpany in the presence of J. F. Strongh, Secretary; Heman Ely, Vice President & Treasurer. (Seal)

The Common Seal of British Timken Limited was affixed hereto by Order of the Board in the presence of B. L. P. Caillard, G. W. Grazelbrook, Directors; A. Jacob, Secretary. (Seal)

[fol. 5009] DEFENDANT'S EXHIBIT No. 89

July 30, 1925.

The Timken Roller Bearing Company, Canton, Ohio.
Attention: Mr. Strough

GENTLEMEN:

. . . . . .

An application was filed in Germany; but it developed that Max Prausnitzer (who, as we understand, is the German representative of your British licensee) had already registered the mark and he successfully opposed our application for registration. There is no use to file another application for registration in Germany without

first obtaining the assurance of Mr. Prausnitzer that he will not oppose the application. Another way of handling the matter would be for Mr. Prausnitzer to execute an assignment of the registration to you.

No application has been filed in France, Great Britian or Ireland, because the laws of those countries seem to require actual use of the trade-mark before registration. Accordingly, such applications would have to be filed in the name of your British licensee or their subsidiaries. Such applications should be filed with the clear understanding that upon the termination of your relations with British Timken the registrations will be assigned to you.

We were under the impression that you had advised us that the mark "Timken" had already been registered in [fol. 5010] France by Societe Mecaniche de Gennevilliers (or some such name) and that this concern is the French agent or subsidiary of British Timken. If that is the fact, it would be impossible for you to obtain registration of the "Timken" mark in France and, as suggested in the case of Mr. Prausnitzer, you may obtain an assignment thereof. Apparently the best way of handling the matter will be for us to instruct Messrs. Skerrett & Skerrett to file applications in Great Britain, Ireland and France in the name of British Timken or its subsidiaries; but we await definite instructions from you before so doing. In writing Messrs. Skerrett & Skerrett we will, of course, raise once more the question of filing these applications in your name instead of in the name of British Timken or its subsidiary; but we anticipate that such procedure will not be found practicable, since you are not actually engaged in business in those countries.

Yours truly, —— ——.

JJG:K.
CC to Mr. Brooks.

[fol. 5011] DEFENDANT'S EXHIBIT No. 90

August 15, 1925.

Messrs. Skerrett & Skerrett, 24 Temple Row, (Next Bank of England) Birmingham, England.

GENTLEMEN:

The Timken Roller Bearing Company has its trade-mark "Timken" registered in the United States and in a great many foreign countries. From time to time the question has arisen of registering the trade-mark in Great Britain; but it was only recently that the British law was changed to permit the registration of surnames. Even after such change, there was the further question of whether the Timken Roller Bearing Company could make a successful application in view of the fact that the business in England had been conducted through British Timken and its predecessors. We believe that it will probably be advisable to file the application in the name of British Timken but we will be governed by your judgment in the matter.

It is also desired to register the trade-mark "Timken" in Ireland. As we understand the new law, the simplest way to obtain a registration is to file an application based on the British application and an application in Ireland will be filed in the name of the British registrant or applicant.

It is also desired to register the trade-mark in France; but as we understand the French law, the appli-[fol. 5012] cation should be filed in the name of the person actually conducting the business in France which, as we understand, is a corporate subsidiary of British Timken, Ltd. We are under the impression that a registration may already have been obtained in France in the name of such subsidiary and, if such is the fact, a new application will, of course, be necessary. Registration in Germany has been obtained by Max Prausnitzer.

* * * * * * *

Please go into this matter with British Timken and arrange to file applications in Great Britain and Ireland, and in France, if registration has not already been obtained. We are not sending formal documents, since we understand that they will probably be executed in the name of British

Timken. If it should be decided to file applications in the name of The Timken Roller Bearing Company, please send us the required documents for execution, particularly in the case of Ireland; because we have no information as to the form of the documents required under the new Irish law. Please also arrange for an assignment to the Praus-nitzer German registration, to the The Timken Roller Bearing Company and for the assignment of other registrations as soon as issued.

Yours truly, ——— ———.

JJG:MG.

[fol. 5013] Copy

DEFENDANT'S EXHIBIT 91

Stibbard, Gibson & Co.

(Thomas Cooper & Co.)

21 Leadenhall Street,
London, E. C. 3,
14th Septr., 1925.

E

DEAR SIRS:

Timken Trade Marks

We enclose a copy of the proposed statement of grounds for the Trade Mark Application which Messrs. Abel & Imray inform us can be signed by them and filed in their name; the information contained in this has been supplied by British Timken, Ltd.

If the application proceeds to advertisement in the Trade Mark Journal, Messrs. Abel expect that the Registrar will afterwards require a similar document in the form of a statutory declaration to file as evidence in support of the application, and he will probably also ask for declarations by traders in various parts of Great Britain before the application can be put upon the Registrar.

We have sent a copy of the enclosed document to British Timken, Ltd. for their approval, and in case of need, they will no doubt supply the statutory declaration and traders' declarations if occasion arises.

If you will kindly cable us the word "approve", we shall understand that you have no remarks to make upon the

enclosed document, and that we can instruct Messrs. Abel & Imray to sign it, and lodge it with the Trade Mark Office. We should be glad to get on with this.

Yours faithfully, Stibbard, Gibson & Co.

The Timken Roller Bearing Company.

[fol. 5014] Copy

DEFENDANT'S EXHIBIT 92

Trade Marks Acts

In the Matter of TRADE MARK APPLICATIONS, Nos. 459791-2 of TIMKEN ROLLER BEARING CO. and BRITISH TIMKEN LIMITED

STATEMENT OF GROUNDS

We, Timken Roller Bearing Company, and British Timken Limited, joint Applicants for the registration of the Mark Timken in Classes 6 and 13, hereby Give Notice that the following are the grounds on which we rely in supporting our Application:

1. The manufacture of these bearings was begun under a licence from the Timken Roller Bearing Company of Canton, Ohio United States of America, in the year 1908. We are unable to give particulars of the numbers of bearings delivered to customers in Great Britain for the years 1908 and 1910 owing to the records for these years not having been kept distinct from other business, but we give below the quantities for the succeeding years to the 30th September 1924:

Year ending September, 1911	27,125
Year ending September, 1912	56,988
Year ending September, 1913	57,471
Year ending September, 1914	73,028
Year ending September, 1915	64,027
Year ending September, 1916	50,276
Year ending September, 1917	58,437
Year ending September, 1918	66,240
Year ending September, 1919	111,862
Year ending September, 1920	225,848

Year ending September, 1921	178,362
Year ending September, 1922	145,884
Year ending September, 1923	255,358
Year ending September, 1924	363,549

2. All the bearings supplied as above have been stamped with the mark "Timken" and enclosed in boxes bearing the name "Timken". A specimen bearing in box marked "A" a catalogue marked "B", and a bundle of sample [fol. 5015] advertisements marked "C" are sent herewith.

3. It has been the practice to advertise Timken bearings in Great Britain regularly, and we set out below the amounts which have been spent in advertising from the commencement of the business up to January, 1925 with the exception of the period 1918/1919 of which we have no separate details:

1909	£143.10. 9
1910	540.13. 5
1911	586. 7.11
1912	396.13. 3
1913	605. 8. 6
1914	584.17. 1
1915	314. 4. 7
1916	774.12. 2
1917	159.18. 3
1918 (records not kept)-	
1919 do.	
1920	103. 1. 6
1921	1,684.15. 5
1922	1,659.17. 3
1923	2,201.11. 0
1924	3.537. 8.10

4. So far as we are concerned the mark is applied to bearings only.

5. The Mark "Timken" in regarded in the trade as a means of identifying goods of our manufacture, and such recognition is very necessary owing to the fact that other manufacturers in Great Britain are making bearings of a similar type and have been distributing them in boxes like those which we use, the only difference being that our competitors do not use the name "Timken" thereon.

We Therefore claim to be entitled to the Trade Mark as

we own the goodwill of the business concerned in the goods with respect to which the said mark is used.

Agents for Applicants.

Dated this — day of September, 1925.

To the Registrar Trade Marks Branch, Patent Office.

[fol. 5016] DEFENDANT'S EXHIBIT 93

H. N. & W. S. Skerrett, Patent Agents

24 Temple Row, (Next Bank of England)

Birmingham, Sept. 25th, 1925.

Carr & Carr, 610 Boatmans Buildings, St. Louis, Mo., U. S. A.

Gentlemen,

re Trade Mark "Timken"

Referring to your letter of August 15th., we have now discussed this matter with our clients.

They point out that application for the registration of the word "Timken" have already been filed in this country through Messrs. Abel & Imray of London, the numbers of the applications being 459791 and 459792. These applications were in the joint names of the Timken Roller Bearing Co., and British Timken Ltd. They are proce-ding in the ordinary way will shortly be advertised in the Trade Marks Journal. In view of this we should be glad to know whether you desire us to do anything further in connection with this matter.

As regards the Irish Free State the new law is expected to come into force very shortly and it will then be possible to obtain registration based on the English registration.

As regards France we have not yet heard from the French Co., as to whether they have registered the name. We will write you further when we hear.

As to Germany we understand from our clients that Mr. Prausnitzer will be in Birmingham in the course of a few weeks and they prefer to leave the matter over until then so as to discuss the question of the Assignment with him personally.

Awaiting your further instructions.
We enclose our Debit Note.
Yours faithfully, H. N. & W. S. Skerrett.

N. B. Papers sent under separate cover.

[fol. 5017] DEFENDANT'S EXHIBIT No. 94

Oct. 9, 1925.

Messrs. Skerrett & Skerrett, 24 Temple Row, (Next Bank of England), Birmingham, England.

Gentlemen:

We have your letter of September 25th concerning the British trade-mark "Timken". We have just been advised by The Timken Roller Bearing Company of the joint applications in the name of British Timken and The Timken Roller Bearing Company. In view of the pendency of these applications it will not be necessary, of course, for you to file the applications suggested in our letter.

You will please bear in mind the desire of The Timken Roller Bearing Company to obtain registration in the Irish Free State; and you will attend to this matter as soon as it is in order to do so.

* * * * * * *

We call your attention again to the revised contract between The Timken Roller Bearing Company and British Timken, which states clearly that the trade-mark "Timken" is the property of The Timken Roller Bearing Company.

Yours truly, —— ——.

JJG:K

[fol. 5018] DEFENDANT'S EXHIBIT 95

H. N. & W. S. Skerrett, Patent Agents
24 Temple Row, (Next Bank of England)
Birmingham, 7th October, 1925.

Messrs. Carr & Carr, 610 Boatmen's Bank Buildings, St. Louis, Mo., U. S. A.

Dear Sirs,

re Trade Mark "Timken" in France.

With further reference to your letter of August 15th, our clients Messrs. British Timken Ltd., have made enquiries from the French firm who are manufacturing Timken Bearings, and they have ascertained that the word "Timken" is already registered in France in the name of Societe de Mecanique de Gennevilliers.

We have discussed the question of the suggested assignment with our clients, but they are strongly of the opinion that this French registration should be in the joint names of the three firms interested, namely, The Timken Roller Bearing Company, British Timken Ltd., and Societe de Mecanique de Gennevilliers. Our clients are communicating with the French firm to ascertain their views on this question of assignment, and in the meanwhile we should be glad to know whether the Timken Company would be agreeable to a joint registration.

Yours faithfully, H. N. & W. S. Skerrett.

[fol. 5019] DEFENDANT'S EXHIBIT No. 96

January 9, 1926.

Messrs. H. N. & W. S. Skerrett, 24 Temple Row, Birmingham, England.

Gentlemen:

We note your suggestion that the French registration of the word "Timken" in the name of Societe de Mecanique de Gennevilliers should be placed in the joint names of said company. The Timken Roller Bearing Company and Brit-

ish Timken Ltd.; and after considering the matter approve your suggestion. This will place the French registration on the same basis as the British Registration application for which is now pending in the joint names of British Timken Ltd., and The Timken Roller Bearing Company.

It seems to us that the German registration of the trade-mark "Timken", now standing in the name of Mr. Prausnitzer should be issued in the same way; and that this registration should be held jointly in the names of British Timken Ltd., The Timken Roller Bearing Company and Mr. Prausnitzer or whatever person or corporation may from time to time represent British Timken Ltd. in Germany.

Will you please take whatever steps are necessary to carry out the above suggestions.

• • • • • • •

Yours truly, —— ——.

JJG:DM

[fol. 5020] DEFENDANT'S EXHIBIT No. 97

January 9th, 1926.

The Timken Roller Bearing Company, Canton, Ohio.

Attention: Mr. Strough.

Gentlemen:

We have had considerable correspondence with Messrs. H. N. & W. S. Skerrett concerning registration of your trade-mark "Timken" in Germany and France.

We have suggested to Messrs. Skerrett that the German registration in the name of Mr. Prausnitzer and the French registration in the name of Societe de Mecanique de Gennevilliers should both be assigned to you; but they state that British Timken does not want to handle the matter in this way, and suggest instead that the French registration be held in the names of Societe de Mecanique de Gennevilliers, British Timken Ltd. and The Timken Roller Bearing Company. By the same reasoning, the German registration would be held in the name of Mr. Prausnitzer, British Timken Ltd. and The Timken Roller Bearing Company.

• • • Accordingly, we have authorized Messrs. Skerrett to have the French registration placed in the joint

names of the Societe de Mecanique de Gennevilliers, British Timken Ltd. and The Timken Roller Bearing Company; and we are likewise instructing them to place the German registration in the joint names of Mr. Prausnitzer, British Timken Ltd. and the Timken Roller Bearing Company.

* * * * * * *

Yours truly, —— ——.

JJG:DM

[fol. 5021] DEFENDANT'S EXHIBIT No. 98

Stibbard, Gibson & Co.
(Thomas Cooper & Co.)

21, Leadenhall Street, London, E. C. 3

2nd February 1926.

Dear Sirs,

Trade Marks

Messrs. Abel & Imray recently received a letter from Messrs. H. N. & W. S. Skerrett, in which the latter firm stated that as the result of correspondence between you and British Timken Limited the British Company had been considering their position with respect to the trade mark "Timken" and the respective rights of themselves and you in the said mark. You will recollect that the agreements between you and the British Co. contain clauses intended to reserve the name as far as possible to you, and that there is at present a joint application for registration in the joint names of yourself and the British Company. Messrs. Abel & Imray were asked to attend a conference with Sir Duncan Kerley and Mr. F. E. Bray, and as a result of this conference we are able to send you a copy of a joint opinion of Sir Duncan Kerley and Mr. F. E. Bray; we enclose the copy herewith.

The law with respect to trade marks in this country depends largely upon statute, and it is not open for a manufacturer or trader to register any mark he pleases and in any way he pleases. Any registration has to be brought within the provisions of the Act dealing with trade marks. Apart from the statute law with respect to trade marks, there is the Common Law, the principal point in this being

that if a firm can show that its goods are known in the market by a particular name or mark, it will be able by legal proceedings to stop another firm from using this name [fol. 5022] in such a way as to deceive and cause people to purchase the goods of the second firm in the belief that they are the goods of the first firm. Registration of a trade mark is not necessary for such proceedings which are known here as a "passing off" action.

There has always been the question in connection with the name "Timken" as a trade mark, that it has not been used to signify one class of goods; it has been used at different times to signify (1) goods of your manufacture, (2) goods manufactured by the British Company and to some extent also, we understand (3) goods manufactured by the French Company. The name "Timken" may also have come to signify not the origin of the bearing but a particular kind of bearing, just as in the well known case of Liebeg; the Liebeg Extract of Meat Co. Ltd. had to give up the use of the name "Liebeg" and adopt the name "Lemco" because Liebeg had come into common use as descriptive of a particular kind of preserved food. Registration of a trade mark gets over this difficulty, but if a firm can prove a case within the Common Law, registration is not of so great importance.

So far as we can see, your agreements in the form in which they are at present are about as helpful to you as they could be. It would, of course, be a good thing if the trade mark could become a registered trade mark, but Sir Duncan Kerley and Mr. Bray are against making an application for this purpose; they are also of the opinion that the present application for joint registration will not succeed, and that the only chance of registration would be concurrent registration.

According to our law, a trade mark means a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of the mark by virtue of manufacture, selection, [fol. 5023] certification, dealing with, or offering for sale, and in a case of honest concurrent user or of other circumstances which in the opinion of the Court make it proper so to do the Court may permit the registration of the same trade mark or of nearly identical trade marks for the same goods or description of goods by more than one proprietor

subject to such condition and limitations if any as to mode or place of user or otherwise as it may think right to impose. There is another provision in the Trade Marks Act which is relevant in the present connection, to the effect that a trade mark when registered should be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered, and shall be determinable with that goodwill.

We are inclined to think that the present application for a joint registration will not succeed, and that it is a question whether it would be best to allow matters to remain as they are or to rearrange the agreements and then make an application for concurrent user. We do not think that it would be easy to come to an agreement with the British Company as to the terms of an agreement suitable for concurrent user.

* * * * * * *

We feel, however, that we are to some extent in the dark and shall be glad to hear from you before moving further in the matter.

Yours faithfully, (Signed) Stibbard, Gibson & Co.

The Timken Roller Bearing Co.

[fol. 5024] DEFENDANT'S EXHIBIT 99

Joint Opinion

We think it more useful to advise as to the position generally than to deal with the specific questions in our instructions, some of which are framed upon assumptions which are open to question.

The name "Timken" was originally applied to bearings made according to a patent of which Timken was an inventor. It has been used in this Country in respect of bearings made by successive English Companies and also in respect of bearings made by the American Company and to a small extent by a French Company which have not passed through the hands of the English Company at all. In the literature of the English Companies the name has been frequently used in a context which suggests that it describes a type of bearing rather than trade origin.

In these circumstances it is clear that neither the English nor the American Company could prove that "Timken" distinguishes the goods of either Company exclusively of the other, and neither Company could obtain registration alone.

Having regard to the fact that there has been no user of "Timken" by any third party it is possible and indeed probable that, if any third party were to commence to use the name, the English Company or the American Company might succeed in stopping such user in an action for passing off, but it is by no means certain that such an action would succeed. We think on the whole that if any one were to sell bearings as "Timken" simply, he would be stopped; but that, if he were to sell them as, say, "Smith's Timken Bearings" the result would be doubtful.

In these circumstances we consider it most undesirable to proceed with the application to register. Joint registration is inapplicable, as, except for the payment of a royalty, the goods of the English and American Companies are produced and sold independently. The only registration which might be obtained would be a separate concurrent registration in the name of each Company. Having regard to the way in which Timken has been used, as referred to above, we think that such applications would probably be refused at the present time and that it is very undesirable to raise the issue by any premature application. The [fol. 5025] longer the time during which no third party uses the name, the stronger the position will become.

It follows from what has been said above that Clause 4 of the agreement of January 1, 1925, is inoperative so far as it purports to determine the ownership of the name during the subsistence of the principal agreement. An exclusive right against third parties cannot be created by agreement, and to treat the name as the subject of a "Licence" is inconsistent with the existence of an exclusive right in the American Company.

So far as the clause deals with the position on the determination of the principal agreement, it binds the English Company to discontinue the use of Timken, but as the English Company is not bound to assign the goodwill of its business to the American Company, the latter would have to establish its title against third parties on the ground of the name being distinctive of its goods by user.

As regards the future, in our opinion, the existing agreements should be determined. In order to render the position of the English Company secure there is no doubt that the most satisfactory scheme would be for the English Company to pay a lump sum in order to secure that none of the American Company's bearings should come into the country marked "Timken"; but having regard to the import of cars, we appreciate that this may be impossible. In that case, there are two alternatives with a view to securing the position.

(1) One is to aim at getting concurrent riglits firmly established in which case a fresh agreement should be made based on the assumption that concurrent rights do now exist and defining the conditions of user. The literature of the Company should also be revised.

(2) The other alternative is to combine the interests of the Companies by one practically absorbing the other.

As regards the position in France and Germany this would have to be ascertained according to the laws in those countries and we cannot usefully say more than that the position there appears to be insecure from the point of view [fol. 5026] of the English Company and its subsidiaries and that we consider that new agreements covering those territories should also be prepared and submitted to experts there. No express permission as to importing cars with Timken bearings should be included.

With regard to the question of royalties, it is clear that so long as the English Company continues to make bearings according to the methods covered by the later patents which are still in force, royalties are payable upon all bearings so made.

Bearings which are not protected by any subsisting Patent would not in our opinion have been "made under this agreement" within the meaning of Clause 7(4) of the Principal Agreement, had that agreement remained unmodified. The subsequent agreements do not in terms alter the basis of royalty payment except as regards amount; but the agreement of January 1925 does make the use of the name "Timken" as between the parties a matter of contract deemed to be the subject of a licence and we are upon the whole of the opinion that reading the agreements together the effect is that the English Company is liable

to pay royalties on all bearings sold as "Timken" Bearings.

(Signed) D. W. Kerley, F. E. Bray.

22nd January 1926.

[fol. 5027] DEFENDANT'S EXHIBIT No. 100

Carr & Carr & Gravely

Attorneys at Law

Suite 1304 Central National Bank Bldg.

St. Louis, Mo., January 12, 1927.

The Timken Roller Bearing Company, Canton, Ohio.

Attention: Mr. Strough

Gentlemen:

The writer has discussed with Mr. Brooks his letter of October 12, 1926, to us, but has never made a written reply thereto.

The letter of your New York representative suggests the filing of a number of applications for registration of the trade-marks "Timken" and "T" in oval. So far as the word "Timken" is concerned, the field is fairly well covered; although we are in difficulty in Great Britain, New Zealand, France and Germany.

Your application in New Zealand has been unsuccessful by reason of your inability to obtain affidavits as to ownership of the mark, the New Zealand trade recognizing the mark as being the property of British Timken. In Great Britain, it seems impossible for you to obtain registration in your name. In both cases, it might be possible to obtain registration in the name of British Timken, with a promise to assign the registrations to you; but we have not done this because of the provision against assignment of a trade-mark registration separate and apart from the business. In France and Germany, representatives of British Timken have obtained registration; and presumably they are bound [fol. 5028] to assign the registrations to you whenever your relations with British Timken are terminated. The difficulties in these four countries could be surmounted if you were to take over the business of British Timken. This would

merge the somewhat conflicting titles of yourselves and British Timken, and, from the legal viewpoint, is by far the best way of handling the situation. If the matter is handled merely by you beginning when British Timken leaves off you will probably not be able to carry back your title to the trade-mark, and there will be the possibility of trouble with other people. For instance, in Germany we understand that "Timken" is more or less equivalent to "tapered" and your right to your trade-mark may be lost unless you can relate back your ownership to the date of the Prausnitzer registration.

You have a great many registrations of the word "Timken"; and one man's guess is as good as another's on the question whether you should obtain registration in Timbuctoo and Zanzibar in addition to those that you already have. It seems a needless expenditure to register a trade-mark in every possible place; but it is likewise true that no matter how obscure the place may be the time may come when you may wish you had a registration.

. . . . . .

Yours truly, Carr & Carr & Gravely. By (S.) Jos. J. Gravely.

[fol. 5029] DEFENDANT'S EXHIBIT 101

The Timken Roller Bearing Company, Canton Ohio

February 2, 1927.

Messrs. Carr & Carr & Gravely, 1304 Central National Bank Bldg., St. Louis, Mo.

Attention: Mr. J. J. Gravely.

Dear Mr. Gravely,

We are referring to your letter of January 12th regarding trade mark registration. Apparently the oval T is sufficiently covered, and also Timken, with the exception of Great Britain, France, Germany and New Zealand.

You suggest that we seriously consider the advisability of taking over British Timken. This is a very large order, and we do not now know and we may not know for years whether this will be advisable. In the meantime, if it is

at all possible to get Timken registered in these four Countries, we want it done.

Our present Contract with British Timken may expire in two years, and we want you to prepare an agreement supplemental to the existing one, which will protect us on the trade mark Timken. We haven't the faintest idea how this can be done, and if you can see no way in which to do it, will you please so advise us promptly; otherwise, we would like to have you push this along.

Yours truly, The Timken Roller Bearing Co., J. F. Strough, Secretary & Treasurer.

J. F. Strough.BES

[fol. 5030] DEFENDANT'S EXHIBIT 102.

Western Union

Canton, Ohio, April 1, 1927.

Carr & Carr & Gravely, 1304 Central National Bank Bldg., St. Louis, Mo.

We are sending representative to England next week to negotiate purchase of controlling interest in British Timken for us. We hope at same time to arrange for modification of agreement. Please wire us tomorrow morning your general suggestions as to what should be done regarding name registration, and write us fully to reach us early next week. Also please advise us not later than next Monday giving your opinion whether Claim 14 in Shafer Patent 1551334 is broad enough to cover both convex and concave rollers, and if so is there possibility that SKF type infringes.

J. F. Strough.

JFS.Bes
Charge: The T-R B Co.

[fol. 5031] DEFENDANT'S EXHIBIT 103

Western Union Telegram

Duplicate of Telephoned Telegram

1927 Apr 2 PM 12 00

HBR229 34
NB St. Louis, Mo. 2 1031A

J. F. Strough, Care of The Timken Roller Bearing Company, Canton, Ohio

If you acquire control of British Timken it should register trademark Timken in countries where you have not been able to obtain registration in your own name letters being sent today answering your telegram.

Carr & Carr & Gravely.

[fol. 5032] DEFENDANT'S EXHIBIT 104

Carr & Carr & Gravely

Attorneys at Law

Suite 1304 Central National Bank Building

St. Louis, Mo., April 2, 1927.

The Timken Roller Bearing Company, Canton, Ohio.

Attention: Mr. Strough

Gentlemen:—

We have Mr. Strough's telegram of April 1st advising that you are sending a representative to England to negotiate for a controlling interest in British Timken, that you hoped to obtain a modification of your foreign agreement and asking for suggestions as to the filing of trade-mark registrations. We understand that you refer to registration of the trade-mark "Timken".

We are glad to note that you are endeavoring to obtain a controlling interest in British Timken. This is in line with our own suggestions and will put you in control of the trade-mark "Timken" all over the world, whereas, under existing conditions, there is danger that, if your present license agreement with British Timken should be terminated, you might not be able to prevent others from estab-

lishing a right to use the word "Timken" in certain countries from which you are excluded by the agreement from doing business.

The principal matter to be considered in making a new agreement with British Timken is to make sure that subsidiaries or agents do not acquire any rights that would entitle them to use the word "Timken" without your permission; that is, to see that they duly acknowledge you (or their immediate principal British Timken) to be the sole [fol. 5033] and exclusive owner of the trade-mark "Timken" and bind themselves by appropriate instruments to hold in trust for you (or British Timken) any and all rights, powers, registrations and the like affecting the word "Timken" that they may acquire or become invested with during the period of their contractual relations, and to assign and convey the same to you (or British Timken) or such other parties as may be designated by you (or British Timken) together with any good will they may have acquired under such name, and to agree specifically not to use the word "Timken" after the termination of such contractual relation. For instance, Mr. Prausnitzer and the French subsidiary have effected registrations of the mark "Timken" in their own names but, presumably, for the benefit of British Timken. You should see that no right adverse to you shall grow out of such registrations but that your right thereto (or the British Timken right) be formally acknowledged. The agreement should also specifically obligate British Timken to cause its subsidiaries to carry out the agreement.

In the past, we have been very anxious to obtain all registrations of the trade-mark "Timken" in your own name instead of in the name of British Timken; but if you obtain control of British Timken, there will no longer be any objection to its obtaining registrations in its own name. Accordingly, we have today wired you that if you obtained control of British Timken, it should register the mark "Timken" in its own name in those countries where you [fol. 5034] have not been able to obtain registration. The most important of such countries are Great Britain, Ireland and New Zealand. A joint application was at one time filed in Great Britain, but was abandoned (as we understand) because of subsequent adverse opinion of British counsel. The filing of an application in Ireland has

been withheld pending the issue of a certificate of registration in England.

In New Zealand, an application in your own name has been unsuccessful by reason of the impossibility of obtaining affidavits of dealers that the mark "Timken" indicates goods originating with you. Said dealers stand ready to make affidavits that the mark "Timken" indicates goods originating with British Timken; and an application in the name of British Timken should be successful.

As a matter of precaution, it would be well to file applications for registration promptly after the negotiations are concluded for the purchase of the controlling interest in British Timken by you. The filing of such applications would forestall any effort on the part of outsiders to begin the use of the mark "Timken" on competing bearings.

Yours truly, Carr & Carr & Gravely. By —— ——.

JJG:B

[fol. 5035] DEFENDANT'S EXHIBIT 105

April 4, 1927.

Mr. Heman Ely, 1075 Park Avenue, New York City.

DEAR MR. ELY:

Lothrop has written you two letters today—one on our Steel Mill and one on future development and reduction in bearing costs. Mr. Klinedinst has written you about industrial bearings.

The three Powers of Attorney will be sent you from Cleveland on Tuesday. An extra copy for your own information and use is enclosed herewith.

We did not discuss Saturday anything about providing you with funds for the actual purchase. I assume this can be done through the National Bank of Commerce upon receipt of definite cable advices from you.

You wanted a list of British Timken Directors; they are: Sir Vincent Caillaird, G. Ward Grazebrook, W. Dallow, A. Jacob and M. B. U. Dewar.

I enclose copy of letter dated the 2d from Carr & Carr, just received regarding the registration of "Timken", which is self-explanatory.

I believe you made note, but I want to be sure that you remember that if a United States corporation owns 51%,

or more, of a foreign corporation it may deduct from its income tax the income taxes paid by the foreign corporation. This is naturally a matter of considerable consequence to us.

The present British income tax is 20% of the net profits, but is based on the average of the three prior years each time.

In connection with the reformation of the Contract, the three major matters to be considered are:

[fol. 5036] 1. We to have the right to fill service orders placed in this country, regardless of destination. We are willing to pay British Timken up to 10% commission on such sales of bearings for shipment into their territory.

2. In case we purchase or acquire patents in the future, British Timken are only to acquire such rights as we get; in other words, we may purchase patents which are already subject to licenses granted to foreign parties prior to the time of our purchase of them.

3. The registration of "Timken" must be definitely cleared up, and the registration in our own name, or if it is absolutely necessary that registration be made in the name of British "Timken", proper provision must be made that such registrations ultimately come to us at the expiration of the main license agreement with British Timken.

You will recall that we discussed that the price asked by Vickers is the top price, and it is inconceivable that they could find other purchasers willing to pay so high a price.

I assume that after you have had your first discussions with Dewar and understand the situation, you will cable us fully so that we can be thinking about it back home. (There is a third rate classification for cables which is even much cheaper than the delayed rate, and I find you can do a lot of cabling for five dollars.)

I enclose copies of letters being sent today to Dewar and British Timken, announcing your coming. I also enclose copy of letter written them regarding the Timken Albia Patent Universal Joint.

Yours truly, ————, Secretary & Treasurer.

JFS.BES

[fol. 5037] DEFENDANT'S EXHIBIT 106

Western Union

Sent CLT April 5, 1927.

Stibbard, London:

Have accountants examine balance sheet also give consideration to proper method of clearing up registration of name Timken at this time in England, France and Germany so we are fully protected.

Timken.

[fol. 5038] DEFENDANT'S EXHIBIT 107

Stibbard, Gibson & Co.
(Thomas Cooper & Co.)

6th April, 1927.

DEAR SIRS:

We confirm cables exchanged with you as per copies enclosed.

We have instructed Messrs. Cooper Brothers & Co. to examine the accounts of British Timken, Ltd.

We have already been considering the position with respect to the name "Timken", and if this position can be improved in connection with the new arrangements. We do not know that there is very much which can be done with respect to the name in this country, but we shall further consider the matter and we shall also take up the question with the proper people in France and Germany.

Yours faithfully, ——.

Timken Roller Bearing Company.

[fol. 5039] DEFENDANT'S EXHIBIT 109

British Timken, Limited

Common Lane, Ward End, Birmingham

6th February 1928.

D. P. Hess, Esq., The Timken Roller Bearing Company, Canton, Ohio, U. S. A.

Dear Mr. Hess,

Your letter of the 25th ultimo is to hand, setting out certain returns which you would like to receive. Dealing with them in the order of your letter—

(a) The monthly particulars of Industrial and Railroad Sales, showing the number of the various types, is one which can be prepared without any trouble and I am instructing Mr. Hobley to let you have this regularly every month.

(b) Quarterly Inventories of raw material, process, and finished goods.—The stock was actually taken as at December 31st, 1927, and as soon as the figures are available I will let you have same. The corresponding figures will then be available every month as they are prepared in conjunction with the Monthly Financial Statement and I could well arrange to let you have this monthly instead of quarterly, which I will do.

(c) As from October 1st last a more detailed classification of our Sales has been prepared on the lines discussed by you with Mr. Hobley. Such details will be embodied in the Monthly Financial Report as from January 1st, 1928. I enclose a draft sheet showing the form this will take, which I think will answer your purpose. Unfortunately, it will not be possible, without a great deal of work, to give corresponding information for the previous year although it will be possible, by tying together some of the items, to make certain comparisons with the totals under the various headings of the old statement.

[fol. 5040] B. T. Ld.

Date 6/2/—.

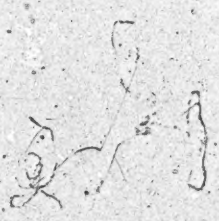
No. 1 To: D. P. Hess, Esq.,

I am pleased to be able to inform you that we are now pretty comfortably fixed up in the new Works and everyone is happy here.

With kind regards,

Yours sincerely, Wm. C. Dallow.

(Here follows 1 Photolithograph, side folio 5041)



BRITISH TIMKEN LIMITED. **2018A**

Estimated Trading Results for the.....Months ending 192

	Cost	Selling Price	Gross Profit	Profit on Turnover
HOME SALES.				
Manufactured.				
Automobiles				
Commercial Vehicles				
Motor Cycles				
Industrial				
Service				
Wolseley Motors (1927) Ltd.				
Alvis Joints				
Factored.				
Automobiles				
Commercial Vehicles				
Motor Cycles				
Industrial				
Service				
Total Home Sales				
EXPORT SALES				
Manufactured.				
Automobiles				
Commercial Vehicles				
Motor Cycles				
Industrial				
Service				
Alvis Joints				
Factored				
Automobiles				
Commercial Vehicles				
Motor Cycles				
Industrial				
Service				
Total Export Sales				
Total Home and Export Sales				
Scrap and Sundries				
Grand Total Sales				
LESS: Overhead Charges				

[fol. 5042] DEFENDANT'S EXHIBIT 110

February 20, 1928.

British Timken Limited, Birmingham, England.

Attention—Mr. W. Dallow.

Dear Mr. Dallow:

This will acknowledge your letter of the 6th inst., with reference to the reports asked for in ours of January 25th.

The manner in which you propose having these reports come forward is quite satisfactory.

Yours very truly, The Timken Roller Bearing Company, —— ——, Assistant to the President.

HGW

[fol. 5043] DEFENDANT'S EXHIBIT 111

September 3, 1928.

Mr. W. Dallow, Director, British Timken Limited, Birmingham, England.

Dear Mr. Dallow:

According to my recollection, when our Mr. Procter left for England I gave him quite a report with reference to statistics which we needed from your plant; and due to the fact that I am unable to get in touch with him at the present time, I cannot definitely state as to whether this was actually delivered to you or what your reaction was.

However, the situation has now come again to mind, and I am constantly being asked by our executives here, and namely Mr. Timken, for the information that was heretofore requested. I am enclosing a copy of it, and I will greatly appreciate your forwarding to me as promptly as possible. If there is certain data you do not have, please give me as much of this as possible.

Yours very truly, The Timken Roller Bearing Company, —— ——, Assistant to the President.

DPH-HW

[fol. 5044] DEFENDANT'S EXHIBIT 112

British Timken, Limited

29th March, 1928.

D. P. Hess, Esq., Messrs The Timken Roller Bearing Co., Canton, Ohio, U.S.A.

Dear Mr. Hess,

In your letter of the 25th January you ask us to furnish certain information monthly in reference to our industrial sales, etc. We regret that there has been a little delay in getting through the details for January, and even now we are not quite clear as to how you would like us to furnish such data, and perhaps you will be good enough to criticize what we are enclosing herewith if it does not conform to your wishes. We are setting this out in the following manner:

1. Industrial Sales in Detail

List No. 1 attached shows our sales for the month of January, which total 5,528 bearings, and is classified under the headings that you use yourselves.

2. Railroad Sales

During the month of January no actual sales were effected of railway bearings, although two or three enquiries were being handled. One of these is for the Wagon Lit Railway Co.—perhaps the largest French Railway Company. Another enquiry being handled is from the Buenos Aires Great Western Railway, and we are expecting very shortly an order for a trial set. Another is for the London Underground Railway, but here there are certain difficulties in connection with the size of the box, which our Engineering Department have been discussing with you.

[fol. 5045] 3. Report on Industrial Business

Some information of interest covering new applications is given on Form No. 2 attached, and will indicate what we are doing. You know yourselves that quite a long time must elapse while a new customer is experimenting and trying out the bearings, and most of these will not become

good accounts for a long time. They are all being closely followed through.

4. Report on Automotive Business

On List No. 3 you will find particulars of the bearings we sold during January to the Automobile and Commercial Vehicle sections. The sales are analyzed under the various points of application, and this we think will be of interest to you. We also include details of the customers who have purchased such bearings.

Please let us know if the report in this form is what you desire or if you require it to be amplified in any way.

Yours faithfully, For British Timken Limited, ——

——.

Lists.

———

[fol. 5046] List No. 2

10th February, 1928

Report on New Business Handled During January—Industrial Division

C. O. Liebscher, Germany.

This concern has equipped 3 Milling machines throughout with Timken Bearings, and they are to be exhibited at the forthcoming Leipzig Fair.

J. Archdale & Co. Birmingham.

This is one of the wellknown Machine Tool Manufacturers here, and they are experimenting with 2 bearings in a Drilling machine head. They are well-informed as to what is happening in America amongst machine tool builders but their conservatism has up to now been responsible for their not using Timken bearings before.

Wanderer Werke A. G., Germany.

These clients have ordered some 600 bearings or more for use in Milling machines. It has come to us privately that they secured a set of our bearings some 18 months'

ago and experimented with them on their machine tools. They were astounded with the extraordinary results enjoyed, and the whole of their machines are now so equipped. They will be exhibiting their machines at the Leipzig Fair. The results have become known amongst other German machine tool makers, and a number of enquiries are now being handled as a result from smaller concerns.

Emil Schenker, Switzerland.

This is another machine tool maker who is equipping 2 Milling machines throughout on the works spindles and in the gearbox with our bearings. No. 3 bearings are being made up specially for the works spindles.

Kamenick & Co., Czecho Slovakia.

This is a Czecho Slovakian firm of machine tool makers who have experimented with a set of our bearings on Lathe Spindles and are now negotiating with us for bearings for 200 Lathes, so successful have been their trials.

Sentinel Waggon Works, Shrewsbury.

This firm are building an experimental rail coach to be used by one of the leading railway companies—London & North Eastern. This coach is equipped with our Timken bearings on the bevel gear drive

[fol. 5047] Thames Board Mills Ltd., Purfleet.

This is the largest firm of cardboard manufacturers in England, and they have been interested in the American Berloit Co., who you have supplied with bearings for their machines. They insist on our supplying rolls complete with bearings, and having for some time been in close connection with a firm called Messrs Whittaker & Co., who specialize in this class of work, we are working with them. A preliminary enquiry has come through for 22 sets of rollers and bearings, and on the results of these they will consider changing over the whole of their machines, which will involve some thousands of bearings. The industry of paper-making presents exceptional opportunities and other firms will follow the lead of this one if it is successful.

[fol. 5048] British Timken Limited. List No. 3.

Automobile Sales—January

Touring Cars—23,901 Bearings.

Front Hubs	59.2%
Pivots	4.0%
Rear Hubs	8.6%
Differential	9.0%
Pinion	4.0%
Steering Gear	0.5%
Fans	6.9%
Universal Joints	5.8%

Our Sales included deliveries to the principal British Motor manufacturers, such as—

Standard Motor Co. Ltd.
Arrol-Johnston & Aster Eng. Co. Ltd.
Hillman Motor Car Co. Ltd.
Humber Limited.
Talbot.
Vauxhall Motors Ltd. (a subsidiary of G.M.C.)
Bentley Motors Ltd.
Sunbeam Motor Car Co. Ltd.
Crossley Motors Ltd.
Star Eng. Co. Limited.
Alvis Car & Engineering Co. Ltd.
Daimler Co. Limited.
Beardmore (Paisley) Limited.
Bean Cars Limited.
Rover Co. Limited.
Lagonda Limited.

with others of smaller importance.

An order was also executed with Austro Fiat, one of the leading Austrian Companies, Adlerwerk A.G., a German concern—bearings for pinions—and also Horchwerke on differential job.

[fol. 5049] Commercial Vehicle Sales—January

Commercial Cars—11,004 Bearings.

Front Hubs	35.7%
Pivots	2.6%
Rear Hubs	36.6%
Differential	6.4%
Pinion	2.1%
Worm	8.2%
Worm (Dual)	1.9%
Fans	2.3%
Steering Gear	3.2%
Clutch	1.0%

January shipments were to all the leading British Commercial Vehicle builders, such as—

Karrier Motors Limited.
Guy Motors Ltd.
Dennis Bros. Ltd.
Bean Cars Limited.
Associated Equipment Co. Ltd.
Albion Motor Car Co. Ltd.
Leyland Motors Limited.
Maudslay Motor Co. Ltd.
Crossley Motors Limited.
John I. Thornycroft & Co. Ltd.
Tilling-Stevens Motors Ltd.
Vulcan Motor & Eng. Co. Ltd.
Star Engineering Co. Ltd.
Scammell Lorries Limited.
Halley Motors Limited.
Commer Cars Limited.

and a few others of smaller importance.

Overseas manufacturers included—

Minerva, of Belgium.
Mannesmann Mulag, of Germany, and
Lancia of Italy.

Some months ago we started a propaganda on the dual worm mounting, similar to the T.D.A. Co. and several of the leading lorry makers have taken it up. Indications are that it is likely to become a popular form of final drive.

[fol. 5050] DEFENDANT'S EXHIBIT 113

British Timken, Limited

8th October, 1929.

DPH-HGW. WD/NB.

D. P. Hess Esq., The Timken Roller Bearing Company, Canton, Ohio, U. S. A.

DEAR MR. HESS:

I am sorry that through pressure of work I have been unable to deal earlier with your letter of September 5th (received Sept. 19th) enclosing copy of the List which was handed to me by Mr. Porter containing particulars of your requirements of British Timken Data.

This List was discussed at considerable length by Mr. Porter, Mr. Dewar and myself on the occasion of Mr. Porter's visit early in March, when we explained to him the difficulties which presented themselves in regard to some of the items. However, immediate steps were taken to prepare for you what was possible at that time, and in a letter written to you enclosing one of these Returns, dated March 14th last, I referred to the explanations which had been given to Mr. Porter.

Prior to that date we were regularly sending to you certain items which were included in your list, and since then we have added quite a number.

In an endeavour to clear up the situation at the moment, I will set out the position in the order of your list, as underlined, in regard to each item:

Monthly—Report for Each Department Showing

(1) Pcs. produced by part number. Detailed returns in hand (see my letter to Mr. Strough dated Aug. 29th).

Hours worked. For the present this is impossible (see my letter to Mr. Strough dated Aug. 29th).

Wages paid. Units produced. Cost per Unit. Efficiency of Operation. By groups of machines.)

With the exception of Assembling Section this information is being sent to you regularly every month in Returns [fol. 5051] "B", "D", "G" and "H".

(2) Total Indirect Labor expense for above production.

(3) Total supervision expense for above production.

Shown in above-mentioned monthly Returns "B", "D", "G" and "H" and also included in monthly Return "A".

(4) Number of pcs. scrapped by reason and value of same. Detailed Returns in hand (see my letter to Mr. Strough dated Aug. 29th).

(5) Expense of Dept. in detail i.e., tools, oils, belting, diamonds, bone meal, fuel, power. Given in monthly Return "A".

(6) General departmental overhead as depreciation taxes, insurance, rent. Given in monthly Return "A".

Monthly—Summary of Total Cost of Sales Showing

(1) Material Cost.
(2) Labor Cost (Direct, Indirect Supervision).
(3) Expense Cost (In detail).
(4) Total Manufacturing Cost.

This information is sent to you monthly by Mr. Squire and was specifically referred to in his letter dated Apl. 16th, 1929.

(5) Units produced. (See J.F.S. about variation in units.) Is this the aggregate Unit Value of the Sales of Bearings for the month, obtainable by extending the respective quantities of each Bearing at fixed Unit Values, such Unit Values being made up by adding together the detailed operation Units of each piece number in the Bearing (referred to in Item (1) "Monthly—Report for each Department showing")? If so, we shall be unable to give this until such time as we have fixed the Units for all operations and all pieces (including assembling) and obtained a total Units for each Bearing. In my letter of October 1st I informed you that we had only recently fixed the Units for Cone Race and Rib grinding, and we have not yet assessed the Assembling.

I do not understand "(See J.F.S. about variation in units)".

(6) Mfg. cost per unit. Is this (4) divided by (5)?
(7) General Overhead (In detail inc. depreciation, rents, taxes, ins.)
(8) Total Cost of Sales.

This information is sent to you monthly by Mr. Squire and was specifically referred to and explained in his letter dated April 16th, 1929.

[fol. 5052] Monthly.

(1) Force Report (T.R.B. Amer. forms). This is being sent to you every month—Return "E".

(2) Department payroll (T.R.B. Amer. forms). This is being sent to you every month—Return "F".

(3) Cups and Cones produced as well as shipped. Particulars of Cups and Cones "produced" are given to you in our Returns "B", "D" and "G" and also in Return "C", also a separate return of Bearings "assembled" monthly (current and corresponding period previous year). Particulars of Cups and Cones "shipped" are not given by us separately, but the Bearings Invoiced are shown in our Weekly Return of Orders Received, Invoiced and In Hand.

Monthly—Financial Status, showing cash on hand, bank or other indebtedness, advance to subsidiary companies. (Inventories in value—Raw Material, Process Finished).

The information referred to in the first part of this item has not been prepared for you in the form of any special "Return". It can be supplied. That in parenthesis is sent to you monthly by Mr. Squire and was specifically referred to in his letter dated April 16th, 1929.

Quarterly.

(1) List of new machinery put into operation and savings resulting therefrom—also cost of this machinery.

You have been consulted in regard to all new Machinery purchased; the details of such Machinery when it has been put into operation have been embodied in Returns "B", "D", "G" and "H".

In your letter of September 7th, 1929, you ask for "a new list of the Machinery you have installed at Birmingham" and in my reply of September 21st I informed you that I am having this information prepared. This is taking the form of a complete detailed copy of our Fixed Plant Register as at December 31st 1928, and will show each individual Machine and the value of each item, making up the total shown in our Balance Sheet at that date. This will be supplemented by particulars of Machines which have been installed since December 31st last, and the list can be readily brought up to date from time to time.

Generally speaking, the cost of new Plant installed will be recovered in savings effected in 2–3 years.

[fol. 5053] (2) List of machinery obsoleted. Where Machines have been obsoleted since December 31st last I will have same shown on the Inventory above referred to. None have been actually disposed of but some have been removed to an Obsolete Stores.

(3) List of new machinery on order, delivery promised and cost. If the Inventory is brought up to date from time to time as suggested in para. (1) above, you doubtless will agree this will suffice, as you are fully acquainted with our moves in this direction.

(4) Raw material prices and tonnage of material purchased for quarter. Show parts purchased from American Timken. In reply to your letter of September 7th, 1929, I sent you under cover of my letter of September 27th particulars of Tubes and Solids *issued* from our Stores to the Automatic Section for the period 8 months ended August 31st, 1929. Similar information could be supplied from time to time, or Quarterly if you so desire, much more readily than the "purchases". The American supplies you will identify. As regards "prices" we have advised you on several occasions and can do so again if you wish it.

(5) Quantity of bearings sold and part number. Our weekly Return to you of "Orders Received, Invoiced and In Hand" gives the *total* Bearings sold. To prepare a Return under part numbers in detail Quarterly will involve extra work.

(6) Part numbers made from (a) forgings (b) solids bars. In a manner this can be deduced from our monthly "D" Return. Apart from this we do not at present compile such information.

(7) Improved method of manufacture other than listed in (1). From cables and correspondence which passes between us we think you are in a position to know what we are doing in this direction.

Semi Annually

(1) List of staff and salaries, bonus, paid cash and occupation. This information was given under cover of my letter of September 21st, 1929 (in reply to yours of September 7th) and can be brought up to date periodically.

(2) Financial budget for next half year.

(3) Report on performance against budget for ½ year ended. I would suggest that you discuss these points with Mr. Dewar when you see him at the end of the month.

(4) Sales review showing new business received and value of same for ½ year ended—sales prospects by divisions (R.R. Ind. Auto. etc.) for next half year.

[fol. 5054] Mr. Hobley posts you periodically on these points.

(5) Competitors production. Rather an unknown quantity, but I believe Mr. Dewar has informed you on this point from time to time as far as possible.

(6) Value of business lost and explanation of same. Very difficult to determine.

Annually

(1) Inventory of all parts. Can of course be done but involves a lot of work.

(2) List of machinery. Covered in "Quarterly—Item (1)".

From the above you will see that I am already supplying to you regularly, or am about to supply, quite a lot of the information which you have asked for. In this respect I shall be glad to hear in detail exactly how far this information serves your purpose or how (if it can be readily altered) you would like it re-arranged.

As regards the items with which I have so far been unable to deal, will you please study very carefully what I have said and let me have your considered replies as to whether you still desire to have the information and if so the form that it should take.

Yours sincerely, for British Timken Limited, Wm. C. Dallow, Director.

[fol. 5055] DEFENDANT'S EXHIBIT 114

May 27, 1930.

British Timken Limited, Birmingham, England. Attention —Mr. Wm. Dallow

Gentlemen:

We are enclosing the comparative manufacturing costs for Canton, Columbus and Birmingham for the month of January, 1930.

In accordance with the request of your letter of the 10th ultimate, we are also enclosing a supplementary statement showing the way we have applied the expense items shown on your statements. We have not considered it necessary to place the amounts of these items on this supplementary sheet inasmuch as these amounts are already set up on the enclosed accomplishment sheet.

You will note that there has been approximately a 20% increase in the direct labor item and a corresponding decrease of approximately 20% in the indirect labor item which is mainly due to the inclusion of the viewing item under direct labor.

Very truly yours, The Timken Roller Bearing Company, —— ——, Assistant to the President.

CMC-REF
File 3.4

[fol. 5056]

MANUFACTURING COSTS

CANTON—COLUMBUS and BIRMINGHAM

MONTH of JANUARY 1930

(BIRMINGHAM 5 Wks. Ending 2/1/30)

	CANTON		COLUMBUS		BIRMINGHAM	
	Amount	%	Amount	%	Amount	%
Actual Labor, Exp. & Scrap	$441,986.	126.1	$139,277.	132.9	$78,336.	290.6
Standard Value of Above	350,579.	100.0	104.837.	100.0	26,957.	100.0
Variance	91,407.	26.1	34,450.	32.9	51,379.	190.6
Labor & Expense Variance	90,913.	25.9	32,428.	30.9	47,926.	177.8
Scrap Variance	494.	.2	2,022.	2.0	3,453.	12.8
Standard Labor & Expense	331,556.	100.0	99,413.	100.0	25,210.	100.0
Actual Labor & Expense						
Direct Labor	136,605.	41.2	35,691.	35.9	25,635.	101.7
Other Labor						
Indirect Labor	43,223.	13.0	12,000.	12.1	5,643.	22.4
Supervision	15,630.	4.7	7,442.	7.5	7,681.	31.2
Total Other Labor	58,853.	17.7	19,442.	19.6	13,524.	53.6
Supplies						
General	11,273.	3.6	4,449.	4.5	626.	2.5
Oil & Cutting Compound	14,149.	4.3	2,266.	2.3	1,470.	5.8
Grinding Wheels	8,066.	2.4	3,092.	3.1	3,178.	12.6
Diamonds	526.	2	76.	.1		
Water	279.	.1	176.	.2	185.	.7
Air	2,477.	.7	1,165.	1.2		
Belting	1,374.	.5	861.	.9	1,040.	4.1
Fuel	8,997.	2.7	1,530.	1.4	1,837.	7.3
Total Supplies	46,089.	13.9	13,607.	13.7	8,336.	33.1
Direct Expense						
Steam Power & Heat	679.	.2	217.	.2	374.	1.5
Electric Power	6,502.	2.0	3,224.	3.2	2,290.	9.1
Tool Replacement	35,189.	10.6	8,862.	8.9	4,655.	18.5
Maint.—Pots & Retorts	7,306.	2.1	828.	.8	591.	2.3
Repairs—Mach. & Equip.	32,035.	9.7	7,741.	7.8	3,430.	13.6
Total Direct Exp.	81,711.	24.6	20,878.	20.9	11,342.	45.0
Total of Above Exp. (Direct Labor Excluded)	186,633.	56.2	53,921.	54.2	33,202.	131.7
Depn.—Taxes & Insur.	38,644.	11.7	15,962.	16.1	9,630.	38.2
Building Expense	14,282.	4.3	6,369.	6.4	415.	1.6
Experimental	6,070.	1.8	3,035.	3.1		
Sundry	1,991.	.6	1,269.	1.3	1,644.	6.5
Provision for Invent. Adj.	10,000.	3.0	5,000.	5.0		
Gen'l Manufacturing Exp.	7,370.	2.2	931.	.9	2,043.	8.1
Administrative Expense	20,854.	6.4	9,663.	9.7	567.	2.2
Total Gen'l Overh'd	46,285.	14.0	19,898.	20.0	4,254.	16.7
Total of Above Exp. (Direct Labor Excl.)	285,864.	86.2	96,150.	96.7	47,501.	188.4
Total Labor & Exp.	422,469.	127.4	131,841.	132.6	73,136.	290.1
Scrap	19,517.	102.6	7,436.	137.4	5,200.	297.7
Material	292,258.	126.0	68,243.	110.9	38,180.	205.1
TOTAL COST	734,244.	126.0	207,520.	124.7	116,416.	255.4
TOTAL STANDARD VALUE	582,603.	100.0	166.375.	100.0	45,576.	100.0

[fol. 5057]

APPLICATION OF EXPENSE ITEMS SHOWN ON BRITISH TIMKEN LTD. STATEMENT IN THE PREPARATION OF THE ATTACHED COMPARATIVE STATEMENT

T. R. B. CO. TERMS	B. T. LTD. TERMS
ACTUAL LABOR & EXPENSE	
Direct Labor	Productive Wages & Viewers
Indirect Labor	Stock Taking — Overtime — Sundry Allowances. Rough and Finished Stores —Stockers—Laborers
Supervision	Staff wages—Foremen's Bonus
SUPPLIES	
General	Sundries — Machine Shop — Tool Room —Assemble — Press & General — General Charges
Oil & Cutting Compound	Oil & Waste
Grinding Wheels	Emery Wheels (Grinding Dept.)
Water	Water
Belting	Shafting and Belting
Fuel	Gas
DIRECT EXPENSE	
Steam, Power & Heat	Coal & Coke
Electric Power	Electric Current
Tool Replacement	Loose Tools
Repairs—Machinery & Equipment	Pots & Retorts (Hardening Dept.) Repairs to Machines — Electric Driving Plant, etc., Sundry Upkeep Shop Cars & Lorries
Depn.—Taxes & Insurance	Depn. Plant — Shop Cars & Lorries — Jigs & Gauges. Rents, Rates — Taxes & Insurance — National Insurance
Building Expense	Repairs & Maintenance. Buildings, Fixtures & Furniture — Gas, Heat & Water Fittings
Sundry	Expenses Incurred by Canton
General Manufacturing Expense	Mess Rooms — Cartage & Carriage — Packing & Dispatch
Administrative Expense	Stationery & Printing — Stamps & Telephone — Traveling Expense

[fol. 5058]

APPLICATION OF EXPENSE ITEMS SHOWN ON BRITISH TIMKEN LTD. STATEMENT IN THE PREPARATION OF THE ATTACHED COMPARATIVE STATEMENT

T. R. B. CO. TERMS	B. T. LTD. TERMS
ACTUAL LABOR & EXPENSE	
Direct Labor	Productive Wages & Viewers
Indirect Labor	Stock Taking — Overtime — Sundry Allowances. Rough and Finished Stores —Stockers—Laborers
Supervision	Staff wages—Foremen's Bonus
SUPPLIES	
General	Sundries — Machine Shop — Tool Room —Assemble — Press & General — General Charges
Oil & Cutting Compound	Oil & Waste
Grinding Wheels	Emery Wheels (Grinding Dept.)
Water	Water
Belting	Shafting and Belting
Fuel	Gas
DIRECT EXPENSE	
Steam, Power & Heat	Coal & Coke
Electric Power	Electric Current
Tool Replacement	Loose Tools
Repairs—Machinery & Equipment	Pots & Retorts (Hardening Dept.) Repairs to Machines — Electric Driving Plant, etc., Sundry Upkeep Shop Cars & Lorries
Depn.—Taxes & Insurance	Depn. Plant — Shop Cars & Lorries — Jigs & Gauges. Rents, Rates — Taxes & Insurance — National Insurance
Building Expense	Repairs & Maintenance. Buildings, Fixtures & Furniture — Gas, Heat & Water Fittings
Sundry	Expenses Incurred by Canton
General Manufacturing Expense	Mess Rooms — Cartage & Carriage — Packing & Dispatch
Administrative Expense	Stationery & Printing — Stamps & Telephone — Traveling Expense

[fol. 5059] DEFENDANT'S EXHIBIT 115

September 11, 1931.

Mr. William Dallow,
British Timken Limited,
Birmingham, England.

Dear Mr. Dallow:

We have just made a comparison of the British Timken June costs as compared with the Canton and Columbus Plants, and I am enclosing herewith the results of this comparison. You have certainly made a decided improvement in your over-all costs and this in itself is very encouraging. Both your labor and scrap seem to us to be rather high and it is the writer's thought that this high labor variation is probably due to the great many changes which you have owing to your smaller volume. However, I do think that your scrap losses could be very materially reduced and I would very much appreciate receiving your thoughts on these last items.

At any rate you have done a mighty fine job and all of us here in Canton are very proud to be able to say so. Keep up the good work and we hope very much that you can better our performance at Canton and Columbus.

Very truly yours, The Timken Roller Bearing Company, —— ——, Assistant to the President.

PHK:AH
File 3.4

[fol. 5060] DEFENDANT'S EXHIBIT 116

British Timken Limited

MSUD/NB. 20th October, 1931.

D. P. Hess Esq.,
The Timken Roller Bearing Company,
Canton, Ohio, U. S. A.

My dear Don,

I am hoping to hear from you soon that you will be coming over; in case, however, you don't there are one or two things I would like to write about.

The break in the Sterling Dollar Exchange has made it inadvisable, and indeed sometimes impossible, to purchase from you more than our actual necessities, so that I fear our purchases of tubing from you will be nil for the present.

Sweden abandoned the Gold Standard within a fortnight of our doing so, consequently the London-Stockholm Exchange is much nearer parity than London-New York. In any event, I do not anticipate having to pay Sandviken more in sterling for Tubing than perhaps 5%, as we have a years contract with them still to run in sterling.

As Canada has now followed our lead and come off the Gold Standard too, we shall of course be delighted to help you in any way we can in delivering of Bearings to that Country, where now we should get not only the benefit of the exchange but also the benefit of the Preferential Tariff on British Goods.

Mr. Dallow has been giving an enormous amount of thought and attention to the question of Standard Costs and he has come to the conclusion that for June 1931, exclusive of material, our Standard Labour and Expense is almost exactly double your Standard. I can understand that our grinding cost is higher than yours, as all our bearings are ground twice being to No. 2 specification (incidentally you will never disclose what percentage of your bearing production is No. 1 and No. 4) and in spite of this it would appear that our actual floor to floor grinding times [fol. 5061] are as good as yours. Where we lose seems to be in having to change over so often from one symbol to another. Our weakest spot is without question our Automatic Section, and I am writing to ask you whether it is possible for you, say in your June Standard figures, to split up your Labour and Expense under the following Sections:

Automatics,
Grinding,
Hardening,
Press,
Assembling.

Of our total Productive Labour (for June) our Automatic Section took 36% and our Grinding Section 43%. I should be most interested to know how yours compare with this. Whilst on this subject, I wonder if you could find a

man who knows your Gridley methods (for preference an Englishman) whom we could take on here for a year or so to help us to get nearer to your times and your efficiencies, and your scrap figures.

I regard the outlook here as fairly bright, particularly in industrial work, but of course the fact will always remain that no one Country can really be prosperous for very long unless the others prosper too.

Yours very sincerely, Michael B. U. Dewar.

[fol. 5062] DEFENDANT'S EXHIBIT 117

November 6, 1931.

Mr. M. B. U. Dewar,
10, Mayfair Place,
London, W.1, England.

Dear Michael:

Your letter of the 20th arrived with its very interesting information and we will certainly do all we can to assist you and Dallow in your cost analysis problems. I note Dallow's analysis of labor and expense being double our standard. We have of course reached this same conclusion and there is no question but that you are correct in your assumption that a large part of this difference is due to your smaller quantities and various changes from one symbol to another. The writer has studied your production sheets and data at great length and frankly I am absolutely satisfied that you are going to do considerably better than double our standard cost. My conclusion is that you will reach one and one half times our standard costs even in view of the heretofore mentioned smaller quantities and changes from one symbol to another. In this connection you may possibly build up your process inventory to some extent, but I think this a very minor item in the whole problem, and I am wondering if a good deal of your trouble is not due particularly in your screw machines to the slowness in changing from one size to another. During my regime at Columbus and also by experience here at Canton dating back several years ago, I found it was quite customary for linemen and operators to take several extra hours in making changes, due to the fact that these changes were socalled

credit time. Of course, as you and Dallow can readily realize, the more time taken in changing the less production time is available and therefore your net production is bound to be lower.

As I recall your situation when I visited you—which seems to be verified by yourself and Fegan —, your problem is that satisfactory set-up men are hard to get, and I am wondering if it might not be possible, when we send over one of our Gridley linemen which I will discuss later in this letter, to start a little school for the education of set-up men. As you can realize, it is rather hard from a study of records and distance of four thousand miles away to be of very great assistance to you, but I am giving all these thoughts for what they are worth.

[fol. 5063] I would also suggest that Dallow keep track of the number of changes in the main productive department, automatic and grinding, for a month, together with the time lost in changing, as compared with productive time, and we will do the same thing here at Canton so that in this way we can analyze this problem a little more in detail. If this appeals to you, please advise me and I will have the necessary machinery set-up here for it.

With reference to your inquiry on your June figures regarding splitting up labor and expenses, our statistical department is preparing this data and it will go forward to Dallow in the very near future.

Now, with reference to your No. 1 and No. 4 specifications, as compared with No. 2 grinding, please let me set your mind at rest—which I thought I had done many summers ago. Our production runs normally 75% No. 4 product and 25% #2 product (we no longer have a No. 1 specification). Our No. 2 product is now the same as your product, i.e., two grinds on the inside of the cups and two grinds on the outside of the cone. I think you will find that Fegan is very familiar with this, as I personally spent considerable time in going over it with him and explaining the why and the wherefore of it. Incidentally, in comparing our standard with your cost sheet you can calculate on the above basis and be correct practically all the time. One thing, however, should be borne in mind and that is in the efficiency comparson that we have been sending both to British Timken and French Timken our comparisons and made only on No. 2 specifications, as we

felt this was the only accurate way to make efficiency comparisons.

We have just closed down our Columbus Plant and within the next week or ten days we will select for you one of our best Gridley linemen and arrange to send him to England. If possible we will send an Englishman, but of the two men I have in mind neither as far as I know is of English birth, but I am absolutely satisfied that either one will fit into your problem very nicely. One in particular is a very quiet but thorough type of individual and extremely well versed in Gridley accuracy of product. In fact, I personally think he is the best Gridley lineman at either of our plants and it is just a problem in my mind in getting his consent to go to England. I will cable you further on this subject very shortly.

Of course, all of us here have been very much interested in the effect of England going off the gold standard and particularly as to how it effects your operations and costs. We realize that you cannot purchase tubing from us, but we are all very anxious to have your report on the quality and general satisfaction you obtained with our tubing.

There is no question but that you will have to assist us in our problems in Canada and this is now being worked out with the Canadian Customs Authorities.

With kind personal regards, to you and your entire organization, I am,

Very truly yours, The Timken Roller Bearing Company, —— ——, Asistant to the President.

PHK:AH
File 4.1

[fol. 5064] DEFENDANT'S EXHIBIT 118

November 25, 1931.

Mr. M. B. U. Dewar, 10, Mayfair Place, London, W. 1, England.

DEAR MICHAEL:

We have finally gotten together the data you requested with reference to our standard costs based on June, 1931, and it is going forward to Mr. Dallow. I have not attempted

personally to go over all of this data, but, if it is not just what you want, do not hesitate to call upon us, as we are more than willing to give you all the help possible.

So far I am not having much luck in getting the right kind of a man to send over to you to assist in the operation of you Gridley automatics, but we will probably come to a definite conclusion on this within the next few days, and I will get in touch with you again.

With reference to the matter of tubing, we quite realize the situation you are now in due to the break in sterling, but at the same time we are very anxious to know just how our tubing performed and if it is satisfactory to both you and Ransome & Marles.

Very truly yours, The Timken Roller Bearing Company, —— ——, Assistant to the President.

DPH:PHK.
File 4.1.

Pardon my neglect—25% of our production is #2 or 3 and balance 75% is #4.

[fol. 5065] DEFENDANT'S EXHIBIT 119

27th November, 1931.

D. P. Hess, Esq., Timken Roller Bearing Co., Canton, Ohio.

MY DEAR DON:

Although I hope to have the pleasure of talking with you in the near future, I feel I must write to you regarding your letter of November 6th on the subject of actual and standard costs of Canton, Columbus and Birmingham.

So far as the Labour and Expense items go, Dallow points out that as his Standards are approximately double your Standards, he fails to see how it is going to be possible to get Actuals down to one and a half times your Standards.

I note your remarks regarding probable loss of time in changing over in the Automatic Section. As you are doubtless aware, our custom (not only in the Automatic Department but in the whole of our Departments) is to pay wages on a piece work basis for good work produced,

but as allowance is made in fixing such prices to cover changing over there is the direct incentive for the men to get through the change as quickly as possible as it is in their interests to do so. In view of this I do not think it would serve any useful purpose to record the time taken in changing over. This was done at some length when our Time Units (which similarly provide for changing over) were first fixed, and numerous checks have been made from time to time. We have a man doing nothing else but check floor to floor times in our various Departments, and it is [fol. 5066] from this information that we know that it is chiefly in our Automatic Sections that our times are not nearly as good as yours. However, now that you have agreed to send us one of your linesmen, I am hoping for big things in this respect.

Regarding our proportions of No. 4 and No. 2 specifications, which you now give as 75% and 25%, respectively, Dallow has shown me a letter signed by Riley dated August 27th 1930, in which he states that you "have only one set of standard costs and those are calculated on what we consider a number four specification. . . . This same standard has been used in determination of the standard values used in the preparation of the British Timken Manufacturing Statement for the month of January, and provided the Bearings manufactured at Birmingham are of a grade above our number four specification, then the Statement does not in that case give full credit in the standard values used"..

I suppose that you have not altered your method and that the June 1931 comparison is based on similar figures. You should, however, bear in mind that the whole of B. T.'s production is manufactured under the No. 2 conditions, and allowance surely should be made for this. The question I would like to ask you is to what extent would your findings that B. T. cost of Labour and Expense (which you show as 214.8% on Canton Standard) be modified provided this factor were taken into consideration?

I note that in the "efficiency" comparison you have provided for it.

I shall be pleased to receive your promised cable advising me of your final decision regarding a linesman coming over.

As regards a report on the quality of your tubing, we have not really had enough experience to make any remarks.

With kindest regards, Yours very sincerely, Michael B. U. Dewar.

[fols. 5067-5068] DEFENDANT'S EXHIBIT 120

British Timken Limited

14th April, 1930.

D. P. Hess Esq., The Timken Roller Bearing Company, Canton, Ohio, U.S.A.

DEAR SIR,

I have pleasure in enclosing herewith Estimated Trading Results for the two months ended February 28th, 1930, which I trust you will find in order.

Yours faithfully, for British Timken Limited.
R. O. Squire, Secretary.

Encls:

BRITISH TIMKEN LTD.

OVERHEAD CHARGES.

Estimated Expenditure for the 8 Months ending 28th February, 1930.

	Estimated 1930	Actual to 28.2.30.
Salaries and Commission, Head Office and Sales ...	18,000	2,372
Sales Representatives Salaries, Commission and Exes. ...	3,[illegible]	[illegible]
Repairs and Running Exes. of Sales Cars	600	181
Salaries and Commission—Foreign and Colonial ...	1,600	267
Travelling Expenses—Foreign and Colonial	1,380	[illegible] E
Advertising and Catalogues	3,000	580
Trials and Exhibitions	1,000	167 E
Travelling Expenses—Home	400	10
Stamps, Telephones and Telegrams ...	700	81
Stationery and Printing	280	88
Professional Charges	280	42 E
Patent Fees and Trade Mark Exes.	100	17
Royalty	16,000	2,503
London Office [illegible] Rent.	225	38
General Charges	3,000	498
Experimental Expenditure	100	45
Bad and Doubtful Debts	1,000	164 E
Discounts	1,250	257
	51,480	8,186
LESS. Interest Received	-	-
	51,480	8,186
Guarantee Account	300	62
Depreciation	3,000	500 E
	54,780	8,707

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E.—Estimated.

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BRITISH TIMKEN LtD.

14th A,. 1930.

Estimated Trading Results for the 2 Months ending 28th February, 193 0.

	Cost	Selling Price	Gross Profit	% of Profit on Turnover
HOME SALES.				
MANUFACTURED.				
Automobiles	11,899	11,063	636	5
Commercial Vehicles	18,482	22,768	4,286	18.8
Motor Cycles	1,400	1,099	301	21 3
Industrial	2,300	3,211	921	27.8
Service	3,211	8,155	4,811	59.2
Railway	-	-	-	-
Alvis Joints	228	326	26	11.0
	37,771	46,622	8,217	19.1
FACTORED.				
Automobiles	21	26	5	20.8
Commercial Vehicles	115	128	13	10.1
Motor Cycles	-	-	-	-
Industrial	720	886	166	18.7
Service	36	96	60	62.5
Railway	-	-	-	-
	902	1,149	247	21.5
TOTAL HOME SALES	38,673	47,857	9,164	19.1
EXPORT SALES.				
MANUFACTURED.				
Automobiles	844	848	4	.7
Commercial Vehicles	13,775	10,712	1,063	9.9
Motor Cycles	429	371	54	15.6
Industrial	687	1,057	420	39.7
Service	4,088	7,777	3,694	47.5
Railway	-	-	-	-
	19,823	20,466	2,997	14.6
FACTORED.				
Automobiles	44	50	6	12.0
Commercial Vehicles	6	6	-	-
Motor Cycles	-	-	-	-
Industrial	414	466	52	11.1
Service	289	703	414	58.8
Railway	-	-	-	-
	753	1,225	472	38.5
TOTAL EXPORT SALES	20,576	21,691	3,469	15.9
TOTAL HOME & EXPORT SALES	59,249	69,548	12,633	18.1
Manufactured—Semi-Finished Parts	1,293	1,680	387	21.6
Factored Semi-Finished Parts	96	134	38	28.3
Scrap and Sundries	962	1,351	389	-
GRAND TOTAL SALES	61,600	72,713	13,417	18.6
LESS: Overhead Charges		3,185		
Guarantee		82		
Depreciation of Stock (Est.)		800	8,707	
NET PROFIT			4,710	
ADD General Charges saved on the difference in Wages in Stock as between Actual Rate and Stock Rate			5,239	
ADJUSTED NET PROFIT			9,949	

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BRITISH TUNNEL LIMT 14th April, 1930.

Estimated Trading Results for the 2 months ended 28th February, 1930.

STOCKS ON HAND at 28th February, 1930:

	Estimated value of Productive Materials	24,304	
	" " " Sundry Stores.	3,871	28,035
x	Estimated value of Materials & Stores.		
	Materials	37,806	
	Wages	16,234	
	Gen. Charges & Sundries.	2,417	54,066
			£82,101

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x Includes Stocks on Consignment.

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BRITISH TIN.. LIMITED 14th April, 193..

Estimated Trading Results for the 2 months ended 28th February, 1930.

STOCK POSITION AS COMPARED WITH 31ST DECEMBER, 1929.

	Wages	Material	Total
Stock Value at 31st December, 1929	19,492	72,977	92,469
Estimated Value of Stock at:-			
31st January, 1930.	17,917	68,844	86,761
28th February, "	16,834	65,840	82,674

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BRITISH TIMKEN LIMITED.

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GENERAL CHARGES - Month 1st [illegible] 4 WEEKS)
(CUMULATIVE 8 WEEKS)

	Production Wages	General Charges	%
Cumulative to [illegible]	[illegible]	[illegible]	[illegible]
Month of [illegible] daily.	[illegible]	[illegible]	[illegible]

Factory Charges	Month of	Cumulative	%
Staff Wages	[illegible]	[illegible]	[illegible]
Stores Wages	[illegible]	[illegible]	7.21
Viewers Wages	[illegible]	[illegible]	21.10
Shop Labourers	[illegible]	[illegible]	7.24
General Charges	[illegible]	[illegible]	11.18
New Loose Tools	[illegible]	[illegible]	12.16
Repairs	[illegible]	[illegible]	22.72
Coal, Gas & Water	[illegible]	[illegible]	12.77
Electric Current	[illegible]	[illegible]	11.89
Sundry Stores	[illegible]	[illegible]	[illegible]
Rents & Rates	[illegible]	[illegible]	1.23
National Insurance	[illegible]	[illegible]	[illegible]
General Expenses	[illegible]	[illegible]	[illegible]
Depn. Plant & Jarring Jigs & Gauges	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
	[illegible]	10,400	[illegible]

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BRITISH TIMKEN LIMITED. 10th April 1930.

DELIVERIES 8 MONTHS ENDING FEBRUARY 1930.

	Wages.	Mate-rial.	S.C. 252.12	Total.	Fact ored.	Grand Total.
HOME SALES.						
Automobiles.	2278.	3808.	6019	11880.	31.	11930.
Comm:Vehicles.	3199.	7186.	8097.	18482.	115.	18597.
Motor Cycles.	334.	888.	880.	1400.	-	1400.
Industrial.	466.	727.	1186.	2380.	730.	3110.
Service.	611.	1188.	1647.	3211.	36.	3247.
Timken-Alvis.	66.	86.	167.	299.	-	299.
Railway.	-	-	-	-	-	-
TOTAL:	7046.	13800.	17936.	37772.	908.	38678.
EXPORT SALES.						
Automobiles.	104.	177.	263.	544.	44.	588
Comm:Vehicles.	1916.	5013.	4947.	11775.	5.	11780.
Motor Cycles.	101.	78.	296.	429.	-	429.
Industrial.	118.	320.	399.	637.	414.	1051.
Service.	736.	1311.	1987.	4033.	339.	4372.
Railway.	-	-	-	-	-	
TOTAL:	2983.	6799.	7892.	17468.	782.	18250.
Sundry Sales.	7.	336.	18.	361.	-	361.
Semi-Finished Parts.	289.	370.	696.	1356.	96.	1259.
	296.	717.	673.	1686.	96.	1781.
GRAND TOTAL:	10325.	20816.	26501.	57926.	1787.	58844.

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DEFENDENT'S EXHIBIT 121

BRITISH TIMKEN LIMITED

DEFENDANT'S EXHIBIT

STATEMENT FOR WEEK ENDING 17th March 1928.

"Cousr" 100/2/28

Orders in hand week ending 10th March 1928.

	PREVIOUS YEAR		CURRENT YEAR		INCREASE OR DECREASE (Red)	
	No. of Bearings.	Amount	No. of Bearings.	Amount	No. of Bearings.	Amount.
Direct Sales	119.354	80.404	161.535	66.421	42.181	13.983
Wolseley	11.243	2.588	33.704	8.220	22.461	5.632
Total	130.597	82.992	195.239	74.641	64.642	8.351

Orders Received.

WEEK'S TOTAL						
Direct Sales	6.900	3.230	9.535	5.190	2.635	1.960
Wolseley	12	5	72	11	60	8
Total	6.912	3.235	9.607	5.201	2.695	1.968
TOTAL TO DATE						
Direct Sales	133.595	73.612	160.873	72.830	27.278	782
Wolseley	12.648	3.022	28.074	6.641	15.426	3.619
Total	146.243	76.634	188.947	79.471	42.704	2.837

Orders Invoiced.

WEEK'S TOTAL						
Direct Sales	8.655	5.017	14.226	5.675	5.571	658
Wolseley	886	220	984	161	98	39
Total	9.541	5.237	15.210	5.856	5.669	619
TOTAL TO DATE						
Direct Sales	112.812	52.232	169.640	67.274	56.828	15.042
Wolseley	4.642	1.241	10.049	2.168	5.407	927
Total	117.454	53.473	179.689	69.442	62.235	15.969

Orders Cancelled.

WEEK'S TOTAL						
Direct Sales	16	26	-	-	16	26
Wolseley	-	-	-	-	-	-
Total	16	26	-	-	16	26
TOTAL TO DATE						
Direct Sales	9.061	2.901	5.056	1.828	4.005	1.073
Wolseley	16.480	4.783	2.000	510	16.480	4.273
Total	27.541	7.684	7.056	2.338	20.485	5.346

Orders in hand week ending 17th March 1928.

Direct Sales	117.583	78.591	156.844	65.936	39.261	12.655
Wolseley	10.369	2.371	32.792	8.050	22.425	5.679
Total	127.952	80.962	189.636	73.986	61.684	6.976

Date 17th March 1928.

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[fol. 5076] DEFENDANT'S EXHIBIT 122

British Timken Limited

WD/RMW. 2nd December, 1938.

Mr. W. Robert Timken, The Timken Roller Bearing Company, Canton, Ohio, U.S.A.

DEAR SIR,

We enclose our Productive Material Issues Statement for the months of August and September, 1938.

Yours faithfully, for British Timken Limited,
Wm. Dallow, Director.

Enclosures.

[fol. 5077]

BRITISH TIMKEN LIMITED 6th October, 1938

PRODUCTIVE MATERIAL ISSUES

AUGUST, 1938

		Quantity or Weight Cwt.	Value £
Chrome Bar Cups and Cones		96	189
Chrome Bar Rollers		35	69
D.O.H. Bar & Coil Steel Rollers & Balls		430	1064
S.N.C. Roller Steel		99	300
Stampings & Forgings	13125 =	871	3587
Chrome Forgings, Own Make, S. D. & Covmac	27125 =	476	1111
D.O.H. " " " " " " "	3074 =	23	58
Cage Steel		628	714
Finished Rollers & Cages ex Canton			227
" " " " ex France			11
Hardening Compound		159	175
C.C. Tube		893	1792
O.C.C. Tube		103	255
Factored Balls, Rollers & Rivets			104
Railway Axleboxes	790 =		9942
Railway Axlebox Sundries			253
Brass Tube		10	39
Stainless Steel Rollers		—	—
Mild Steel Bar Rollers		76	80
Cage Pins	104 =		6

[fol. 5078]

BRITISH TIMKEN LIMITED 8th November, 1938

PRODUCTIVE MATERIAL ISSUES

SEPTEMBER, 1938

		Quantity or Weight Cwt.	Value £
Chrome Bar Cups and Cones		233	456
Chrome Bar Rollers		36	70
D.O.H. Bar Ball Races		8	13
D.O.H. Bar & Coil Steel Rollers & Balls		395	950
S.N.C. Roller Steel		178	545
Stampings & Forgings	12692 =	1136	4375
Chrome Forgings Own Make, S.D. & Covmac	35580 =	670	1563
D.O.H. " " " " " "	5048 =	50	129
Cage Steel		843	922
Finished Rollers & Cages ex Canton			514
Semi-Finished Rollers ex Canton			36
Finished Rollers & Cages ex France			1
Hardening Compound		321	353
C.C. Tube		1235	2465
O.C.C. Tube		184	452
Factored Balls, Rollers & Rivets			144
Railway Axleboxes	726 =		7782
Railway Axlebox Sundries			384
Brass Tube & Castings		9	117
Mild Steel Bar Rollers		148	158
Cage Pins	504 =		3

[fol. 5079] DEFENDANT'S EXHIBIT 123

August 6, 1930.

British Timken Limited, Birmingham, England.

Attention—Mr. Wm. Dallow.

GENTLEMEN:

We are anxious to have your revised list of the machinery you have installed at the Birmingham Plant since the issue of your inventory covering machinery in your plant mailed us last year, for as you will remember you mentioned in your letter of October 9th, 1929 that this list could be readily brought up to date from time to time.

Thanking you for your usual consideration in matters of this kind, we are

Very truly yours, The Timken Roller Bearing Company, —— ——, Assistant to the President.

CMC-REF
File 9.4

[fol. 5080] DEFENDANT'S EXHIBIT 124

British Timken Limited

15th August, 1930.

Mr. D. P. Hess, The Timken Roller Bearing Co., Canton, Ohio. U.S.A.

DEAR MR. HESS,

Your letter of the 6th inst. to hand to-day asking me to furnish you with particulars of Machinery installed since the date of the last Inventory sent to you in October last. I have given instructions for an up-to-date Inventory to be prepared and will send same on to you at an early date.

Your sincerely, Wm. Dallow, Director.

[fol. 5081] DEFENDANT'S EXHIBIT 125

British Timken Limited

October 1st, 1930.

D. P. Hess Esq., The Timken Roller Bearing Company, Canton, Ohio, U.S.A.

DEAR SIR,

With reference to your letter of the 6th August, acknowledged by Mr. Dallow on the 15th idem, regarding Fixed Plant installed at these Works, we have now compiled lists (enclosed herewith) which we trust will give you the information required.

In regard to the lists sent to you last year for the period —9 months to September 30th, 1929—these, of course, merely represented the position in our records up to that date, but before closing our books for the year, certain adjustments had to be made.

To make the position perfectly clear, therefore, we are now sending to you new lists covering the whole of 1929, which take the place of the sheets above referred to.

We are also enclosing a Summary showing exactly how the Book Value, as shown in our accounts at December 31st, 1929, namely, £107,501 0. 11. ($522,000) is arrived at.

In regard to our purchases during the present year, we are also sending you detailed lists of these, totalling £11240 11. 6d. It is, however, necessary to explain that numerous adjustments represented mainly by Sales and obsolescence will have to be made before the figures for the year are completed.

[fol. 5082] In the early part of 1931, and subsequent years, we propose to send to you complete lists up to the end of the previous December, which will put you in possession of definite figures at the earliest possible moment.

Trusting this will be of assistance to you,

We are, Yours faithfully, for British Timken Limited, R. O. Squire.

Enclosure.
AMH.

[fol. 5083]

1.10.30.

BRITISH TIMKEN LTD.

FIXED PLANT

				£	s.	d.
Total to Dec. 31st, 1928, as lists previously sent to you				71625.	7.	2.
Machines (included in Fixed Plant at some value) sold in 1929:						
No.	Book Value 31.12.1928 £	s.	d.			
19.	262.	18.	10.			
28.	207.	11.	7.			
130.	83.	0.	7.			
407.	69.	3.	10.			
411.	34.	12.	0.			
431.	27.	13.	7.			
Old No. 368. (Ward Driller)	5.	10.	9.	690.	11.	2.
				70934.	16.	4.
Less depreciation off original Purchase Prices at 31.12.29.				5846.	9.	6.
Book value of 1928 Plant at 31/12/29 =				65088.	6.	10.
Add—						
Machines purchased in 1929 at Book Values as per list attached—				42412.	14.	1.
Total Book Value at 31/12/29.				£107501.	0.	11.

[fol. 5084] DEFENDANT'S EXHIBIT 127

August 19, 1932.

Messrs. H. H. Timken Sr., H. H. Timken Jr., Ernst, Spray, Umstattd and Brower.

Following is a brief summary of results for the first half of 1932 covering British Timken operations:

Sales for this period were $660,000.00 as compared with $1,180,000.00 for the similar period of last year. This large decline was due primarily to the loss of Russian business which for the first six months of 1931 amounted to $330,000.00 against $6,300 for this year. If we eliminate this Russian business from our sales figures for both years to date, we find that 1932 sales are 20% below last years. Another point we must remember is that Mr. Dewar advised us that his selling prices on the average had declined 14% from last year.

We are making real headway in developing Industrial Sales at British Timken. While the figures shown an 8% decline from the first half of last year, our second quarter business was 10% ahead of last year. The first rolling mill equipped with British Timken bearings recently went into operation and is meeting every guarantee of its makers. Our engineering department at British Timken is swamped with industrial layout work, and Mr. Dewar wants to keep our engineer Moreland for another year. England generally has realized they must modernize their industrial equipment, and we are going to share very largely in this development.

Another encouraging factor is the development of our railroad business. We received an order recently for 15 cars from the London Midland & Scottish Railway similar to the type which have operated so successfully on the Metropolitan Railway during the past year. The former is the largest railway in England and is considered one of the best managed and financed not only in England but on the Continent as well. Recognition of our product by this road will be of immense help to us throughout Europe. We are also equipping a trial car for the Belgian State Railways.

Profits for the first half were $36,000.00 as against $270,000.00 for the same period in 1931. This rather indicates

that with sales of $1,200,000.00 annually we will just about break even.

Progress is being made in the development of our straight roller and ball bearing business. We expect to be marketing the former type bearing by October of this year and the latter by the Spring of 1933.

D. P. Hess.

Note A:—All figures are based on the pound sterling at par.

Note B:—French Timken and German Timken figures for the first half of 1932 are not yet available.

[fol. 5085] DEFENDANT'S EXHIBIT 128

Report on Foreign Subsidiaries of the Timken Roller Bearing Company

By Mr. D. P. Hess, Assistant to the President, Visit of February and March, 1932.

1. British Timken Limited.
2. S. A. Francaise Timken.
3. Deutsche Timken Gesellschaft.

[fol. 5086] Report on British Timken Limited

Cheston Road, Aston,
Birmingham, England

[fol. 5087] Report on British Timken Limited

April 8, 1932.

Sales

During 1931 British Timken total sales were $1,860,000 which is a decrease of 1.3% under 1930. As has been our experience in England for the past few years, commercial vehicles and service represent the largest part of our sales or 31% and 25% respectively or a total of approximately $1,040,000. It is rather interesting to know, however, that, while these figures represent the monetary value of these sales, the total number of bearings shipped for commercial and passenger car vehicles is approximately the same,

although the latter represent only 10% of our gross sales in monetary value. This figure, of course, includes the Ford business, as we are receiving all of this business available from the British Ford plant.

During the past year approximately 68,000 commercial vehicles were produced in England and with the exception of Chevrolet, Austin, Morris, and Hillman we are represented in at least one position on every truck produced. To put it another way, Timken bearings are used on 97% of the commercial vehicles in England, excluding Chevrolet (see Exhibit "A"). Prices range from our #14 to #16, but we are now faced with severe S.K.F. competition, who are now equipped in England to make truck size bearings. During the past year this latter company has quoted several of our customers and during the writer's visit Leland Motors, one of our best accounts, called up and stated S.K.F. had just quoted them the equivalent of our #9 price, which of course is lower than our costs at British Timken. There is no question but that S.K.F. will try to get into this commercial vehicle picture in England, because:

(1) Prices are still at a level where profit can be earned which is contrary to automobile prices generally, as will be noted later, and

(2) This service business is attractive.

In the strictly passenger car field our sales in dollars were, as heretofore mentioned, comparatively small, due primarily to the fact that we do not have any bearings on the Austin and Morris cars. These two manufacturers produce practically 50% of the automobiles in England during the past year, which was 159,000 vehicles (see Exhibit "B"). Of the remaining passenger car output we are represented in at least one position in all but six of the manufacturers, which latter control a production of about 20,000 cars. One of these companies, Vauxhall, is controlled by General Motors; another, Woolesley, is controlled by Morris; and of the remaining four, two companies (Riley and Jewett) are dependent for the bulk of their production on cars in the class of the Baby and 12 H.P. Austin. Most of the small cars use ball bearings and purchase them at extremely low prices (85 and 2½% off list).

A careful study was made of the possibility of obtaining some of the Austin and Morris business, but the situation

is not at all encouraging. Morris is definitely tied up with Ransome & Marles (ball bearing manufacturers) chiefly on [fol. 5088] account of past relationships, which, I was told, originated in the early days of Morris' career when he was having difficulty to get funds to finance his activities and Ransome & Marles, either by actual cash advances or long term credits, materially assisted him. At one time Morris was on the Board of Ransome & Marles and this relationship is still very close. In the case of Austin Motors, Sir Herbert Austin very bluntly told Mr. Dewar that he could see absolutely no advantage in the use of our bearings on his small cars which represent the bulk of his output and that ball bearings had been entirely satisfactory and under no circumstances would a change be made unless he had trouble and regardless of theoretical savings due to smaller bearings and mountings. Incidentally, in order to test out this statement, about six months ago we quoted Austin prices approximately 20% under our costs and received absolutely no business. It only forced ball bearings prices down and both Morris and Austin are being quoted discounts of 85 and 5 from the British ball bearing list, which, it must be understood, is about 20% under the American list.

We are trying very hard to swing more automobile manufacturers to our bearings on pinion mountings, but invariably meet the old story of lower ball bearing prices, combined with good performance. It is to be noted that our selling price for passenger car vehicles is approximately at cost and the only opportunity we have of getting any of this business is apparently by quoting materially lower prices which is impossible under present manufacturing costs (see Manufacturing).

One of the outstanding points in our British sales is the decline in service bearing sales for American made cars. England, like practically all other Continental countries during the past few years, has materially raised the tariff on American made vehicles, which has had a decided effect on the use of American cars. The best evidence of this is in an analysis of our 1931 service sales in England which are as follows:

Commercial vehicles	80%
Ford	10%
All others	10%

Here again we are getting the usual competition from S.K.F., but, due to the use of our bearings in the original equipment, we are able to get a large part of this service business at discounts of approximately 50% from list.

We continue to do a good export service business and in 1931 this represented 9½% of our total sales or approximately $175,000. Due to Great Britain being off the gold standard, we hope to increase this business during 1932, but are beginning to feel RIV competition, especially in southern Europe.

Another interesting point in the service picture is the business coming into England from American territory, chiefly from Japan, Brazil, and the Argentine, due to the fact that British bearings (being off the gold standard) are at lower prices than American product. As a typical example, S. Kimura, of Tokio, insists on buying British made bearings and has told us that, if he cannot get British Timken bearings, he will buy S.K.F. British Timken quote him 50% off the British list which in actual American figures is equivalent to approximately 65 off our list. The same condition exists in Brazil and we have had a couple of instances of it from Buenos Aires.

[fol. 5089] Our tentative plan for handling this is as follows: British Timken will accept these orders coming into England and advise the customer that, due to their country being in American territory, they are forwarding the order to us and it will be shipped either from New York or San Francisco at 60% off the American list. If the customer objects or insists on British bearings, British Timken will of course execute the order, and the writer is inclinded to think this is going to happen in practically all cases, but it will at least give us here in America some chance of executing these orders at American prices. It might be well to mention at this time that we are going to feel the effect of this situation in all American territory, as S.K.F., with Sweden off the gold standard, can certainly under-sell us if they are inclined to do so. In Canada of course we can use British made bearings and the writer discussed the entire Canadian situation with the Canadian Government representatives in London. We recently shipped as a test case a quantity of bearings from Birmingham at the maximum British discount of 80% and which are billed to us by British Timken at #11 price. England of

course is in the favored nation position on Canadian tariffs and this will permit these bearings to be rated at Ottawa with the minimum amount of duty, as compared with the duty on American made bearings of 35%. The duty will be paid at the discount price of 80% off list.

British Timken are very aggressively going after South African and Australian markets. Up to this time they have had distributors representing them the same as we are represented in South America, but starting January 1st of this year they have an individual representative in each of these countries and have already noticed improved results. It is simply the old story of a better job being done by someone directly responsible to the home office.

Due to the fact that we now have definite American representatives in Japan and China, it was decided that Hong Kong, formerly British Timken territory, would be transferred to us, and this has been arranged.

The Ford tractor situation at Cork, Ireland, is chaotic and latest reports indicate there are less than 100 people employed there. We are still carrying approximately 3,000 sets of tractor bearings at Birmingham which were made up on orders from Ford, but on which delivery has not been specified.

Due to the general improvement in industrial conditions in England our prospects for industrial bearing business is definitely brighter. During 1931 we increase our sales 7%, reaching a total of $160,000. During the writer's visit we made a study of this industrial situation based on inquiries received at Birmingham, and we found it necessary to materially increase the engineering staff, as from the best calculations available they had approximately four months' work ahead of them. It was decided to have our Mr. Moreland, industrial engineer, remain for the balance of the year with headquarters at Birmingham. British Timken engineering practice in this division follows exactly our American practice. The prospects look particularly bright for rolling mill business. England has recently passed a 10% tariff on practically everything except foodstuffs and one of the industries which will feel the benefit of this tariff is the steel industry.

In fact, recent figures show that the British steel production has passed Germany for the first time since the war and a point that is being very seriously discussed in [fol. 5090] England is the possibility of increasing this

tariff on steel from 10% to 33⅓%. We are advised that the British Government, together with the Bank of England, thoroughly recognizes the necessity of rehabilitating and modernizing three major industries, namely, ship building, textiles, and steel, and that the program for doing so is now well under way and is being handled by a separate corporation whose identity is secret, but which is apparently dominated by the Bank of England. So far this program has functioned to the extent of shutting down in the ship building industry old and obsolete plants and concentrating activities in more modern ones located near shipping centers. I was told this move is now on in the steel industry and will reach culmination within the next two years. I discussed this British steel situation in considerable detail with Mr. H. E. Cooper in the office of the American Consul General who specializes in this particular phase of the work, and also with the directors and officials of the Wellman-Seaver Rolling Mill Company, who are one of the largest builders of rolling mills and miscellaneous steel equipment in England. The latter are busier than they have been in 15 years and are studying very carefully all recent American installations. This of course means that our bearings are receiving considerable attention and further evidence of this can be readily seen in great numbers of inquiries which we are receiving at Birmingham. So far we have only received one order for large steel mill bearings and this is for equipment for a four-high cluster type sheet mill similar to the kind built by the E. W. Bliss Company of Salem, Ohio.

Railroad bearing prospects in England are also quite encouraging. During 1931 we equipped and had in operation 35 cars on the Metropolitan railways, one of the smaller systems running a city and suburban service, both underground and surface, in London and adjacent territory. The writer spent considerable time with Mr. George Hally, traffic manager, who is very enthusiastic about our bearings. This man is a typical British engineer and made very exhaustive studies of our bearings in test car service before adopting them. His report and various calculations showed a savings of 8%, but he told me their present figures showed they were actually getting from 14% to 17%. Detailed figures covering this data are shown on Exhibit C and were the basis of an additional order for 65 cars which are now building.

This particular type of service in which these bearings are used is very interesting. The Baker Street Station out of which most of these trains run is in the heart of London and during the rush hours 45 trains per hour are operated. These trains contain seven cars and many of them are on half minute schedules. These figures sounded unbelievable to me, so I went to Baker Street to watch this service during the rush hours, and there is no question but that it is true. During my stay in England we had what is considered quite a cold spell and Mr. Hally had considerable trouble with hot boxes. Naturally running on these schedules any kind of a delay almost disrupted the service and he told me that the most gratifying thing of all was that the five Timken trains ran without a single minute's delay and were the only ones he could count on 100% of the time. He told me before several of his associates that there would never be another plain bearing car purchased by Metropolitan as long as he was traffic manager. The excellent performance of our bearings for Metropolitan is known all over England and is receiving a great deal of attention.

The London, Midland & Scottish Railroad, the largest in England, have just sent us an inquiry covering 400 bearings for 50 cars for service similar to the Metropolitan. We are working hard to obtain this order, as to have our [fol. 5091] bearings on the L. M. S. means that we are accepted in England in every sense of the word, and at my leaving everything indicated that we would obtain this order. The L. M. S. engineers spent three days riding the Metropolitan trains and analyzing all of Mr. Hally's figures. Their men told us that Mr. Hally's figures were too conservative and that their report would certainly be favorable. A detailed analysis of the British railroad situation with reference to the larger companies is shown in Exhibit "D".

Sales Engineering

There has always been a doubt in our minds as to the British Timken sales engineering policy. Mr. Wood, chief engineer, in our opinion is inclined to be too conservative and the writer discussed this matter quite at length with both Mr. Wood and Mr. Dewar. It seems there are a great many cases where Mr. Wood is handicapped by

customers demanding either metric size bearings or where our bearings must be fitted with only the minimum change in housings, closures, etc. Many times this means that we must fit larger Timken bearings than would be the normal American practice if we had a free hand in presenting a bearing of sufficient load capacity to handle a given job and where there were no limiting factors such as to make them interchangeable with ball bearings. I asked Mr. Wood point blank if he followed American engineering practice in using the smallest bearings possible wherever he was not limited by other considerations. He replied definitely "Yes" and in support of his conclusions he has presented a list of British Timken applications attached hereto and shown as Exhibit "E" which in commercial vehicles in particular show that they load their bearings even more than we do in America.

Mr. Wood, Mr. Dewar, and I went over several applications shown on these sheets and I satisfied in my own mind that the British Timken engineering policy is perfectly sound from the standpoint of British conditions. The question of the calculation of bearing loads was also discussed in detail and Mr. Wood told me that while they used a different formula than Canton, in the end they accomplished the same result. In other words, British Timken takes into consideration at all times thrust loads, whereas we in America disregard the thrust load in certain cases and calculate only the radial load. Both Mr. Wood and Mr. Dewar stated this was absolutely necessary in England and on the Continent, because S.K.F. used exactly the same formula and British engineers are very insistent in knowing exactly how we calculate loads and very often check our figures down to the minutest detail.

We must also bear in mind that in England particularly there is no standardization of engineering such as is used in this country and every British engineer takes pride in having something just a little bit different than his competitor. Naturally, while we do not like this, we have to meet the demands of our customers and it quite often forces us to use mountings that would seem rather inconsistent with American practice. Even in industrial engineering we have met some criticism of American practice, but always, as mentioned before, we have succeeded in convincing our customers that it is far better to follow Ameri-

can practice which is borne out of experience than mere theoretical load calculations, etc.

The entire British Timken sales organization and method of operation was discussed with Mr. Dewar and the plan is to make changes in the line-up in the very near future. These changes will be in the direction of conforming exactly [fol. 5092] to the American procedure and a man is to be appointed in charge of industrial sales. Mr. Hobley at present is in charge of all sales. The latter will be placed in charge of automotive and service sales. Railroad sales at present handled separately will be combined with industrial sales. British Timken are using the same procedure that we do in America, i. e., train men in the factory and put them on the sales staff as soon as possible, and there is no question but that Mr. Dewar and Mr. Pascoe are very active in the entire sales picture.

Ball Bearings

As is generally know, Mr. Dewar and the British Timken board of directors feel it vital that we undertake the manufacture of ball and straight roller bearings at the earliest possible moment. Their reasons are shown in a memorandum attached to this report as Exhibit "F", which are basically the same as were told to us when the merger with Ransome & Marles was discussed and approved by us, namely:

(1) the further expansion of British Timken business with resulting lower costs, and

(2) to block the possibility of S. K. F. having a monopoly in England the same as in Germany and France on all types of bearings.

I explained to Mr. Dewar and Mr. Pascoe our thoughts along the line that it was unwise to create additional capacity when there was admittedly already plenty of bearing capacity available and they agreed with me in principle in this matter. They have, however, studied the possibility of a merger with Ransome & Marles and Hoffman and S. K. F. The Ransome & Marles situation is understood by all of us and needs no further mention at this time, but the merger with Hoffman is impossible for the following reasons:

(1) Hoffman earnings are poor and have declined for the past several years.

(2) They are not very strong in cash and may default on the debenture notes due in 1932.

(3) Their balance sheet shows very high land and plant investments.

(4) They have several different kinds of shares, in addition to the debentures, which makes the question of control uncertain and particularly so if the debenture interest is defaulted.

(5) Brown, Bailey Company (steel interests) own a large block of stock, and they in turn are none too strong financially.

Balance sheets of Ransome & Marles and Hoffman are attached hereto as Exhibits "G" and "H".

We had an opportunity to purchase the ball bearing business of a small firm known as the Auto Machinery Company who do primarily an industrial business in ball bearings along with a nut and bolt business, but the price they asked was $150,000 with annual sales of $150,000. Their amount of profit from the ball bearing business was difficult to determine, as it was all thrown together with their nut and bolt business. Our Dr. Wrba personally visited [fol. 5093] their plant and reported their ball bearing equipment was very old and obsolete in almost all respects and in his opinion they could not get low manufacturing costs with this type of equipment. We of course felt that the price was entirely too high, but the executives of the Auto Machinery Company flatly refused to consider a lower figure and the matter was dropped.

This forces us into the position of either abandoning the thought of going into the ball or straight roller bearing business at this time or providing ourselves with whatever equipment is necessary and going forward at once. An analysis was made of what equipment we would need to manufacture approximately 500,000 bearings per year of the popular and standard sized primarily for industrial, commercial vehicles, and service uses (see Exhibit "I"). On the assumption that we could buy the balls from either Ransome & Marles or Hoffman, it was decided that the only major equipment we would need would be track grinders for grinding the ball raceways in the cups and cones. Actual quotations were received on this type of equipment and together with certain miscellaneous gauging equipment represented a total of approximately $25,000. Mr. Dewar has

already discussed the proposition of obtaining balls from Col. Higgs, of Ransome & Marles, and the latter stated they would be willing to supply us. During my last day in England, Col. Higgs called while I was in Mr. Dewar's office and enquired as to when we were going to give him some orders for balls and Dewar advised him in the near future. Of course, it may be that the price for balls will be prohibitive, in which case we will have to manufacture our own. This will mean an investment over and above the $25,000 heretofore mentioned of about $35,000.

This ball manufacturing will only be done as a "last step," because we feel that as soon as Ransome & Marles understand we are in earnest about going into the ball bearing business they will again bring up the merger question. As mentioned in my preliminary report, Ransome & Marles have had several opportunities to discuss the merger, but have avoided it and, while Hoffman is anxious for a merger, it is certainly not advantageous from our standpoint.

As was mentioned in one of my letters, S.K.F. is definitely announcing to the trade that ultimately there will be only one major anti-friction bearing manufacturer in England, similar to France and Germany, and that will be S.K.F. They state British Timken will never go into the ball bearing business, because they are dominated by American Timken and we will not permit it. I was advised by Mr. Dewar and Mr. Pascoe, and incidentally checked this up both in France and Germany, that the present S.K.F. policy in England is exactly the same as was used in Germany and later in France, namely, to force ball bearing prices down to a point where no one could make a profit, and then effect a merger on terms primarily favorable to themselves. They feel that unless we aggressively fight S.K.F. right now our prices will continue to be pushed down similar to the Leland Motors case heretofore discussed and we can, therefore, look forward to diminishing profits if this condition is allowed to continue. They further state that as soon as S.K.F. understands that we are permanently in the picture as far as making all types of bearings is concerned they will certainly change their policy, as nothing is to be gained by price cutting except to hurt themselves and ourselves.

Russian Situation

As stated in a preliminary report, we do not at the immediate moment have any Russian orders on our books. During 1931 we shipped $370,000 worth of bearings to them [fol. 5094] and practically all Russian bills have now been paid. In the meantime RIV (Italy) have made a technical agreement with the Russians and have been their main source of bearing supply at #15 price with no cash down and two year terms. The Italian Government guarantees 100% of the invoice value. With England off the gold standard our probability of getting this Russian business is much brighter, as the Italian price of #15 is equivalent to the British #23 price, and Mr. Benedetti, Managing Director of RIV, and Mr. Dewar have mutually agreed to maintain these prices to the Russians. So far this year no bearings have been purchased by the Russians, as their entire industrial program has been materially slowed down. Three members of our staff have been in Russia during the past six months, Mr. Pascoe, Dr. Wrba, and Mr. Moreland, and the consensus of opinion is that the Russians will succeed in their present so-called five-year program, but in a materially longer time, dependent, of course, on world conditions and the success they have in selling their products everywhere. Incidentally, with many countries off the gold standard, they have found it very difficult to sell their products and pay for equipment and machinery purchased in the United States and Germany, and this, of course, is having its effect on the entire Russian situation.

The German Government for 1932 has served notice on their manufacturers that they cannot guarantee to any extent any further Russian invoices. This, of course, is due to Germany's financial condition and means that a good deal of business, formerly placed in Germany, will go elsewhere. There seems to be a very definite policy all over Europe in the handling of this Russian business which is going to bother the Russians and that is as follows: Russia is being told that they can sell into England, for example, just as much as they buy from England. This same condition exists in France and is patterned after the Italian program of the past few years. Whether this will work successfully or not, nobody knows, but they are taking advantage of it in England and both Mr. Pascoe and Mr.

Dewar are working with the Government departments to see that a portion of this Russian business placed in England will be for tapered bearings. At the time of my visit Pascoe had several discussions with the Arcos (Russian) representatives and, while nothing definite was settled, we were told that we would have an opportunity to quote on any bearings placed by the U.S.S.R. It is interesting to note that the Moscow authorities told Pascoe that they would definitely place business in England, if the English purveyors were prepared to guarantee the price of this business at a certain fixed value for the pound. This is of course impossible, but is a good example of the Russian buying attitude.

Mr. Moreland and Dr. Wrba spent two weeks in Russia discussing the use of large mill bearings on Russian equipment. The Russian policy is apparently to build exactly the same kind of mills and equipment used in America and they are very favorable to Timken bearings. They complain, however, that our prices are too high and that up to the present they have left the choice of bearings up to the mill builders. We found this to be true and the mill builders in Germany have been using S.K.F. bearings (see German report). Mr. Berger, an American engineer, is designing two sheet mills for the Russians which are to be located near the Ukraine and near Petrograd. Based on American selling prices the value of the Timken bearings on these two mills would approximate $1,500,000, and we were told by Mr. Berger that there was no question but that these two mills would be built by the Russians themselves.

Mr. Moreland and Dr. Wrba report that Russian workmanship is very bad and that they recommend we do everything possible to avoid the use of our bearings particularly [fol. 5095] on pinion stands, as Russian cut gears are terrible specimens and there is little likelihood that they will work.

We have always been amazed at the great quantities of bearings purchased by the Russians and this can be largely explained by the fact that a set of spare bearings is attached to the front wheels of every tractor produced, and we are told by RIV officials that in many cases it is merely a question of hours as to how long the bearings last in a tractor. This same information has been given us by the British Timken service representative in Russia.

Various divisions in Moscow told Mr. Moreland and Dr. Wrba that they were anxious to get some agreement with Timken to assist them in the manufacture of tapered bearings for steel mills and various industrial uses. This particular phase of the question is being handled by Mr. Pascoe with the Arcos representatives and the plan is to make such an agreement with the Russians provided they will give us definite commitments on large mill bearings or guarantee us other bearing business. Both Mr. Dewar and Mr. Pascoe feel that ultimately the Russian situation with reference to the railroads will receive more attention than at present and our chance of selling them railroad bearings will be quite good. At present the Russian policy is to concentrate largely on supplying all farm and various miscellaneous industrial equipment. Railroads, ship building, and other industries will be held back and are to form the major part of the second five-year program now being discussed and partially prepared. Mr. Dewar through his Docker connections is constantly in touch with the Russian railroad situation and we feel sure this matter is being very well handled, although as yet we have no concrete evidence in the shape of orders or inquiries received.

Financial

The financial position of British Timken has already been reported by the writer in my dividend report, but briefly is as follows: cash on hand as at December 31, 1931 $38,000; as of March 1, 1932, $180,000; and as of June 1, 1932, $325,000, based on an estimate of sales and indebtedness for the next few months and before dividend payments. Throughout all our discussions of British financial conditions, the writer endeavored to impress them with the thought that the cash position should be materially strengthened before our English position would be, what is called in America, comfortable. I was greatly surprised to find that Mr. Dewar and Mr. Pascoe were very much opposed to showing too strong a cash position and, because of the fluctuation of the pound, they considered it better policy to either have this money in plant, machinery and to operate on bank loans.

They supported this statement by saying our cash position at the time England went off the gold standard was quite low and that they were indebted to the banks, and

incidentally there is no question but that this was a favorable condition at that time. I discussed this matter with Mr. Duncan, our director, in a separate interview, and he told me that it is general British practice to maintain small amounts of cash on hand and use the banks to finance business. We must bear in mind that Mr. Duncan's experience is borne out of some 50 odd years on the street and I find his opinions highly regarded in London. All the British Timken directors feel we have ample capital and particularly strong borrowing power to embark on almost any venture within reason, such as industrial bearings, Russian business, or ball bearings. The reserves, both apparent [fol. 5096] and hidden, were in their minds quite ample and Mr. Dallow, director at Birmingham, is very conservative in all financial matters. This is one of the outstanding points which impressed me and upon which I was somewhat doubtful on my visit in 1927. Dallow personally passes on every dollar of expenditure occurring at the plant and I had plenty of opportunity to observe him in action. In fact, in many cases his conservatism, as practiced in the buying of supplies for the plant, was detrimental, as I found them using tools, collets, etc., that should have been scrapped long ago (see Manufacturing).

Manufacturing

British Timken manufacturing practice has actually greatly improved over what it was three years ago and this is quite evident in comparison with costs of standard bearings existing at that time and now. Briefly they are as follows:

Part Number	BT cost 1929	BT cost 1930	BT cost 1931	BT cost 1932	Canton cost 1932
365/363	$1.10	$1.07	$ .75		$ .36
537/532A	2.07	1.97	1.63		.76
26118/26283	.83	.72	.55		.26
09074/09194	.49	.36	.33		.18
6552/6520	—	5.73	4.50		2.66
LY70/LY62A	—	2.58	2.55		1.46

Of course, not all the improvement in cost is due to better manufacturing, as a certain amount of it naturally follows with increased volume of production. The entire attitude of British Timken toward the use of American methods has completely reversed itself. They are now more than anxious to use anything we have or to follow anything we recommend, and this attitude goes right down from Mr. Dewar to every man in the shop. Mr. Teague, superintendent, is far more capable than the former one Mr. Loader, who twice visited Canton, and seems very anxious to follow American practice. One of the greatest changes was the promptness in making changes suggested by me and several recommendations made early in February were completed and in operation in a week or ten days.

The raw material situation at British Timken is somewhat involved due to the arrangement of the plant, as they are being forced to use in some cases tubing only 10′ in length. This handicap will be almost entirely overcome within the next 60 days due to the re-arrangement of the automatic machines recommended during the writer's visit and following the increased floor space to be created by moving the grinding department to a new plant addition now in process of construction. This particular addition covers approximately 28,000 sq. ft. and is largely necessitated by the expansion of large bearing industrial business. British Timken have purchased two boring mills and miscellaneous grinding equipment and it has crowded the present department beyond all possibility of even fair working conditions. This new addition will completely relieve this situation, besides being of great assistance in eliminating congestion in the grinding department as well.

Regarding the quality of the raw material, the writer found the tubing received from Sandviken is quite satisfactory and that the high carbon-tubing which we shipped [fol. 5097] them six months ago is also entirely satisfactory. Of two lot numbers out of the four chrome steel lot numbers which we sent them, one had severe ingot breaks and the other bad concentricity. The later rejection was rather extreme in the writer's mind, but nevertheless the material was not up to the standard they required. At present, with Sweden off the gold standard, the cost of tubing delivered in Birmingham is approximately $.04 per pound (Brightmanized) which is lower than we can possibly sell

it. Under the new tariff British Timken raw materials cost- are bound to go up, but Mr. Dallow anticipated this situation and we have sufficient raw material on hand for six months. It is important to remember that all tubing is purchased on a consignment basis and paid for on the basis of 30 days after consumption in the screw machine department. In view of the fact that Britain faces a still higher duty on raw material, Mr. Dallow and Mr. Dewar are experimenting with forgings produced on an upsetter. This machine has been in our plant for about six weeks and at the time of my visit they were having the usual trouble incidental with a new method of manufacture. The writer had obtained data on the New Departure practice in heating and forging and this was handed to British Timken and before I left we could see definitely improved results. It is planned to make product of 4¼" diameter and up to 6" on this machine.

A thorough study of the possibility of using our hot forming method was made and calculations show that based on 1931 production with a press of the same size as ours they would develop a savings of about $30,000 to $40,000. Incidentally they are very keen to get into this, but the writer held this temporarily in abeyance due primarily to the fact that they will have to use a slug made on an upsetter rather than from tubing such as we do. They will start at once developing this type of manufacturing practice and depending on their costs and the mechanical perfection of the slugs, we will defer the decision of our supplying them with a hot forming press.

The question of making some of their small cups from strip steel in a cold stamping method was carefully analyzed, but did not look feasible due to high costs of strip steel. All sources of supply for this type of material were to be investigated and it may be that this will eventually prove a satisfactory method at British Timken. The press equipment they have seems to be ample to handle it.

Screw machine practice at British Timken is bad and without question is the limiting factor in their improved processes of manufacture. This condition upon investigation was found to be due to three things:

(1) Miscellaneous difficulties in the mounting and use of tools, collets, bearings, cams, etc.

(2) General manufacturing conditions such as poor spindles and general machine conditions.

(3) Inefficient operators.

As is generally known, Mr. Travis, head lineman at Columbus, is now in England and is doing a great deal of improvement to their screw machine practice. At the time of my departure he had four machines running in exactly the same way as at Columbus and Canton, and Mr. Teague and Mr. Dallow were very enthusiastic about this work. In fact, they want him to stay permanently in England, but he has refused. An additional cause of trouble was the use of poor tools, collects, etc. This was largely the result of false economies on the part of Mr. Dallow who refused to replace feed shell collets, etc., until they were worn beyond any possible chance of using them. The [fol. 5098] writer noticed several conditions like this which are the outgrowth of inexperience and I believe this matter has been permanently corrected. In fact, upon examination I found a great percentage of the tool stores to be fit only for the scrap pile and they were scrapped.

British Timken uses purchased forgings on all sizes over 4¼" and these are machined on a small Herbert machine similar in construction to our Potter & Johnson, but quite a good deal faster and operated by girls. These girls turn out a very satisfactory quantity of work as well as a good quality. Chamfering and secondary operations are all performed by girls or boys with rates of 12¢ to 14¢ per hour. Due to small quantities of the part numbers going through the department, they would not be able to use the same type of chamfering equipment that we do and all of this of course is done on hand lathes.

Carburizing practice at British Timken is as good as can be expected with the box type method. It is impossible for them to use gas carburizing furnaces, as the only gas available has a BTU content of less than 500 and calculations show that the best method is the one now used. The hardening department uses practically the same type of equipment as American Timken except for electric furnaces. This latter feature was carefully investigated and may eventually be used, but at this time costs do not warrant it. The heat treating departments are in charge of Mr. Evans, metallurgist, who is a very capable young man, both from the standpoint of metallurgical skill and the handling

of this department. For example, the hardening department on my previous visit contained 30 men, but now contains only eight and is doing four times the former production. The heat treatment and general handling of high carbon steel was discussed with Mr. Evans and he has written a detailed report of their practice in this matter which the writer has handed to Mr. Hildorf.

Cup and cone internal grinding is handled on the Heald machines with practically the same floor to floor times as exist at Canton. All this work is done by girls on piece work who earn an average of 22¢ an hour which incidentally compares with our Canton average of 68¢ per hour. Girls are also used on all of the external operations with satisfactory results. The entire British Timken grinding practice is very comparable with our American practice and, while their costs are higher, the writer found it due to two things:

(1) All work is made to what we call #2 quality, and
(2) Small quantities cause numerous changes.

The writer endeavored to make a rather exhaustive study of the effect of small quantities on the cost of production and, while this was not possible in all departments, we did ascertain in the screw machine department that if the Canton plant had to make as many changes per month as British Timken our screw machine efficiencies would be 59% instead of 87% as at present. It is very difficult to put this type of calculation into dollars and figure the actual difference in costs, but there is no question in the writer's mind but that it is having a detrimental effect on British Timken costs equaling ours. Mr. Dallow is insisting from his superintendents and foremen that they will have exactly the same floor to floor times as American Timken and, as heretofore stated, this has been accomplished in the grinding department on almost all part numbers in operation, but is still to be obtained in the screw machine department.

[fol. 5099] All rolls are now made on headers and, while their efficiency does not compare with Canton, they get quite satisfactory results. Roll grinding is excellent in all respects and production times compares very favorably with ours.

Inspection and assembly operations are of course handled with female labor at rates of about 18¢ per hour and all

the bearings are put through a "run-in" operation similar to what we used and are also sound tested.

The British plant at the time of my visit was employing 430 people in the plant (of which 180 were female) and 125 on the so-called "staff". It is a rather outstanding fact that wage rates paid in the office, excluding department head and engineers, average approximately $30 a month. This figure sounded almost unbelievable, but upon a double check I found it correct. Hours of work in the shop are on the basis of a 45 hours per week on an eight hour day and in the office 40 hours per week on a 7½ hour day.

Mr. Dallow and the writer made a thorough study of British Timken costs, the outstanding feature of which was that improved screw machine practice in the use of longer tubing, better operations, and lower scrap, will save approximately $30,000 per year. This of course does not take into consideration the savings possible through the hot forming method or lower costs due to increased volume. In fact, British Timken calculations show that with each 10% reduction in volume costs go up 4% to 5% based on present standards. Another interesting point is that based on the 1931 practice labor is 16% of their total costs and material 40%—which compares with our American figures of 25% and 40% respectively.

General

The anti-friction bearing industry in England is handled by the corporations shown below and the volume for 1931 is estimated by Mr. Dewar as follows:

Hoffman	$ 4,500,000
Ransome & Marles	3,000,000
S.K.F.	2,750,000
Timken	1,800,000
Bock	350,000
Rudge	75,000
Misc.	100,000
Total	$12,575,000

There is no question but that S.K.F. is by far our most aggressive and alert competitor and is our real competition even in the face of the fact that Hoffman is the largest producer. The latter have told us that they will in all

probability go into the tapered roller bearing business. Ransome & Marles many years ago actually made tapered roller bearings with poor results and have given no indication that they will again take up this manufacture. Of course, from the attitude of British Timken, a merger with Ransome & Marles is desirable, as it would put us in a very fine position from two standpoints, namely,

(1) The largest manufacturer of anti-friction bearings in England, and

(2) A definite possibility of merger with Hoffman on very favorable terms.

[fol. 5100] Both Mr. Dewar and Mr. Pascoe feel this will eventually be culminated and as mentioned before their thought of going into the ball bearing business is to rush this particular development as quickly as possible before Hoffman joins with S.K.F. or in some way strengthens its present position.

The writer discussed with Mr. Dewar a change to be made in our agreements to the effect that royalties from subsidiary companies will not be deducted by British Timken royalties, but will be paid direct to us by the subsidiaries. I explained to Mr. Dewar that this put American Timken under a handicap due to the pound going off gold and he readily agreed to make any change that we and Mr. Higgins might suggest. This will be worked out with Mr. Brower and Mr. Higgins.

We are spending at this time approximately $16,000 per year to maintain our foreign patents. This subject was thoroughly discussed and analyzed with the British Timken staff and it was decided, subject to Canton approval, to drop a large majority of these patents.

The new Ford small car which is to be sold in competition with the Austin and Morris 7 H. P. units was on display in London and viewed by the writer. In my opinion it looks a great deal better than either of its two major competitors and I feel Ford will be successful, but I might say at this point that general British opinion is contrary to this and they feel Ford's enormous investment at Dagenham is a grievous mistake. Incidentally the writer accompanied by Mr. Dallow visited the Dagenham plant, located 26 miles from London on the Thames and occupying 140 of a total site of 640 acres. Ford's expenditure to date in

this plant is reported as $25,000,000 with an additional $15,000,000 to be spent. The capacity is given at 1000 cars per day, but at this time they are turning out only 60 trucks per day and employ 3000 people. All of the Ford operations have been transferred from Manchester to Dagenham. This plant is built on exactly the same lines as Ford's River Rouge plants with all machinery motor driven and immense one-story buildings. An interesting thing in a construction way is the major factory buildings, which are 3000' long with a span of 90' in width.

It is Ford's program to manufacture not only cars required for the British market, but units required for cars assembled in Continental countries. Of course, since Ford conceived this idea and started building Dagenham, tariffs in practically all of these Continental countries have been greatly increased, not only on complete cars, but units going into cars, to such an extent that it is seriously questioned whether the original Ford idea can possibly be carried out. When one realizes that the total automotive production in 1931, not only in England, but France and Germany as well, totaled 450,000 units, as compared with Ford's capacity of 280,000, the magnitude of Ford's undertaking can readily be seen.

The writer visited the RIV plant at Turin, the details of which are covered in his report attached hereto and marked Exhibit "J".

Business conditions in England seem to be improving and one does not encounter the depressed feeling so prevalent here in America. Not only on one occasion, but almost universally everywhere I went in England, there was definite optimism, tempered of course with the usual British conservatism. Even in France where the depression is just really taking hold, there was more optimism than one would [fol. 5101] expect, and they feel that England's improved position is going to be very beneficial to all of Europe. Of course in England particularly, there was the same old criticism of American bankers and politicians. Some of the older and more experienced men with whom I came in contract very bluntly said that in their opinion we were quite a long way from being out of the depression and, until we had a Congress with more common sense and less personal ambitions we would not get anywhere. I am simply giving these statements as pictures of the British viewpoint.

There was also considerable talk about potential weakness of the American dollar with the resulting narrowing margin between the pound and the dollar. It seems that most Englishmen view this with a great deal of alarm, as they feel that weakness in the dollar would serve to mitigate the advantage they have by being off gold and thus their ability to put British product into markets considered primarily American territory. One of the officials of the National City Bank told me that England would do all in their power to keep the pound around the $3.50 level, as they feel this would have an enormous advantage for England for the next several months. It was impossible to get any real statistics in England to support their contention of better business, but figures were just published since my return in the Wall Street Journal which show that unfavorable trade balances for the first two months of the year were approaching the lowest level in a great many years and this is considered a bullish condition in England.

The writer left Paris the day before Ivar Kreugar's suicide and was in London at the time it was announced. All the London newspapers carried various comments as to the why and wherefore of this entire situation and both Mr. Pascoe and Mr. Dewar endeavored to find out the effect of the involved condition of Kruegar & Toll on S.K.F. At the time of my leaving (March 18th) they had not obtained any positive information, except that Mr. Prytz had been appointed on the committee to investigate Kreugar & Toll's affairs, which might indicate that S.K.F. were not involved. In the meantime we are trying to obtain all possible information with reference to the situation.

In conclusion, I wish to advise that among my notes and memoranda there are a great many details which were of necessity omitted from this report, and the writer will be pleased upon request to give as much additional information as possible on the entire European situation.

D. P. Hess.

DPH:PHK

[fol. 5102] DEFENDANT'S EXHIBIT 129

Report on Visit to S. A. Francaise Timken
5 & 7 Quai Aulagnier,
Asnieres, Seine,
France.

[fol. 5103] Canton, Ohio
March 29, 1932.

Report on Visit to S. A. Francaise Timken

Sales

During the past year our sales increased from $375,000 to $500,000 or 33⅓%. This is considered quite creditable for two reasons: (1) French automobile production declined from from 180,000 vehicles in 1930 to 150,000 during the past year (see Exhibit "A") and (2) we lost the Citroen passenger car business to S K F during the last half. There is no question but that the French automotive designer and manufacturer is quite anxious to follow American practice in the mechanical part of his car and this of course has been of great help to us. Another point is our favor is the apparent French policy of S K F which will be discussed in the heading "General".

It is the writer's opinion that our future prospects in France are very good, not only for the reasons outlined heretofore, but also because just within the past three months we have aggressively gone after commercial vehicle business. France, it will be recalled, purchased all the U. S. A. military trucks at the expiration of the war, and many of these are still in service. Again bus transportation is practically negligible, but is growing and we are bound to share in this development. During 1930 51,000 commercial vehicles were built as compared with 44,000 in 1931. The decline of 7,000 units, however, was mainly in so-called "small truck" class (see Exhibit B).

An analysis of the data shown on Exhibits C and D shows we still have a wide field of application and at present we have test bearings in many jobs. Citroen continues to use our product in his commercial line and has advised us through his technical staff that they will continue to build at least 20% of the passenger cars with our bearings

mounted. It is of interest to note that the Citroen purchasing department, when placing orders, specify the bearings must be packed in unmarked containers and not shipped in the French Timken truck. We are told our product is superior to S K F and much preferred, but they are under instructions to buy from S K F. The bulk of our business during the coming year will be from Renault, whose product has apparently caught the public favor. He is supposed to have passed Citroen during the past six months. This sounded unbelievable to me, but after three checks of this statement it seems correct. The last day I was in Paris his scheduling department telephoned that we should double our output at once, and this in itself means his product is selling. Renault prices are very low (#9–10) and he is still operating his own bearing plant. Mr. Seward is now working on a proposition to sell them at cost plus 500%., which at present is our total cost including sales, and they in turn will agree to discontinue taper bearing production and buy all their requirements from us. We will doubtless work out some kind of a deal within the next 30 days and this business will serve as our "back-log" production. Another interesting thing is that while we can make no head-[fol. 5104] way selling Austin in England, his French car named Rosengart has our bearings on the differential and we are quoting on the front wheel business.

It is Mr. Seward's and Mr. Beauvivier's opinion that 1932 automotive sales will be lower than 1931 due to depression conditions, but that the commercial vehicle business will bring our volume up and also our profits, as this product will sell at about #15 price. In fact at the present moment we are behind on deliveries of truck size bearings. It was decided to send drawings of the larger truck builders to Canton Timken, so that we can lay in our bearings in typical American practice and French Timken will then check and present to the builder.

Service business in France now forms about 20% of the total volume whereas for 1930 it amounted to 13%. Our maximum discount is 61%. This part of our business will show limited growth due mostly to the decline in the use of American cars. Ford will probably do fairly well, but the tariff situation if continued as at present means that American producers will do very little business in France. This is quite evident as when the writer was in France five years ago at least half the automotive showrooms on the

Champs Elysee were showing American products. Now there are only three: Auburn, Ford and Chevrolet.

Mr. Ainsworth, managing director of Hotchkiss and also a French Timken director, pointed out to me that in the past six months the French car buyer has swung his favor back to four cylinder cars. Mr. Anylaux, managing director of Renault, told me the same thing and it is apparently due to two things (1) the lowered operating cost, both from the gasoline and tax standpoint, and (2) the resale value of a four is on the average greater than a six after two years of use. The Frenchman with typical thrift has sensed these points and when it comes to an expenditure of this type smoothness of performance, etc., means nothing to him. Citroen has apparently seen this trend, as he is reported to be concentrating his new models to fours with the flexible mounting like Plymouth.

We have decided to go slow on industrial business in France. Inquiries coming in are of course handled and we will endeavor to get the business, but neither the present staff at French Timken nor our working capital will permit of any concentrated sales and engineering policy. The writer discussed all details of this situation with Mr. Dewar, Mr. Seward, and Mr. Beauvivier, and we outlined general plans to start functioning in 1933.

It was decided, however, to press railroad sales to the greatest possible limit. S K F have their bearings on a good many of the through transcontinental trains, such as the Riviera-Naples Express, the Blue Train to Switzerland, and the Nord Express to Berlin. We were told that the Nord Railway was having considerable trouble with flange wear and had decided to discontinue use of anti-friction bearings. I tried to verify this report, but was unsuccessful. Mr. Dewar has excellent contacts in the railroad industry in France through J. E. Stone & Company and here again the French seem quite anxious to follow American practice. We are now mounting eight bearings on a passenger coach for the Chemin de Fer de l'Etat, second largest railroad in France (see Exhibit E) and we will endeavor to get test cars operating on the other two major lines, i.e., P.L.M. and the Nord Railway.

[fol. 5105] Manufacturing

The French bearing factory is small, occupying approximately 22,000 sq. ft. in about six different buildings, all attached, but very poorly arranged. How they ever produced 45,000 bearings per month is beyond the writer, and there must have been considerable high cost manufacture in so doing. For example, the screw machine department is 20′ wide from wall to wall and it is physically impossible to use a tube longer than 8′. The hardening department is divided into three different rooms, none of which is larger than 20′ x 20′. The grinding room is better, but will only hold three rows of machines and it is impossible to get between the machines without going to the end of the aisle. Apparently it was the only type of building we could get at the time and that plus the low rental ($3,000.00 yearly) accounts for its selection.

We decided to continue to use it for this year if at all possible due to uncertain business conditions, but to look around at once for a decent manufacturing space. In order to handle 3,000 truck size bearings per month, we arranged to cut down the tool room space, operating this division if necessary on three shifts, eliminate the garage and possibly move the time and cost office to some empty house near by. However, just before the writer left Paris, we were offered a building—one story type built in 1916, not far from our present plant in Asnieres. It is owned by Hotchkiss Motors and was formerly a machine gun plant and has not been used for about seven years. It is in excellent condition and covers 36,000 sq. ft. and there is ample ground around it to expand to 150,000 sq. ft. The construction is typically French, fine concrete and brick work, but light overhead steel construction and light built up steel columns. I cautioned Mr. Dewar and Mr. Seward to carefully check the stresses, as I doubt if countershafts could be hung on the steel work without additional bracing. Details as to leasing, etc., will be developed but nothing will be done without Canton approval. At present Hotchkiss have a large order for machine guns (their original activity before automobiles) for China and wish to use at least a part of the building for gun storage purposes.

French Timken manufacturing methods are good and their bearings compare favorably with ours, both for finish and limits. Female labor is used on all chucking machines,

lathe, chamfering, presses and all grinders. These girls earn from 12¢ to 16¢ per hour and their production is quite good. They need badly an electric hardening furnace, which purchase was authorized by the writer. Mr. Beauvivier presented figures where the equipment could be paid for in 18 months even on the present curtailed production and, if they get any volume of truck bearings, they cannot do without it.

Their roll grinding was excellent and they use the so-called one-size program employing Vanderbeek end grinders. The writer checked about 100 rolls of various sizes and found every one within the limits of ±.001 standard. Incidentally, both French and British Timken speak very highly of our Mr. Shuler, who spent four months at these two plants and give him the entire credit for their roll grinding performance.

[fol. 5106] It was decided to swing French Timken over to the use of upset forgings on all sizes above 4" as figures shown by Mr. Dallow check very closely with data computed at Canton. Tubing purchased in Sweden carries a duty of 2½¢ per pound plus an import tax of 15%, making a total delivered cost of .09¢ (Swedish tubing is used and being off the gold standard the kronen is down 30% from par. France, however, to partially compensate for this, adds a 15% import tax and is now threatening to increase the tariff rate of 2½¢ per pound). Prices were obtained on upset forgings which indicate a 20% saving in material costs of 4" size and a 10% saving in material cost in the 3" size. French Timken are perfectly willing to use Canton tubing in the high carbon type provided we meet the Swedish prices outlined above and the Swedish consignment terms which are: all material is shipped on a consignment basis and paid for 30 days after it is consumed.

It is the writer's opinion, after studying French costs, that with the use of forgings, longer tubes, good manufacturing screw machine conditions, better hardening equipment and a minimum increase in volume, French costs will be lowered at least 10% to 15%. At present due to small volume, it will not be feasible to use our hot forming process and due to the preference in France for high carbon steel we cannot use the cold stamped cup method. Cost reduction in France is very important and I stressed this point with Mr. Seward and Beauvivier. We are cutting

into SKF quite seriously and prices are bound to decline in line with their policy of killing off competition.

[fol. 5107] General

Business conditions in France show some decline, but the apparent stabilizing in England is having its effect in slowing down this decline. It is impossible to get any statistics, as apparently the French don't believe in them, but the writer did discuss the situation with Mr. Pierce, head of the National City Bank in Paris, Mr. Groening, assistant manager of National City, Mr. Ainsworth, managing director of Hotchkiss, Mr. Marchall, head of the largest lamp works in France (both of the latter are French Timken directors as well), Mr. Augeot, tax expert and lawyer, Mr. Nourry, director of Horstmann, Inc., Machine Tool Sales Agency. (similar to Motch & Merryweather). All of these men had varying opinions of course, but generally they agreed that conditions were not as bad as the French would have you believe and Mr. Nourry and Ainsworth were very optimistic about our particular prospects in France.

I had been advised by Mr. Seward and Beauvivier that SKF were having difficult going. They had consolidated all the former plants of SMG, CAMRBF, and SKF into two plant-, CAM and RBF. Their policy is to eliminate all French department heads, French salespeople (to a large extent) and even to the French foremen in the shops. I could hardly believe this and set out to check it up. This proved quite easy, as Mr. Nourry happens to live next door to the assistant manager of SKF, a Swede, and he not only verified the statement, but Nourry told me the Government is watching SKF very closely. There is a certain law which requires that only 10% of an organization can be other than French and that due to curtailed operations SKF is very close to this limit. They closed down the SMG works and let every man go, even after agreeing to hold certain department heads. Weinfeld, former SMG sales manager whom the writer knew, was one let out and died 30 days later. There is no question but that this policy of SKF is hurting them and we in turn are taking every advantage of it. Mr. Seward is staying well in the background of our affairs and letting Mr. Beauvivier do all contact work. We stress the fact that we are

"the only bearing plant in France employing all French people, with French salesmen, French managers, and French directors". When pressed, we admit that our staff does contain two English people but that is all. In addition we say that in time of war our plant, operated, managed, etc., by French, would be the only one the French war office could count on in its entirety. All of these things, while of no great consequence to Americans, seemingly appeals to the French.

Our directors, Messrs, Marchall, Sanz, and Ainsworth spent several hours twith the writer and they are very high types of French business men. I was told by Mr. Pierce of National City that we were very fortunate in getting men of this type to serve on our board and incidentally Mr. Sanz and Mr. Ainsworth do actually serve by getting Beauvivier in contact with anyone in the automotive industry. Sanz is financially interested in many enterprises and Mr. Dewar informed me he has been very valuable to us.

RIV (Italy) have a modern French plant at Chamberg [fol. 5108] near the Italian border and we had an arrangement worked out with them to the effect that we would supply their French needs of taper bearings at #65 price. These bearings were to be marked Timken and they agreed to maintain our selling prices both for service and otherwise. Just when all the contracts were ready, they asked for certain exclusive territories (which is quite true to form for this outfit) and we could not agree due to certain existing service contracts. At the moment the whole deal is held in abeyance.

The ball bearing situation was discussed at length and both Seward and Beauvivier feel we could do well in this line. However, Mr. Dewar feels we have enough to do for the current year and as this would involve certain financial expenditures we decided to make no plans along this line.

Our competition in France is largely SKF, but Rossi (Swiss) and RIV are also very active. A detailed estimate of bearings sold in 1931 is shown on Exhibit H.

D. P. Hess.

[fol. 5109] DEFENDANT'S EXHIBIT 130

Canton, Ohio, March 29, 1932.

Report on Visit to Deutsche Timken Gesellschaft

Sales—Automotive and Service

In accordance with the decision reached last fall upon Mr. Higgins' return from Europe, our German plant operations have been discontinued and the machinery (excluding tool room equipment) has been shipped to England and France. A small staff will be maintained (four persons) including Dr. Wrba, who after June 1st will be assigned to British Timken staff and considered as European representative. The remaining staff consists of a storekeeper, watchman, and billing clerk.

It is hoped that we can sell sufficient service bearings to break even, excluding such charges as taxes, interest, etc. In the writer's opinion this is very doubtful, as service prices are being forced downward by SKF and most important of all is the great decline in the use of American cars in Germany. In 1931 with a total registration of 62,500 passenger cars, only 6,800 were American cars, and these mostly Fords and Chevrolets (see Exhibit "A"). I was told by the National City Bank officials in Berlin that Chrysler and Hudson had completely withdrawn from the German market and had closed their sales agencies, etc. This lack of American cars is quite noticeable on the streets of Berlin now, whereas five years ago fully 25% of the cars were American types. There are very few at this time.

Another important point is the withdrawal from the use of passenger cars during the winter months. A German newspaper estimated that fully 40% of the registered cars are stored from October to March, and I was informed that this figure was probably nearer 50% due to the depression. It must be understood that the German driver can pay his taxes monthly and that when his car is not in service he pays no taxes. For example, it costs $240.00 per year just for taxes and insurance on an Essex. In addition, gasoline and oil costs roughly twice as much as in the U. S. A., so driving even a small car becomes quite a burden.

Our product is well regarded in Germany and this is quite evident when it is noted our sales were $42,500 during the past year as compared with $29,000 in 1930, or an in-

crease of 55% (see Exhibit "B"). Service sales were 38% of the total last year and 25% in 1930. The increase in sales was in passenger car equipment being up 90% in value and 300% in quantity, Industrial increased 180% in value and 80% in quantity (see Exhibit "B"). A list of the vehicles using our bearings is shown in Exhibit "C". Dr. Wrba advises that had we continued the German plant, our Sales would continue to improve and that in some cases he could obtain 5% higher prices, due to Timken name and quality. In the case of Adler, we were practically certain of the front and rear wheel business until they heard our manufacture in Germany had stopped. Wanderer also wanted to use our product in front wheels.

[fol. 5110] It is planned to supply assembled bearings to the German plant from either French Timken, British, or American Timken, wherever the lowest price, consistent with sales policy can be made. At present French Timken are supplying at #9 price which covers French manufacturing costs. To this must be added freight, tariff, and sales tax, amounting to 3 points, making the bearing ready for sale in Germany at #12 price. Our selling price in Germany for automotive purposes has been #13-14 price, although Ford is being supplied at #11-12 price by both SKF and Fischer. Some Ford business has recently been given to R. I. V.

The bearing production during the past year is estimated by Dr. Wrba as follows:

S. K. F.	$ 4,760,000
Fischer	4,760,000
Miscellaneous	2,380,000
Total	11,900,000

The German automotive manufacturer does not like the so-called Swedish combine, as is proven by the fact that Fischer's sales are the same as S. K. F. Three years ago his output was only 20% of the total industry and now has reached 40%, largely due according to Dr. Wrba to his slogan of completely made, managed, and sold by Germans.

As is generally known, S. K. F. is the result of a merger several years ago of the following firms: Fichtel & Sachs

Fried & Hoplinger, D. W. F., Rheinland, and Riebe (two separate corporations). They have met considerable difficulty in getting organized and are now operating two plants, one at Schwinefurt and one at Stuttgart. I was told that it is very likely they will discontinue Stuttgart operations and confine themselves to Schwinefurt. The last balance sheet published by S. K. F. (1930) showed the following:

Sales	$7,140,000
Inventory	8,663,000
Loans	2,118,000
Lands, bldgs., and machinery	6,640,000
Depreciation (4%)	285,000
Loss	182,000

An analysis of the balance sheet (to be forwarded by Dr. Wrba) will give additional details, but attention is called to the heavy inventory (which certainly declined in value during 1931) and the small depreciation item. Also during 1931 the capital has been decreased from $9,500,000 to $7,100,000. Even in the so-called prosperous year of 1929 only a profit of $50,000 was made on sales of $9,000,000.

The remaining $2,380,000 of sales is divided by Timken, Jaeger, D. K. F., and N. G. B. Among these Jaeger is a small ball bearing plant in South Germany, as is N. G. B., in the North German district. D. K. F. is the Hoffman (England) affiliation and make all classes of bearings except taper, but largely concentrating at present on needle bearings (see "General").

[fol. 5111] Railroad Sales

It was unfortunate that Mr. Culmeyer, of the German Railways, was away during the writer's stay in Berlin. Mr. Beilfuz, who spent two months with us in America as representative of the German Railways, is now stationed in charge of a locomotive repair shop in southeastern Germany and was therefore not available. However, certain interesting points regarding the railroad situation are as follows:

1. The last two designs presented by us and permitting of disassembly for inspection are acceptable to the German Railway officials as advised by Mr. Culmeyer.

2. Laboratory tests of our product were entirely satisfactory.

3. Contrary to all past statements the S. K. F. self-aligning bearings used so extensively in Germany are made in Sweden and not in Germany. It must be remembered that both Mr. Culmeyer and Mr. Beilfuz have stated that the German Railways could buy nothing but German made bearings, and this has been a severe handicap to us. Recently Dr. Wrba received confidential information that not a single S. K. F. self-aligning bearing had been made in Germany, but all imported from Sweden. When presented with this information, Mr. Culmeyer attempted to evade answering, but upon being pressed by Dr. Wrba finally admitted the truth of this statement, but stated that Fischer was supplying German made bearings. Upon inquiry he advised they would use American or British made bearings if our price was from $7.00 to $9.50 under the price he was paying S. K. F. of $60.00 for complete bearing and box mounted in place on the axle. He further stated that nothing further would be done with Timken bearings unless we were prepared to make such a price. This latter price of $60.00 is for a 4½" bearing and corresponds to a U. S. A. selling price for a similar equipment of $108. This problem is now being studied both at Birmingham and Canton as to the possibility of meeting such a condition.

4. During 1931 a total of 831 cars were purchased for the German Railways, but I could not ascertain whether these were equipped with anti-friction bearings or what types of cars were purchased. I was told, however, that during 1930 and 1931 approximately 1,000 new cars, anti-friction bearing equipped, were put in service on the Berlin-Metropolitan Railway which operated in, and adjacent to, Berlin both in subway and surface traffic.

Rolling Mill and Industrial Business

We are receiving a great many inquiries on rolling mill bearings, the majority of which are for ultimate Russian use, but a good portion are for use in Germany. Many German mills are considering either modernization or increasing their line of products and are turning toward Timken bearings. So far we have had four major objections to overcome:

1. Loose fitting of bearings on the necks as contrary to S. K. F. tight mounting.

2. Delay in getting replacement bearings from America, should this be necessary.

[fol. 5112] 3. Failure to give so-called "working life" figures.

4. High prices.

The first three problems have been solved by Mr. Moreland's visit and British Timken manufacturing mill type bearings, but the matter of price is a serious obstacle. We estimate we can sell these bearings for approximately $.80 to $1.00 per pound and meet S. K. F. competition. However, freight and duty amount to 11¢, taxes 4¢, royalty 4¢, which leaves a price of $.61 to $.81 per pound to cover all manufacturing and selling costs as well as profit allowance. Canton Timken manufacturing cost is about $.65 per pound. S. K. F. is getting this business on bearings imported from Sweden and the fact that this business is now available is evidenced by the fact that during October and November we lost orders amounting to $70,000 and in January we lost another order for $14,00- on account of our price of about $1.25 to $1.50 per pound being too high. Quotations were based in American made bearings. British Timken are now in a position to manufacture mill type bearings, and the writer estimates their costs will be very close to ours, as in this type of bearing we can get full advantage of the difference in labor rates. We have therefore decided to obtain an order for our bearings to be mounted on a German mill, preferably in the Dusseldorf district, regardless of what price we have to quote for it. This will then give us an opportunity to show our product on a typical German mill and not depend on drawings, pictures of American installations, etc.

The German mill builders certainly are aggressively going after Russian business, so far very successfully, and they prefer to follow American practice in using Timken bearings. Wrba and Moreland have been told many times and the writer verified this in a meeting with Mr. Eisner, director of A. H. Rohrenwalzwerk. He told me Timken bearings through their splendid performance in America were very much wanted, but German mills and builders simply could not pay any premiums for them and that our prices were in some cases 25% higher than S. K. F.

An idea of Germany's industrial output can be obtained from the following figures which cover all types of machinery, except automotive:

1928

Germany	$952,000,000	(No recent figures available but 1931 estimated about 10% under 1928).
England	737,800,000	
France	14,750,000	

Financial

It is the writer's opinion that under present conditions we will operate at a loss of $10,000 to $15,000 yearly, including all charges, etc., as compared with a loss of $26,000 in 1931.

It is quite probable no additional working capital will be required in Germany unless business conditions greatly decline. Sufficient funds will be forthcoming due to selling machinery to British and French Timken to handle current expenses. In a discussion with Mr. Dewar and Mr. Seward it was decided to consider Deutsche Timken as a purely British Timken subsidiary and any funds needed would be supplied by British Timken.

[fol. 5113] General

The entire business situation in Germany is badly depressed and this is certainly quite evident in Berlin. The famous restaurants of Horcher & Pelcher are only 20% filled, whereas during the writer's visit five years ago it was difficult to get in. Prices on the contrary are still high, even though the government is using strenuous means to decrease them, such as a flat 10% decrease in rentals, interest rates, property taxes, wages, etc. However, there seems to be a firm conviction that once the reparation problem is settled Germany will go forward quickly. I first met this attitude in England, both with members of our own organization and with members of the U. S. Department of Commerce, and may others. The same thing was told to me in Paris by Mr. Pierce of the National City Bank. The latter bluntly said Germany was ten years ahead of all other European countries, both in mechanical equipment and in realizing what difficulties lay ahead of them.

This same opinion seemed predominant in the minds of the following men whom I met and discussed conditions with

in Berlin: Mr. Messersmith, Consul General for the United States; Dr. Freundt, financier and representative of Loeb & Bendix, Wall Street, New York; Mr. Betta, manager of the National City Bank, Germany; Mr. Eisner, director for A. H. Rohrenwolzwerk Steel Company. All agreed that the current year would be a difficult one, but Messersmith in particular told me the turn was bound to come and Germany with its 60,000,000 people would go forward quickly. Mr. Seward at my request discussed the same situation with Mr. Thorald, British Consul, who has been in Berlin 20 years. It was his opinion that in the not too distant future Germany would produce more automotive vehicles than either France or England and anyone could plan right now for this eventuality. He said Ford, in particular, had this in mind in building his immense plant at Cologne. Mr. Thorald also gave me some good points on handling the German railroad situation, which will be reported verbally, along with Mr. Messersmith's statement on the political situation.

It would seem that our position in Germany at present should continue to be one of "watchful waiting", but to do all possible to maintain sales contacts in the industrial field and larger car builders. This was discussed and agreed to by Mr. Dewar, Mr. Pascoe, and Mr. Seward.

D. P. Hess.

DPH:PHK.

[fol. 5114] DEFENDANT'S EXHIBIT 131

May 31, 1935.

Mr. Timken, Mr. Umstattd cc to Messrs. Ernst, Brower, Weiss, Higgins.

(all exchange computed at £=$4.95)

Mr. Dewar telephoned yesterday stating that he was still conducting negotiations with the brokers on the basis of 32 shillings $7.90) per share, or approximately $988,000 for the entire issue, but had reached a deadlock due to the fact that the brokers are objecting to the phase of our Business Agreement, which specifies that at the end of the agreement, i. e., 16 years, the name "Timken" reverts to the American Company if the agreement is not renewed.

The broker's feeling is that this is entirely too short a period during which the British Company would conduct business under the name of British Timken, and then possibly be forced to give up the name under which it had been operating for not only this particular 16 years period, but also the period of years prior to the current time, i. e., 15 years. Mr. Dewar, therefore, recommends that our agreement should be changed from 16 years to 30 years, and feels quite positive that with this change the brokers will agree to this price of 32 shillings per share and, furthermore, that he can probably close the deal within the next few days. I explained that in this country a 30 year period was practically unheard of and that all similar types of agreement were usually made for 15 years and some extreme cases for 20 years.

Mr. Dewar advises that with this attitude of the brokers it is going to be impossible to obtain the price heretofore mentioned, and upon my inquiry as to what price he could obtain without making any changes in our present agreements, he stated that it would probably be somewhere between 30 shillings per share ($926,250) and 31 shillings per share ($957,125), but there was also the possibility that the present group of brokers who are planning to place the issue privately might even decline to handle it at all, but Mr. Dewar definitely explained that he hoped to avoid this latter alternative after all the work they had done with the present brokers even if we did not agree to change the present agreement.

Putting it another way, a difference of one shilling in the price per share amounts to approximately $31,000, of which the Timken share is approximately $16,275, so that if the price is affected to the extent of 2 shillings per share, the difference in the amount received for the total issue will be approximately $62,000, and that our approximate share would be $32,550.

The writer immediately cabled Mr. Duncan as follows:

> [fol. 5115] "Dewar telephoned stating brokers object 16 year agreement with possibility loss Timken name at expiratioin date and recommends 30 year agreement Stop We feel this is extremely long time for business agreement be in effect and not subject to modification Stop Period this length very unusual in this country Cable any suggestions and your recommendations".

I asked Mr. Dewar their attitude on the exchange situation and he stated that in England it was the opinion that France would go off gold within the next week or 10 days, and that under such circumstances he felt the dollar-pound exchange (present exchange $4.95) would be somewhere between $4.70 and $4.80.

It is the present plan that as soon as the brokers have signed the contract, Mr. Dewar will cover the entire transaction both from his point and our own with the purchase of dollars, and we have already authorized the Bankers Trust Company of London to act for us in this regard.

The writer advised Mr. Dewar we will cable him promptly on this matter.

D. P. Hess.

DPH:MC.

[fol. 5116] DEFENDANT'S EXHIBIT 132

1935 May 31, A. M. 9:00.

HB 12 Via RCA-CD London 65 31 1420.

Hess Timken, Canton (Ohio).

My Opinion Is Proposed Extension to Thirty Years not Important Except to Brokers and Harmless Stop Unlikely Present Position Manufacturing Industries Will Continue Unchanged for Sixteen Years and in View Mutuality in Present Agreement if Occasion Arises Consider Modification Even Termination Will Be Arranged Without Difficulty in Accordance with Views Both Companies Stop in View Foregoing Recommend You Agree Thirty Years.

Duncan.

[fol. 5117] DEFENDANT'S EXHIBIT 133

May 31, 1935.

Stibbard, London, England.

Do not understand your cable starting with words present position and ending with words both companies Stop Please cable more in detail.

Hess.

[fol. 5118] DEFENDANT'S EXHIBIT 134

1935 May 31, P. M. 3:34.

HB 268 Via RCA-CD London 151 31/1920.

LC Hess Timken Canton (Ohio).

First Remark Has General Application Only Operation of Any Provision Taking Effect at End Sixteen Years Must Be Problematical Owing Possible Intermediate Happenings General and Particular and Present World Uncertainties Tendencies Make Future Happenings Specially Doubtful Second Remark Has No Particular Application agreement Contains Mutual Advantages Obligations for Both Parties if in Future Either Party Considers Some Modification Desirable Present Mutual Confidence Will Ensure Full and Friendly Consideration Even if After Some Years Canton or British Desire Termination Stop Business Agreement Contains Consideration Moving Both Ways Between Parties from Which if Occasion Arises There Can Be Give and Take So That Any Modification Should Be Arranged Without Difficulty Stop Our Thoughts Entirely General and Without Any Particular Happening or Occasion in View Stop We Look for Complete Mutual Confidence in Future as in Past and See No Reason to Anticipate Any Change in Entirely Friendly Relations.

Stubbard.

[fol. 5119] DEFENDANT'S EXHIBIT 135

Postal Telegraph

May 31, 1935.

Dewar, Britimken, London, England.

We agree 30 year period Stop Our understanding present corporate name British Timken will be continued for this same period Stop Advise Duncan.

Hess.

[fol. 5120] DEFENDANT'S EXHIBIT 136

Française Timken

18th February, 1930.

Mr. D. P. Hess, The Timken Roller Bearing Company, Canton, Ohio.

DEAR HESS:

I enclose a statement for January 1930 showing the symbol number, gross hours required, quantity of pieces and total scrap, which you requested me to prepare when I was in America.

The time shown should not be regarded as final as we are constantly improving, especially the D.O.H. steel figures, as our experience increases and the personnel becomes more expert.

I shall be sending you a statement of the expenditure in January in due course and Trading Statement in a similar form to that rendered by British Timken.

After great difficulty I have at last succeeded in getting a satisfactory accounting and costing personnel together and as soon as they are a little more familiar with the work I shall be able to let you have the various returns more promptly.

With kindest personal regards,

Yours sincerely, W. E. L. Seward.

WELS/EW.
Enclosures:

[fol. 5121] DEFENDANT'S EXHIBIT 137

Cablegram

March 4, 1930.

Seward, Frantimken, Paris, France.

Very anxious to compare French costs with ours Stop Has Dallow advised you as to figures we need Stop Congratulations on production times just received Hope you can forward other data stated your letter in very near future.

Hess.

[fol. 5122] DEFENDANT'S EXHIBIT 138

Western Union

1930 Mar. 5 PM 3 53.

HA20 Cable–Paris 18, LCD HESS, Timken, Canton (Ohio).

Thanks for cable forwarding figures on same lines as Britimken before end of month.

Seward.

[fol. 5123] DEFENDANT'S EXHIBIT 139

Française Timken

16th December, 1929.

The Timken Roller Bearing Company, Canton, Ohio.

DEAR SIRS:

We enclose the following weekly statements for the week ending 14th December 1929:

1. Orders
2. Production

Yours faithfully, For S. A. Francaise Timken l' Administrateur Délégué, W. E. L. Seward.

Enclosures.

[fol. 5124]

S. A. FRANCAISE TIMKEN

Orders Statement for week ending 14th December 1929

	No. of Bearings	Francs	VALUE £ sterling
Orders in Hand			
Week ending 7th Dec.:	45,463	1,104,113	8,903
Orders Received			
During week	648	44,873	363
From 16th June 1928 to 31st December 1928	11,957	276,476	2,229
From 1st January 1929 to date	232,131	6,145,808	49,563
Total to date (From 16th June 1928)	244,068	6,422,284	51,792
Orders Invoiced			
During week			
Mfd by B.T.	1,000	73,030	589
" " F.T.	125	5,432	44
Total	1,125	78,462	633
From 16th June to 31st December 1928 (all mfd by BT)	1,988	72,150	561
From 1st January 1929 to date			
Mfd by B.T.	123,663	3,769,323	30,398
" " F.T.	71,135	1,454,734	11,733
Total to date (from 16th June 1928)	196,826	5,296,212	42,712
Orders Cancelled			
During week	—	—	—
From 16th June to 31st December 1928	8	541	4
From 1st January 1929 to date	2,268	55,007	443
Total to date (From 16th June 1928)	2,276	55,548	447
Orders in Hand			
Week ending 14th December 1929	44,936	1,070,524	8,633

Date 16th December 1929

[fol. 5125]

S. A. FRANCAISE TIMKEN

Production week ending 14th December 1929

	Cups	Cones
Automatics	5,110	5,761
Hardened	7,886	8,337
Finished	5,573	5,043
Ex B'ham Finished	—	202
Rolls		
Ex B'ham or Canton Finished		97,853
Bearings Assembled		
Passed to Stores		4,960

The number of bearings assembled passed to Stores was slightly reduced owing to the order for certain sizes of rolls being still outstanding.

[fol. 5126] January 4, 1930.

S. A. Francaise Timken, 5 & 7 Quai Aulaguier, Asnieres (Seine) France.

Attention: Mr. W. E. L. Seward

GENTLEMEN:

We wish to acknowledge with thanks your letter of the 16th ultimo enclosing a copy of your order statement for the week ending December 14th, 1929, as well as your weekly statement for orders and products for the same week.

Very truly yours, The Timken Roller Bearing Company, —— ——, Assistant to the President.

CMC:REF

[fols. 5127-5128] DEFENDANT'S EXHIBIT 140

Française Timken
Société Anonyme

30 May, 1930.

The Timken Roller Bearing Company, Canton, Ohio.

For the Attention of Mr. Hess

DEAR SIRS:

We enclose Estimated Trading Results for the four months ending the 30th April 1930.

Yours faithfully, For S. A. Francise Timken L' Administrateur Délégué, W. E. L. Seward.

WELS/SM

[fol. 5129]

S. A. FRANCAISE TIMKEN

Estimated Trading Results for the Four Months ending 30th April 1930

	Cost Frs	Selling Price Frs	Gross Profit Frs	% of Gross Profit on Turnover Frs
SALES				
Manufactured				
Automobiles	10,562.60	7,735.00	2,827.60	36.55
" (Commercial)	2,050.46	5,535.50	3,485.04	62.96
Motor Cycles	1,347.91	775.00	572.91	73.92
Industrial	37,105.94	63,945.90	26,839.96	41.97
Service	3,858.57	17,623.55	13,764.98	78.10
Hotchkiss	142,319.78	222,605.85	80,286.07	36.06
Renault	21,684.04	37,988.10	16,304.06	42.92
Citroen	961,375.45	967,134.80	5,759.35	0.59
	1,180,304.75	1,323,343.70	143,038.95	10.81
Factored				
Automobiles	26,000.45	16,720.20	9,280.25	55.50
" (Commercial)	10,900.93	9,445.80	1,455.13	15.40
Motor Cycles	1,904.37	1,573.75	330.62	21.01
Industrial	88,280.95	97,231.45	8,950.50	9.20
Service	221,587.78	249,593.65	28,005.87	11.22
Hotchkiss	27,139.88	28,854.95	1,715.07	5.94
Renault	3,641.44	7,064.70	3,423.26	48.45
Citroen	1,693.14	3,669.90	1,976.76	53.86
	381,148.94	414,154.40	33,005.46	7.97
Total Sales	1,561,453.69	1,737,498.10	176,044.41	10.13
Semi-Finished Parts	7,557.71	10,037.50	2,479.79	24.70
Scrap etc		5,072.60	5,072.60	—
GRAND TOTAL SALES	1,569,011.40	1,752,608.20	183,596.80	10.47
Less: Overhead Charges		705,161.36		
Guarantee Account		—	705,161.36	
NET LOSS			521,564.56	
			$20,450.00	
Add: General Charges lost on difference in Wages in Stock as between Actual Rate and Stock Rate			218,466.37	
ADJUSTED NET LOSS			740,030.93	
			$29,000.00	

[fol. 5130]

S. A. FRANCAISE TIMKEN

COST OF DELIVERIES FOR THE FOUR MONTHS ENDING 30th APRIL 1930

HOME SALES	Wages	Material	G. C 356,38	Total	Factored	Grand Total
	Frs.	Frs.	Frs.	Frs.	Frs.	Frs.
Automobiles	374.46	8,853.64	1,334,50	10,562.60	26,000.45	36,563.05
Commercials	190.97	1,178.92	680.57	2,050.46	10,900.93	12,951.39
Motor Cycles	29.65	1,212.60	105.66	1,347.91	1,904.37	3,252.28
Industrials	1,850.55	28,660.40	6,594.99	37,105.94	88,280.95	125,386.89
Service	363,93	2,197.67	1,296.97	3,858.57	221,587.78	225,446.35
Hotchkiss	12,708.71	84,319.77	45,291.30	142,319.78	27,139.88	169,459.66
Renault	2,159.93	11,826.56	7,697.55	31,684.04	3,641.44	25,325.48
Citroën	89,326.21	553,708.43	318,340.81	961,375.45	1,693.14	963,068.59
	107,004.41	691,957.99	381,342.35	1,180,304.75	381,148.94	1,561,453.69
Semi-finished parts	589.25	4,868.50	2,099.96	7,557.71		7,557.71
	107,593.66	696,826.49	383,442.31	1,187,862.46	381,148.94	1,569,011.40

[fol. 5131]

S. A. FRANCAISE TIMKEN

PRODUCTIVE WAGES AND GENERAL CHARGES

For the Four Months Ending 30th April 1930

	Frs.	%
PRODUCTIVE WAGES		
Direct	115,467.35	
Throwover	77,338.25	66.97
Total	192,805.60	
MANUFACTURING CHARGES		
Staff Wages	113,434.85	
Rough & Finished Stores		
Viewers	43,965.60	
Shop Labourers	39,168.55	
Stock Taking		
Overtime & Night Allowances	1,470.10	
Foremen's Bonus	9,628.	
"Assurance Sociale"		
	207,667.10	107.71
REPAIRS & UPKEEP OF MACHINES, etc.		
Machine Tools	33,195.47	
Electric Driving Plant	4,044.85	
Shafting & Gearing	19,199.63	
Buildings	3,555.50	
Fixtures, Fittings & Furniture	2,179.50	
Gas Fittings	1,125.91	
Central Heating	5,120.25	
Water Fittings	314.75	
Air Fittings	60.75	
WAGES & MATERIAL	68,796.61	35.67

Forward

[fol. 5132]

PRODUCTIVE WAGES AND GENERAL CHARGES
For the Four Months Ending 30th April 1930

	Frs.	%
Forward		
Coal & Coke		
Gas (E)	34,218.47	
Water (E)	5,000.	
Electricity (E)	31,533.55	
Oils & Waste	25,432.02	
Diamond pots, lids, emery wheels, etc.	42,883.51	
Stationery & Printing	1,641.15	
Stamps, Telephones & Telegrams	1,962.82	
Travelling Expenses		
Rent, Rates, Taxes & Insurance (E)	36,020.08	
General Charges	5,563,55	
Rearrangement of Shops		
Packing & Despatch	3,478.53	
Canton Expenses	3,454.90	
TOTAL	191,188.58	99.16
Depreciation Jigs & Gauges (E)	18,296.	
Depreciation of Plant, etc. (E)	201,191.15	
TOTAL	219,487.15	113.84
GRAND TOTAL	687,139.44	356.38

(E) Estimated.

[fol. 5133]

S. A. FRANCAISE TIMKEN
GENERAL CHARGES—APRIL 1930 (4 Weeks)
CUMULATIVE 17 WEEKS

	Production Wages	General Charges	%
	Frs.	Frs.	
Cumulative to 30th April 1930	192,905.60	687,139.44	356.38
Month of April only	53,726.20	134,673.45	343.73

	Month of April only	Cumulative	%
Factory Charges			
Staff Wages	28,511.80	113,434.85	58.83
Viewers Wages	12,438.80	43,965.60	22.80
Shop Labourers	12,569.40	39,168.55	20.32
General Charges			
Overtime Frs. 519.80			
Foremen's bonus 3114.	3,633.80	11,098.10	5.76
Repairs	18,127.51	68,796.61	35.67
Gas (E)	8,500.	34,218.47	17.75
Water (E)	1,250.	5,000.	2.60
Electricity (E)	8,000.	31,533.55	16.35
Sundry Stores (including Oils and Waste)	23,768.11	68,315.53	35.43
Rents, Rates, Taxes & Insurance (E)	9,010.	36,020.08	18.68
General Expenses			
Stamps, etc. Frs. 536.80			
Sundries 1,114.70	1,651.50	9,167.52	4.76
Packing & Despatch	1,043.23	3,478.53	1.80
Canton	1,167.30	3,454.90	1.79
Depreciation			
Plant, etc. (E)	50,000.	201,191.15	104.35
Jigs & Gauges (E)	5,000.	18,296.	9.49
	184,673.45	687,139.44	356.38

(E) Estimated.

[fol. 5134]

S. A. FRANCAISE TIMKEN

OVERHEAD CHARGES

Estimated Trading Results for the Four Months Ending 30th April 1930

		Estimated 1930	Cumulative to 30th April 1930
		Frs.	Frs.
Salaries & Commissions			168,100.80
Sales Representatives' Salaries, Comm. & Expenses			2,711.10
Repairs & Running Expenses of Sales Cars			27,064.98
Interest on Bank Overdraft (N.C. Bk. of N. Y.)	E		180,000.
Advertising & Catalogues			40,130.99
Trials & Exhibitions	E		5,000.
Travelling Expenses			13,933.30
Stamps, Telephones & Telegrams			6,413.58
Stationery & Printing			2,182.60
Professional Charges	E		1,825.
Tax on Turnover			29,402.69
Royalty	E		64,245.60
Rent, Rates, Taxes & Insurance	E		18,460.36
General Charges			48,250.88
Experimental Expenditure			15,167.95
Technical Committee & Special Expenses	E		79,938.
Discounts			2,921.19
			705,749.02
Less: Interest Received			587.66
			705,161.36

"E" Estimated.

[fol. 5135]

S. A. FRANCAISE TIMKEN

Estimated Trading Results for Four Months Ending 30th April 1930

STOCK POSITION AS COMPARED WITH 31ST DECEMBER 1929

	Wages	Material	Total
	Frs	Frs	Frs
Stock Value as at 31st December 1929	95,779.28	4,016,932.90	4,112,712.18
Estimated Stock Value at :-			
31st January 1930	136,894.57	4,318,708.29	4,455,602.86
28th February 1930	158,237.71	4,534,869.01	4,693,106.72
31st March 1930	164,811.21	4,453,404.31	4,618,215.52
30th April 1930	180,991.22	4,336,505.34	4,517,496.56

[fol. 5136]

S. A. FRANCAISE TIMKEN

Estimated Trading Results for the Four Months Ending 30th April 1930

STOCKS ON HAND at 30th April 1930.

Estimated Value of Productive Materials	Frs.	697,441.63
" " " Sundries		282,490.21
	Frs.	979,931.84
*Estimated Value of Finished Stock & Work-in-Progress		
Wages	180,991.22	
Material	3,356,573.50	
General Charges at 100%	180,991.22	3,718,555.94
		4,698,487.78

*Includes Stock on Consignment.

[fol. 5137] DEFENDANT'S EXHIBIT 140

June 12, 1930.

S. A. Francaise Timken, Paris, France.

Attention—Mr. W. E. L. Seward.

Gentlemen:

This will acknowledge with our thanks receipt of your letter of the 30th ultimo enclosing your Estimated Trading Results for the four months ended the 30th of April, 1930.

Very truly yours, The Timken Roller Bearing Company, —— ——, Assistant to the President.

CMC-REF
File 6.211

[fol. 5138] DEFENDANT'S EXHIBIT 141

Data Now Received from British Timken

Monthly—Trading results showing—

(1) Total Home Sales (by division i.e. automotive, com'l. motorcycles, industrial, service, Alvis joints).
(2) Cost of Sales (by division).
(3) Gross Profit (by division).
(4) % of Profit (by division).
(5) Total sales of bearings purchased from Amer. T. by same classifications as "Home Sales".
(6) Export sales on same basis as "Home Sales" & sales of Amer. Timken prod.
(7) Total Gross Sales.
(8) ——
(9) Grand total sales.
(10) Sales cost in detail and misc. charges.
(11) Net profit (without tax deduction).

Monthly—Total payroll (for one week).
Number of employees and hours worked (for one week).
List of Industrial Sales by classification).
List of Auto and Coml. Sales by application (hubs, pinions, etc.).
Value of inventory both process and finished.
Weekly—Orders on hand—quantity and value—compared with same week of preceding year.

Orders received—quantity and value—compared with same week of preceding year.

Orders invoiced—quantity and value—compared with same week of preceding year.

(All data weekly and cumulative to date for entire year).

[fol. 5139] British Timken Data

Also for Deutsche Timken and Francaise Timken

Monthly—Report for each department showing

(1) Pcs. produced by part number, hours worked, wages paid, units produced, cost per unit, efficiency of operation (by groups of machines).

(2) Total Indirect Labor expense for above production.

(3) Total supervision expense for above production.

(4) Number of pcs. scrapped by reason and value of same.

(5) Expense of Dept. in detail i.e., tools, oils, belting, diamonds, bone meal, fuel, power.

(6) General departmental overhead as depreciation taxes, insurance, rent.

Monthly—Summary of Total Cost of Sales showing

(1) Material Cost.

(2) Labor Cost (Direct, Indirect Supervision).

(3) Expense Cost (In Detail).

(4) Total Manufacturing Cost.

(5) Units produced (See J.F.S. about variation in units).

(6) Mfg. cost per unit.

(7) General Overhead (In detail inc. depreciation, rents, taxes, ins.).

(8) Total Cost of Sales.

Monthly—

(1) Force Report (T.R.B. Amer. forms).

(2) Department payroll (T.R.B. Amer. forms).

(3) Cups and Cones produced as well as shipped.

[fol. 5140] Monthly—Financial Status, showing cash on hand, bank or other indebtedness, advance to subsidiary companies (Inventories in value—Raw Material, Process, Finished).

Quarterly.

(1) List of new machinery put into operation and savings resulting therefrom—also cost of this machinery.
(2) List of machinery obsoleted.
(3) List of new machinery on order, delivery promised and cost.
(4) Raw material prices and tonnage of material purchased for quarter. Show parts purchased from American Timken.
(5) Quantity of bearings sold and part number.
(6) Part numbers made from (a) forgings (b) solids bars. (Change to semi-annual).
(7) Improved method of manufacture other than listed in (1).

Semi-Annually.

(1) List of staff and salaries, bonus paid each and occupation.
(2) Financial Budget for next half year.
(3) Report on performance against budget for ½ year ended.
(4) Sales review showing new business received and value of same for ½ year ended—sales prospects by divisions (R.R. Ind. Auto, etc.) for next half year.
(5) Competitors production.
(6) Value of business lost and explanation of same.

Annually.

(1) Inventory of all parts.
(2) List of machinery in operation.

[fol. 5141] DEFENDANT'S EXHIBIT 142

December 2, 1930.

British Timken Limited, Birmingham, England.

Attention—Mr. Wm. Dallow.

Gentlemen:

It has become increasingly important that we be supplied with the cost data of the French plant similar to the data

contained in your monthly "A" to "H" returns and production reports.

Please advise us approximately when we may expect to receive this data.

Very truly yours, The Timken Roller Bearing Company, —— ——, Assistant to the President.

CMG:PHK
File 3.1

[fol. 5142] DEFENDANT'S EXHIBIT 143

British Timken, Limited

9th January, 1931.

D. P. Hess, Esq., The Timken Roller Bearing Company, Canton, Ohio, U. S. A.

Dear Mr. Hess:

Your letter of the 2nd December asking for arrangements to be made for Francaise Timken to furnish you with cost data similar to that which we supply, was received on December 11th. I regret the delay in acknowledging this but was under the impression that Mr. Dewar had dealt with the matter.

A few days after receiving your letter I visited Francaise Timken and took the opportunity of going thoroughly into this question with them, when Mr. Seward expressed the opinion that he would be able to get the whole of the Returns going as from January 1st, 1931. There will, however, in all probability be a little delay in sending you these Returns, on account of pressure of work arising out of their stock-taking and the year end accounts.

Yours sincerely, for British Timken Limited. Wm. Dallow, Director.

[fol. 5143] DEFENDANT'S EXHIBIT 144

June 26th, 1931.

S. A. Francaise Timken, Asnieres (Seine) France.

Attention—Mr. W. E. L. Seward.

Gentlemen:

Mr. W. Dallow in his letter of Jan. 9th 1931 stated that in a recent visit to Francaise Timken at that time that you expressed the opinion you would be able to get the whole of the Returns similar to those supplied by the British Timken going from the first of January 1931. We fully realize the delay to date in your arranging to forward those Returns to us but as the year 1931 is about half over we, of course, are anxious to know when we will be able to receive these returns. In fact we are expecting to receive them in each mail but as they have not as yet turned up we would like to have some expression from you as to the time when we may receive them.

Thanking you for your consideration, we are

Very truly yours, The Timken Roller Bearing Co.,
—— ——, Assistant to the President.

CMG/t
Our File 3.4

[fol. 5144] DEFENDANT'S EXHIBIT 145

August 24, 1931.

Mr. William Dallow, % British Timken Limited.

Dear Dallow:

I am enclosing comparison of French Timken costs with our own costs. I am sending this in duplicate in view of the fact that I do not know whether Mr. Dewar wishes us to send these comparisons direct to Mr. Seward, so that I would appreciate your advising me just what action to take in the future. However, if Mr. Dewar deems it advisable, will you please send one of the copies on to Mr. Seward.

Very truly yours, The Timken Roller Bearing Company, —— ——, Assistant to the President.

DPH:PHK
File 3.4
Encls.

[fol. 5145]

MANUFACTURING COSTS—CANTON, COLUMBUS & PARIS
MONTH OF APRIL 1931

	CANTON AMOUNT	%	COLUMBUS AMOUNT	%	PARIS AMOUNT	%
Standard Value of Production	484,760.	100.0	237,870.	100.0	17,188.	100.0
Total Actual Cost	603,326.	124.5	243,357.	102.3	31,150.	181.2
TOTAL VARIANCE	118,566.	24.5	5,487.	2.3	13,962.	81.2
Standard Material	193,356.	100.0	82,553.	100.0	7,478.	100.0
Actual Material	272,583.	141.0	98,675.	119.5	13,039.	174.4
VARIANCE	79,227.	41.0	16,122.	19.5	5,561.	74.4
Standard Labor and Expense	287,696.	100.0	153,010.	100.0	10,315.	100.0
Actual Labor and Expense	330,743.	115.0	144,682.	94.6	18,111.	175.6
VARIANCE	43,047.	15.0	8,328.	5.4	7,796.	75.6
Standard Scrap Allowance	14,341.	100.0	7,346.	100.0	405.	100.0
Actual Scrap Loss	10,633.	74.1	5,039.	68.6	1,010.	249.4
VARIANCE	3,708.	25.9	2,307.	31.4	605.	149.4
Labor and Expense Detail						
Labor						
Direct	116,719.	40.6	53,400.	34.9	4,207.	40.8
Indirect	29,206.	10.1	13,490.	8.8	2,356.	22.8
Supervision & Clerical	11,561.	4.0	5,146.	3.4	1,707.	16.6
	157,486.	54.7	72,036.	47.1	8,270.	80.2
Supplies						
General	8,055.	2.8	3,953.	2.6	487.	4.7
Oil & Cutting Compounds	7,184.	2.5	2,608.	1.7	561.	5.4
Grinding Wheels	8,096.	2.8	4,786.	3.1	763.	7.4
Diamonds	540.	.2	246.	.2	0.	.0
Water	332.	.1	194.	.1	0.	.0
Air	1,975.	.7	1,087.	.7	0.	.0
Belting	1,448.	.5	743.	.5	0.	.0
Fuel	6,675.	2.3	1,716.	1.1	0.	.0
	34,305.	11.9	15,333.	10.0	1,811.	17.5
Direct Expense						
Electric Power	6,869.	2.4	3,816.	2.5	1,895.	18.4
Steam Power and Heat	700.	.3	872.	.6	0.	.0
Repairs-Mach. & Equip.	19,389.	6.8	6,318.	4.0	1,460.	14.2
Tool Repair & Replacement	16,477.	5.7	7,892.	5.2	548.	5.3
Maint. Pots & Retorts	5,218.	1.8	857.	.6	4.	.0
	48,653.	17.0	19,755.	12.9	3,907.	37.9
TOTAL OF ABOVE	240,444.	83.6	107,124.	70.0	13,988.	135.6
General Overhead						
Depreciation, Taxes & Insur.	40,473.	14.0	16,045.	10.4	3,809.	37.0
Building Expense	8,572.	3.0	4,398.	2.9	127.	1.2
Inventory Adjustment	10,000.	3.5	5,000.	3.3	0.	.0
Experimental	6,910.	2.4	3,455.	2.3	0.	.0
Sundry	172.	.0	1,806.	1.2	0.	.0
General Mfg. Expense	8,579.	3.0	704.	.5	85.	.8
Factory Administrative	15,937.	5.5	6,150.	4.0	102.	1.0
	90,299.	31.4	37,558.	24.6	4,123.	40.0
TOTAL	330,743.	115.0	144,682.	94.6	18,111.	175.6

[fol. 5146] DEFENDANT'S EXHIBIT 146

Francaise Timken, Societe Anonyme

5th January 1931.

The Timken Roller Bearing Company, Canton, Ohio.

Dear Sirs,

We enclose herewith Production Report per Symbol for the month of November 1930.

Yours faithfully, for S. A. Francaise Timken: l'Administrateur Delegue: W. E. L. Seward.

WELS/EW.
Enclosures:

[fol. 5147]

S. A. FRANCAISE TIMKEN

Production Report per Symbol — For the Month of November 1930

CONES

	Part Number (symbol)	Gross Hrs. Required	Quantity of pieces made	Total Scrap
GREEN OPERATION				
Gridley 1 Spindle	339	15.	315	3
" "	1755	75.	1,992	10
" "	3190	258.75	3,831	74
" "	07098	24.	610	—
" "	26118	89.75	1,646	13
" "	28137	80.25	1,737	7
" "	29177	299.75	6,352	52
Gridley 4 Spindle	1755	36.	1,150	10
" "	MS2226	41.50	1,665	28
" "	05066	30.50	1,314	16
Acmés "	1755	171.50	4,916	54
" "	14132	179.50	3,015	64
Undercutting and Radius	339	6.25	1,064	—
" " "	A1201	8.25	961	—
" " "	1755	61.50	8,155	—
" " "	3120S	11.50	2,098	—
" " "	MS2226	38.25	2,170	—
" " "	3190	31.50	4,126	—
" " "	05066	9.25	1,160	—
" " "	14132	42.25	5,441	—
" " "	19138	12.50	1,670	—
" " "	26118	13.25	2,095	—
" " "	28157	6.25	1,041	—
" " "	29177	33.75	5,471	—
HEAT TREATMENT				
Meker Furnace	247	2.	814	—
" "	339	5.25	1,601	—
" "	357	5.	2,121	—
" "	365	16.	4,095	—
" "	AA1201B	12.50	4,109	—
" "	1755	16.50	8,347	—
" "	MS2226	3.50	2,155	—
" "	3190	11.50	4,095	—
" "	05066	2.25	1,154	—
" "	07098	2.	1,076	—
" "	14132	26.75	8,746	—
" "	19138	2.	560	—
" "	28157	2.50	1,038	—
" "	29177	6.	1,619	—

[fol. 5148]

S. A. FRANCAISE TIMKEN

Production Report per Symbol — For the Month of November 1930

CONES

	Part Number (symbol)	Gross Hrs. Required	Quantity of pieces made	Total Scrap
FACE GRINDING OPERATION				
Automatic Blanchard	247	.75	378	—
" "	939	2.75	1,509	2
" "	357	4.75	2,563	—
" "	385	5.50	2,689	—
" "	A1216	.50	183	—
" "	1755	9.25	8,344	—
" "	MS2226	2.25	2,155	—
" "	05066	2.25	1,154	—
" "	07098	2.	1,073	3
" "	14132	12.	8,741	—
" "	28138	1.25	408	—
" "	29177	.75	563	—
I. D. GRINDING OPERATION				
Heald Sizematic	247	9.	849	121
" "	339	4.50	449	13
" "	385	50.75	3,578	188
" "	AA1201B	13.50	737	—
" "	A1216	13.	522	147
" "	1755	124.25	9,445	376
" "	MS2226	25.50	1,218	70
" "	3191	7.	294	9
" "	05066	25.25	1,127	27
" "	07098	23.	2,112	46
Heald Gagematic	357	44.75	2,404	207
" "	14132	70.75	4,657	194
" "	28138	1.25	40	5
" "	29177	6.50	584	19
O. D. GRINDING OPERATION				
Landis	1755	24.50	1,751	—
"	MS2226	28.50	1,354	—
"	3191	5.25	294	—
"	05066	6.25	310	—
Timken Race Grinders	247	7.50	614	—
" " "	357	30.75	2,095	—
" " "	385	78.75	3,578	—
" " "	A1216	11.75	975	—
" " "	1755	106.	8,695	—
" " "	05066	10.75	817	—
" " "	07098	25.25	2,145	—
" " "	14132	136.50	8,548	—

[fol. 5149]

S. A. FRANCAISE TIMKEN

Production Report per Symbol — For the Month of November 1930

	Part Number (symbol)	Gross Hrs. Required	Quantity of pieces made	Total Scrap
CONES.				
RIB GRINDING OPERATION.				
Jones et Shipman	1755	7.75	270	—
" "	A1216	.25	5	—
" "	MS2226	30.25	1,819	—
" "	14132	1.50	46	—
" "	26118	10.75	334	—
" "	28156	1.75	46	—
Timken Rib Grinder.	247	3.50	548	—
" " "	357	7.	1,362	—
" " "	385	18.75	3,000	—
" " "	A1216	5.25	1,000	—
" " "	1755	45.	9,302	2
" " "	05066	7.50	1,537	3
" " "	07098	10.	2,062	—
" " "	14132	42.25	8,279	14

[fol. 5150]

S. A. FRANCAISE TIMKEN

Production Report per Symbol — For the Month of November 1930

	Part Number (symbol)	Gross Hrs. Required	Quantity of pieces made	Total Scrap
CUPS.				
GREEN OPERATION.				
Gridley I Spindle	243	120.75	2,686	28
" "	332US	40.	1,001	5
" "	333	12.25	238	4
" "	383	81.50	1,354	15
" "	1729	68.	1,811	8
" "	MS2225	107.	3,191	23
" "	3120S	69.75	1,689	9
" "	05185	54.25	1,242	18
" "	07204	62.25	1,316	7
" "	14274	271.25	6,979	41
" "	29334	347.50	8,781	61
Acmés.	1729	147.75	4,553	44
Engine Lathe.	1729	87.	350	—
" "	29334	36.	233	—
Chamfering	243	29.50	4,841	—
"	332US	4.50	1,005	—
"	333	3.50	918	—
"	383	11.50	2,154	—
"	AA1217B	5.75	1,645	—
"	1729	52.	12,129	—
"	MS2225	14.50	2,987	—
"	05185	7.25	1,633	—
"	07204	6.75	1,320	—
"	14274	40.50	6,057	—
"	29334	16.25	3,170	—
HEAT TREATMENT.				
Meker Furnace	243	6.25	2,149	—
" "	332US	18.25	2,474	—
" "	362X	12.25	1,598	—
" "	383	20.75	3,106	—
" "	AA1217B	3.25	1,135	—
" "	1729	35.75	11,824	—
" "	MS2225	1.50	1,526	—
" "	3120S	12.25	2,189	—
" "	05185	5.25	2,880	—
" "	07204	3.25	1,317	—
" "	14274	8.25	2,085	—
" "	29334	27.	5,406	—

[fol. 5151]

S. A. FRANCAISE TIMKEN

Production Report per Symbol — For the Month of November 1930

Part Number (symbol)	Gross Hrs. Required	Quantity of pieces made	Total Scrap
CUPS.			
FACE GRINDING OPERATION.			
Automatic Blanchard			
243	3.25	1,990	—
313	2.75	1,584	—
362X	5.25	2,657	—
363	1.25	680	—
383	6.50	2,539	—
332US	3.25	1,473	—
A1202	3.25	1,769	—
1729	11.75	8,912	—
3120S	2.50	1,115	—
05185	1.25	615	—
07204	.75	510	—
29334	11.	6,405	—
O. D. GRINDING OPERATION.			
Cincinnati Centerless			
243	5.75	1,972	18
313	7.25	2,072	36
332US	4.	1,472	—
354A	1.50	495	3
362X	8.25	2,647	—
363	2.	677	—
383	7.75	2,015	—
A1202	9.75	3,389	—
1729	22.	7,809	1
3120S	3.	1,088	27
05185	1.50	615	—
07204	3.25	1,484	40
29334	15.25	5,898	16
I.D. GRINDING OPERATION.			
Heald Sizematic			
243	38.50	1,969	—
313	40.25	1,656	—
332US	28.	1,519	—
354A	11.25	493	—
362X	56.50	2,639	—
363	19.	737	—
383	52.50	1,877	—
A1202	73.75	3,947	—
AA1202B	14.25	741	—
1729	105.	4,505	38
3120S	4.25	150	—
05185	25.25	883	—
07204	27.	1,010	—
29334	117.75	5,521	—

[fol. 5152]

S. A. FRANCAISE TIMKEN

Production Report per Symbol — For the Month of November 1930

	Part Number (symbol)	Gross Hrs. Required	Quantity of pieces made	Total Scrap
CAGES.				
BLISS PRESS.				
Blank form	Ext. II	10.	9,751	—
" "	Int. II	25.	22,703	—
" "	T.75 C.	37.50	17,986	—
" "	T.75 R.	12.	5,900	—
" "	1711	15.50	9,935	379
" "	29008	10.75	4,028	2
Sizing	Ext. II	9.25	9,751	—
"	Int. II	38.	22,703	—
"	1711	10.	7,435	—
"	14001	3.	2,021	—
"	29008	9.25	8,014	—
Perforating	Ext. II	13.	9,751	—
"	Int. II	1.50	800	—
"	1711	20.75	6,423	138
"	14001	10.25	2,021	—
"	29008	66.	10,923	—
Winging	Ext. II	5.50	1,058	—
"	Int. II	62.75	19,741	—
"	1711	11.50	1,900	—
"	14001	38.25	5,057	212
"	29008	84.25	11,623	308
Crimping	Int. II	18.	8,000	—

[fol. 5153]

S. A. FRANCAISE TIMKEN

Production Report per Symbol — For the Month of November 1930

	Part Number (symbol)	Gross Hrs. Required	Quantity of pieces made	Total Scrap
ROLLS.				
Waterbury Heading	1003	91.50	269,017	1485
" "	2008	158.	465,286	—
SURFACE GRINDING OPERATION.				
Jones & Shipman	1003	3.50	2,362	38
" "	1008	43.25	27,148	302
" "	2003	27.50	18,443	57
" "	2008	84.25	57,858	1008
Oakley	1	65.25	45,998	252
"	1003	57.	48,992	76
"	2008	64.50	42,068	212
Vander Beek	1003	183.50	145,133	717
" "	2003	59.75	46,704	226
" "	2008	123.75	92,750	3820
ANGLE GRINDING OPERATION				
Cincinnati	103	20.75	16,333	—
"	1003	396.	263,966	—
"	1008	28.	21,930	—
"	2003	62.50	55,600	—
"	2008	318.75	268,680	—

[fol. 5154]

S. A. FRANCAISE TIMKEN

Production Report per Symbol — For the Month of November 1930

	Part Number (sytmbol)	Gross Hrs. Required	Quantity of pieces made	Total Scrap
RACE.				
BLISS PRESS.				
Blanking	T. 82	98.25	32,148	—
Form	T. 82	83.25	11,628	—
FACE GRINDING OPERATION				
Ordinary Blanchard	T. 82	42.75	11,366	—

[fol. 5155]

S. A. FRANCAISE TIMKEN

Production Report per Symbol — For the Month of November 1930

	Part Number (symbol)	Gross Hrs. Required	Quantity of pieces made	Total Scrap
ASSEMBLING OPERATION.				
Hand press for closing cages	11	157.25	15,180	
" " " " "	T. 82	142.	13,525	
" " " " "	344/332US	2.25	150	
" " " " "	357/354A	1.50	100	
" " " " "	385/383	13.50	1,000	
" " " " "	1755/1729	141.	9,999	
" " " " "	MS2226/MS2225	5.50	337	
" " " " "	2788/2720	1.50	125	
" " " " "	05006/05185	8.25	700	
" " " " "	07098/07204	21.75	1,600	
" " " " "	14132/14274	98.25	6,885	
" " " " "	26118/26283	12.	900	
" " " " "	28156/28314	12.	352	
" " " " "	29177/29334	103.50	7,501	

[fol. 5156] Jan. 22, 1931.

Mr. W. E. L. Seward, S. A. Francaise Timken, 5 & 7 Quai Aulagnier, Asnieres (Seine) France.

Dear Mr. Seward:

This will serve to acknowledge receipt of your letter of Jan. 5th, 1931, enclosing your Production Report for the month of November, 1930. British Timken supplies us with their force report which indicates the number of employees —day work and night work and if it is at all possible to supply us with the information setup in regard to the number of your force working days and nights, we would appreciate your giving us this information in addition to the

report we are receiving just setting forth the number of people employed by the month.

Yours truly, The Timken Roller Bearing Co., ——
——, Assistant to the President.

CMG:MS
File 6.24

See pending file for report

[fol. 5157] DEFENDANT'S EXHIBIT 147

Française Timken

Société Anonyme

A1/1198 7th July, 1931.

The Timken Roller Bearing Company, Canton, Ohio, Attention of Mr. Hess

Dear Sirs,

We have your letter of the 26th June last, your file 34, regarding the rendering by Française Timken of returns similar to the whole of those supplied by British Timken. The additional returns, with the exception of Efficiency Sheets for the Hardening and Press Shops, as from January 1st to various dates in March and April, have already been dispatched to you. The returns bringing these statements up to date will be dispatched shortly.

We would point out that with the exception of the Accountant in charge, the whole of the Book-keeping and Costs staff of Française Timken are French and are not accustomed to British or American methods of cost accounting or book-keeping. Consequently, they are unable to deal with the special returns requested by you. The policy followed in France is to employ French personnel as far as possible, with a view to local opinion and also to keep the total salaries as low as possible.

From the first of the year until April, the British Accountant was extremely busy with the preparation of the Balance Sheet and the audits carried out by the two firms of Accountants, to which work preference had to be given. Subsequently, when the returns specially requested by you were compiled, our Accountant waited for the return from

America of our Mr. Seward as he wished for instructions regarding certain of these statements.

Yours faithfully, S. A. Francaise Timken, l'Administrateur Délégué, W. E. L. Seward.

WELS/RR:

[fol. 5158] DEFENDANT'S EXHIBIT 148

Française Timken

Société Anonyme

D3/1772 18th July, 1933.

The Timken Roller Bearing Company, Canton Ohio

Dear Sirs,

Further to our cable of even date reading as follows:

"Details Regarding Material and All Charges Despatched Tonight" we have pleasure in enclosing herewith the following statements.

A. Details of Productive Wages and General Charges for May/1933.

C. Productive Material Issues for May/1933.

Yours faithfully, For S. A. Française Timken, Le Directeur, —— ——.

[fol. 5159]

S. A. FRANCAISE TIMKEN

DETAIL OF PRODUCTIVE WAGES AND GENERAL CHARGES FOR THE MONTH ENDED 31st MAY 1933

	Automatic	Grinding Shop	Tool Room	Assembling	Hardening	Press	General	Total
PRODUCTIVE WAGES								
Direct	20,714.65	20,907.40	3,120.78	2,504.15	4,751.20	5,246.95	—	57,245.13
Throwover	6,890.60	10,557.40	—	—	—	1,973.20	—	19,421.20
Total	27,605.25	31,464.80	3,120.78	2,504.15	4,751.20	7,220.15	—	76,666.33
MANUFACTURING CHARGES								
Staff Wages	1,729.41	2,677.38	2,768.55	332.40	265.84	398.82	47,700.00	55,872.40
Viewers	5,018.64	14,862.65	—	1,270.15	3,397.90	1,657.51	—	26,206.85
Labourers	5,302.99	2,715.17	2,238.44	2,188.74	105.84	1,660.94	23.75	14,235.87
Overtime	1,290.30	199.60	71.30	—	—	8.10	—	1,569.30
Foremen's Bonus	1,272.52	1,260.07	949.72	564.08	—	—	474.86	– 4,521.25
Wages	14,613.86	21,714.87	6,028.01	4,355.37	3,769.58	3,725.37	48,198.61	102,405.67
REPAIRS & UPKEEP								
Machine Tools	6,873.78	3,755.26	575.20	97.77	1,008.61	93.93	21.88	12,426.43
E. D. Plant	—	372.03	—	—	—	—	—	372.03
Shafting & Gearing	3,438.00	799.96	145.94	—	68.02	76.17	—	4,528.09
Sundry Plant	—	—	—	—	83.15	—	—	83.15
Loose Tools	10,190.43	5,618.75	1,485.04	89.02	298.22	4,729.01	20,000.00	2,410.47
Buildings	311.93	219.45	94.84	119.34	73.14	73.14	350.00	1,241.84
Fixtures, Fittings & Furniture	660.66	630.46	203.25	226.10	203.25	203.24	47.20	2,174.16
Wages & Material	21,474.80	11,395.91	2,504.27	532.23	1,734.39	5,175.49	19,580.92	23,236.17

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S. A. FRANCAISE TIMKEN

DETAIL OF PRODUCTIVE WAGES AND GENERAL CHARGES FOR THE MONTH ENDED 31st MAY 1933

	Automatic	Grinding Shop	Tool Room	Assembling	Hardening	Press	General	Total
GENERAL CHARGES								
Gas, Electricity, etc.	7,600.00	6,650.00	1,990.00	190.00	13,775.06	3,000.00	5,113.15	38,318.21
Oils & Waste	3,251.75	6,207.43	352.87	339.02	1,322.85	1,563.12	319.97	13,357.01
Diamonds, Grinding Stones, etc.	1,463.28	13,862.44	2,379.95	41.37	455.64	76.62	231.05	18.510.35
Stationery & Printing	717.59	773.32	496.80	138.00	110.40	165.60	8.30	2,410.01
Rents, Taxes & Insurance	—	—	—	—	—	—	6,414.81	6,414.81
State Insurance	—	—	—	—	—	—	8,073.20	8,073.20
Illness Compensation Fund	—	—	—	—	—	—	6,184.72	6,184.72
Total	13,032.62	27,493.19	5,219.62	708.39	15,663.95	4,805.34	26,345.20	93,268.31
DEPRECIATION								
Jigs et Gauges	—	—	—	—	—	—	85,000.00	85,000.00
Total	—	—	—	—	—	—	85,000.00	85,000.00
Total Excluding Productive Wages	49,121.28	60,603.97	13,751.90	5,595.99	21,167.92	13,706.20	139,962.89	303,910.15

LOOSE TOOLS: A sum of Frs. 20.000.- representing a previous overestimate of the expenditure on Loose Tools has been written back during the month of May and entered on the General Column, so that the other detailed columns show the actual expenditure during the month.

[fol. 5160]

S. A. FRANCAISE TIMKEN

PRODUCTIVE MATERIAL ISSUES

MAY 1933

		Weight Kos	Value Frs.
Franco-Suédois	Tube	390	1.770.60
Sandviken	"	12.391	56.251.72
Citroen	"	1.667	9.668.60
Sarre	Bar	1.008	3.771.79
Ugine	"	12.847.400	34.304.63
Cages	Strip	2.106.050	3.857.25
Iron	Wire	5.185	18.147.50
Stamped	Cones	7.202.800	25.890.45
"	Cups	5.407.685	22.773.57
Finished Rolls and Cages ex Canton or British			20.510.41
French rough Cages			15.896.75
Material for Railway Axle Boxes			7.528.66
		48.204.935	220.371.93

[fol. 5161] DEFENDANT'S EXHIBIT 149

Française Timken

Société Anonyme

D3/1718 1st July, 1933.

The Timken Roller Bearing Company, Canton, Ohio

Dear Sirs,

We have pleasure in sending you under separate cover the following statements:

X. M. Production Report per Symbols, Month of May 1st and 2nd Fortnights.

E. Particulars of Employees, Month of May 1st and 2nd Fortnights.

F. Wages Statement, Month of May 1st and 2nd Fortnights.

D. Efficiency Summary, Automatic, Month of May 1st and 2nd Fortnights.

B. Efficiency Summary, Hardening, Month of May 1st and 2nd Fortnights.

H. Efficiency Summary, Press, Month of May 1st and 2nd Fortnights.

G. Efficiency Summary, Grinding, Month of May 1st and 2nd Fortnights.

Yours faithfully, For S. A. Française Timken, Le Directeur, ——. ——.

[fol. 5162] DEFENDANT'S EXHIBIT 150

S. A. FRANCAISE TIMKEN — DECEMBER 1933

PARTICULARS OF EMPLOYEES (Excluding Staff)

	DECEMBER 1933 15TH	31ST
Machining		
Productive Piece Workers	9	9
Setters	6	6
Chargehands	1	1
Labourers	2	2
Day Workers	1	1
Working Days	19	19
" Nights	—	—
Hardening		
Productive Days Workers	3	3
Labourers	—	—
Working Days	3	3
" Nights	—	—
Grinding		
Productive Piece Workers	15	15
Chargehands	1	—
Setters	6	6
Labourers	1	1
Day Workers	1	1
Working Days	24	23
" Nights	—	—
Press and Sandblasting		
Productive Piece Workers	5	5
Tool Setters	2	2
Labourers	1	1
Working Days	8	8
" Nights	—	—
Assembling		
Productive Piece Workers	3	2
Labourers	1	1
Working Days	4	3
" Nights	—	—

[fol. 5163]

S. A. FRANCAISE TIMKEN — DECEMBER 1933

PARTICULARS OF EMPLOYEES (Excluding Staff)

Fortnight Ending	DECEMBER 1933 15TH	31ST
Inspection		
Chargehands	2	2
Viewers	29	27
Labourers	—	—
Working Days	31	29
" Nights	—	—
Tool Room		
Tool Makers (Days Workers)	17	17
" " mates	1	1
Labourers	1	1
Working Days	19	19
" Nights	—	—
Plant		
Electricians	1	1
" mates	—	—
Oilers & Beltmen	1	1
Labourers	2	2
Office Cleaners (Part Time)	2	2
Millwrights	7	7
" mates	—	—
Carpenters	1	1
Plumbers	1	1
Working Days	15	15
" Nights	—	—
Sundries		
Stores Keepers and Labourers	6	7
Garage	2	2
Laboratory (Assistant Metallurgist and Viewers)	3	3
Door Keepers	4	4
Time Clerk (Days Workers)	1	1
Nurse	1	1
Assistant-Draughtsman	1	1
Office Boy	1	1
Working Days	19	20
" Nights	—	—
Working Days	142	139
" Nights	—	—

[fol. 5164]

S. A. FRANCAISE TIMKEN

FORTNIGHTLY WAGES STATEMENT

NAMES	HOURS Worked	HOURS O/T Allow.	Overtime Allowances FRS.	Bonus FRS.	Pieces Work FRS.	Day Work FRS.	Allowances FRS.	Gross Wages FRS.
Fortnight ending 31st December 1933								
Automatic	1,187			109.25	4,999.70	2,336.95		7,445.90
Hardening	222.½	1	1.40			1,168.05	—	1,169.45
Grinding	1,404			540.10	6,476.50	2,008.70	178.95	9,204.25
Press and Sandblasting	456			200.40	1,338.80	912.25		2,451.45
Assembling	186				564.50	284.40		848.90
Inspection	1,657					7,046.55		7,048.55
Tool Room	1,645			29.40		11,562.63		11,592.05
Plant	1,345.¼	34	53.55			6,244.95		8,297.50
Sundries—Stores	592					2,745.40		2,745.40
Garage	213.½	2	3.80			1,228.30		1,232.10
Laboratory	227.½					955.15		955.15
Door Keepers) Time Clerk) Nurses)	948					3,809.20		3,809.20
	10,083.¼	37	58.75	879.15	13,379.50	43,303.55	178.95	56,799.90

[fol. 5165] DEFENDANT'S EXHIBIT 151

October 6, 1927.

British Timken, Limited, Birmingham, England, Attention Mr. M. B. U. Dewar, Managing Director

Gentlemen:

In view of the neccesity for additional machinery of a modern type at British Timken, we are fully agreed with you in the fact that the dividend payable for the current year should be passed, and a similar amount invested in machinery for your manufacturing plant. We agree that this action shall not cause any change in the voting rights as is set out in Clause 6, Section (A), of our agreement with you dated May 16, 1927.

Yours very truly, The Timken Roller Bearing Company, —— ——, Vice President.

DPH-HGW

———

[fol. 5166] DEFENDANT'S EXHIBIT 152

January 4, 1933.

Mr. M. B. U. Dewar, 10 Mayfair Place, London, W. 1, England

Dear Michael:

Mr. Timken and the writer recently held a meeting with Mr. Ernst in Cleveland at which our European affairs were discussed pro and con, and Mr. Ernst has asked me to write you stating that he greatly appreciates your appointing Messrs. Whinney, Smith & Whinney to be our joint auditors. As you know, he has great confidence in Mr. Meares and I have ex ained your similar feeling, so I am sure the whole affair will work out very nicely.

Very truly yours, The Timken Roller Bearing Co., —— ——, Assistant to the President.

DPH:MC

[fol. 5167] DEFENDANT'S EXHIBIT 153

British Timken Limited

Cheston Road, Aston, Birmingham, 7

Our Reference MBUD/RMW

28th November, 1932.

D. P. Hess, Esq., The Timken Roller Bearing Company, Canton, Ohio, U. S. A.

MY DEAR DON:

You will remember that when Mr. Pascoe and I were in Canton last Mr. Ernst raised the question of the Auditors of British Timken Limited. I quite understand Mr. Ernst's desire for those associated with him in this country to be associated with us.

I am writing this now to tell you that if Mr. Ernst again cares to raise this question with me I should be delighted to arrange for Messrs. Whinney, Smith & Whinney to become joint Auditors to British Timken Limited for next year.

Yours very sincerely, (S.) M. B. U. Dewar.

[fol. 5168] DEFENDANT'S EXHIBIT 154

10 Mayfair Place, London, W.1.

21st March, 1933.

Personal and Confidential:

Mr. D. P. Hess, 1549, Logan Avenue, Canton Ohio.

MY DEAR DON:

I have had a long talk with Moreland and I have arranged for him to deal with all our heavy engineering work, with the exception of Railways, and I have given him the two men he asked for from our existing organisation.

I do not think he will find it necessary to stay more than four, possibly five, months, and he does not appear to consider it desirable for his wife to come over this time.

One thing I am anxious to ask you privately:

He tells me that our Drawing Office is terribly slow, and he gives as the reason that in America, when a letter

comes in asking about some application, this letter is handed straight to a draughtsman, who does the calculation, replies to the letter and does the drawings which are then checked by the Head of the Department. (Weckstein to 2 checkers then to men who prepare layout after consulting with checkers. Then to Dept. Head for approval, back to Draughtsman.)

Our method, he says, is that Wood deals with practically every letter and makes sketches, which he gives to a draughtsman, telling him to elaborate them. The draughtsman is thus really little more than a tracer and not particularly interested in the jobs.

I should be awfully glad if you could tell me what the method actually is in your Drawing Office.

Yours very sincerely, (S.) Michael.

[fol. 5169] DEFENDANT'S EXHIBIT 155

April 6, 1933.

Personal.

Mr. M. B. U. Dewar, 10, Mayfair Place, London, W. 1, England.

DEAR MICHAEL:

I have investigated the method we handle our work in our Industrial Engineering Department, and this is the line up:

When information along the line of letters or telegrams come in from the Industrial Sales Department it goes to Mr. Weckstein, head of the Industrial Engineering Department. He in turn divides the work up between two checkers, and they in turn hand the original letter, telegram, etc. to one of the men under them, or draftsmen, who does the actual work of preparing the layouts after consulting with the checkers. When this layout is finished and checked it is handed to the departmental head, Mr. Weckstein, for final approval. If he approves it, it then goes back to the draftsmen who make all the necessary office records and write the letter which goes to the respective sales divisions or customer who is interested in the layout.

We have found from five years of experience that this works out very well and it, of course, means that Weckstein

and his two checkers are very careful to guide the draftsmen and supervise their efforts very closely. However, they do not do any of the actual detail work such as I understand Mr. Wood has been doing. As you know, we take these draftsmen after they have been in our Engineering Department for two or three years and then transfer them to the Sales Department.

Very truly yours, The Timken Roller Bearing Co.,
—— ——, Asst. to the President.

DPHESS/REF

[fol. 5170] DEFENDANT'S EXHIBIT 156

British Timken Limited

Cheston Road, Aston, Birmingham, 7

Our Reference: MBUD/RMW

20th April, 1933.

Mr. D. P. Hess, The Timken Roller Bearing Company, Canton, Ohio, U. S. A.

MY DEAR DON:

Thank you very much for your letter of the 6th April giving me particulars of your method of handling work in your Industrial Engineering Department. We are following out this method and hope to be successful.

With kindest regards,

Yours very sincerely, (S.) Michael Dewar.

[fol. 5171]

DEFENDANT'S EXHIBIT — No. 162

MACHINES SENT TO BRITISH TIMKEN

1928—1929—1930—1934—1940—1941

[fol. 5172]

MACHINES SENT TO BRITISH TIMKEN

Qty.	Name and Serial Number		Date Shipped	Building Information
1	Ohio No. 3 Universal Tool and Cutter grinder	Export application	2-12-41	Used machine
1	Landis #3 full Universal belt driven grinder	" "	2-12-41	Reconditioned
1	#23 Bliss geared inclinable 6" stroke press	" "	2-12-41	Used machine
1	6 spindle V-18 roll end grinder	" "	2-21-41	Timken design—new
1	8 spindle V-16 roll end grinder	" "	2-21-41	Timken design—new
1	Bliss #24—400 ton coining press	" "	2-12-41	Used
1	Consolidated geared press	" "	2-12-41	Used
3	Cincinnati centerless roll grinders	" "	12-30-40	Used
4	Gridley chucking machines	" "	12-18-40	Second hand
4	Gridley chucking machines	" "	12-10-40	"
1	#44 Waterbury cold heading machine	Invoice dated	12- 3-40	"
1	#33 Waterbury cold heading machine	" "	12- 3-40	"
1	Six-spindle roll end grinder	" "	12- 3-40	"
1	Eight-spindle roll end grinder	" "	12- 3-40	"
50	Single spindle Gridley automatic machines	" "	12- 3-40	Used
2	Model J Gridley single spindle belt driven turret lathes	Export application	7-19-40	Reconditioned
1	Model J Gridley automatic turret lathe	" "	7-17-40	"
1	Model J Gridley automatic turret lathe	" "	7-17-40	"
1	Landis 12" x 36" grinding machine	Delivery: France	2-16-40	"

[fol. 5173]

MACHINES SHIPPE

Qty.	Name and Serial Number
1	Model H, 3-hole Turret Machine Serial #34370
1	Concentricity Cup Machine
3	Heald Wheel Heads #12, 18, 20
2	Norton 25200 BS #6 Centerless Grinding Wheels
2	Toggle Machines #4370
3	V-71 Cone race grinders
4	Out of round & Size Gauges
2	Quenching machines #1460 & 1445
1	Cup Hardening Mach.
2	Cone Race Grinders
1	Loading attachment for #2 Centerless Roll Grinder
1	Roll Chatter, Taper & Size gage
1	Shadow gage
1	Grinder (Cone)
1	Rib Grinder
3	V-71-A Grinders #4552, 4437, 4793
3	V-75 Cone rib Grinders
3	Schlaupitz Gauging Machines
3	#76 Acme Machines

O TO BRITISH TIMKEN

Date Shipped	Building Information
1-30-28	
7-24-29	Ordered from Heald Machine Co. by TRB for British Timken
9-10-29	Ordered from Norton Company
Approx. date	by TRB for British Timken
July 1929	Taken from TRB Production Line
8- 3-29	
8-30-29	
Approx. date	
7-12-29 &	Taken from TRB Production Line
7- 8-29	
6-29-29 Approx.	From Columbus plant
12-14-29	
8-31-29	Canton Design
8-31-29	
8-13-29	From TRB Production Line
8- 3-29	From TRB Production Line
12-12-29	Built by TRB for British Timken
4- 1-30	
	Built by TRB for British Timken
12-15-32 Approx.	From Columbus Plant

[fol. 5174]

MACHINES SHIPPED TO BRITISH TIMKEN

Qty.	Name and Serial Number	Date Shipped	Builtling Information
1	V-16-B Roll End Grinder	6-14-34	Built by TRB for British Timken
1	V-14 Sizing Roll End Grinder #6196	9-25-34	Rebuilt by TRB for British Timken
1	#33 New Heading Mach. #29795-74	6-24-41	Ordered from Waterbury-Farrell Co. by TRB for British Timker
1	#44 New Heading Machine Serial #29796-33	8-15-41	Ordered from Waterbury-Farrell Co. by TRB for British Timken
1	#24 Bliss 400-Ton Embossing Press	About 3-24-41	Ordered from Duff & Spiro Mach. Tool Co. by TRB for British Timken
1	#23 Bliss Press	2-26-41	Ordered from Falk Mill Supply Co.
1	#3 Grinder Belt Drive		by TRB for British Timken
1	#3 Tool & Cutter Grinder Belt Drive		
4	Gridley Chucking Machines	About 2-17-41	
1	Geared Press	3-29-41	

[fol. 5175]

DEFENDANT'S EXHIBIT — No. 162A

MACHINES BUILT, ORDERED, OR TESTED FOR
BRITISH TIMKEN LIMITED BY
THE TIMKEN ROLLER BEARING COMPANY

1932—1936—1937—1938

[fol. 5176]

MACHINES BUILT, ORDERED, OR TESTED FOR BRITISH TIMKEN, LTD. BY THE TIMKEN ROLLER BEARING COMPANY

Type of Machine	Date of First Inquiry	Date Job Finished	Number of Machines Built	Ordered	Tested	Size of Machine	Machines Built Here	TRB Co. ordered for B. T. from Machine Builders in U. S.	Mach. ordered by B. T. tested in U. S. A.	TRB aided in engineering of machines as to design
Cone & Cup Chamfering Machine	2-19-37	About 12- 8-37		2	2	3" & 5" dia.	Ferry Mach.	Ordered by TRB for B. T.		Yes.
Roll End Grinding Machine V-18	2-24-37	About 12-14-37		2	2					
Cone Hardening Mach. V-16, 8-spindle Roll End Grinding Mach.	2-26-37 4- 2-37	About 12-17-37		1	1		Hearn Die, Tool & Mach.			
Cross Hatching Mach.	11-11-37			2						
Race Grinding Mach.	2-26-37									
V-14 Single Spindle Grinder	4-27-37	5-27-37		1		Apparently taken from our plant.				
Lubricant Testing Machine							Pure Oil Company			

[fol. 5177]

MACHINES BUILT, ORDERED, OR TESTED FOR BRITISH TIMKEN, LTD. BY THE TIMKEN ROLLER BEARING COMPANY (Continued)

Type of Machine	Date of First Inquiry	Date Job Finished	Mumber of Machines Built	Ordered	Tested	Size of Machine	Machines Built Here	TRB Co. ordered for B. T. from Machine Builders in U. S.	Mach. ordered by B. T. tested in U. S. A.	TRB aided in engineering of machines as to design
#77 Heald Grinder	10-14-36									
Sclaupitz roll size gaging Machine	11-14-32									
6¼" Model H3 hole burret machine				1				Ordered from Cleveland Automatic		
Bethel-Player lapper	7-15-38			1			Reconditioned here 1-16-39.			
20" Magnetic chuck ordered	1-12-38			1				Ordered from O. S. Walker Co.		
Roll Headers	10-22-37			6						
Roll End Grinders		Four machines were being tested at Columbus and were to be shipped in October, 1937.								

[fol. 5178]

DEFENDANT'S EXHIBIT — No. 162B

MACHINES SENT BRITISH TIMKEN, LTD.

1937—1939—1940

[fol. 5179]

MACHINES BUILT, ORDERED, OR TESTED FOR BRITISH TIMKEN, LTD. BY THE TIMKEN ROLLER BEARING COMPANY (Continued)

Type of Machine	Date of First Inquiry	Date Job Finished	Number of Machines Built	Ordered	Tested	Size of Machine	Machines Built Here	TRB Co. ordered for B. T. from Machine Builders in U. S.	Mach. ordered by B. T. tested in U. S. A.	TRB aided in engineering of machines as to design
3 Single Feed Bearing Assembling Machines	5- 8-39		Obtained quotations from outside builders and prices forwarded to B. T. about 9-1-39. No indication of machines being ordered by B. T.							Yes Spec. #1234
56" Niles Grinder	About 12- 1-37	About 1-15-39	1	1	1	56" chuck	Niles Tool Works	Ordered by B. T.	1	Yes
4¼" Gridley Bar Machines	About 7- 1-40	About 9- 1-40	Rebuilt 5	5	5	4¼"	Rebuilt at Gamb. Plant	Purchased by TRB Co. from different companies recon-ditioned here.	5	—
3¼" Gridley Automatics	About 7- 1-40	About 9- 1-40	Rebuilt 10	10		3¼"	Rebuilt at Gamb. Plant	These are TRB Co. Machines, purchased by B. T. Recondi-tioned here.		—
Cone Rib Grinders	About June 1939	About 12- 1-39	2	2	2		Designed by TRB and built by Ferry Mach. Company	Built by Ferry Mach. Co. from TRB design.	2	Spec. 1304
V-18 Roll End Grinder	About June 1939	About 12- 1-39	1	1	1		Designed by TRB and built by Ferry Mach. Company	Built by Ferry Mach. Co. from TRB design.	1	Spec. 1073
#33 Waterbury Farrel Roll Header—order #12782	About 9- 1-40	About 6- 1-41	1	1	1		Waterbury Farrel Fdy. & Mach. Co.	Ordered by TRB for B. T.	1	

[fol. 5180]

MACHINES BUILT, ORDERED, OR TESTED FOR BRITISH TIMKEN, LTD. BY THE TIMKEN ROLLER BEARING COMPANY (Continued)

Type of Machine	Date of First Inquiry	Date Job Finished	Number of Machines Built	Ordered	Tested	Size of Machine	Machines Built Here	TRB Co. ordered for B. T. from Machine Builders in U. S.	Mach. ordered by B. T. tested in U. S. A.	TRB aided in engineering of machines as to design
#44 Waterbury Farrel Roll Header—order #12782	About 9- 1-40	About 8- 1-41	1	1	1		Waterbury Farrel Fdy. & Mach. Co.	Ordered by TRB for B. T.	1	
#33 Waterbury Farrel Roll Header order #14817	About 9- 1-39	About 3- 1-40	1	1	1		Waterbury Farrel Fdy. & Mach. Co.	Ordered by TRB for B. T.	1	
#44 Waterbury Farrel Roll Header	See Waterbury Farrel letter 7-8-4.		1	1	1		Ordered by British Purchasing Commission Req. #5718, through War Dept. Lend-Lease Division, for British Timken, Ltd.		1	
Chucking Machines	About 9-15-39		Obtained quotations for British Timken on chucking machines from various manufacturers. No orders placed.							
#81 Heald Gagematic Internal Centerless Grinders	About 9- 1-39	About 1-30-40	3	3	3		Heald Machine Company	Ordered by TRB for B. T.	3	
#81 Heald Sizematic Internal Centerless Grinders	About 9- 1-39	About 1-30-40	2	2	2		Heald Machine Company	Ordered by TRB for B. T.	2	
Timken Rib Grinder Cone	12- 4-40		1	1	1		Designed by TRB and built by Ferry Mach. Co.	Built by Ferry Mach. Co. from TRB design.	1	Spec. 1304
#23 Bliss Press Used Rebuilt	12- 4-40			1			Ordered from Falk Mill Supply Co.	Ordered by TRB for B. T.		

[fol. 5181]

MACHINES BUILT, ORDERED, OR TESTED FOR BRITISH TIMKEN, LTD. BY THE TIMKEN ROLLER BEARING COMPANY (Continued)

Type of Machine	Date of First Inquiry	Date Job Finished	Number of Machines Built	Ordered	Tested	Size of Machine	Machines Built Here	TRB Co. ordered for B. T. from Machine Builders in U. S.	Mach. ordered by B. T. tested in U. S. A.	TRB aided in engineering of machines as to design
#3 Landis Universal Grinder—Used	12- 4-40			1			Ordered from Falk Mill Supply Co.	Ordered by TRB for B. T.		
Ohio #3 Universal & Tool Grinder—Used	12- 4-40			1			Ordered from Falk Mill Supply Co.	Ordered by TRB for B. T.		
Conveyor Type Schlaupitz Roll Gaging Machine	12- 4-40		1	1	1		Designed by TRB and built by Ferry Mach. Company	Built by Ferry Mach. Co. from TRB design.	1	Spec. 1330 & Spec. 1079
#77 Consolidated Press—Used	12- 4-40			1			Ordered by TRB from Joseph Hyman & Sons	Ordered by TRB for B. T.		
#24 Bliss Coining Press—Used	12- 4-40			1			Ordered by TRB from Duff & Spiro Mach. Tool Co.	Ordered by TRB for B. T.		
#2 Cincinnati Centerless Roll Grinders—Used	11-20-40			3			Ordered by British Timken from TRB Co. Shipped from Columbus Plant.			
#72 Heald Sizematic Grinder—Used	12-19-40	—		1			Ordered by British Timken from TRB Co. Shipped from Canton Plant.			
#2 Cincinnati Centerless Roll Grinders	About 9- 1-39	About 1-15-40	3	3	3		Cincinnati Milling Mach. & Grinders, Inc.	Ordered by TRB for B. T.	3	Yes

[fol. 5182]

MACHINES BUILT, ORDERED, OR TESTED FOR BRITISH TIMKEN, LTD. BY THE TIMKEN ROLLER BEARING COMPANY (Continued)

Type of Machine	Date of First Inquiry	Date Job Finished	Number of Machines Built	Ordered	Tested	Size of Machine	Machines Built Here	TRB Co. ordered for B. T. from Machine Builders in U. S.	Mach. ordered by B. T. tested in U. S. A.	TRB aided in engineering of machines as to design
#1 Cincinnati Centerless OD Cone Grinders	About 9- 1-39	About 4-15-40	2	2	2		Cincinnati Milling Mach. & Grinders, Inc.	Ordered by TRB Co. for B. T.	2	Yes
#1 Cincinnati Centerless Cone Chucking Grinders	1941	About 10- 1-42	3	3	3		Cincinnati Milling & Grinding Mach., Inc.	For B. T.— Cincinnati order 41 G-353643	2	
Landis Raised #2 Internal Race-A-Way Grinding Machines	About 9- 1-39	About 1-20-40					Landis Tool Company	Ordered by TRB for B. T.		
Landis Universal Grinders, and #2 Landis Internal and External Raceaway Grinders	About 3-15-40		Obtained quotations from Landis Tool Company and prices forwarded to B. T. No indication of orders placed.							
Power Press for 3911 Cage	About 3-10-40		Obtained quotations on Henry & Wright 75-ton Dieing Machine and #6 Bliss Press, and prices forwarded to B. T. No indication of order placed.							
5" Cup and Cone Chamfering Machine	2- 7-40		Obtained quotations and prices forwarded to B. T. No indication of order placed.							
56" Niles Grinder			1	1	1		Niles Tool Works: Ordered by British Timken from Niles Tool Works—TRB Co. forwarded samples to Niles Tool Works Co. for testing machine in April, 1946.			

[fol. 5183]

MACHINES BUILT, ORDERED, OR TESTED FOR BRITISH TIMKEN, LTD. BY THE TIMKEN ROLLER BEARING COMPANY (Continued)

Type of Machine	Date of First Inquiry	Date Job Finished	Number of Machines Built	Ordered	Tested	Size of Machine	Machines Built Here	TRB Co. ordered for B. T. from Machine Builders in U. S.	Mach. ordered by B. T. tested in U. S. A.	TRB aided in engineering of machines as to design
#437 National Roll Header			2	2	2		National Machinery Co.: Ordered by British Timken from National Machinery Co. TRB Co. forwarded tooling and wire samples to National Machinery Co. for testing Machines, in Dec. 1946.			
3 Head Centerless Honing Machine	About 5- 1-46	About 5-15-47	1	1	1		Designed by TRB Co. and built by Ferry Mach. Co.	Built by Ferry Mach. Co. from TRB Co. design. Ordered by TRB for B. T.	1	Yes Spec. #1602
#72A-3 combination Gagematic-Sizematic Centerless Grinders Heald			2	2	2		Heald Machine Company: Ordered by British Timken from Heald Mach. Co. TRB Co. forwarded samples to Heald Machine Co. for testing machines in May, 1947.		2	

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[fol. 5184]

DEFENDANT'S EXHIBIT 163

CC: Messrs. Klinedinst, Moore, Partridge, Kuhl, Bergstrom, Weckstein, Doughty, Tom Robinson, November 3, 1947

INDUSTRIAL ENGINEERING DEPARTMENT REPORT
WEEK OF OCTOBER 27th to OCTOBER 31st, 1947

Name of Company	Application	Work Done	Date Received	Date Completed	Engr.
TERRITORY #1 MR. JEHU WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.					
B. F. Perkins	Textile Calender	Check	10-13-47	10-31-47	WNT
Bromfield Mfg. Co.	Winch	Check	10-20-47	10-31-47	JRC
Babcock Printing Press	Web Press	Check	10-20-47	10-28-47	JRC
C. B. Cottrell & Sons	5 Color Press	Check	10-22-47	11-6	RDZ
Morgan Construction Co.	Loop Guard Roller	Check	10-23-47	10-28-47	AHB
Babcock Printing Press	Conveyor	Check	10-23-47	10-29-47	THS
Goss & DeLeeuw Mch. Co.	Valve Machine	Check	10-24-47		RLA
Waterbury Farrel	2 Hi Mills	Layout	10-24-47		CWR
Kidder Press Co.	Printing Press	Check	10-24-47		RDZ
Holyoke Machine Co.	Super Calender	Recom.	10-24-47	10-31-47	THS
Geo. T. McLauthlin Co.	Elev. Sheaves	Check	10-24-47	10-29-47	DOS
Sturtevant Mill Co.	Ring Roll Mill	Check	10-24-47	10-31-47	WNT
Babcock Printing Press	Creasing Press	Check	10-28-47	11-4	JRC
Waltham Floor Machine Co.	Polishing Machine	Check	10-28-47	11-7	CD
Peck Stow & Wilcox Co.	Shear	Check	10-28-47		CD
Allen D. Cardwell	Antenna	Check	10-28-47	10-31-47	WNT
Waterbury Farrel	2 Hi Mills	Check	10-28-47		CWR
Westinghouse Elec.	Garbage Grinder	Check	10-30-47		JRL
Raytheon Mfg.	Antenna	Check	10-30-47	11-7	DOS
Van Norman Co.	Grinder Spindle	Check	10-30-47		JRL
Duesberg-Bosson of America	Card Mach.	Layout	10-30-47		JRC
TERRITORY #2 MR. CROUCH WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.					
Geo. L. Squier Mfg. Co.	Cane Mill	Layout	8- 4-47	11-6	CWR
Bausch & Lomb Opt.	Grinder	Check	10- 6-47	10-31-47	DOS
General Electric Co.	Motor Unit	Check	10- 6-47	10-29-47	JRL
Air Preheater Corp.	Preheater	Check	10-17-47	10-31-47	CD
Wright Hibbard	Lift Trucks	Check	10-23-47	10-31-47	WNT
American Can Co.	Can Machine	Check	10-23-47	10-28-47	AHB
Champlain Co.	Paper Cutter	Check	10-23-47	10-28-47	AHB
Wright Hibbard	Lift Trucks	Check	10-28-47		WNT
TERRITORY #3 MR. YATES WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.					
DeLaval Steam Turbine	Worm Gear	Check	10-20-47	10-28-47	DOS
Gould & Eberhardt	Disc Cutting Mch.	Check	10-22-47	10-28-47	DOS
American Type Founders	Printing Press	Check	10-24-47	11-5	CD
Star Elec. Motor	Planetary Gear Mtg.	Check	10-27-47	11-5	THS
Cox & Sons	Threading Machine	Layout	10-27-47	10-31-47	JRC
U. S. Govt.-Naval Shipyard	Reduction Unit	Check	10-30-47	11-4	WNT
Amer. Machine & Fdry.	Antenna	Check	10-31-47		DOS
TERRITORY #4 MR. ROBB WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.					
Alum. Co. of America	Spindles	Check	3-29-45		FRM
Westinghouse Elec. Corp.	Gear Red. Unit	Check	10-10-47	10-29-47	WNT
TRB Co.	Reeler Drive	Layout	10-14-47	10-31-47	CWR
Parkersburg Rig & Reel	Counterbal. Units	Check	10-15-47	11-4	DOS
Pittsburgh Steel Fdry.	Bar Mill	Check	10-16-47		CWR
McKay Machine Co.	Forming Machines	Check	10-20-47	10-31-47	AHB
Iron & Steel Engineers	Crane Standards	Check	10-20-47		JEL
Mackintosh Hemphill	Coiler	Check	10-24-47	10-29-47	JRC

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DEFENDANT'S EXHIBIT 163

INDUSTRIAL ENGINEERING DEPARTMENT REPORT
WEEK OF OCTOBER 27th to OCTOBER 31st, 1947

Name of Company	Application	Work Done	Date Received	Date Completed	Engr.
United Engrg. & Fdry.	Vertical Mill	Check	10-27-47		CWR
Jones & Laughlin	Worm Drive	Check	10-27-47	10-29-47	WNT
Republic Steel	4 Hi Hot Mill	Check	10-28-47		CWR
Lombard Co.	Press	Check	10-29-47		DOS
Sutton Engrg.	5 KTC Joint Strtn'r.	Check	10-30-47		WNT
United Engrg. & Fdry.	Pinion Stand	Check	10-31-47		WNT
Parkersburg Rig & Reel	Rotor Brake	Check	10-31-47		DOS

TERRITORY #5 MR. WEIR WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.

Roderick Lean Co.	Disc Harrow	Check	11-13-44		SMW
Allied Engrg.	Kiln Cars	Check	10-13-47	10-28-47	RKW
Sidney Machine Tool	Spindle	Check	10-21-47	10-31-47	JRC
Oliver Corp.	F Tractor	Check	10-21-47	10-28-47	DOS
Westinghouse Elec. Mfg.	Washing Machine	Check	10-22-47	11-4	JRL
Bonnot Co.	Clay Machine	Check	10-23-47	10-28-47	JEL
Nat. Tube Co.	Ingot Cars	Check	10-23-47	10-29-47	RLA
Fawick Airflex	Car Drive	Check	10-24-47		CD
Nat. Tube Co.	Conveyor	Check	10-24-47	10-29-47	RLA
Nat. Acme Co.	4-6 Spdl. Machine	Check	10-27-47		THS
Gas Machinery Co.	Rotary Kiln	Check	10-28-47	11-7	RDZ
Visioneering Engrg.	Scraper	Check	10-28-47	10-31-47	JRC
Sobol Machine Co.	Reducer	Check	10-28-47	10-31-47	DOS
Towmotor Corp.	Truck Center Pin	Check	10-28-47		JRC
Morgan Engrg.	Crane C6515	Check	10-29-47	10-31-47	WNT
Glascote Prod., Inc.	Mixer	Check	10-29-47	11-4	JRL
General Elec. Co.	Shell Feeder	Check	10-30-47		CD
National Rubber Machinery	Rubber Mill	Check	10-31-47		CWR

TERRITORY #6 MR. MCKINNEY
WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.

Allen Engrg. Co.	Presses	Study	8- 3-45		FRM
McLouth Steel Corp.	Cold Mill	Check	10- 8-47	11-6	CWR
Detroit Steel Co.	2 Hi Mill	Check	10-16-47	10-31-47	CWR
Holland Hitch Co.	Hitch	Check	10-17-47	10-29-47	DOS
Gray Marine Motor Co.	Engine	Check	10-17-47		RDZ
Planet Corp.	Conveyor	Check	10-21-47	10-31-47	CD
Manning, Maxwell & Moore	5 Ton Trolley	Check	10-22-47	10-29-47	THS
Novo Engine Co.	Engine	Check	10-24-47	10-31-47	RDZ
Michigan Tool Co.	Worm Drive	Letter	10-28-47	10-31-47	THS
Haughton Elevator	Sheaves	Check	10-28-47		WNT

TERRITORY #7 MR. REISER WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.

Air Material Command	Airplane Wheel	Check	10- 8-47	10-28-47	JRL
Monarch Machine Tool Co.	7" Headstock	Check	10-20-47		JRC
R. K. LeBlond Machine Tool	15" Spindle	Recom.	10-20-47	10-31-47	JRC
Wm. Powell Co.	Valve	Check	10-23-47	10-31-47	WNT
Bedford Fdry. & Mch.	Crane	Check	10-28-47	10-31-47	AHB

TERRITORY #8 MR. CAMPBELL
WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.

Inland Steel	2 Hi 76" Hot Mill	Study	4-20-44		PLH
Walsh Press & Die	Punch Presses	Check	10-10-47	10-28-47	JRL
Globe Co.	Meat Dolly	Check	10-14-47	10-29-47	RDZ
Caterpillar Tractor	D-8 Transmission	Check	10-16-47		JRL
Armstrong Blum Mfg.	Saw	Check	10-17-47	10-31-47	RKW

[fol. 5186]

DEFENDANT'S EXHIBIT

INDUSTRIAL ENGINEERING DEPARTMENT REPORT
WEEK OF OCTOBER 27th to OCTOBER 31st, 1947

Name of Company	Application	Work Done	Date Received	Date Completed	Engr.
St. John & Co.	Shop Trucks	Check	10-22-47		JRC
Goss Printing Press	Press	Check	10-24-47	11-6	RDZ
Canedy-Otto Mfg.	Radial Drill	Check	10-24-47	11-4	THS
TERRITORY #9 MR. CURTIS WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.					
Van Brunt Mfg. Co.	Disc Furrow Opener	Check	3-17-47	10-31-47	FRM
Wisconsin Axle	Mine Car Drive	Recom.	10-20-47	10-28-47	JRL
Ray A. Miller	Trailer	Check	10-20-47	10-31-47	CD
J. I. Case Co.	Tractor	Check	10-21-47	10-28-47	RDZ
G. H. Tennant Co.	Scrubber	Check	10-21-47	10-28-47	RDZ
Evinrude Motors	Outboard Motor	Check	10-21-47	10-28-47	DOS
Giddings & Lewis	350T Machine	Check	10-21-47	10-28-47	THS
Lavers Engrg. Co.	#40 Tractor	Check	10-24-47		DOS
Ladish Co.	BH3186 Pump	Check	10-24-47	10-31-47	JRC
Minn. Moline Power Imp. Co.	Fan Drive	Check	10-24-47	10-28-47	WNT
Lavers Engrg. Co.	Tillmaster	Check	10-24-47	11-5	DOS
Massey-Harris Co.	Tractor #55	Check	10-28-47	11-7	DOS
Oliver Corporation	#77 Tractor	Check	10-28-47	10-31-47	AHB
Giddings & Lewis	Spindles	Check	10-29-47	10-31-47	THS
J. I. Case Co.	DC-X11 Tractor	Recom.	10-30-47	11-5	ASE
J. I. Case Co.	LA Tractor	Check	10-30-47	10-31-47	ASE
Eagle Mfg. Co.	Trailer	Check	10-31-47	11-5	AHB
TERRITORY #10 MR. FLEMING WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.					
Walton's Machine Works	Worm Gear	Check	10-13-47	10-27-47	DOS
Rimple Mfg. Co.	Disc Plow	Check	10-30-47	11-7	JRC
TERRITORY #11 MR. ANDERSON WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.					
Black, Sivalls & Bryson	Creosote Car	Check	10-13-47	10-29-47	JRL
Beech Aircraft	Propeller	Check	10-13-47	11-5	WNT
Krause Plow Corporation	Disc Plow	Check	10-13-47	10-29-47	JRC
Locomotive Finished Mater. Co.	Slush Pump	Check	10-16-47	10-31-47	RDZ
Gibson Mfg. Co.	3750 # Tractor	Recom.	10-21-47	10-31-47	JRL
Gibson Mfg. Co.	3000 # Tractor	Recom.	10-21-47	10-31-47	JRL
Country Gentleman	Misc. Data	Check	10-21-47	10-28-47	AHB
Amer. Pulverizer Co.	Ring Crusher	Check	10-24-47	10-29-47	THS
St. Louis County Vocational Schools	Drill	Check	10-28-47	11-7	RDZ
Vulcan Iron Works	Bearing Data	Recom.	10-28-47	10-31-47	JRC
Medart Co.	Billet Peeler	Check	10-29-47	11-4	JRC
TERRITORY #12 MR. BAUM WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.					
Eimco Corp.	Pan Filter	Check	10-20-47	11-7	DOS
TERRITORY #13 MR. REITHER WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.					
Pressed Steel Car	Asphalt Cars	Check	10-17-47		THS
Hockensmith Corp.	Mine Cars	Check	10-22-47	10-31-47	RLA
TERRITORY #14 MR. TRUMP WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.					
Avalos R. R.	Ore Cars	Check	10-16-47	11-7	RLA
R. G. LeTourneau	Tournadozer	Check	10-31-47	10-31-47	THS

[fol. 5187]

DEFENDANT'S EXHIBIT

INDUSTRIAL ENGINEERING DEPARTMENT REPORT
WEEK OF OCTOBER 27th to OCTOBER 31st, 1947

Name of Company	Application	Work Done	Date Received	Date Completed	Engr.
TERRITORY #15 MR. PROFFITT WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.					
U. S. Maritime Comm.	Propeller	Check	4- 8-47		AHB
U. S. Navy Dept.-Naval Research	Gun	Check	10-28-47	10-29-47	WNT
TERRITORY #17 MR. MORGAN WEEK OF OCTOBER 27th to OCTOBER 31st, 1947					
Geo. White & Sons Ltd.	Thresher	Check	10-17-47	10-31-47	CD
Dom. Engrg. Ltd.	Work Roll	Recom.	10-20-47	11-7	CWR
Provincial Engrg. Ltd.	Crane	Check	10-22-47	10-31-47	CD
Modern Tool Wks. Ltd.	Road Roller	Check	10-24-47	11-5	THS
R. A. Hastings	Spinning Lathe	Check	10-29-47	11-7	CD
Spruce Falls Power & Paper	Drier Idler	Check	10-29-47	11-7	WNT
Pollard Mfg. Ltd	Carbo Edger	Check	10-31-47		AHB
Otaco Ltd.	Wagon	Check	10-31-47		CD
TERRITORY #19 MR. AUSTIN WEEK OF OCTOBER 27th to OCTOBER 31st, 1947. NONE					
TERRITORY #22 MR. WHITE WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.					
Hardinge Co., Inc.	Trunnion Roller	Check	10-17-47	10-31-47	CD
Revere Copper & Brass	2 Hi Mill	Recom.	10-22-47	11-1	CWR
Ingersoll-Rand Co.	Pump	Check	10-23-47	10-31-47	THS
Revere Copper & Brass	2 Hi Mill	Check	10-24-47	11-7	CWR
Fairchild Aircraft	Plane Wheel Hubs	Check	10-24-47	10-29-47	FRM
Lavelle Aircraft	Conveyor Drive	Check	10-24-47	11-7	CD
Welder Steel Shapes	Shop Truck	Check	10-28-47	10-31-47	AHB
Wiley Mfg. Co.	Hoists	Check	10-28-47	10-31-47	AHB
New Holland Mfg. Co.	Rototiller	Check	10-28-47	10-31-47	AHB
Standard Stoker Co.	Reamer	Check	10-28-47	10-31-47	JRC
Morris Truck & Wheel	Truck	Check	10-29-47	11-5	DOS
Standard Steel Works Div.	Transfer Car	Check	10-31-47		CD
TERRITORY #24 MR. CARNEY WEEK OF OCTOBER 27th to OCTOBER 31st, 1947					
Reynold Alloys	Work Rolls	Recom.	10-20-47	11-6	CWR
Palmer & Baker	Fan	Check	10-23-47	10-31-47	CD
Southeastern Faries Inc.	Extractor	Check	10-28-47	11-7	DOS
Wheland Co.	Swivel	Check	10-28-47		JRL
Trinler, Inc.	Cane Cart	Check	10-28-47		THS
Veneer Machine Div.	Jib Crane	Check	10-30-47		THS
Sanford-Day Iron Works	Mine Car	Check	10-30-47	10-31-47	AHB
Tillage Test Station	Disc Plows	Check	10-31-47		JRL
TERRITORY # MR. TINLIN WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.					
Splash Dam Coal Corp.	Mine Car	Check	10-30-47		JRC
TERRITORY #TRB CO. WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.					
TRB Co.	Pillow Block	Layout	3-16-44		PLH
TRB Co.	Miniog. Eg. Jrnl.	Layout	2-12-46		AI
Prof. Ault-Purdue	Worm Data	Check	4-15-47		FRM
Diamond Iron Works	Jaw Crusher	Layout	9- 2-47	11-5	MM
The Sheffield Corp.	Burring Machine	Layout	9-11-47	11-5	MM
Francaise Timken	Mills	Recom.	9-17-47	10-27-47	CWR
E. Anderson	Fixtures	Check	10- 3-47		MM
J. D. Adams	Wheel	Layout	10- 6-47	10-31-47	MM
J. R. Comber	Bearing Data	Check	10-24-47	11-11	AHB

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DEFENDANT'S EXHIBIT

INDUSTRIAL ENGINEERING DEPARTMENT REPORT
WEEK OF OCTOBER 27th to OCTOBER 31st, 1947

Name of Company	Application	Work Done	Date Received	Date Completed	Engr.
TERRITORY #FOREIGN WEEK OF OCTOBER 27th to OCTOBER 31st, 1947.					
TRB of S. A.	Vibr. Screen	Check	10-14-47	10-31-47	RLA
TRB Co. of S. A.	Stone Crusher	Check	10-16-47	10-31-47	DOS
Mr. A. C. Fall	Cold Mill Brgs.	Check	10-21-47	11-6	CWR

Jobs on hand October 24th, 1947	108
Jobs received during week of October 27th to October 31st, 1947	62
	170
Jobs completed during week of October 27th to October 31st, 1947	84
Jobs on hand October 31st, 1947	86

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CC: Messrs. Klinedinst, Moore, Partridge, Kuhl, Bergstrom, Weckstein, Doughty, Tom Robinson

March 16, 1948

INDUSTRIAL ENGINEERING DEPARTMENT REPORT
WEEK OF MARCH 8th to MARCH 12th, 1948

Name of Company	Application	Work Done	Date Received	Date Completed	Engr.
TERRITORY #1 MR. JEHU WEEK OF MARCH 8th to MARCH 12th, 1948					
Joy Mfg. Co	Coal Drill	Layout	1-29-48		RDZ
General Electric Co.	Hand Car	Check	2- 6-48	3-10-48	THS
Jones & Lamson Mach. Co.	Turret Lathes	Check	2- 6-48		THS
Hathaway Machine Co.	Winch	Check	2- 6-48	3-10-48	WNT
Cone Automatic Mach. Co.	1⅝ Auto.	Layout	2-11-48		JRC
Babcock Printing Press Corp.	Folder	Check	2-11-48	3-10-48	JRC
Farrel-Birmingham	Roll Grinder	Check	2-11-48	3-10-48	RDZ
Porter-McLeodMch.ToolCo.	Buffers	Check	2-11-48	3-12-48	RLA
Electric Boat Co.	Rudder Bearing	Recom.	2-13-48	3-11-48	JRC
Morgan Construction Co.	Wire Draw. Unit	Check	2-13-48		WNT
New England Butt Co.	Tapping Machine	Check	2-13-48	3-12-48	JRL
Lewis-Shepard Co.	Shop Lift Truck	Check	2-23-48	3-12-48	RDZ
Whitnon Mfg. Co.	Grinder Spindle	Check	2-23-48	3-12-48	DOS
Brown & Sharpe	Milling Machine	Check	2-24-48		FRM
Pratt & Whitney	Roller	Check	3- 2-48	3-10-48	CWR
Snow-Nabstedt Gear	Marine Drive	Check	3- 2-48	3-11-48	WNT
Van Norman Co.	Milling Machine	Check	3- 2-48		VU
Winsor & Jerauld	Chain Idler	Check	3- 2-48	3-12-48	RC
Babcock Printing Press	Packer Box	Check	3- 2-48		JRC
Snow-Nabstedt Gear	Power Takeoff	Check	3- 2-48		WNT
W. H. Nichols Co.	Hand Miller	Check	3- 2-48		THS
J. K. Pirie Estates	Crane Sheaves	Check	3- 4-48		RC
Waterbury Farrel Foundry & Mch.	Mill Drive	Check	3- 4-48		WNT
Olson Ind. Prod., Inc.	Red. Unit	Check	3- 5-48		RLA
Farrel-Birmingham	Grinder	Check	3- 5-48		RDZ
New England Road Mchy.	Crushers	Recom.	3- 5-48		DOS
Leominster Tool	Granulator	Recom.	3- 5-48		JRL
New Britain Gridley	Milling Machine	Check	3- 5-48		RLA
Rodney Hunt Machine Co.	Water Turbine	Check	3- 9-48		VU
Heald Machine Co.	Grinder	Check	3- 9-48		WNT
B. F. Perkins & Son	Textile Calender	Check	3- 9-49		WNT
Clark Aiken	Spiral Bevel Drive	Check	3- 9-48		WNT
Heald Machine	Grinder	Check	3- 9-48		WNT
New England Tank & Tower	Agitator Drive	Check	3- 9-48		RDZ
Raytheon Mfg. Co.	Radar Tower	Check	3- 9-48		JRC
Lewis-Shepard Co.	Truck	Check	3- 9-48	3-12-48	RDZ
American Tool & Machine	Driving Head	Layout	3-12-48		DOS
Mathewson Machine Works	Slotter	Check	3-12-48		AHB
TERRITORY #2 MR. CROUCH WEEK OF MARCH 8th to MARCH 12th, 1948					
Crouse Hinds Co.	Planetary Unit	Check	2-18-48	3-10-48	JRC
Lapp Insulator Co.	Kiln Cars	Check	2-18-48	3-10-48	WNT
Lipe-Rollway Corp	Lathe	Check	2-18-48	3-19-48	RDZ
Kane & Roach, Inc.	Forming Mill	Check	2-20-48	3-10-48	RLA
Edward Falls Amuse. Co.	Locomotive	Check	3- 4-48		JRC
Erie Fdry. Co.	Press	Check	3- 5-48		JRC
Skinner Engine Co.	Engine	Check	3- 9-48	3-18-48	RDZ
Carrier Corp.	Compressors	Check	3- 9-48		RLA
Skinner Engine Co.	Steam Engine	Check	3-11-48	3-18-48	WNT
Cons. Machine Tool	Bevel Drive	Check	3-12-48	3-17-48	WNT

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Gleason Works	Planer	Check	3-12-48	WNT

DEFENDANT'S EXHIBIT—163-A

INDUSTRIAL ENGINEERING DEPARTMENT REPORT
WEEK OF MARCH 8th to MARCH 12th, 1948

Name of Company	Application	Work Done	Date Received	Date Completed	Engr.
TERRITORY #3 MR. YATES WEEK OF MARCH 8th to MARCH 12th, 1948					
Otis Elevator Co.	Elevator	Check	2-20-48		RDZ
Amer. Type Founders	Press	Check	2-23-48	3-10-48	WNT
Robert Reiner, Inc.	Beam Wrapper	Layout	2-23-48	3-10-48	JRL
Derrick & Hoist Co.	Crane	Check	2-23-48		VU
Gorrell & Gorrell	Grinder	Check	2-26-48		DOS
Kennedy Van Saun	Hammer Mill	Check	2-27-48		JRL
Yale & Towne	Propane Pump	Check	3- 1-48		WNT
Thomson Machine Co.	Molder	Check	3- 3-48	3-12-48	RLA
Loewy Constr. Co.	Alum. Mill	Check	3- 4-48		CWR
S & S Corr. Paper Mach.	Preheater	Check	3- 5-48	3-10-48	AHB
Sperry Gyroscope Co.	Bearing Data	Letter	3- 5-48	3-10-48	MM
Park Instrument Co.	Milling Machine	Check	3-11-48		RC
S & S Corr. Paper Co.	Folder	Check	3-11-48		VU
Mach. & Tool Design Co.	Printing Press	Check	3-11-48	3-12-48	RC
Ticket Off. Equipment	Ticket Machine	Check	3-11-48		DOS
R. Hoe & Co.	Printing Press	Check	3-12-48		DOS
Wm. H. Nichells Co.	Molding Machine	Check	3-12-48		JRL
TERRITORY #4 MR. ROBB WEEK OF MARCH 8th to MARCH 12th, 1948					
Carnegie Ill. Steel	Crane	Check	2-11-48	3-11-48	JRC
Assn. of Iron & Steel Engrs.	Cranes	Check	2-13-48		PLH
Joy Mfg. Co.	Mining Machine	Check	2-18-48	3-11-48	JRC
Kerotest Mfg. Co.	Field Valve	Check	2-18-48		WNT
Bethlehem Steel Co.	Ladle Car	Check	2-20-48	3-11-48	JRL
Carnegie Ill. Steel	100" Mill	Check	2-20-48	3-11-48	CWR
Lewis Fdry. & Machine	Edger	Check	2-20-48		CWR
Steel Co. of Whales	Pinch Roll Drive	Check	2-20-48		JRC
Pittsburgh Engrg. & Mach.	Rod Mills	Check	2-23-48	3-12-48	CWR
Carnegie Ill. Steel	Mine Cars	Check	2-24-48		JRC
Joy Mfg. Co.	Mining Machine	Check	2-24-48	3-11-48	JRC
Superior Railway Prod.	Jack	Check	2-24-48		VU
Aetna Standard	Trimmer	Check	2-26-48	3-10-48	RLA
Lewis Fdry. & Machine	4 Hi Mill	Recom.	2-26-48	3-10-48	CWR
Chicago Pneu. Tool	Tram Drill	Check	2-27-48		VU
Heyl & Patterson	Sheaves	Check	3- 1-48	3-12-48	RC
Everett P. Frey	Ball Cleaner	Check	3- 3-48		DOS
Lewis Fdry. & Machine	Foil Mill	Check	3- 4-48	3-10-48	CWR
Aetna Standard	Sizing Mill	Check	3- 4-48	3-12-48	WNT
Voss Machinery Co.	Levellers	Check	3- 4-48	3-10-48	RLA
L. W. Nash Co.	4 Hi Mill	Check	3- 4-48		CWR
Arms Franklin Co.	Slitting Line	Check	3- 4-48		CWR
Cont. Fdry. & Machine	Mill Drive	Check	3- 4-48		WNT
Pittsburgh Fdry. & Mach.	Dry Pan	Check	3- 4-48		WNT
Lewis Fdry & Machine	4 Hi Mills	Check	3- 5-48	3-12-48	CWR
Weirton Steel Co.	4 Hi Hot Mill	Check	3- 5-48		CWR
Union Steel Castings	Charging Cars	Check	3- 5-48	3-12-48	RLA
National Tube Co.	Charging Cars	Check	3- 5-48	3-12-48	RLA
The Guide Co.	Leveller	Check	3- 5-48		WNT
McKay Machine Co.	Arc Welder	Check	3- 5-48		WNT
Lombard Corp.	Press	Check	3- 5-48		JRC
Int. Derrick & Equip.	Spudder	Check	3- 5-48		DOS
Homestead Valve Mfg.	Valves	Check	3- 5-48		RC
Conrad R. Hilpert	Testing Machine	Check	3- 9-48		RDZ
United Engrg. & Fdry.	Work Rolls	Check	3- 9-48	3-11-48	CWR

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INDUSTRIAL ENGINEERING DEPARTMENT REPORT
WEEK OF MARCH 8th to MARCH 12th, 1948

Name of Company	Application	Work Done	Date Received	Date Completed	Engr.
Lewis Fdry. & Machine	Roll Lathe	Check	3- 9-48	3-11-48	PLH
Taylor Wilson Mfg.	4 Hi Mills	Check	3- 9-48	3-11-48	CWR
Penn. Engrg. Corp.	Cradle Car	Check	3- 9-48		RLA
Carnegie Ill. Steel	4 Hi Mill	Check	3- 9-48		CWR
Westinghouse Elec.	Drives	Check	3- 9-48	3-18	WNT
United Engrg. & Fdry.	Comb. Drive	Recom.	3-11-48	3-19	WNT
United Engrg. & Fdry.	Mills	Check	3-11-48	3-18	CWR
Westinghouse Elec.	Gear Drive	Check	3-12-48	3-18	WNT
Peter F. Loftus	Conveyor	Check	3-12-48	3-19	RC
Pittsburgh Steel Fdry.	Charging Car	Check	3-12-48		RLA
TERRITORY #5 MR. WEIR WEEK OF MARCH 8th to MARCH 12th, 1948					
Roderick Lean Co.	Disc Harrow	Check	11-13-44		SMW
Hercules Motors	4 Cyl. Engine	Layout	2- 2-48		RLA
Thew Shovel Co.	TL-20 Shovel	Check	2- 5-48	3-10-48	THS
Pipe Machinery Co.	Facing Machine	Check	2- 6-48	3-11-48	DOS
Adamson United	24 x 68 Calender	Check	2- 6-48	3-19	CWR
Towmotor Corp.	Ind. Truck	Check	2-11-48		RDZ
Alliance Machine Co.	Crane 5202	Check	2-13-48		VU
Republic Steel Corp.	Roller Guide	Check	2-13-48		CWR
Oliver Corp.	"E" Tractor	Check	2-16-48	3-10-48	RDZ
Patterson Fdry. & Machine	Pebble Mill	Check	2-18-48	3-10-48	JRL
American Aggregates Co.	Rotary Hoe	Check	2-20-48	3-11-48	THS
American Steel & Wire	8" 2 Hi Mill	Recom.	2-20-48	3-19	CWR
French Oil Mill Machinery	Press	Check	2-20-48		RDZ
Towmotor Corp.	Trucks	Check	2-24-48		VU
Alliance Machine Co.	Crane 5202	Check	2-24-48	3-19	VU
Hydro-Power Inc.	Feed Screw	Check	2-25-48		RLA
Arthur G. McKee & Co.	Cooler	Check	2-26-48	3-12-48	RC
Stewart Bolling & Co.	Rubber Mill	Recom.	2-26-48	3-10-48	CWR
Bonnot Co.	Greyhound Machine	Check	2-27-48		WNT
National Acme Co.	Spindle	Check	3- 2-48		JRC
Speed Control Corp.	Power Control	Check	3- 3-48		DOS
Lima Hamilton	Shovel	Check	3- 4-48		JRC
McNeil Machine & Engrg.	Tire Mold Control	Check	3- 5-48		DOS
Cleveland Trencher	Track Roller	Check	3- 5-48		RDZ
Alliance Machine Co.	Crane 5213-14	Check	3- 5-48		VU
Flexible Conveyor	Trolley Wheels	Check	3- 5-48	3-12-48	WNT
Alliance Machine Co.	Crane 5230	Check	3- 9-48		VU
Goodyear Aircraft	Antenna	Check	3- 9-48		RLA
Alliance Machine Co.	Crane 5204	Check	3- 9-48		VU
Yoder Company	Welder	Check	3-12-48		RLA
TERRITORY #6 MR. McKINNEY WEEK OF MARCH 8th to MARCH 12th, 1948					
Allen Engrg. Co.	Presses	Study	7- 3-45		JRC
Palmer Bee Co.	Reducers	Check	2-11-48	3-10-48	DOS
Baker-Perkins Inc.	Blueprint	Check	2-11-48	3- 9-48	AHB
Detroit Ball Bearing Co. of Mich.	Multi-Spdl. Mch.	Check	2-18-48	3-11-48	THS
Great Lakes Steel Corp.	Work Roll	Check	2-24-48		CWR
Western Mfg. Co.	Truck Transm.	Check	3- 3-48	3-17	RDZ
Haller Mch. & Mfg.	Strip Feeder	Check	3- 3-48		VU
Mitts & Merrill	Lumber Hog	Check	3- 5-48	3-19	WNT
Hardie Mfg. Co.	Pump	Check	3- 5-48	3-12-48	DOS
Oliver Corp.	Bearing Data	Letter	3- 9-48	3-10-48	AHB
Battle Creek Bread Wrapping Mach. Co.	Slicing Mch.	Check	3- 9-48		VU
Monroe Auto Equip.	Jack	Check	3- 9-48		RLA
Defiance Machine Works	Boring Mill	Check	3- 9-48		THS
Machine Tool Co.	Rubber Mill Drive	Check	3- 9-48		VU
Haughton Elevator	Sheaves	Check	3- 9-48		RC

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DEFENDANT'S EXHIBIT—163-A

INDUSTRIAL ENGINEERING DEPARTMENT REPORT
WEEK OF MARCH 8th to MARCH 12th, 1948

Name of Company	Application	Work Done	Date Received	Date Completed	Engr.
Rathbunn-Jones Engrg.	Jack Screws	Check	3- 9-48		DOS
Morenci Rubber	Rubber Mill	Recom.	3- 9-48	3-16	CWR
Kent Owens Machine	Hand Mills	Check	3- 9-48		WNT
National Supply Co.	Bearing Data	Check	3-11-48	3-16	AHB
Michigan Tool	Cone Worm	Check	3-12-48	3-16	DOS
TERRITORY #7 MR. REISER WEEK OF MARCH 8th to MARCH 12th, 1948					
Mosler Safe Co.	Caster	Check	2- 6-48	3-11-48	THS
Lima Hamilton	Lathes	Check	2-10-48	3- 9-48	JRL
Ohio Ball Bearing	Wire Machine	Check	2-11-48	3-10-48	DOS
War Dept. (Army Air Forces)	Plane Wheel	Check	2-23-48	3-19	DOS
American Can Co.	Slitter	Check	2-23-48		JRC
Buffalo Springfield	Transmission	Check	2-23-48		JRC
Int. Clay Machinery Co.	Charging Cars	Check	2-26-48	3-11-48	RLA
Fosdick Machine Tool Co	Drill	Check	2-26-48		DOS
R. D. Englesfield Corp.	Tractor	Check	2-27-48		JRL
Air Material Command	Airplane Wheel	Check	3- 1-48	3-19	DOS
Harris-Seybold	Flywheel	Check	3-12-48	3-17	JRL
R. D. Eaglesfield	Sickle Bar	Check	3-12-48		RC
TERRITORY #8 MR. CAMPBELL WEEK OF MARCH 8th to MARCH 12th, 1948					
W. E. & John Barnes	Cut-Off Machines	Check	2-13-48		JRC
Dodge Mfg. Corp.	Flaking Mill	Check	2-13-48		DOS
Athey Prod. Corp.	Walking Beam	Check	2-13-48	3-10-48	JRC
Alpha Engrg. & Mch. Wks.	Wheel Truing Mch.	Check	2-18-48		JRC
Int. Harvester Co.	Beet Harvester	Check	2-23-48	3-12-48	RDZ
Allis-Chalmers	Ad Grader	Check	2-26-48		DOS
Allis-Chalmers	HD3 Trans.	Layout	2-26-48		RDZ
Carnegie Ill. Steel	Work Rolls	Check	2-29-48	3-19	CWR
Oliver Corp.	Hay Baler	Check	2-27-48	3-17	AHB
Int. Harvester	UD-14A Power Unit	Check	3- 1-48		RLA
Foote Bros. Gear & Mch.	Agitator Drive	Check	3- 1-48	3-15	WNT
Freyn Engrg. Co.	Disintegrator	Check	3- 2-48	3-10-48	RC
The Globe Co.	Trucks	Check	3- 4-48	3-16	DOS
Frank G. Hough Co.	Center Pivot	Check	3- 5-48		RDZ
Burns Machine Co.	Roll Crusher	Letter	3- 5-48	3-12-48	DOS
Lake City Machine Shop	17" Coulter	Letter	3- 5-48	3- 9-48	AHB
Municipal Supply	Gutter Snipe	Letter	3- 5-48		AHB
Bendix Prod. Div.	Track Gear	Check	3- 5-48		JEL
Athey Prod. Corp.	Walking Beam	Check	3- 9-48		JRC
Int. Harvester Co.	Furrow Wheel	Check	3- 9-48	3-19	RDZ
Barnes Drill Co.	Honing Machine	Check	3- 9-48		RC
General Electric Co.	Crank Shaft	Check	3- 9-48		RDZ
Caterpillar Tractor	D-8 Transmission	Check	3-12-48		RDZ
Franklin N. Smith	Conveyor	Check	3-12-48	3-18	WNT
Mathieson & Hegeler	3-Hi Mill	Check	3-12-48		CWR
TERRITORY #9 MR. CURTIS WEEK OF MARCH 8th to MARCH 12th, 1948					
Allis-Chalmers	Mower Drives	Layout	11- 4-47		AHB
Oliver Corp.	Tractors	Check	2- 6-48	3- 9-48	THS
Wisconsin Axle Div.	Shuttle Car	Check	2-11-48		DOS
Wisconsin Brg. Co.	Boring Bar	Check	2-11-48	3-10-48	DOS
North Star Granite	Concrete Saw	Check	2-13-48	3-17	JRC
Allis Chalmers	Cotton Picker	Check	2-13-48		DOS
Lavors Engrg. Co.	Power Take-off	Check	2-17-48	3-16	RDZ
Allis Chalmers	"G" Tractor	Check	2-17-48	3-12-48	RDZ

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DEFENDANT'S EXHIBIT—163-A

INDUSTRIAL ENGINEERING DEPARTMENT REPORT
WEEK OF MARCH 8th to MARCH 12th, 1948

Name of Company	Application	Work Done	Date Received	Date Completed	Engr.
Allis Chalmers	Rt. Angle Drive	Check	2-17-48	3-17	RDZ
Allis Chalmers	Spur Gear Drive	Check	2-17-48	3-17	RDZ
Allis Chalmers	B-15 Angle Drive	Check	2-17-48	3-17	RDZ
Oliver Corp.	66 Diff. Drive	Check	2-17-48	3-10-48	THS
G. H. Tennant Co.	Flour Machine	Check	2-18-48	3-15	JRC
Diamond Iron Works	Vib. Screen	Check	2-18-48	3-12-48	RLA
American Hoist & Derrick	Crane	Check	2-18-48	3-10-48	VU
Allis Chalmers	Elec. Motor	Check	2-20-48	3-19	THS
John Deere Ottumwa Works	Hay Blower	Check	2-26-48		RC
Oliver Corp.	#77 Tractor	Check	2-26-48	3-12-48	RC
Galloway Co. Inc.	Spreader	Check	2-26-48		RC
Construction Machinery Co.	56S Mixer	Check	2-27-48	3-12-48	THS
Bell Machine Co.	Match Cutter	Check	2-27-48	3-16	RC
Allis Chalmers	G Tractor	Check	2-27-48	3-18	RDZ
Giddings & Lewis	Headstocks	Check	3- 2-48	3-10-48	JRL
Allis Chalmers	Wheeled Plow	Check	3- 4-48	3-17	VU
C. B. Cottrell & Sons	Color Press	Check	3- 4-48	3-10-48	AHB
Wisconsin Axle	Tractor	Check	3- 4-48		VU
C. H. & E. Mfg. Co.	Road Roller	Check	3- 4-48	3-17	RC
J. I. Case Co.	DC-X11 Tractor	Check	3- 4-48		RDZ
Madison Machine & Eng.	Worm Wheel	Check	3- 5-48	3-10-48	AHB
Bowe Mfg. Inc.	Farm Wagon	Check	3- 5-48	3-11-48	RC
French & Hecht	Farm Wagon Wheel	Check	3- 9-48		RC
McFarlane Mfg. Co.	Disc Jointer	Check	3-10-48		RLA
Heil Co.	Drum Roller	Check	3-10-48		DOS
Koehring Co.	Shovel	Check	3-11-48		VU
John Deere Harv. Works	Combine	Check	3-11-48		RLA
Allis Chalmers	Vibr. Screen	Check	3-12-48	3-18	DOS
Noll Bros.	Fiberizer	Check	3-12-48	3-19	WNT
TERRITORY #10 MR. FLEMING WEEK OF MARCH 8th to MARCH 12th, 1948.					
Mobilift Corp.	Engine	Check	2- 6-48	3-19	THS
Lincoln Tractor Co.	Tractor	Check	2-13-48	3-16	RDZ
Western Gear Works	Concrete Mixer	Check	2-20-48	3-15	THS
Wagner Morehouse	Crown Block	Check	2-27-48		RC
Kay Brunner Steel Prod.	Axle	Check	3-11-48		RC
Strathmore Mch. Works	Disc Harrow	Check	3-11-48		VU
Be Ge Mfg. Co.	Scraper	Check	3-12-48		RC
Woolridge Mfg. Co.	Scraper	Check	3-12-48	3-19	RC
TERRITORY #11 MR. ANDERSON WEEK OF MARCH 8th to MARCH 12th, 1948.					
Beech Aircraft	Plane	Layout	11- 5-47		WNT
LaPlant Choate	4 Wheel Tractor	Recom.	12-30-47	3-15	RDZ
Medart Co.	Misc.	Check	2- 2-48	3-10-48	JRL
Medart Co.	Pump Saddle	Recom.	2-27-48	3-16	JRC
Wincharger Corp.	Generators	Check	3- 1-48	3-12-48	RLA
Denver Machine Shop	Spindle	Check	3- 1-48	3-10-48	WNT
Reed Engrg. Co.	Bearing Data	Letter	3- 4-48	3-10-48	MM
W. J. Small Co.	Trailer	Check	3- 5-48	3- 9-48	AHB
Trailscope Co.	Trailer	Check	3- 5-48	3-10-48	RC
Shaw Mfg. Co.	4 Wheel Trailer	Check	3- 9-48		AHB
Cushman Motor Works	Scooter	Check	3-11-48		TDZ
Locomotive Finished Mater.	Pump	Check	3-12-48	3-18	DOS
TERRITORY #12 MR. BAUM WEEK OF MARCH 8th to MARCH 12th, 1948.					
Mobilift Corp.	Crankshaft	Layout	2- 3-48	3-19	THS
Permanente Metals	Rewind Block	Check	3- 2-48	3-12-48	RLA

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INDUSTRIAL ENGINEERING DEPARTMENT REPORT
WEEK OF MARCH 8th to MARCH 12th, 1948

Name of Company	Application	Work Done	Date Received	Date Completed	Engr.
Hyster Co.	Towing Winch	Check	3- 2-48	3-19	DOS
Coeur D'Alene Hardware & Fdry.	Bearing Data	Letter	3- 4-48	3-10-48	MM
Pacific Car & Fdry.	Dump Cars	Check	3- 5-48	3-10-48	AHB
Renton Machine & Welding	Tractor	Check	3- 9-48	3-12-48	AHB
TERRITORY #13 MR. REITHER WEEK OF MARCH 8th to MARCH 12th, 1948.					
American Rolling Mill	4 Hi Cold Mill	Check	2-16-48		CWR
TERRITORY #14 MR. TRUMP WEEK OF MARCH 8th to MARCH 12th, 1948.					
Guiberson Corp.	Sheave Block	Check	2-16-48	3-10-48	JRL
Hugh B. Williams Co.	Post Hole Digger	Check	2-16-48	3-11-48	JRC
Brewster Co.	Traveling Block	Check	2-17-48	3-19	JRC
Brown Shipbuilding Co.	Power Pump	Check	2-17-48	3-19	WNT
W. C. Nabors Co.	Spreader	Check	2-23-48	3-11-48	JRL
Lufkin Fdry. & Mch.	Pitman	Check	2-23-48	3-12-48	DOS
Brewster Co.	Drawworks	Check	2-23-48	3-19	DOS
Hughes Tool Co.	Shop Trucks	Check	3- 4-48		RLA
Atlas Trailers & Water Mufflers	Trucks	Check	3- 5-48	3-10-48	AHB
Texas Iron Works	Drive Units	Check	3- 5-48	3-16	DOS
Rouse Mfg. Co.	Rotary Table	Check	3- 5-48	3-10-48	AHB
Koening Iron Works	Hoist Winch	Check	3- 9-48	3-16	AHB
Int. Derrick & Equip.	Drawworks	Check	3- 9-48		VU
Adams Engrg. Co.	Worm Drive	Check	3- 9-48	3-16	AHB
Emsco Derrick & Equip.	Drawworks	Check	3- 9-48		RDZ
Bethlehem Supply	Drawworks	Check	3- 9-48		RDZ
TERRITORY #15 MR. PROFFITT WEEK OF MARCH 8th to MARCH 12th, 1948.					
U. S. Maritime Comm.	Propeller	Check	4- 8-47		AHB
Gary Steel Prod.	Engine	Check	3- 9-48		RLA
TERRITORY #17 MR. MORGAN WEEK OF MARCH 8th to MARCH 12th, 1948.					
Canadian Car & Fdry.	Car Wheel	Check	2-11-48	3-19	RDZ
MacCullum Mfg. Co.	Floor Polisher	Check	2-24-48	3-10-48	AHB
Modern Tool Works Ltd.	Lathe	Letter	3- 1-48	3-15	THS
Provincial Engrg. Ltd.	Crane	Check	3- 2-48		VU
Cockshutt Plow Co.	40 Tractor	Check	3- 4-48	3-17	MM
Aluminum Co. of Can. Ltd.	Work Roll	Layout	3- 4-48		CWR
Modern Tool Works Ltd.	Milling Machine	Check	3- 5-48		RDZ
J. A. Fellows Inc.	Gas Engine	Check	3- 5-48	3-11-48	RC
Supreme Machinery Co.	Trailers	Check	3- 5-48	3-10-48	RC
Forano Ltd.	Threshers	Check	3- 5-48	3- 9-48	AHB
Steel Co. of Can. Ltd.	Bar Mills	Check	3- 5-48	3-11-48	CWR
Int. Harvester Co. of Can.	Disc Harrow	Check	3- 5-48	3-11-48	RC
Brantford Coach & Body	Trailer	Check	3- 5-48	3- 9-48	AHB
Massey-Harris	Plow	Check	3- 9-48		VU
Dom. Engrg. Wks.	Reel	Check	3- 9-48	3-12-48	AHB
Steel Co. of Can.	Reel	Check	3-11-48		CWR
Lynn, MacLeod, Ltd.	Coulter	Check	3-12-48		RC
TERRITORY #19 MR. AUSTIN WEEK OF MARCH 8th to MARCH 12th, 1948.					
Clark Equip. Co.	LT1547 Tractor Pin.	Check	2-27-48	3-10-48	DOS
TERRITORY #22 MR. WHITE WEEK OF MARCH 8th to MARCH 12th, 1948.					
Yale & Towne	Trucks	Layouts	1-16-48		MM

[fol. 5195]

DEFENDANT'S EXHIBIT—163-A

INDUSTRIAL ENGINEERING DEPARTMENT REPORT
WEEK OF MARCH 8th to MARCH 12th, 1948

Name of Company	Application	Work Done	Date Received	Date Completed	Engr.
Read Machinery	Bread Divider	Check	2-16-48	3-19	AHB
C. H. Wheeler Mfg.	Crane	Check	2-23-48	3-19	RC
M. L. Bayard & Co.	Press (Ext.)	Check	2-27-48		VU
Hardinge Co., Inc.	Kiln Roller	Check	2-27-48	3-12-48	RC
Yale & Towne	Elec. Trucks	Check	3- 1-48		RLA
American Engrg. Co.	Trolley	Check	3- 9-48	3-16	RC
Lukens Steel Co.	Plate Mill	Check	3-11-48	3-18	CWR
Wesel Mfg. Co.	Beveler	Check	3-11-48	3-16	AHB
Bethlehem Steel Corp.	Pinion Stand	Check	3-12-48	3-17	WNT
Bethlehem Steel Corp.	Table Drive	Check	3-12-48		CWR
TERRITORY #24 MR. CARNEY WEEK OF MARCH 8th to MARCH 12th, 1948					
Park Mfg. Co.	Elevators	Recom.	2-26-48	3-12-48	JRL
J. C. Steele & Sons	Roll Crusher	Check	2-27-48		WNT
B. L. Montague	Saw	Check	3- 4-48	3-10-48	AHB
Miller Equipment Co.	Kiln Car	Check	3- 4-48	3-17	JRC
Allis Chalmers	G Tractor	Check	3-11-48		DOS
Wright's Aut. Mchy. Co.	Radar Ant.	Check	3-11-48	3-16	AHB
Sherman & Reilly	Bearing Data	Check	3-12-48	3-17	JRL
U.S. Government TVA	Gluing Press	Record	3-12-48		AHB
Monarch Elevator & Mach.	Elevator	Check	3-12-48		RC
TERRITORY #MR. TINLIN WEEK OF MARCH 8th to MARCH 12th, 1948					
Elk Creek Coke Co.	Mine Cars	Check	3- 4-48	3-10-48	AHB
American Car & Fdry.	Mine Car	Check	3-10-48		AHB
Lamons Wagon Co.	Trailer	Check	3-11-48	3-16	AHB
TERRITORY #TRB CO. WEEK OF MARCH 8th to MARCH 12th, 1948					
TRB Co.	Pillow Block	Layout	3-16-44		PLH
TRB Co.	Miniog. Eg. Jrnl.	Layout	2-12-47		AI
Prof. Ault-Purdue	Worm Data	Check	4-15-47		FRM
G. S. Blakeslee	Food Mixer	Layouts	1-23-48		MM
E. E. Brosius, Inc.	Manipulator	Layouts	1-23-48		MM
TRB Co.	Transm.	Layouts	1-29-48		DOS
Blanchard Machine Co.	Grinder	Layout	2- 5-48	3-10-48	MM
TRB Co.	Flywheel Tab.	Check	2-11-48	3-16	MM
Gibbs & Cox Co.	Bearing Data	Check	2-16-48	3-16	MM
Baker Raulang Co.	Truck	Layout	2-23-48		MM
TRB Co.	Hot Saw	Recom.	2-27-48	3-10-48	CWR
N. Ransohoff, Inc.	Trunnion Roller	Layout	3- 1-48		MM
Van Norman Co.	Milling Machine	Layout	3- 1-48		MM
R. K. LeBlond Mch. Tool	Lathe	Layout	3- 9-48		MM
Unit Crane & Shovel	Crane	Layout	3-12-48		MM
TERRITORY #FOREIGN WEEK OF MARCH 8th to MARCH 12th, 1948					
British Timken	SN Tractor	Check	2-23-48	3-10-48	JRL
British Timken	Mills	Check	2-23-48	3-18	CWR
French Timken	Mill	Letter	3- 2-48	3-10-48	CWR
Yih Tai Sing Kee & Mfg.	Steel Mill	Check	3- 3-48	3-11-48	CWR

Jobs on hand March 5th, 1948	244
Jobs received during week of March 8th to March 12th, 1948	96
	340
Jobs completed during week of March 8th to March 12th, 1948	108
Jobs on hand March 12th, 1948	232

[fol. 5196]

DEFENDANT'S EXHIBIT — No. 164

ENGINEERING WORK DONE IN OUR INDUSTRIAL ENGINEERING DEPARTMENT FOR BRITISH TIMKEN LTD.

Date Received	Work Done	Application
1937		
1- 7-37	Check	Rotary
1-13-37	Check	Cranes
1-15-37	Check	Cross Rolling St.
1-27-37	Check	Furnace Charger
2-26-37	Check	Seals
3-10-37	Check	Spindles
3-22-37	Check	Lathes
3-24-37	Check	Press
3-30-37	Check	Press
4- 2-37	Check	Wheel
4- 7-37	Check	Press
4-19-37	Recom.	Closures
4-19-37	Check	Mill
4-21-37	Check	Motor
5- 5-37	Check	Printing Press
5-11-37	Check	Bearing
5-12-37	Check	Flange Bender
5-15-37	Check	Roll Crusher
5-25-37	Recom.	Mills
5-25-37	Check	Generator
6-10-37	Check	Mills
6-10-37	Check	Sugar Mill
6-14-37	Check	Strip Mill
6-15-37	Check	Press
6-16-37	Check	Screwdown
6-21-37	Check	4 Hi Cold Mill
7- 6-37	Check	Printing Press
7- 6-37	Check	Tractor
7- 6-37	Check	Grinder
7-14-37	Check	Lathes
8-10-37	Check	Tyre Press
8-10-37	Recom.	Dredge Pump
8-31-37	Check	Extractor
9- 1-37	Recom.	4 Hi Cold Mill
9- 7-37	Check	Dredge
9-27-37	Check	Ingot Cars
10-22-37	Check	Swivels
10-22-37	Check	Misc.
10-26-37	Check	Airplane
10-26-37	Check	Thrust Block
12- 6-37	Check	Gear Drive
12-16-37	Check	2 Hi Sheet Mill
12-21-37	Check	Cars
	Total number of jobs	43

[fol. 5197]

Date Received	Work Done	Application
1938		
1-11-38	Letter	Air Seal
1-13-38	Check	Milling Mch.
1-22-38	Check	4 Hi Renault Mill
3- 8-38	Check	Piercing Mill
3-21-38	Check	Ore Plant
4-16-38	Check	Printing Press
4-20-38	Typicals	Stoker
5- 3-38	Check	Piercing Mill
5-10-38	Check	Compressor
5-10-38	Check	Misc.
6-13-38	Check	Gun
6-29-38	Check	Table Roll
7-13-38	Check	Rubber Mill
7-13-38	Check	Flaking Mill
8-11-38	Check	Elevator
8-15-38	Check	Grinder
8-18-38	Check	Jig Borer
8-29-38	Check	Hot Mill Chocks
9- 9-38	Check	Screen
9- 9-38	Check	Pump
9-10-38	Check	Crusher
9-22-38	Typicals	Road Mchy.
10-12-38	Check	Pump
10-19-38	Check	Pump
10-22-38	Check	Boring Mill
11-15-38	Check	Tuber
11-15-38	Check	Press
11-15-38	Check	Reduction Unit
11-15-38	Check	Spindle
11-28-38	Check	Engine
11-28-38	Check	Bearings
12- 5-38	Check	Machine Tools
12-23-38	Check	Drill
	Total number of jobs	33
1939		
1-30-39	Check	Banbury
2-10-39	Letter	Hot Rev. Mills
2-18-39	Check	Loader
4- 7-39	Check	Press
4-19-39	Check	Lathe
4-19-39	Letter	Saw
4-21-39	Check	Loader
4-28-39	Letter	Box Board Mch.
5- 9-39	Check	Lathe
6- 5-39	Check	Motor
6- 8-39	Recom.	4 Hi Hot Mill

[fol. 5198]

Date Received	Work Done	Application
6-20-39	Check	Cold Mills
6-20-39	Check	Hot Mills
7-11-39	Check	Crusher
7-11-39	Recom.	Ore Bridges
8-21-39	Check	Mill
8-22-39	Letter	Mills
9-19-39	Letter	Beam Mill
9-19-39	Check	Locomotive
11-15-39	Check	Classifier
11-25-39	Letter	Merchant Mills
	Total number of jobs	21
1940		
1-10-40	Check	Classifier
1-29-40	Letter	Piercing Mill
1-31-40	Letter	Cold Mills
1-31-40	Check	Brg. Catalogs
2-13-40	Check	Rod Mills
2-19-40	Check	Thrust Blocks
3-25-40	Check	5 Stand Cold Mill
3-25-40	Check	Disc Plow
5- 9-40	Check	Brass Mills
5-29-40	Check	2 Hi Mill
6-25-40	Letter	4 Hi Mill Latch
7-12-40	Check	Thrust Block
8-14-40	Check	Tractor
10- 7-40	Letter	Thrust Block
12-18-40	Check	Dryer
	Total number of jobs	15
1941		
8- 5-41	Check	Dryer
8- 5-41	Check	Pump
8-14-41	Check	Elec. Motors
8-15-41	Check	Worm Drive
8-15-41	Check	Calender
8-16-41	Check	Tube Mech.
	Total number of jobs	6
1942		
10- 8-42	Check	Duralumin Mill
10-27-42	Check	Aluminum Mill
12- 3-42	Check	Tuber
	Total number of jobs	3

[fol. 5199]

Date Received	Work Done	Application
1944		
7-15-44	Check	Rolling Mill
	Total number of jobs	1
1945		
2- 8-45	Check	Landing Craft
5-11-45	Check	Grinder
5-30-45	Check	Swash Pump
5-11-45	Recom	Grinder
5-30-45	Recom	Swash Pump
10-19-45	Check	Implement Wheels
	Total number of jobs	6
1946		
11-19-46	Check	Camera
11-26-46	Check	Pinion Stand
	Total number of jobs	2
1947		
1-17-47	Check	Disc Plain
1-21-47	Check	Dryer Rolls
1-21-47	Check	Gear Unit
7-22-47	Check	Thrust Unit
11-19-47	Check	Rubber Mills
11-21-47	Check	Compressors
	Total number of jobs	6
Grand total number of jobs in 11 year period		136

[fol. 5200]

ENGINEERING WORK DONE IN OUR INDUSTRIAL ENGINEERING DEPARTMENT FOR FRANCAISE TIMKEN S. A.

Date Received	Work Done	Application
1937		
2- 1-37	Check	4 Hi Mill
3- 6-37	Check	Gear Unit
4- 2-37	Recom.	Alum. Mill
4- 2-37	Check	Lathe
5-20-37	Check	4 Hi Al. Mill
6-16-37	Check	4 Hi Rev. Mill
7-16-37	Check	Sheet Castor
8- 7-37	Check	Strip Reel
8- 7-37	Recom.	Sugar Mill
9- 3-37	Check	Cluster Mill
9-23-37	Recom.	Rock Crusher
11-15-37	Check	Pump
12-16-37	Check	4 Hi Mills
	Total number of jobs	13
1938		
1-22-38	Check	Rock Crushers
3-16-38	Check	Engine
4-14-38	Check	Rocker Arms
5- 9-38	Typicals	Crusher
6- 7-38	Check	Rocker Arm
6- 7-38	Check	Extractor
6- 9-38	Check	Roll Crusher
8- 1-38	Check	Cone Crusher
9-20-38	Check	Cold Mill
9-20-38	Check	Crusher
10-11-38	Check	Crusher
10-27-38	Check	Rev. Mill
11-16-38	Check	Propeller
	Total number of jobs	13
1939		
1-30-39	Check	Press
2-27-39	Check	Loom
9- 5-39	Check	Beam Mill
	Total number of jobs	3

[fol. 5201]

Date Received	Work Done	Application
1945		
7-16-45	Check	Straightner
	Total number of jobs	1
1946		
7-23-46	Check	4 Row Bearings
	Total number of jobs	1
1947		
1-24-47	Recom.	Pulverizer
9- 2-47	Check	Cement Mills
9-30-47	Check	Cement Mills
10- 8-47	Check	Cranes
	Total number of jobs	4
Grand Total Number of Jobs in 11 year period		35

[fol. 5202] DEFENDANT'S EXHIBIT 167

Report on British Timken Production Efficiency

Submitted by William Sloan, June 3rd, 1929.

[fol. 5203] Automatic Department

Supervision of their Screw Machine Department is neglected by the foreman Mr. Hugh who spends most of his time working on the machines and on minor office details in place of acting in an advisory capacity towards making the men under him more efficient. There is 20% to 30% time lost every day over and above all the down time on the automatics such as repairs tool grinding and adjustments.

There is no system for setting up and timing the machines. The writer found different times on three 3¼ Gridley machines turning out #29177 cone. The relative times of the three machines were 4 min. 58 sec.; 3 min. 45 sec.; and 3½ min. A part of this variation in time is due to the worn out condition of the machines. They never overhaul a machine and do not repair them unless they break down. This condition prevents them from attaining one set time for the different machines. Mr. Dallow agreed to take one machine at a time and completely overhaul them.

The terret bushings and slides were so badly worn another tool could not be used on the reamer position without causing the terret and slide being forced to one side and machining a bad bore. The spindle bearings could not be adjusted properly on account of their being badly worn.

Green Gauges

The green gauges being used on cones consist of profile, plug, size and taper gauges. I recommend their using the American gauges of which they have the blue prints. Mr. Ellis has ordered them to be made up and put in use.

They were gauging the cups from the front face and any variation that occurred in the cup length interfered with the holding of the I.D. dimension to size which is going to be eliminated by changing the plugs so as to gauge off the backface.

The finish of their green product was poor, being torn to the extent of .015" deep. The size of the bores and the O.D.'s varied from .010 to .015".

Traveling Inspection

One inspector was checking the entire green output of the Automatic Department. The writer advised them to have one inspector assigned to each lot of 15 machines [fol. 5204] allowing for each machine to be checked every hour. Starting the week of April 22nd one inspector was employed for every 12 machines.

Automatic Stores

The set ups such as cams, borings, facing and reaming tools were scattered and the setter lost a lot of time hunting them up. The writer recommended a Store Room man to keep the setups together in a designated Store Room.

Machine Times

Gridleys

The following changes in the machine times were made in connection with their 3¼"–4¼" Gridleys.

Part #29334 cup on 4¼" Gridleys. Old time: 2 min. 45 sec. per piece; changed to: 1 min. 50 sec. per piece.

Part #313 cup on 3¼" Gridley. Old time: 4 min. —per piece; changed to: 1 min. 48 sec. per piece.

Part #29177 Cone on 3¼" Gridley. Old time: 3 min. 45 sec. per piece; changed to: 2 min. 45 sec. per piece.

The green cones were being made with the small end out which left the backface and radius to be done on the second operation. This operation not being accurate left the backface eccentric with the cone bore and O.D. and caused trouble for all the operations on the grinders. The forming tool was reversed to make the cones with the large end out as we do. They are completely sold with this method and are having the setters work on Saturday afternoon and Sunday changing all the machines to new times on methods of forming the cones.

They have 1 operator and 1 lineman to six machines and they are going to speed up all the jobs. They can get our speeds providing the machines are overhauled and the tools and tubing are O.K.

Acmes

The following changes in machine time were made in connection with their #72 and 2¼" Acmes.

Part #A4221 Cone on 2¼" Acme. Old time: 1 min. 12 sec. per piece; changed to: 1 min. 1 sec. per piece.

[fol. 5205] Part #1008 Roll on #72 Acme

Old time—26 sec. per piece
Changed to—18 sec. per piece

They were using only one forming tool on their #56 Acme making their part #09194 cup, and the writer tried to obtain a shaving form tool, rough form and form tool holder so the set up could be changed. They didn't have these tools which would help in speeding up the machines. Mr. Gray, the assistant foreman is having these tools made up to effect this change.

Cleveland Automatics

Their Cleveland Automatic machining times are on the average 13% slower than the American times because of the inferior tool steel they are using which is not only the case in connection with this automatic machine but applies to all the other automatics. Mr. Teague is getting in touch with different steel companies in an endeavor to obtain a more satisfactory grade of tool steel.

The writer found that all the tubing being used in their automatic department had more scale and slag on the surface than our tubing. Mr. Evans agreed with me that the tubing should be given a better pickling.

They payed no attention to spindle speeds and surface feet per min. The machines were running anywhere from 60-80 feet per min. which can be accounted for in the changing of jobs to different size work and not changing the spindle speeds. In each instance the tubing surface feed per minute will have to be changed to 90 feet per min. to obtain the best results.

At the time I arrived at Birmingham Mr. Dewar was breaking in as an efficiency man a Mr. Fegan. He instructed him to work with me on all the machines and operations so as to learn everything possible to enable the French and German plants to get started on the best pos-

sible operating basis, in connection with his visits to these respective plants.

Mr. Fegan and Mr. Gray, the assistant foreman, gave me their willing support in effecting the changes made and suggested and both of them had willingly changed over a machine without my assistance.

Carburizing

The cone and cup carburizing times cannot be changed on their pot carburizing operations on account of the small [fol. 5206] pots and small furnaces they are using.

They have increased the roll carburizing output on their small Gas Rotary Furnaces by tilting them at an angle which permits the loading of the furnaces with more rolls at one time, and prevents rolls from lying in the neck and not being carburized properly as was the case before the furnaces were tilted.

The quenching tank is in front of the furnace from which the rolls were scraped out by the operator. The tilting furnaces are dumped the same as we do. The carbon depth is checked by fracturing the rolls and the case depth is checked by the same method that we use.

Hardening Department

Hardening Practice on Cones & Cups

The I.D. size inspection of their cones was being carried out by taking the first two pieces of a run of one part number to the Main Inspection Department. This practice at times caused a delay of 2 to 3 hours before they could start the hardening machine. So the writer had a set of go and no go gauges made to check the pieces at the machine and save this unnecessary loss of time. The cups were being taken care of in the same way as the cones. They were advised to have the file test inspector check for size as well as hardness at the machines.

Hardening Test

The hardening test results on part #29334 cups using their French furnace is as follows,—

Pieces hardened—297.
Actual Quenching time—50 min.
Average per hour—360 pieces.

This time compares with ours but due to the many changes they have to make on account of the small lots of from 25 to 50 pieces, their production time is cut at least 20%. The cone hardening time when using the American Rotary furnace was found to be the same as on the cups.

When starting these tests the writer found the Quenching machine was working very sluggish and a check up [fol. 5207] showed they were using only 30 lbs. of air. Their plant Engineer, Mr. Tibbets was informed and he started up their large blower bringing the pressure up to 80 lbs., correcting the trouble.

The writer advised Mr. Evans, Metallurgist to age all their cups over 4" diameter in oil to prevent the heat cracking of these parts on the #3 Centerless Grinders.

Grinding Department

Automatic Blanchard Back Face Grinder

The Automatic Blanchard was being operated without a washing tank and no effort was being made to keep the work close together, the same guide ring being used for all cones and cups. The operator was required to bring his own work up to his machine most of the time, and often take the finished work to the stock room. It was necessary for the operator at his position before the machine to turn around and reach down into the box containing his work which he had brought up to his machine in wagons. Meanwhile the feed table would be empty and there would be room enough for 3 or 4 pieces in the gaps left between the work.

The work varied so much in length it would be necessary for the operator to make four passes on 50% of it. While grinding, he would pick out the pieces that did not clean up, and put them thru the grinder after the others had been finish ground. Their production was 300 to 400 pieces per hour.

They never used the automatic feed because they claimed that it took too much time to reset the feed when they were changing jobs so often. The guide rings they were using were not high enough to support the cone ribs and did not have the correct diameters to keep the work on the outer edge of the chuck. They have started to make new rings to the correct dimensions and also feed table guides to our latest prints.

They were grinding all cones on the small faces, first which made the bore and O. D. eccentric with the backface on account of their being formed with the small face out on the automatics as mentioned before.

Blanchard Grinding Test

The writer had special cups part #29334 and cones part #29177 made up in the green to the correct limits giving [fol. 5208] the following grinding times in comparison to their times,—

Parts #29334 Cups & #29177 Cones
Pieces ground on both faces—297
Total time—20 min.
Pieces per hour—890
British Timken time 300 pieces per hour ground on both faces.

So with the green work made right, the feed table guides built and set up correctly, the operator kept at his machine, and with the right method of handling work at the machine, their Blanchard Automatic will produce its full capacity with the exception of the time lost thru changing the jobs so often.

Blanchard Solutions

They were using soda ash grinding solution. The writer left instructions concerning the washing tank solution to be used when they receive the washing tank.

Cincinnati Centerless OD Cup Grinders

In checking over the #3 centerless O. D. cup grinding practice the writer found the cups had as much as .040" grinding stock, and they had only 2 diamonds for 3 machines which caused quite a loss of time by having the machine stand idle as the operators waited for each other to dress their wheels.

They used micrometers to check the cups while roughing which is very slow, and snap gauges for finish. It is impossible to check the work for out of round, taper, and chatter with snap gauges. They have prints of the Schlaupitz O. D. cup gauge and are going to make three, one for each machine. The transportation of the work is very crude, there being no benches at the machines and no pans.

The work is carried about in wagons which is very unhandy.

In setting up the machines to our time the writer found it was impossible to grind the cups due to their large variation in size which caused them to join up and make scrap. Until their green product is made to the correct sizes it will not be possible to speed up the machines. The grinding wheels being used are 60 P. Carborundum which are no good, so a 60 K universal wheel which is much better was acquired at Stafford. Mr. Teague cabled the Norton Co. for an 80 D. L. wheel.

Cincinnati Centerless Grinding Test

The writer had 500 pieces #29334 cup made in the green to our dimensions with a maximum of .024" grinding stock and set up the machine at our speed giving the following results as compared with their time,—

[fol. 5209] Pieces ground—500
Actual grinding time—60 pieces per min.
run in 4 passes

Net time—15 pcs. per min.
Total time—1 hr. and 20 min.

British Timken Time
Actual grinding time—30 pieces per min.
run in 2 or 3 passes

Net time—10 to 15 pcs. per min.

The reason for their taking so much time to grind was due to the control wheel bearing being in bad shape and not holding size very good. The writer is having #3 Timken bearings and prints of the control wheel applications sent them so as to eliminate this difficulty.

The #2 centerless cup grinder was being operated without a loading device which was the chief cause for the low production of 80 pcs. #09194 cups per hour. Mr. Teague has ordered a loading device and cup chute from the Cincinnati Grinder Co., as it is impossible to speed up this machine on account of the operator not being able to feed it any faster without the loading device.

Heald Grinders

The Heald grinders were being operated efficiently but the low production was due to the operator bringing up and taking away their own work and to the amount of grinding stock being removed which was as high as .040" on the small cones. The backfaces of the cones being eccentric with the bores and O. D.'s caused by the cones being made with the small ends out on the Automatics necessitated the cones being faced and radiused on the Capstone machines which is a larger operation than champfering. They had changed all the cone chucks by removing the spring adjustment and putting on solid rings to prevent the cones from slipping in the chucks.

Heald Grinding Tests

The writer had 500 #29177 cones made in the green with .012" stock on the I. D. and changed one chuck putting back the spring adjustment. The results of the test are as follows,—

Pcs. ground—500	British Timken Machine
Machine time—120 pcs. per hour	time is 60 pcs. per hour.
Total time—7 hours.	
Inspection—O. K.	
Hard O. D. with finish I. D. eccentricity .003"	

[fol. 5210] Mr. Dewar, Mr. Dallow, and Mr. Teague timed this machine and were very much surprised, and they intend to maintain the set time as nearly as possible.

The cup machines were being operated with the same difficulties as the cone machines consisting mainly of excess grinding stock.

300 #29334 cups were made up in the green with .015" I. D. grinding stock and #2 quality cups were ground with the following results as compared to their grinding time,—

Pcs. ground—300	British Timken Machine
Grinding time—60 per hour	time 40 pcs. per hour.
Total time—5 hours	
Inspection—O. K.	

This test was also timed by Mr. Dallow and Mr. Teague. Their present finish on #2 cups is O. K. but I left instruc-

tions regarding our 2nd operation for pinion bearings in case a better finish is required.

The one Ransome and Marles chuck which they are using is very accurate for concentricity. Mr. Dewar was very much pleased with it and arranged with Col. Higgs of the Ransome and Marles Ball Bearing Company for me to see their internal grinding department and their chucks in operation to convince me of its accuracy. I made the inspection trip on April 22nd and checked the outer and inner rings off of their different machines and found they were holding them to a maximum of .0003" for concentricity.

O. D. Cone Grinders

The Churchill grinders are worn out and very unsatisfactory, the type of arbor used taking too much time to load and unload. The only possible way to speed them up is to change the amount of grinding stock as it would not be economical to build new workheads and equip them with our type of expansion arbors.

Their cones have .030" stock on the O. D. and the undercut is not deep enough which causes them quite a lot of trouble by breaking the corners of the grinding wheels down and leaving a shoulder which causes trouble in rib grinding.

The new Herbert O. D. grinders were a complete failure. These machines were received one week after I arrived and the Herbert people were making changes and balancing up different parts, but they could not produce good cones on account of chatter.

Mr. Dewar is disgusted with them and would like to get some of our designed grinders for both the rib and O. D. [fol. 5211] operation.

All the grinding production will automatically increase when the green product is made correctly.

#2 Centerless Roll Grinders

The set up of their #2 Centerless Roll Grinders is correct with the exception of the emery wheel—80 K. C. Carborundum used for roughing and finishing. All rolls up to part #502 are ground in 2 passes at the rate of 39 pcs. per min. which compares with our production of 70 per min. in three passes.

They dress the control wheels on a lather and if the taper is not correct when the wheels are replaced on the machines

they try filing and if they are unsuccessful they resort to another recut on the lathe. Sometimes they recut and file three or four times losing a day or more.

The hoppers cannot be used on account of the rolls being mixed in carburizing which they are now trying to remedy by more careful dumping of the rolls from the carburizing so they are using one girl feeding rolls at each machine and one lineman for all the eight machines in operation. They were only using a shadow taper gauge and no size, chatter or out of round gauges.

The writer has agreed to send them one Vanderbeek roll size gauge and one gauge for out of round and chatter together with prints of the same.

The control wheel dressing attachment was put on a #2 Centerless Grinder as soon as it was received, but the motor with flexible drive had not yet arrived when the writer left.

Roll and Grinders

Their Churchill grinders cannot be speeded up as they are too clumsy for the job. They are end grinding on the average of 4000 rolls in 9 hours per machine. The actual grinding time on the Woods' grinders is 1100 rolls per hour. The American actual grinding time is 1200 rolls per hour and 10,000 rolls in ten hours. The girls operating these machines work from the backside, having the work head set at zero. The low production of 4000 rolls (end ground in 9 hours per machine is caused by the girls) taking time off and resting every once in a while. They are using 80 N. Universal grinding wheels which are correct.

[fol. 5212]

Inspection

O. D. Cup Inspection

They are using Snap Gauges on the cup O. D.'s which makes it impossible to determine the amount of chatter, out of round and taper. The inspectors take the work from the grinders which is either piled on the floor or placed in wagons and unnecessary time is lost in their carrying the work to a bench or picking the work out of the wagons. A comparison of British Timken and our gauging time is as follows,—

Canton Timken time—5000 cups O. D. Gauged in 9 hours.

Canton Timken time—5000 cups Visual inspected in 9 hours.

British Timken time—1500 cups gauged & visual inspected in 9 hrs.

I instructed them that the O. D. cup gauging should be done after I. D. grinding the cups on account of shrinkage caused by the heat generated from the I. D. grind. By having both inspections carried out together, extra handling will be eliminated. They should use Schlaupitz O. D. cup gauges which will give the true conditions of the cups. They were instructed to put the work in pans which should be taken when filled to the inspection bench by laborers. The inspection bench should be double width to accommodate gauging of the cups on one side with visual inspection on the other, and when the gauging has been accomplished the pans should be shoved on the bench to the inspection side in order to save time in handling.

Roll Inspection

They have been first inspecting the rolls on the surface, then end grinding and following this with a roll end inspection which causes a double handling and inspection. Since they do not have traveling inspection on the roll grinders, it is necessary for them to have 100% final inspection. They use daylight in all their inspection which is not as good as artificial light.

The following is a comparison of Canton Timken and British Timken roll surface and end inspection time,—

Canton Timken roll surface & end inspection time 1555 rolls per hr.

British Timken roll surface & inspection time 777 rolls per hr.

British Timken roll end inspection time 1100 rolls per hr.

Mr. Dewar is going to have roll surfaces and roll ends ground before inspection which should increase the production at least 30%.

[fol. 5213] Roll Gauging

The production of the roll size gauging machines is very low as they can only get 10 sizes on their type of ma-

chine and rolls have to be rerun 4 times owing to them not being ground to any particular size. Their size gauging machine is timed at 60 per minute but owing to their having to rerun the rolls 3 to 4 times, the net rolls size gauged per min. is about 40.

The roll taper inspection is being done on a small shadow gauge by hand, and cannot be improved upon unless they get on automatic machines.

Their method of checking the rolls for out of round consists of turning the rolls in the shadow taper gauge and if there is no light to be seen between the gauge and the roll surface, the roll is O.K. The remedy for this is our out of round and chatter gauges.

I. D. Cup Inspection

Their I. D. cup visual and gauging inspection is done in the final inspection department. The visual inspection is very slow on account of not having the work in pans and no labor to handle it. Consequently the inspectors have to pile their own work on the benches and take it off. Their cup I. D. gauging consists of using a finish plug fastened on the bench, and checking for out of round, size, and eccentricity. Taper and out of round inspection consists of trying to rock the cup on the plug. They use .001" indicators to check for eccentricity accomplished by turning the cup on the plug. Their sizing is accurate enough for the Regular limits on #2 cups.

The Schlaupitz concentricity gauging machine was received and set up while the writer was there. It was found that the arbor adaptor run out was .002" on the face. They reground it but it could not be ground any better. They have been advised to get a small portable grinder and grind it in place on the machine.

I. D. Cone Inspection

The I. D. of the cones are being gauged with a hand plug. They have one Schlaupitz I. D. cone gauge and are not using it because Mr. Ellis claims it is too sensitive and registers chatter and out of round too plainly. He also claims [fol. 5214] that the Ring masters cannot be ground close enough on their old tool grinders. They have 2 soft Ring masters, one maximum bore and one minimum bore, but they cannot use them on account of being out of round due

to being turned on a lathe which is not accurate enough for masters.

O. D. Cone Inspection

Their cones are not sized until they get to the assembly, but they give the cone O. D.'s 100% finish, taper, rib angle and concentricity inspection. All the cones are run on an arbor for concentricity which is a very slow operation. The concentricity, race and rib angle inspection could be reduced to the point where only a small percentage of the cone O. D.'s need be inspected by having traveling inspectors on the grinding machines to prevent them making bad work. All the inspectors have to convey their own work back and forth from the inspection benches which adds to the loss of time.

Assembling

Their rolls are sized gauged and sent to the Assembly Department in cans, but the cone sizes mentioned heretofore are measured in a work cup by the assembler. The cages are not spread causing a loss of time and possible damage to the cones and rolls. Their process of carrying out the assembly of the bearings is very slow and expensive.

The writer advised them of the Canton Timken method and Mr. Dewar has a new layout of all the final inspection and assembling departments to conform with our methods.

Transportation

They have no system of transporting their materials and parts either in the respective departments or from department to department. The work is carried around in unhandy wagons and shipping boxes by inspectors and machine operators. The only reason the writer could find for their not having laborers to transport the work was their method of saving expense by cutting down on labor as much as possible. The writer advised them that it is much more expensive to allow the machines to be idle while the operators are transporting their own work.

[fol. 5215] Francaise Timken

Mr. Dewar requested the writer to go to France and set up the 2 Gridleys, one 3¼" machine for #29177 cone and one 4¼" machine for #29334 cup which he had sent

to the French Timken plant. Mr. Fegan, their efficiency expert accompanied me.

The Gridleys sent over were badly worn and should have been overhauled. The writer started Mr. Fegan to set up the 3¼" machine while he was setting up the cup machine. The cup set gave a machine time of 2 min. 50 seconds as compared to the British Timken time of 4 min. 37 seconds on D.O.H. steel. The cone set up had not been completed when the forming tool broke due to a hardening crack, and as they did not have an extra tool on hand they had to make up one. They are using Direct Oil Hardening Steel for their product which made it quite difficult to approach Moly steel time. Mr. Fegan has got the production idea well in mind, and will get the machines running as fast as possible.

Mr. Seward had the French furnace man come and get the furnace adjusted properly. However, the 15 cups hardened in a test run had a thin skin which was soft to a depth of .002" whereupon Mr. Seward sent for the steel man and they blamed each other. It is the writers contention that the air and gas mixture was not quite right and a slight decarburizing action occurred as the cups were quite hard under the skin.

The #3 Centerless Cup Grinder was set the same as in England so the writer changed it but having only 15 cups to work with it was impossible to arrive at any time. The Heald time was 1 min. per cup.

I went over the entire plant with Mr. Seward and Mr. Fegan. They intend to repair the automatics and work everything to the Canton Standard.

My passage was booked for the 4th of May but owing to the poor condition which the Gridleys were in it was cancelled so as to be sure of getting everything started right.

Mr. Seward would like to have prints of the green and finish cone gauges sent direct to him as he has been having a hard time in getting them from England. He gave the writer a list of bearing part numbers on which he wants the gauge prints.

[fol. 5216] DEFENDANT'S EXHIBIT 168

Française Timken

Société Anonyme

10th April, 1930.

Mr. D. P. Hess, The Timken Roller Bearing Company, Canton, Ohio.

Dear Sir,

Report on Francaise Timken

No. 22 Waterbury Farrel Upsetters: Started the machine on March 18th making part No. 2008 rolls at 75 per minute, but had some trouble filing out the roll heads due to grease which had been worked all through the dies caused by running the Machine idle before I arrived and after taking all the dies and tools out and cleaning them thoroughly we made 32,800 No. 2008 rolls in 22½ hours with 10 hour delay caused by the wire being greased and dirty, but we eliminated this trouble by washing the wire in carbon oil.

On March 21st I changed to No. 1003 rolls, making 180,000 rolls up to April 6th.

Most of the delays since changing to No. 1003 rolls were caused by breaking in an operator who never had any experience on upsetters, but is doing very good now.

No. 2 Centerless Roll Grinder: They were having a lot of trouble on these machines and in checking over the setup I found Soft Control Plates.

Regulating wheel head set at 2½° angle instead of Zero. The regulating wheel had leads on both front and rear about 2° taper for 1½ inches.

Both regulating and grinding wheel spindles were bad.

The lubricating oil was entirely too heavy to flow properly.

[fol. 5217] They were using the same rail for dressing the regulating wheel on both machines, shifting it from one machine to the other and never getting it lined up properly.

The grinding solution was soft soap and soda which did not lubricate the control plate and caused slippage on the regulating wheel.

The control plates were made of an ordinary Carbon steel and when they were hardened hard enough they would crack, so instead of using the instructions I left with Mr. Fegan last year they used them half hard which caused a lot of trouble.

The 3 No. 76 Acmes, Automatic Blanchard and two Vanderbeeks grinders are being belted wired up and I expect to have them running in another week.

I am having no trouble at all in getting anything changed or getting different materials to improve production as Mr. de Beauvivier, Mr. Cognard, the Factory Manager, and Mr. Fegan are very anxious to improve the plant efficiency.

Yours truly, Wm. Sloan.

[fol. 5218] British Timken Limited

Cheston Road, Aston, Birmingham

15th May, 1930.

D. P. Hess Esq., The Timken Roller Bearing Company, Canton, Ohio, U. S. A.

Report on Francaise Timken

No. 22 Upsetter

This machine was down from April 9th to 15th to change the Electric Power Line from temporary to a permanent line. On April 8th we changed the job back to No. 2008 Rolls.

The Operator is doing very good and is now able to handle the Machine himself.

Rolls made to date:

415,000—1003 Rolls
90,000—2008 Rolls

No. 2 Cent. Roll Grinders

Both the Regulating Wheel dressing attachment Rails are fixed permanent and now have the Regulating Wheels made with the drop off on the rear end in place of the taper.

We had some trouble with Sandvik Charcoal Steel roll rest blades cracking in the hardening, but have overcome this trouble.

On one machine both spindles were repaired and the taper on the end of the Regulating Wheel spindles on the other Machine ground as they were not alike which made the Regulating Wheels unchangeable from one machine to the other. We are now using a light lubricating oil and have no trouble with the spindles sticking.

These machines were down about 30% of the time due to the method of feeding in the rolls, and are now changing to our method.

I have finished 7000–2008 Rolls to .0005 limits for the Vanderbeek End Grinders which have not been run on account of the large variation in the roll size off the Centerless Grinders.

[fol. 5219] Vanderbeek End Grinders

Started one Grinder on May 8th on No. 2008 Rolls, and have had some trouble at first holding size on account of the suction fan not being large enough and sawdust all through the hopper and machine. They have these Machines set in between two wet hand end roll grinders with no water guards on and the water runs all over the floor and there they soak it up with sawdust. After thoroughly cleaning the machine I have no trouble holding the rolls to .0001 for size on the dia.

Mr. Seward, M. de Beauvivier and M. Cognard are very much pleased with these Machines.

Blanchard Back Face Grinder

Received the Machine April 5th and put on all the extra parts during the week of April 7th to the 12th. The Machine was idle until April 22nd waiting on the Electricians. Started April 23rd grinding No. 29177 Cones and have had no trouble at all.

In the past the old type Blanchard was holding up production, but with the new machine we have no more than 2½ to 3 days work per week at the present.

This machine is running 100% American times when we have the work.

Heald I.D. Cup Grinders

Both Pinion and Wheel Bearing Cups are given two passes, and the second Pass takes as long as the first, for they have the machines set to go through all the motions,

dressing the wheel on every cup, while we dress every six or ten cups which is much faster.

I have arranged with M. Pierre Barzy of the Norton Wheel Company to get some 100 A.S.4. Wheels as the 60 grit Rubber Bond Wheels they are using are too corrse to get a good finish, and when these Wheels are received I will start them on our method, of grinding pinion Cups.

Mr. Fegan of the French Timken has a copy of the instructions I left last Year but had it filed away and forgotten.

Automatic Dept.

Of the three Acmes received, two are belted up and one running on part No. 14132 Cone but is running slow as they changed the lineshaft pulley to get 75 surface feet per min. which is their standard on D.O.H. Steel. The Machine time is 1 min. 42 sec. but expect to reduce this time as soon as the Roll Grinders are running O.K.

The Chamfering operation is being done on Capstan Machines, which is very slow, and Mr. Congard and myself have been looking all over Paris for a four spindle drill press suitable for this job and have finally located one, which I expect to see after the No. 33 Heading Machine is running O.K. at British Timken, as Mr. Dallow telegraphed me on May 9th that the Machine was in and he was way behind in 502 Rolls and needed some immediately.

[fol. 5220] Mr. Dewar was at the French Plant on April 30th and said he had made all arrangements for S.K.F. in Sweden, and he also wants me to experiment with D.O.H. Steel on the Heading Machine. He claims that S.K.F. are making rolls out of D.O.H. Steel and I am very anxious to find out all the details, such as die steel used, die life and production; but at the present it is more important to get the French Plant going properly.

All information concerning steel limits and Calow Heading Machine at British Timken Plant will follow this Report a few days later.

Yours truly, —— ——.

[fol. 5221] Date: 6-16-30.

Mr. D. P. Hess, The Timken Roller Bearing Company, Canton, Ohio

Dear Sir,

Report on French Timken.
No. 2 roll Centerless Grinders.

The 2 new Centerless Roll-Grinders are operating on No. 2008 and No. 1003 Rolls at .0005 limits for size and .0001 for out of round and chatter in 3 Passes, 1st and 2nd Passes at 70 pieces per minute and the 3rd at 52 pieces per minute.

Both machines are operated by one girl and one lineman on all the 4 machines at 60 to 70% efficiency at present due to the French carburized and hardened rolls having a soft skin about .003 thick on the outer surface, but O.K. for hardness underneath. There is quite a number of these Rolls spin with the emery wheel about halfways across the wheel until the soft surface is removed on the 1st Pass only, which causes excessive wear on both the emery and regulating wheels.

The remaining 2 machines are operating at 52 pieces per minute and also in 3 passes, but will change as soon as we get the Hoppers on which was received last week. These machines are also running between 60 and 70% efficiency due to the soft surface on the rolls.

Vanderbeek end Grinders. Both machines had been operating well until they accidentally mixed some rolls that were to be reground to size on the centerless with the rolls ready for end grinding.

These machines are timed at 19 pieces per minute and we are having no trouble holding the rolls at .0008 for stand which is 2/100 millimètres on the gauges, but we have the last 100 J. Norton wheels on now and cannot get any for 6 or 8 weeks, so will try to keep going on 120 J wheels which are available and may be just as good.

At present it is impossible to get the efficiency on these machines as they are taking the rolls away as soon as they get 100 or 200 done and no count is being taken.

I have been trying to get them to use a daily work card [fol. 5222] similar to ours so it will be possible to check the efficiency of the machines daily and have had about 5000

printed, but Mr. Cognard says that a large percentage of employees cannot write their names so I suggested they use their block numbers and expect to have them in operation before I am done here. As it is at present all orders are issued for 500 bearings at one time and no cards are turned in until they are done which may be in a day or a week and nobody knows whether the operators are doing a full days work or not. This method is general throughout the Plant.

Heald J.D. Cup Grinders

We have received the 100 A.S.H. Norton wheels for second Pass and also the 10" pulley for the countershaft to speed up the work head to 1000 R.P.M.

When trying the above items out we had trouble getting a decrease in the time due to the cups being .006 off taper after hardening, which left .020 grinding stock to be removed, and was due to the green cups being off taper. We are having some cups made correct in the green and will check after hardening to find out just how much they change and then make the green cups accordingly. This should decrease the grinding stock to .014 and enable us to get a better finish when roughing.

The present time is 90 pieces per hour roughing and finishing 100 pieces per hour.

Rib Grinders

Of the 3 machines received 2 had the forks that operates the work head broken, the emery wheels broken too and the collets damaged, the 3rd machine was O. K.

We started operating 2 of these machines on May 26th and run out of emery wheels as we can only get 1" wear on the Dia. due to the diamond running into the wheel spindle housing, and there is no way to get more wheel wear unless we cut a slot in the spindle housing, which is 1" thick, and it would not effect it to put a slot in ½ deep and ¾ wide, which would give another 1" wheel wear.

I have checked this up thoroughly and find that Cone No. 366 is the largest they make and that eliminates any possibility of wearing the wheels down to less than 5" in Dia. unless the spindle housing is slot-ed.

We have ordered 80 M. Norton wheels, but cannot get delivery in less the 2 months and are now using 60 P. Nor-

ton wheels which are very hard and do not finish very well.

Vanderbeke O. D. Cone Grinders

We have received 1 machine in good condition, but is not set up yet. The other 2 grinders are operating O.K. for finish, but very slow at an average of 60 pieces net per hour, in 2 operations and will work on them as soon as the Cage Department is O. K.

[fol. 5223] Cage Department

We have received all the American Presses and the one from British Timken for making thrust bearings. These machines are being set up for No. 14001 Cage while the Millwrights and Electricians are getting the lineshafting and power ready. We expect to have them running June 9th.

Carburising

At present we have 1 Gregson Furnace and the capacity is 8000 No. 2008 rolls per 6½ hours.

This furnace should be dumped every 5 hours according to information received from British Timken, but the air pressure is low and they have ordered a larger fan.

They also had bad meal which was 50% bone and 50% charcoal and very coarse. The low air pressure and carburising meal as far as we know is the cause of the soft skin on the Rolls and if there is any information such as the analysis of meal, air pressure and temperatures you can send over, they would appreciate it very much as they have quite a lot of trouble getting the desired information from British Timken.

I am going to British Timken on Wednesday 4th to meet Mr. Lothrop.

Yours truly, Wm. Sloan.

[fol. 5224] June 27th, 1930.

The Timken Roller Bearing Company, Canton, Ohio. *For the attention of Mr. Hess.*

DEAR SIR,

Report on French Timken

Cage Department

Arrived in France June 10th and started blanking No. 14001 cages on June 13th, after blanking 21,000 pieces, changed to No. 29008 cages on June 17th and made 15,000 cages and broke both dies, caused by operator letting one blanked cage lie on the dies and tripping the press to form another.

We then changed to No. 1711 cage on June 26th.

Machine Times

1st operation blanking	450 per hour	on No. 1711
2nd operation sizing	800 per hour	
3rd operation perf.	1100 per hour cage	
3rd operation perf.	300 per hour cage	on No. 14001
3rd operation perf.	300 per hour cage	on No. 29008
4th operation winging	300 per hour	on No. 1711
4th operation winging	225 per hour	on No. 14001
4th operation winging	225 per hour	on No. 29008
5th operation spreading	1100 per hour	

The machine times for blanking and spreading are the same for all cages.

During the week of June 17th we finished 10,000 cages complete and also finished the cages from America, but the perforating production was low due to the dies being soft, the max. life of which was 2,000 cages, so we continually changed from one job to another until we used all the American dies to keep going until we could make some.

We are operating very satisfactory now with the excep-
[fol. 5225] tion of the cage steel which is brittle and makes it necessary to anneal the No. 29008 cage after blanking to prevent cracking at the top of the pockets.

On the first lot of No. 29008 cages we had 15% scrap due to cracks, but the No. 1711 and No. 14001 steel is much better and we have had very few cracked.

The sand blast is doing a fairly good job, but expect to do better when we receive some harder sand, the sand being used now is very soft and pulverizes in a very short time.

Roll Carburizing and Hardening

When I first discovered the rolls had a soft skin on the surface, I suggested to have to have Mr. Evans over from the British Plant but they wanted to experiment with different carburizing compounds, and after a month the rolls being no better, they then sent for Mr. Evans. He arrived June 25th and found the heat was wrong due to the gauge not being right and the compound was also wrong, and there is not enough air to heat the furnace properly unless the hardening furnace is shut off, so they immediately got in touch with the people off whom they ordered a fan about a month ago, and it was delivered the same day, so we expect some good rolls to-day.

No. 2 Centreless Roll Grinders.

These machines have been operating between 30 and 40% due to the lineman and soft rolls, but on June 22nd they fired both linemen and since then the percentage has increased from 30 to 60.8% and when the rolls are properly carburized and hardened we expect 90% efficiency.

Yours truly, —— ——.

[fol. 5226] 30th July, 1930.

Mr. D. P. Hess, The Timken Roller Bearing Company, Canton, Ohio.

Dear Mr. Hess:

Report on French Timken

Cage Dept.: New Times

Blanking	No. 1711	Cage	1005	per hour
Blanking	No. 14001	Cage	1002	per hour
Blanking	No. 29008	Cage	990	per hour
Sizing	No. 29008	Cage	1585	per hour
Sizing	No. 1711	Cage		
Sizing	No. 14001	Cage		
Perforating	No. 1711	Cage	423	pcs. per hour
Perforating	No. 14001	Cage	389	pcs. per hour
Perforating	No. 29008	Cage	358	pcs. per hour
Winging	No. 1711	Cage	278	pcs. per hour
Winging	No. 14001	Cage	253	pcs. per hour
Winging	No. 29008	Cage	240	pcs. per hour
Spreading	No. 1711	Cage	1500	per hour
Spreading	No. 14001	Cage		
Spreading	No. 29008	Cage		

This department is operating at 85% efficiency on the above times and I expect them to do better when they get on less brittle material.

We have had trouble with the No. 29008 Cages on the perforating operation which had been annealed after blanking, due to the extreme softness, which left a bur on the inside and prevented them from turning on the die. We scrapped about 8% due to the pockets not being rightly spaced.

The press received from British Timken for making T.75 thrust bearings was in a very bad condition and had to be overhauled. It is a toggle joint machine and had ¼" p-ay up and down on the ram. We have received the discs from British Timken and also the roll grinding and assembling equipment from Canton and unless we have trouble with the material we expect to make some races and retainers by the beginning of the week commencing July 28th.

[fol. 5227] Roll Heading Machine

This machine has been operating fairly well at 70% to 75% efficiency until we ran out of American dies for No. .2008 Rolls and started to use the French dies made at some outside place. They were very accurate but too soft and after making about 300 rolls they would open out .008 which is our size limit.

I gave them the analysis, names of steel and heat treatment for all the various tools when I first arrived and also prints of the Canton die quenching machine. Although they have done their best to duplicate our steel they have only just started to make the quenching machine and when it is complete I expect to get some good dies. I do not think there is much wrong with the steel, it is just a matter of correct heat treatment.

They have just started to work on the dies for the T75 Roll and expect to have them by the end of the week commencing July 28th.

Automatic Dept

Actual machine-times taken July 15th

Part No.	Time	Type of machine
A.1201 Cone	2 Min 0 sec	3.1/4 Gridley
28156 "	2 " 28 "	"
19138 "	2 " 11 "	"
A.1201 Cup	2 " 4 "	"
319 Cone	2 " 15 "	"
367 "	2 " 40 "	"
29334 Cup	2 " 21 "	4.1/4 Gridley
14274 "	2 " 6 "	"
14274 "	1 " 59 "	"
362X "	2 " 58 "	"
29334 "	2 " 4 "	"
14132 Cone	1 " 40 "	No. 56 Acme
2228 "	1 " 00 "	4 Spindle Gridley
1755 "	1 " 30 "	No. 56 Acme

The Acme Automatic on No. .1729 cups has not been operating due to the French tubing being 1/32 larger in diameter than the Canton tubing and they had to make new chuck pads and feed shells.

Production and scrap for the 1st two weeks of June

Part No.	Total hrs required	Quantity made	Pieces scrapped	Average pieces per hr
365	47.75	947	6	19.81
367	76.00	1280	7	16.85
A1201	47.75	937	3	19.6
07098	88.	2570	5	29.8
19138	88	1887	6	21.45
26118	53.5	1088	17	20.4
28156	36	450	0	12.5
1755	83	3060	10	36.9
[fol. 5228]				
1755	81.25	2485	5	30.6
17132	51.25	1395	0	27.25
362X	87	1276	4	14.67
1729	84	2479	2	29.4
07204	88	2484	8	28.25
14274	176	4292	11	24.4
29334	147	3353	4	22.8

The above figures will give you an idea how this department is operating.

Production of undercutting and champher on hand machine for the 1st two weeks of June

Part No.	Total hours required	Pieces made	Average per hr
337W Cone	6	552	92.1
344 "	5	353	70.7
1755 "	56	6150	110.5
07098 "	17.25	2294	133
19138 "	10.5	1100	104.5
14132 "	3.75	485	129
333 Cup	1.75	456	275
362X "	4.0	1020	255.
1729 "	9.0	1682	298
362 "	2.0	550	275
07204 "	15.0	2902	193.7
14274 "	15.5	4361	281
20334 "	13.75	3537	257

These are the latest production figures I have received up to the present for the automatic department.

After advertising in all the Paris papers for a second hand 4 spindle drill press, for champhering cups and cones, without success we finally located a 3 spindle 20" Rockford drill press which is in fairly good condition and I am now starting to revamp to the American prints.

It will be some time before they start using solid bar stock as they have just bought 200 tons of tubing from the Citroen ball bearing plant.

Grinding Department Rolls Centerless Grinders

This Department is slowly increasing in efficiency due to the soft rolls being picked out in the hardening department and a new foreman, and is now running between 65% to 75% efficiency.

Before sorting out the soft rolls we had to change blades on an average of 3 times per day on each machine and were contin-ally dressing both wheels.

Vanderbeek End Grinders

We have had a lot of trouble breaking castings on these machines which was due to not being adjusted right, the [fol. 5229] first one broken was the cam arm which operated the loading device and the hopper and then the loading device casting and also the idler pulley arm.

Mr. Fegan and I have been in almost every day and checked the rolls and the machine adjustments until we finally taught the setters to adjust them right and they are operating at 75% efficiency now and are very accurate for size;

Roll Carburising and Hardening Department

The carburising furnace is now operating at 5½ hours per heat carburising 8,000 No. .2008 and 12,000 No. .1003 rolls each per heat and as there is only one furnace for this operation the hradening furnace only runs about 50% of the time.

We are still getting about 5% soft rolls which we are now able to sort out since we lined the round tumbling barrel with sheet iron and put in 6 angle irons to tumble the rolls more and this is cleaning them very well.

We received a sack of carburising compound from British Timken which is now being tried out.

Mr. Lothrop advised me not to go to Sweden or Germany saying that he had all that was necessary, so I *I* have booked passages on the "George Washington" for August 7th.

Yours truly, Wm. Sloan.

I am leaving for Brit. Timken on Aug. 3rd. Check up before sailing home.

[fol. 5230] DEFENDANT'S EXHIBIT No. 169

Excerpts from W. B. Sloan's Report on Gauges Used at British Timken Ltd., Dated March, 1930

Roll Grinding Department Gauges

American shadow taper gauge
British Timken size gauge—see print #7
British Timken size gauge—see print #8
American Chatter and Out-of-Round gauge

The size limits on roll grinding are plus and minus .0024 and I have advised them to work to .0005 limit as they now have 3 hoppers working, and the operator has plenty of time to keep the machine adjusted and check the rolls.

Shortly after my arrival at the British Plant I looked up the Vanderbeck hand roll drop gauge for size and found it on Mr. Ellis' desk. It had never been tried out since they had received it, but it is being used now.

Roll End Grinding

The only gauge used in this department is a straight edge to test the end for angles. They never use the blueing check for end flatness.

Roll Grading Department

British Timken is still using the Churchill grading machine with a few alterations Mr. Ellis has made but they are not accurate.

The writer has checked the rolls after grading and found 3 sizes or .00075 variation in one can.

[fol. 5231] Excerpt from W. B. Sloan's Report on Francaise Timken

Under date of April 10, 1930.

On March 21st I changed to No. .1003 rolls, making 180,000 rolls up to April 6th.

Most of the delays since changing to No. .1003 rolls were caused by breaking in an operator who never had any experience on upsetters, but is doing very good now.

No. 2 Centerless Roll Grinder: They were having a lot

of trouble on these machines and in checking over the setup I found—

Soft Control Plates.

Regulating wheel head set at 2½° angle instead of Zero. The regulating wheel had leads on both front and rear about 2° taper for 1½ inches.

Both regulating and grinding wheel spindles were bad.

The lubricating oil was entirely too heavy to flow properly.

They were using the same rail for dressing the regulating wheel on both machines, shifting it from one machine to the other and never getting it lined up properly.

The grinding solution was soft soap and soda which did not lubricate the control plate and caused slippage on the regulating wheel.

The control plates were made of an ordinary Carbon steel and when they were hardened hard enough they would crack, so instead of using the instructions I left with Mr. Fegan last year they used them half hard which caused a lot of trouble.

[fol. 5232] The Timken Roller Bearing Company

Canton, Ohio

8-12-'30.

1st Pass Rolls

Taper—¼ to ⅓ the length of the roll touching the taper gauge.

Size—Normal 18. Minimum 17. Maximum 19.

Chatter—on all 3 pass rolls under size 502 allow .0003 and not more than 2 out of a trial lot of 10 or 12 over this. On 502 and larger rolls allow .0004 instead of .0003.

Watch for nicks, especially on the small end of roll.

2nd. Pass Rolls

Taper—½ length of roll touching the taper gauge. Better a trifle over ½ the length off if taper shallow than a trifle under with a deep taper.

Size—Normal 10. Minimum 9½. Maximum 10½. This size will change when special size finish rolls are required.

Chatter—On all 3 pass rolls under size 502 allow .0002 and not more than 2 out of a trial lot of 10 or 12 over this. On 502 rolls allow .0003 instead of .0002.

Watch for flat spots and nicks.

3rd. Pass Rolls

Taper—No allowance.

Size—Not over ¼ size above or below size of finished roll required.

Chatter—On all 3 pass rolls under size 502 allow .0001 and not more than two roll out of a trial lot of 10 or 12 to run more than this. Also if one-half the rolls tried show .0001, machine must be stopped. This applies to either or both ends of the rolls.

Watch for wheel marks, roughness, shadow chatter, nicks, etc. Use stone on at least one roll each time they are tried.

4th. Pass Rolls

Taper—No allowance.

Size—Not over ¼ size above or below size of finished roll required.

Chatter—Limit .00005 and not over 3 or 4 out of a trial lot of 10 or 12 allowed to run to this limit.

Watch for wheel marks, roughness, shadow chatter, nicks, etc. Use stone on at least one roll each time they are tried. Sound test 4-pass rolls frequently.

NOTE: These limits apply to two point checking.

O. J. Grubb, Head Checker.

[fol. 5233] The following gauging equipment is needed in the Roll Grinding Department to operate it efficiently and on the Canton plan:

20—large Ames (2¾" face) .0001 indicators—without revolution counting hand—model number will be furnished later. For chatter checking.

10—Small Ames 2 1/16" face) .001 indicators—but having .0005" graduations also, no revolution counting hand. Style dial 0-20-0 Model 55.

24—Stands for sizing or chatter checking.

1—Diamond point—center contact block for each kind of roll. For chatter checking.

1—Solid block for each kind of roll for size checking.

Two—.0001 indicators are needed for each kind of roll being ground. One set up for 2 point checking and one set up for 3 point checking.

There should be 1 size gauge for each machine also.

This may seem like quite an expense but the salary of

at least two people can be saved which will more than pay for the gauges in a short time.

NOTE: This applies to British plant.

Shuler.

[fol. 5234] Information on hardened steel feed wheels.

The following method is used in getting the old 9⅞" feed wheel ready for the steel shell. It is placed on a boring mill—trued up to the inside hole—roughed to taper on outside (See print) leaving about ⅛" stock for finish cut. If possible leave casting set a few days before finishing.

The inside of the steel shell is bored to size and taper allowing from .040 to .060 for grinding (See print). The steel shell is then pressed on to a special casting (just a regular feed wheel cut undersize on account of the grinding stock in the shell), and turned up on the outside in the regular way to the regular print. Be sure to keep the drop off at least ⅛" deep as the shell can never be recut except for small wells (?). After this it is removed from the special casting, carborized, hardened, ground internally then pressed on the casting prepared for it. It is then put back in the lathe and by means of a special grinding attachment clamped on the tool rest, it is ground true both the bottom of the groove and the side of the Bead. It is then ready to be used on the roll grinders.

The special grinding attachment was made from a spindle taken from a Woods hand angle grinder and driven from the end with a motor and flexible shaft. (Your present motor and flexible shaft used for dressing control wheels can be used).

The cost of the steel feed wheel is very little more than the nickel cast iron that is being tried out here at present. I would not recommend the nickel cast iron as it is very little harder than the regular cast iron.

The steel being used in Canton is known as "Evansteel" No. 2 Grade, made by the Chicago steel Foundry Co., Kedzie Ave., and 37th Street, Chicago, Ill., U. S. A. The rough shell weighs 140 lbs. Cost $.10 per pound, or $14.00 for the material for one wheel. Your Mr. Evans tells me the same steel can be purchased in England. I have given him the analysis of the steel and all the particulars as to carborizing, hardening and heat treatment.

Shuler.

[fol. 5235] Mr. Shuler Mr. Teague.

15.9.30

S/RW

The following is taken from a note by Mr. Bear to Mr. Buker at the Canton Plant dated May 6th, 1930:

502—4 pass.
702—4 pass.
802—4 pass.
902—4 pass.

Above rolls are held to .0001 for chatter and high spots.

Regular production rolls—3rd pass are held to .0001 for chatter up to 3008 rolls—above this size .0002 for chatter.

NOTE: Rolls are checked for chatter on a two point set up and for high spots on a three point set up.

Shuler.

[fol. 5236] FEED WHEELS—ROLL GRINDERS

Evansteel

Chemical Analysis

Carbon—.30-.40
Nickel—1.50
Chromium—.75-1.00

Heat Treatment

Carburize at 1680° F for 40 Hours. Cool in Pot.
Heat 1430° F quench in oil.
Draw at 325° F.

Hardness—.66-.68 Rockwell (C Scale).

[fol. 5237] Mr. Shuler to Mr. E. Teague.

9.9.30

S/W

The following are the sizes that have been standarized in America on all three pass rolls up to and including the 602, 4003, 5003 and 7003 rolls also 702 and 6003 when ground on the No. 2 Grinders.

Pass	Canton Size	British Size
First	17 to 19	40 to 48 grades or .010" to .012 over correct.
Second	9½ to 10½	10 to 14 grades or .0025 to .0035 over correct.
Third or Finish	7¼ to 7½	1 to 2 grades or .00025" to .0005" over correct.

Canton standard is 7—British standard is called "correct". The ¼ to ½ over 7 is the allowance for drop after angle or flash grinding.

If other than standard size is wanted the 2nd pass size should be lowered or raised to allow from .0025" to .0035" stock for the finish pass.

If rolls are to be fourth passed the third pass size should be raised from .00125" to .0015" over the size fourth pass rolls desired. This amount to be removed on 4th pass. The above chart is followed closely in Canton and proves very good. I think it would increase efficiency and improve the quality of rolls if followed more closely in this plant.

Shuler.

[fol. 5238] British Timken Limited

Cheston Road, Aston, Birmingham

LME/NC

9th October, 1930.

Mr. M. Schuler, Ste Ame Francaise Timken 5 & 7, Quai Aulagnier, Asnieres, Seine

Dear Mr. Schuler,

I am in receipt of your letter of the 8th instant and thank you for the information given which will be of con-

siderable assistance to us in dealing efficiently with the rolls you mention.

I am enclosing a copy of the data contained in your letter for your own records and I am circulating other copies in our Works here.

Trusting that you are keeping well and enjoying your stay in Paris,

I am, Yours sincerely, /s/ L. M. Ellis

[fol. 5239] 9th October, 1930.

Information Regarding Feed Wheels for Small Rolls Supplied by Mr. Schuler on the 8th Oct., 1930.

T.75 and T.87 Rolls. The grooves should be 1/8" deep and .010 wider than the maximum length roll.

Drop off should only be 1/32" deep at back end of feed wheel. Undercut front lead in a scant 1/16" deep overall diameter, a trifle less than the drop off on a side.

11-A-103 & MS.22000 Rolls. The same drop off and lead in as above should be used. Width of groove can be made regular.

T.75 and A Rolls. 5/64" blade and top guide must be used.

T.75 and T.87 Rolls. The top guide should have a 15° angle (Canton method of measuring angle).

[fol. 5240] Mr. Shuler to Mr. E. Teague, S/W, 9.9.30.

I am giving you a written summary of some things that if taken care of will help the roll grinding department quite a bit.

Control wheel dressers—there are six for twelve machines, five are being numbered for individual machine use and the sixth one is to be used on the other seven. An hour or two sometimes more, is lost changing this dresser. It is very impractical and does not fit correctly. In Canton these dressers are never moved from one machine to another. Anyone with any experience on these grinders knows that the feed wheel dresser should never be tampered with.

The feed wheel heads are still being tilted, all rolls will grind on any machine without this; this destroys your standard set up and will cause the rolls to pull away from

the feed wheel head or draw tighter against it according to which way the head is tilted. No operator or job setter should be allowed to tilt the head under any circumstance when grinding the straight thru method on tapered rolls. I think Mr. Sloan mentioned this also.

Have all feed wheel spindles set uniform so new style feed wheels will come the same on all machines. Two have been set.

See that all old style loaders have a plate screwed to the bottom so as to be five inches from the bottom to the blade rest, before changing them to new style loaders.

In Canton all rolls up to 502 are ground on a 37° blade, as compared to 45° here. A 37° blade gives a more substantial rest. 45° is only used on rolls that might spin, due to a soft skin or on rolls such as T75—T87 or A roll when ground on a hardened steel feed wheel when spinning is likely. 502 - 602 - 4003 - 5003 - 6003 - 7003 - such rolls should be ground on a 30° or 32° blade. Less angle allows the roll to turn more free thereby cutting down high spots and chatter. Too little angle will allow the rolls to slip.

All rolls up to a 502 should be ground on a blade set 3½ inches in front and from 1/32" to 1/16" higher in the back or where the roll passes off the blade, 502 - 602 - 5003 etc. should be 1/8 lower on each end. Larger rolls ground at this height will be better for high spots and chatter but they cannot always be ground this high as this will bring the center of the roll quite a bit more than 1/8 above the grinding center and they may spin or jump.

[fol. 5241] Mr. Shuler, Mr. E. Teague, 9.9.30. Continued 1.

Angle checking for out of square, at the angle or flash grinding machines is important. All rolls should be checked on center contact blocks in the roll grinding department. Angle contact can be used in inspection or after flash is ground. This applies to either two point or three point checking. If rolls are found bad on a flash contact block a few should be tried on a center contact to determine if the surface or flash is bad.

Size gauges are not in very good shape. They should be looked after by the head checker.

Bins for parts and tools for Lineman are needed. Much time is lost between tool room and roll grinding depart-

ment. A small bench grinder of some sort would also save much time.

Better wheels should be had for control wheel dressers. A good wheel made by the Norton Co. can be had in most all widths, 3" diameter and 5/16" hole—1960K.

When checking rolls with a 3 point set up, a 2 point should also be used, as the chatter that makes a noisy vibrating bearing does not usually show up on a 3 point check.

Quite a few rolls are made on the automatics. I believe they could be made smaller and surfaces ground in two passes. Header roll size should be checked into also—some come small.

Shuler.

[fol. 5242] Hr. Shuler, Mr. E. Teague, 18.9.30.

PDS/W

It will list here a few things that may help you in the line of 4 passing and sound testing.

In the first place the roll must have a very even grind over the whole six inches of wheel surface. It may be made to die out a trifle at the back; too much will make the roll too smooth and cause shadow chatter or light and dark streaks which can be seen under a light but does not show up under an indicator. Shadow chatter will make a bearing whistle when run in a sound testing machine. If you find it impossible to get a straight even grind, it may be due to one of the following causes:

Feed wheel may be dressed low in center due to worn feed wheel dresser rail.

Blade not dressed perfectly straight in the tool room.

Grinding wheel dresser worn badly—not dressing grinding wheel straight.

The feed wheels must be dressed chatter free and perfectly round; the least bit out may make rolls that cause a noisy bearing. The Bead that the large end of the roll comes in contact with must not be chattered.

The grinding wheel spindle or feed wheel spindle may be badly worn—so that they are not parallel. This will cause trouble on any machine any pass. The third pass rolls must be uniform in size and within the chatter limits. They should not have more than .0015 or less than .001 to be removed on 4th pass. This is extremely important.

Only 25200 BS6 or 7 should be used. This is a bakelite bonded wheel.

The rolls should always be flash ground before 4th passing.

A machine sometimes must be run two or three hours before it will come up to sound test, that is when the job is first set up.

[fol. 5243] Mr. Shuler, Mr. E. Teague, 18.9.30. Continued.

Be sure you have a good free cutting diamond; sometimes changing a diamond will work wonders. Above all be sure the sound testing machine is working correctly.

Grinding solution must be up to standard 25% oil in America.

Care must be exercised in setting size as only .001 is being removed. Fourth passing is a very delicate operation. You may try one machine and get it first time. You may have to try two or three different machines, or you may have to repair both spindles and re-line everything before it can be done. Sometimes a new machine must be run in a few days before the rolls are good enough for 4th pass.

All care that is taken to grind good third pass rolls, chatter free etc., and the same methods used to make good third pass rolls can be used to make good 4th pass rolls such as balancing wheel, keeping wheel dressed, keeping blade dressed smooth and set correct height. Always keep the blade about 1/16 inch higher at the back end and keep the feed wheel head set on zero.

The best combination to have between the feed wheel and grinding wheel is dressing the grinding wheel the whole way across and still have the rolls coming out on taper with an even grind the whole way.

Shuler.

[fol. 5244] Mr. Shuler, Mr. E. Teague, 16.9.30.

PDS/W

Method of setting lathe for cutting control wheels at Canton Plant.

An arbor about 14 inches long, 2 inches in diameter with a taper 3 inches long cut on one end, the included angle of which is made to suit a certain roll. All rolls

having the same included angle use the same arbor. The arbor is put in the lathe centers with the tapered end to the right. An indicator is clamped in the tool holder and the top slide is swung around until the indicator registers no movement, when the tool holder is drawn back and forth across the 3 inches of taper, by means of the top slide. In some cases when the taper is not perfect on the arbor, that is if the rolls do not come on taper or nearly so from a new feed wheel, the lathe can be set so the indicator will show as many thousandths more or less as desired in order to bring the rolls nearer to taper. A feed wheel from the lathe should be near enough to taper and round enough that it does not need dressing by the control wheel dresser, if used on 1st or 2nd pass.

The following is a table showing the roll angles, arbor angles and variations made for different rolls.

Roll	Included angle of roll	Included angle of arbor	How Cut
A	5°	9°51′	Same as arbor
T75 & T87	3°	5°24′30″	.010 more taper than arbor.
Saginau No. 1	5°1′	Use A arbor	.006 do.–?.0006
" No. 2	5°2′	do.	.017 do.
" No. 3	5°12	do.	.011 do.
202	3°4′	Use 2003 arbor.	Same as arbor.
205	"	do.	do.
302	3°8′	6°11′	do.
305	3°4′	Use 2003 arbor.	do.
402	3°10′	6°9′20″	do.
405	3°4′	Use 2003 arbor.	do.
502	3°10′	" 402 "	do.
505	3°4′	" 2003 "	do.
602	3°30′	" 1003 "	4° less
702–802–902	3°10′	" 402 "	Same as arbor.
1003	3°34′	6°55′	.0015 more taper than arbor.
[fol. 5245]			
1008	4°	7°45′40″	.002 less taper than arbor.
2003	3°4′	5°58′	.001 do.
2008	4°	Use 1008 arbor	.002 do.
2009	8°	16°	.010 do.
3003	3°8′	Use 302 arbor	Same as arbor.
3008	4°	" 1008 "	" " "
4003	3°10′	" 402 "	" " "
4004	8°	" 2009 "	.010 less taper than arbor.
5003	3°14′	6°30′	.0035 do.
5004	—	—	.010 do.
6003	3°35′	6°56′	Same as arbor.
6006	—	Use 6003 arbor.	.0085 less taper than arbor.
7003	8°18′40″	16°39′20″	.005 do.

The figures given in the last column may have to be changed somewhat to meet your own conditions.

When cutting feed wheels for T75 or T87 rolls be sure to keep them 1/8" deep and not more than .010 wider than the roll. T75 and T87 must be watched close for length and diameter on the upsetters or they can not be ground without sorting.

When cutting T75, T87 or A feed wheels the standard drop off is not used. These rolls should just be brought to the edge of the grinding wheel not 1/16" past. The rolls being so short will be hollow ground if allowed to pass the edge of the wheel.

Shuler.

[fol. 5246] Grinding Wheels

All 3 and 4 pass rolls should be 1st and 2nd passed on an 80N or 80M carborundum wheel. 80L can be used providing it does not cause high spots (found by three point checking) or chatter (found by two point checking). The 80L being the harder wheel of the three.

Other wheels that will grind more rolls per wheel and can be used on first or second pass are 80DM, 80DN, 70DL, 70DM, 70DN—Norton. As these wheels are much harder than the Carborundum 80M or 80N, the rolls must be watched extremely close for high spots and chatter on the roughing passes.

For trouble free grinding, 80M or 80N Carborundum top all others. These wheels are also best for 1st passing 2 pass rolls.

To save time when only 25,000 or 50,000 rolls are wanted, all three passes can be ground on the finish or 80 K. C. wheel. This only applies to small rolls, from 2008 on down. Rolls such as 103 or 1008 can be roughed and finished on an 80 K. C. wheel. In Canton all rolls below 502 size are 3rd passed on 80 K. C. wheels, 502—4003—5003 are third passed on a 150 DM Norton wheel. 4003 and 5003 can be finished with an 80N, but more care must be used to get a smooth finish.

The 150 D. M. is a vitrified wheel and will not give the high polish of an 80 K. C., but the quality of the roll will be better, less chatter. An 80 K. C. wheel does not cut fast or free enough for large rolls, although it can be used but not as efficiently. As long as you demand the high polished roll no wheel can be used for finish except 80 K. C. Carborundum. Large rolls such as 702-802-902 are finished on an 80M or 80N—in Canton but without the high polish.

The Norton Company build a rubber wheel—90 AR5, but it is a poor substitute for Carborundum 80 K. C. Too soft.

For 4th passing, removing only from .001 to .0015 stock and grinding to sound test the Norton 25200 BS6 or 25200 BS7 is the only wheel to use. It cannot be used for removing more stock than this as it is a soft wheel. A high polish can be obtained with this wheel with the proper grinding combination but it is not desired as when this combination is used the rolls will not come up to sound test. They must have a smooth, chatter free finish, but not necessar-ly a polish. The polish is obtained by having the grinding wheel dresser dropped to low in the back, allowing the rolls to pass through the machine taking practically no stock from the roll on the last few inches of wheel surface, merely polishing it. In Canton all railroad and mill bearing rolls are roughed and finished with an 80N wheel. The larger rolls over 902 on an in and out grinder not the straight through method.

Shuler.

[fol. 5247] Yesterday Mr. Dallow mentioned having a closer gauge for sizing. The .001 indicators I have asked you to order must be had for roughing and they will be closer gauges than you are using for finish at present. You have a Vanderbeek drop gauge which is not being used that only needs one collet made for each type roll and you will have a size gauge that will gauge closer than you can grind. This type gauge is used extensively in America and has proved to be very good. If you care to make up collets for all rolls, use the 302 collet that you have as a standard, by that I mean the gauge should be set so that when the collet with a "correct" size or No. 7 roll in it is placed under the gauge, and the handles pulled down to the stop the hand on the indicator should make exactly three round and stop on zero. The dial should be set with zero at the top and *never moved.* If the hand does not come to zero the gauge should be raised or lowered as necessary by means of the clamps on the two upright rods that support it. After the gauge is once set for one roll all other collets should be made in accordance, that is, so a "correct" roll or No. 7 will show exactly three round and stop at zero. The collets are made adjustable for wear and if after a time the "correct" roll shows .001 low a paper shim can

be inserted at the bottom of the collet. The steel washer can be ground off if a new collet shows a "correct" roll too high.

Rolls having the same taper will have the same drop or stand. Rolls of different taper and the same grade or size will not have the same reading on the gauge. Your Mr. Ellis can have a chart made showing the drop for each grade for each roll. For example a 2008 roll drops approximately 14 to 1—A 202—18 to 1.

A	202—1 grade over	correct should show	.0045	high.
A	202—1 grade under	correct should show	.0045	low.
A	2008—1 grade over	correct should show	.0035	high.
A	2008—1 grade under	correct should show	.0035	low.
A	202—2 grades over	correct should show	.009	high.
A	202—2 grades under	correct should show	.009	low.
A	202—4 grades over	correct should show	.018	high.
A	202—4 grades under	correct should show	.018	low.

[fol. 5248] On 2008 rolls in America an operator is given a limit of .002 on drop to work. A few may be over or under these limits as it is impossible to hold them all this close.

Shuler.

[fol. 5249] 9th October 1930.

Mr. Fegan:

Following is a list of rolls and methods used in grinding them, most of which are not run in the regular manner.

Saginaw. No-. 1. 2. and 3.

Steering gear rolls—Finished in *one* pass, grind from size 8.¼ to 8.½—all under 7.½ are scrapped. All over 9.¼ are reground. All 8.¼ or 8.½ *ground end* rejected rolls can be reground on surface. All rejected rolls *not ground end* can also be reground, all under 7.½ are scrap. 70 per minute Rubber wheel.

A. roll. Ground three methods.

1st. For steering gear job. Finish to 7.¼ in one pass.

2nd. For regular bearings. Finish in two passes. 1st pass to 10-finish to 7.¼".

3rd. For quiet sound tested bearings. Regular two passes, then lapped.

All methods run 70 per minute. Rubber wheel.

Delco (straight roll, no taper).

2 passes—80 N. Carborundum wheel.

First pass. .303 to .304.

Finish pass—Maximum .302 minimum .3005.

Replace cast iron control wheel with a 12" x 6" x 5" 80 K. C. wheel. A standard Cincinnati control wheel dresser must be used, set at an agle of 2°30′ (front left). The feed wheel head should be tipped down 2°30′ in the back. The diamond should be set 2°30′ off center in the holder, right. Use a cam with three points on to work the hopper, run the feed wheel spindle 52. R. P. M. The rolls will draw themselves through the machine 150 per minute on roughing and 175 per minute on finish (may run some over) if all angles are correct. No taper allowance on the rolls. Use a long spring tube direct from the hopper tube to the loading tube, old style tube not new style block. Rolls are fed in a steady stream direct from loader tube to blade, no finger or push rod used.

103—3 methods.

1st. One pass to 7.¼ steering gear.

2nd. Two passes—1st pass 10—Finish pass 7.¼.

3rd. Two regular pass to 8.½ instead of 7.¼. Another pass to 7.¼ on 4th pass wheel and sound tested. All 70 per minute.

T.75 and T.87.

One pass on 80N wheel 70 per minute.

Minimum 5.½ maximum 6.½ all over or under are scrap.

A small percentage of nearly all type of three pass rolls are given a fourth pass and sound tested where quiet bearings are needed.

[fol. 5250] 9th October 1930.

Mr. Fegan

The following is a list of gauges which should be had in order to properly check your rolls: Canton is standardising on Ames.

4—Large Ames (2.¾" face) graduated in .0001. Mr. Teague will send you the model number. One of these gauges to be set up for each roll being ground to check for chatter.

4—Small Ames (2/16" face) graduated in .001 and .0005 —Model 55—Style face 0-20-0. One for each machine for size gauging. Small .0001 indicators on hand could be used for size gauging on finish, but I would recommend using

the Vanderbeek drop gauge which you have. If rolls are to be sized on .0001 indicators a few more *angle* contact blocks are needed as you do not have blocks for all rolls. When using the .001 indicators for rough sizing solid blocks can be used. A few more of these are also needed.

One diamond point block-*center* contact for each roll should be had for chatter checking. At least six more stands for indicators are needed.

Setting Diamond Blocks

Set the diamonds as near the center of the roll as possible by the eye. The block should *be* then be put in the stand, a roll on the block and if the indicator registers more than .002 when the block is moved sidewise the length of the roll the two bottom diamonds should be adjusted. The indicator needle should be set straight with the back face of the block, not on an angle, but from .0009 to .0012 off center, toward the operator. If both ends of the rolls are not off center within the limits the back diamonds need adjusting. This set up should always be used for chatter checking and can be used for size gauging, but with an angle contact block instead of center contact.

If a block is to be used for size gauging only, it need not be set up as accurate from .0002 to .0004 off center is plenty, but the indicator needle should be straight with the back face of the block.

Setting feed wheel spindles

On standard American feed wheels, which have the drop off 11/16" from the end of the roll to the end of the wheel, the *maximum* distance that the backface of the wheel should extend past the backface of the grinding wheel is 13/16"—in this position the roll is being carried past the edge of the grinding wheel 1/8". If a ring appears on the small end of the roll (dark colour ring), it is probably caused by the roll passing over the wheel edge too far—the feed wheel spindle should be moved out so the roll only passes over the wheel edge 1/16" or a trifle less, the machine can then be run till the spindle wears back to 1/16" more. The *minimum* distance that the feed wheel should extend past the grinding wheel is 3/4" or a trifle less. On Timken bearing machines it is necessary to put a washer, the thickness of

which is equal to the distance the spindle is to be moved, behind the cone of the front bearing, generally about 1/16".

Bushing agitator

To be used on the following rolls.
[fol. 5251] 502. 602. 702. 802. 902. 4003. 5003. 6003. any large roll of this type. 7003 cannot be run this way—length and diameter being too near alike.

Grinding solution

Considered to be and proven *extremely* important in holding chatter, finish and sound test within limits, also in keeping the efficiency of the grinders up. A good soluble oil should be used, one which will stay in solution and not separate. In Canton "Phoenix" oil is used. "Shell" soluble oil was recommended by the Canton chemist and can be purchased here. In Canton a 3 to 1 solution is used. 25% oil. The water is kept in a central sump and piped to the machine, returning to the sump in covered gutters in the floor. This guarantees uniform solution on all machines. A small arrangement on this order could very easily be made here, it serves also as a filter.

Grinding wheels

Wheels can be run till they are worn down to 15/6" from the adaptor flange many can be run till only ¾" from the flange. It may be necessary to mill the loaders out in the back and cut about ⅛" off the end of the six screws that hold the flanges. The new style loaders should be spotted to allow the grinding wheel and flanges the same clearance on both sides.

A checking devise for testing end of roll for out of square with body should be arranged as I explained.

[fol. 5252]

HARD STEEL REGULATING WHEELS
FOR ROLL GRINDERS

Material Cost:—

	Ketosforged	118# at $.43	$50.74
	Machine Steel	118#	$29.50
Total Finished $50.00	Steel Casting	140# at $.10	$14.00
Total Finished $20.00	Cast Iron	200# at $.04¼	$ 8.50

Increase Eff. 10% saves $.10½ per hr per month.
$50,000 per year Canton & Col.
Treatment—Carburigt Hdn—Temper (?)
to Brinnell—(?)
See Roy Gable.
Material Trade Name—"Evansteel" #2 grade
Chicago Steel Foundry Co.
Kedzie Ave & 37th St.
Chicago, Ill.
(1½% nickel .75 to 1% chrome
.30 to .40 Carbon

[fol. 5253]

THE TIMKEN STEEL AND TUBE COMPANY

Inter-Organization Correspondence

Canton, Ohio
August 11, 1930

CANTON WATER T.R.B. CO. 1930.

	P.P.M.
Calcium	400
Magnesium	100
Alkalinity	265
Free CO_2	50
Cl.	17
SO	206
Fe^3	.4

Permanent Hardness as $CaCO_3$ 30 grains per U.S. gallon.
20 grains per U.S. gallon normal
OLM:ALK O. L. Maag.
add a little tri sodium phosphate is water is too hard
watch foam.

Oil 90%—70 Vic. at 100
5%—R-d oil oleic(?) acid
5%—Soap.

[fol. 5254]

THE TIMKEN ROLLER BEARING COMPANY

Inter-Organization Correspondence

Canton, Ohio

May 6, 1930

Mr. Buker:

Grinding Machines in Dept. #74.

Centerless Roll Grinders
83—No. 2
23—No. 3 Spec.
4—No. 3 for large rolls
58—No. 2's Have tex rope drive
2—No. 3's Have tex rope drive
25—No. 2's Have 6" width belts) 48 total belt drivers
23—No. 3's Spec 6" width belts) on grinding wheel spindle
2—No. 3's Have chain drive

Angle Grinding Machines
28 Keller Grinders Speed 44 per minute
11 Hand Angle Grinders
11—V-14 Angle Grinders Speed 26 per minute
1—V-16 Angle Grinders Speed 51 per minute

Operator runs 5 Kellers on 5 units 1 man runs 3 (1 unit has only 3 mach)
Operator runs 12 Van Angle Grinders experimental test
8 Body lapping machines
2 end lapping machines
4 Radius polishing machines
3 Bock Radius grinders
1 Modern Grinder for shank grinding

Operation of Centerless Machines #1 Shift.

3 machines per man
30 Men = 90 Machines
2 Men = 4 on large rolls
2 Men = 2 mach. singles on railroad and Mill Bearings.
1 Man = 1 Mach. 83 series rolls

Operation of Centerless Machines #2 Shift.

10 Men = 30 Machines 3 per man
2 Men = 2 Machines 1 per man

Note: Sometimes man on single machines operate unit of 3.
4004—4 pass 50% must be held to size for Van Angle Grinder.

[fol. 5255]

THE TIMKEN ROLLER BEARING COMPANY

Inter-Organization Correspondence

Canton, Ohio

502—4 pass) must be held to size for Van Angle
702—4 pass) These rolls are not size gauged by
804—4 pass) Hissner for his grinders.
902—4 pass)

Note: Above rolls are held to .0001 for chatter and high spots.
Regular production rolls 3rd pass are held to .0001 for chatter up to 3008 roll above this size .0002 for chatter.
Total machines operating on Shift #1 97) May 1930
Total machines operating on Shift #2 32)

L. Wood 74-287 Head Lineman over 51 machines
E. Deal 74-101 Head Lineman over 45 machines plus 4 railroad jobs.
Rate of Lineman
62¢ plus Premium or 18 to 20¢
Total 80 to 82¢ Lineman rate.

[fol. 5256] I will make this report out covering several subjects, first the checking system that is being used in Canton.

On first and second pass machines the operators are permitted to dump their rolls from the tray to a basket but on third or finish pass and fourth pass they are not permitted to. This is done by the checker, who makes a check over them first for taper, size, chatter, surface defects and on fourth pass sound test before he lumps them. Both the operator and the checker are held responsible for the quality of the work. If the checker finds any rolls beyond the limits in the tray he immediately takes them away and holds them for regrinding, the operator not being paid for the rolls. If the rolls at either end of the tray are good and the checker thinks he can pass part of them without getting many rolls in that are beyond the limits he passes those that he thinks are good. If he finds nicks, cracks, wheel marks or any other defects on quite a few and size, taper and chatter are O.K. he marks the basket "Inspect 100%" and allows the rolls to pass. No rolls are taken from the operator for being a trifle over or undersize and otherwise O.K. unless he is grinding rolls to be 4th passed as the size must then be within the limits.

On first pass the checker must see that the operator has his rolls within the size limits and if he grinds them oversize he is made to re-first pass them.

On second pass the size is also important; if the rolls are too large they may chatter when passing thru the finisher, if too small they will not clean up. If small the checker takes them away for regrinds, if large the operator must re-second pass them. Taper and chatter must also be checked and if beyond the limits the rolls are taken away. All rolls taken away are taken care of by the head checker. Bins with pans are provided and when a pan has been filled with one size and type of roll it is taken to the machine and reground. While the machine is grinding this pan it is given extra close checking to see if all the defects are being removed. If a checker finds an operator making defective rolls quite often the head checker reports it to the foreman who handles the situation in his own way.

A practice I notice quite frequent here, that is absolutely [fol. 5257] forbidden in Canton is giving the pilot wheel a quick turn back then up again while rolls are passing thru

the grinder. This is done when rolls are undersize and the operator wishes to set the head back, but it should never be done without first stopping the rolls from feeding and allowing the last one to pass from the feed wheel. Every time it is done a few rolls pass thru without grinding or are oversize, causing trouble on the next pass or in case of a finisher not cleaned up.

All No. 2 machines in Canton are equipped with a plate over the rolls where they swing on the hopper blades and a small bracket underneath. (As applied on the 2008 machine with the new style loader). This prevents rolls from going in backwards and makes feeding more uniform. The hoppers should also be adjusted to stop the roll from swinging as on the machine referred to above. Owing to the extremely bad upset rolls they should be sorted which could be done quickly by means of a hopper as I suggested to you.

When grinding 7003 rolls to the limits you require I would give them 2 pass on an 80N wheel—holding the 2nd pass on taper or not more than ¼ of the roll showing light, then flash grind and give the third pass on an 80 K. C. wheel. If they can be ground not chatter free enough this way, you might try 3 passes with an 80N wheel, allowing about .0015 stock to be removed on 4th pass. You could use either an 80 K. C. or 25200 wheel for 4th pass, rolls from the 25200 probably would sound better if you are sound testing. We always found that when grinding large rolls with an 80 K. C. they were more subject to chatter although you seem to be able to get good rolls with the 80 K. C.

I should hold the first pass to about .0003 on a 3 point check. A few at .0004 will grind out on 2nd pass. Hold the 2 pass from .0002 to .00025. Third pass should not be over .0002 and not many that much.

[fol. 5258] The two point checking should be to the regular limits I have given you previously.

When setting the job up be sure the feed wheel is round, spindles drawn up tight and get an even grind. Use the whole wheel, don't have the rolls grinding on only about 3 inches of wheel surfaces.

If the rolls from any machine can not be made to show O.K. on a 3 point check, it is often due to a poor bearing in the feed wheel spindle. The long tapered bearing wears most at the front and when the spindle is pulled back to

tighten it, the spindle tightens up at the back end of the front bearing; this allows the feed wheel to spring. The spindles should be taken out and the bearing relieved at the back. Chatter can be caused by either spindle being bad.

All extension feed wheels should be turned up with the new drop off and when a machine is equipped with the new loaders the feed wheel spindle should be set accordingly.

When the new diamond blocks arrive have them set as I showed you, using a two point set up to check them. They can be used then on 3 point also as they need not be set so exact for 3 point checking.

I think it should be arranged so Mr. Beech has access to a copy of these reports.

Shuler.

[fol. 5259]

PIECE WORK RATES

Hand Angle or End Grinding
Hand Machines Only

Part #	Rate per M. O.K. Pieces
10— 310— 3004 26— 402— 3005 43— 405— 3008 103— 1003— 4003 T-175— 1008— 4004 202— 1009— 4005 T-200— 2003—83042 205— 2004—83052 T-250— 2008—83062 302— 2009 305— 3003	$.65
T-300— 6003— 7004 T-400— 5004— 7005 T-500— 6000— 8003 500— 6004— 9003 502— 6006— A 505— 7003—	.70
B —83082 702—83102 6003—	.82
802— 9004 902—10000	1.12
83122	1.00
83142—83162	1.20
83182—83202	1.30
83222	1.45
12000	3.10

Revised
January 16, 1929.

The Timken Roller Bearing Company
Approved J. G. Oberimier

[fol. 5260]

ROLL SURFACE GRINDING PIECE WORK RATES

Please change the following to read:

Part #	Roughing Rate per M.	Finishing Rate per M. O.K. Pieces
14000	$6.75	$4.75
15000-5-6	6.75	4.75
16000	6.75	4.75

1 man operating 1 mach—Hand Feed—in and out

February 1, 1930

The Timken Roller Bearing Company
Approved J. G. Oberimier

[fol. 5261]

ROLL SURFACE GRINDING PIECE WORK RATES

Cincinnati Centerless

Part #	Roughing Rate per M.	Finishing Rate per M. O.K. Pieces
T-702	$6.50	$5.40
T-800	7.20	5.90
11006	4.35	3.50
12006-7	4.35	3.50
17000	4.50	3.60
19000-5	8.50	6.80
36000	18.60	16.25

One man operating one machine.—Hand Feed—In and Out

October 1, 1928

The Timken Roller Bearing Company
Approved J. G. Oberimier

[fol. 5262]

PIECE WORK RATES

Hand Angle or End Grinding
Hand Machines Only

Part #	Roughing Rate per M.	Large End Only Finishing Rate per M.
11005-6	$1.85	$1.30
12005-7-8	1.85	1.30
12006	2.60	2.10
14000, 83242, 83262, 83282, 83302	3.70	3.25
T-602, T-702, 15000-5-6, 16000	3.20	2.80
17000-5-6	3.70	3.25
19000	5.90	4.80
19005, 21000, 22000, 23000	8.35	5.20
25000	6.50	6.50

Revised
January 16, 1929.

The Timken Roller Bearing Company
Approved J. G. Oberimier

[fol. 5263]

ROLL SURFACE GRINDING PIECE WORK RATES

Cincinnati Centerless Machines

Class #2 Large Rolls Only As 702-802-902-6003 etc

Large No. 3 Grinder Only
Not Special No. 3

Rolls per minute or group	One Mch. rate per thousand O.K. Rolls	Two Mch. rate per thousand O.K. Rolls	Three Mch. rate per thousand O.K. Rolls	Four Mch. rate per thousand O.K. Rolls
12	$1.38	$.742	$.512	$.397
18	.925	.496	.342	.265
23	.724	.388	.268	.208
29	.574	.308	.213	.164
34	.49	.264	.181	.14
57	.292	.157	.108	.084

No hourly rate guaranteed and no credit time allowances.
March 16, 1928.

The Timken Roller Bearing Company
Approved J. G. Oberimier

[fol. 5264]

ROLL ANGLE GRINDING PIECE WORK RATES

Hand Machines Only

Part #	Roughing Rate per M.	Finishing Rate per M.
902	$1.13	$1.12

March 16, 1930.

The Timken Roller Bearing Company
Approved J. G. Oberimier

[fol. 5265] The Timken Roller Bearing Company

Canton, Ohio

Oct. 11, 1929.

Mr. Reifsnyder:

Subject: Special 702 rolls ground for Kesel held for eccentricity to .0002 limit. angle.

Rough end ground	3000 pieces
4 hours average	750 per hour
Finish end ground	3000 pieces
40 hours average	75 per hour

The cause of slow production on finish end grinding was due to the following causes—

Each roll had to be wiped clean before end grinding. Chuck had to be cleaned every 10 or 15 rolls. Rolls were sparked down to minimum to allow for even grind.

We tried washing rolls in hot soda water but soda when dried was to- hard to have wiped off of rolls. We tried grinding rolls with soda spots on after wiping and the run out on these rolls were from .0001 to .0005 eccentricity on end.

To eliminate this rolls were taken from Centerless grinder and wiped dry, which proved O. K. for grinding ends. They could be held to .00025 limit for eccentricity.

Special 902 rolls ground for Kesel, held for eccentricity to .0003 limit angle.

Rough end ground	2500 pieces
5 hours average	500 per hour
Finish end ground	2500 pieces
29 hours average	86 per hour

The cause of slow production on finish end grinding was due to the following cause—

Operator had to wipe all rolls clean before grinding.

These rolls were wiped clean after surface grinding.

Special 802 rolls ground for Kesel held for eccentricity to .0003 limit angle.

Rolls were delivered to Mr. Yohe after surface grinding to be wiped clean by one of his girls.

We did not rough grind angle on these rolls, ground angle in one grind.

Finish end ground	1255 pieces
5½ hours average	230 per hour

I suggest that Mr. Yohe furnish a girl to clean all rolls that have to be ground for Mr. Kesel for #3 rolls.

This will increase production on end grinding No. 3 rolls.

G. Baer.

[fol. 5266]

Mr. Walters— 10-24-'29

Following is the sizes and taper tolerance for Header and Screw Automatic rolls. Kindly make blue print of same.

Roll #.	Size.	Roll #.	Size.
Saginaw #-1	22-24-26	17000*	22-26
" #-2	" " "	17005*	" "
" #-3	" " "	17006*	" "
A- Roll	18-22	19000*	" "
Dalce	18-24	19005*	" "
103	18-22	21000*	" "
T-75	18-22	21005*	" "
T-87	" "	22000*	" "
Burnished (T-100*		23000*	" "
wells to (T-137*		25000*	" "
size (T-150*		25005*	" "
T-175*	18-22	26000*	" "
T-200*	18-22	27000*	" "
200	26-34	28000*	" "
202	" "	29000*	" "
205	" "	31000*	" "
302	" "	33000*	" "
305	" "	35000*	" "
307-B	" "	36000*	" "
402	" "	41000*	" "
405	" "	44000*	" "
502	24-32	45000*	" "
602	" "	83052	26-32
702	22-26	83062	" "
(802*	18-22)	83082	" "
Check (902*	" ")	83102	" "
(903*	" ")	83122*	18-22
1003	26-34	83142*	18-22
1008	" "	83162*	" "
1009	" "	83182*	" "
2003	" "	83202*	" "
2008	" "	83222*	" "
2009	" "	83242*	" "
3003	" "	83262*	" "
3004*	18-22	83282*	" "
3005	26-34	83302*	" "
3008	" "		
4003	"-32		
4004	"-34	.005 off taper on Header Rolls only.	
5003	"-32		
5004	"-34		
6003	22-26	.001 off taper Screw Automatic.	
6004	26-34		
6006	26-34	CC—Reifsnyder	
7003	26-32	Buker	
7004*	18-22	Richey	
7005*	18-22	Riegler	
8003*	18-22	Baer	
9003*	20-22	Schum	
9004*	" "	Drowns	
10000*	" "	Hague	
11005*	" "		
11006*	" "	NOTE: Rolls marked * are not header rolls.	
11007*	" "		
12000*	" "		
12005*	" "		
12006*	" "		
12007*	" "		
12008*	" "		
14000*	22-26		
15000*	" "	Vert W. Schlott.	
15005*	" "		
15006*	" "		
16000*	" "		

(Here follow, 1 Photolithograph folio 5267.)

Triple O

Double O

AMERICAN

Standard

SIZE

Correct

UNDER

BRITISH

.003 off on 3rd pass

.003 off on 3rd pass

.008 off on 2nd Pass

.008 to .016 off on 1st Pass

UPSETTER SIZE ON STANDARD ROLLS

[fol. 5268]

THE TIMKEN ROLLER BEARING COMPANY

Canton, Ohio

Roll Speeds on Cin. Centerless Roll Grinders.

Roll #	Speed	Pass
A	70 per min.	2
T-75	70	1
T-87	70	1
103	70	2 & 3—now 1 & 2
T-150	39	1
T-175	39	1
T-200	39	1
T-300	39	2
302	70	3 & 4
502	52	3—39 per—4 pass
602	39	3 & 4
702	34	3 & 4
802	34	3
902	29	3
903	34	3
1003	70	3 & 4
1008	70	3 & 4
2003	70	3 & 4
2004	70	2 & Lapp Auto roll
2008	70	3 & 4
2009	70	– 4
3005	70	3
3008	70	– 4
4003	52	3
4004	70	3—52 on 4 pass
5003	39	3
5004	52	– 4
6003	34	3
7003	52	3—39 on 4 pass
8004	34	Grind to size for railroad jobs lapp ends.
Beck 56	12	2
" 70	70	3
11005	34	3
11006	Single	Rough & Finish
11007	"	" "
12000	"	" "
12005	"	" "
12006	"	" "
12007	"	" "
14000	"	" "
15000	"	" "
15005	"	" "
15006	"	" "
16000	"	" "
17000	"	" "
17005	"	" "
17006	"	" "
21000	"	" "
21005	"	" "

[fol. 5269]

THE TIMKEN ROLLER BEARING COMPANY

Canton, Ohio

Roll #	Speed	Pass
22000	Single	Rough & Finish
23000	"	" "
25000	"	" "
25005	"	" "
26000	"	" "
28000	"	" "
29000	"	" "
19000	"	" "
19005	"	" "
31000	"	" "
33000	"	" "
35000	"	" "
36000	"	" "
Note 41000	"	" "

83052	52	4 must sound test
83062	39 Hand Fed	4 " " "
83082	39 " "	4 " " "
83102	39 " "	4 " " "
83122	39 " "	4 " " "
83142	39 " "	4 " " "
83162	39 " "	4 " " "
83182	29 " "	4 " " "
83202	29 " "	4 " " "

Note: One man runs 1 machine on above

83222	Single	2 passes Must sound test
83242	"	2 " " " "
83262	"	2 " " " "
83282	"	2 " " " "
83302	"	2 " " " "

G. Baer

International Chamber of Commerce: World Business Information Centre — Chambre de Commerce Internationale: Centre International d'Information Economique
Internationale Handelskammer: Weltwirtschaftsdienst

CLEARING AND PAYMENTS AGREEMENTS
ACCORDS DE CLEARING ET DE PAIEMENTS
VERRECHNUNGS- UND ZAHLUNGSABKOMMEN

In force on 1st March 1939
En vigueur le 1er mars 1939
In Kraft am 1. März 1939

Contracting Countries / Pays Contractants / Vertragsländer				For each country / Pour chaque pays			
				For your Land / Pour votre pays			
				Total agreements ●	Total agreements ▼	Total agreements ◆	Total agreements ● ▼ ◆
B	Belgium	Belgique	Belgien	1	7	5	13
BG	Bulgaria	Bulgarie	Bulgarien	8	10	—	18
BR	Brazil	Brésil	Brasilien	2	—	—	2
CA	Canada	Canada	Canada	—	—	1	1
CH	Switzerland	Suisse	Schweiz	2	8	2	12
CO	Colombia	Colombie	Colombien	1	—	1	2
CS	Czecho-Slovakia	Tchéco-Slov.	Tschecho-Slow.	5	5	1	11
D	Germany	Allemagne	Deutschland	22	6	7	35
DK	Denmark	Danemark	Dänemark	2	1	1	4
E	Spain	Espagne	Spanien	5	8	—	13
EIR	Eire	Eire	Eire	—	—	2	2
EW	Estonia	Estonie	Estland	6	1	1	8
F	France	France	Frankreich	1	4	7	12
GB	Gt. Kingdom	Royaume-Uni	Grossbritannien	1	3	5	9
GR	Greece	Grèce	Griechenland	10	7	2	19
H	Hungary	Hongrie	Ungarn	7	6	4	17
I	Italy	Italie	Italien	18	5	5	28
IR	Iran	Iran	Iran	1	—	—	1
IS	Ireland	Islande	Island	2	—	—	2
JP	Japan	Japon	Japan	—	—	2	2
LR	Latvia	Lettonie	Lettland	10	—	1	11
LT	Lithuania	Lithuanie	Litauen	6	—	—	6
NBU	Nederlandsche	Nederlandsche	Niederländische	—	1	1	2
N	Norway	Norvège	Norwegen	4	1	—	5
NL	Netherlands	Pays-Bas	Niederlande	2	5	1	8
NZ	New Zealand	Nouv.-Zélande	Neuseeland	—	—	1	1
P	Portugal	Portugal	Portugal	2	1	—	3
PL	Poland	Pologne	Polen	8	1	1	10
R	Romania	Roumanie	Rumänien	4	10	2	16
RA	Argentine	Argentine	Argentinien	1	1	8	10
RCH	Chile	Chili	Chile	2	7	—	9
S	Sweden	Suède	Schweden	6	2	2	10
SF	Finland	Finlande	Finnland	6	—	—	6
SL	Syria & Lebanon	Syrie et Liban	Syrien u. Libanon	—	—	1	1
SU	U.S.S.R.	U.R.S.S.	U.d.S.S.R.	4	1	—	5
TR	Turkey	Turquie	Türkei	11	10	2	23
U	Uruguay	Uruguay	Uruguay	—	2	3	5
Y	Yugoslavia	Yougoslavie	Jugoslawien	6	5	3	14
	Total number of agreements in force (1) / Nombre total des accords en vigueur (1) / Gesamtzahl der Abkommen (1)			88	69	36	178

KEY – LEGENDE – ZEICHENERKLÄRUNG

●= Clearing Agreement / Accord de Clearing pur / Reines Verrechnungsabkommen

▼= Clearing and Payments Agreement / Accord de Clearing et Paiements / Verrechnungs- und Zahlungsabkommen

◆= Payments Agreement / Accord de Paiement pur / Reines Zahlungsabkommen

(1) Each agreement being bilateral and therefore occurring twice in the table, the total number of agreements is reached by dividing by two the actual total of the figures given in each column.

(1) Comme il s'agit d'accords bilatéraux, chaque accord figure deux fois au tableau; le total des accords en vigueur est donc obtenu en divisant par deux le total des chiffres indiqués dans chaque colonne.

(1) Da sämtliche Abkommen bilateral sind, war zur Errechnung der Gesamtzahl dieser Abkommen die Endsumme jeweils zu halbieren.

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DEFENDANT'S EXHIBIT 171

DEFENDANT'S EXHIBIT 172

2214

U. S. DEPARTMENT OF COMMERCE
JESSE H. JONES, *Secretary*

BUREAU OF FOREIGN AND DOMESTIC COMMERCE
O. P. HOPKINS, *Acting Director*

Economic Series—No. 23

THE UNITED STATES IN THE WORLD ECONOMY

The International Transactions of the United States During the Interwar Period

Prepared in the International Economics and Statistics Unit

By

HAL B. LARY
and Associates

with a Foreword by

WAYNE C. TAYLOR, Under Secretary of Commerce

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1943

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Price 35 cents

5271

TABLE 1.—*Decline in Dollars Supplied to Foreign Countries in Relation to Debt-Service Charges, 1929 to 1932*

Transaction	1929	1932	Amount of decrease	Percentage decrease
	Million dollars	*Million dollars*	*Million dollars*	
Dollars supplied by the United States through purchases of goods and services and new investments abroad	7,400	2,400	5,000	68
Dollars required to meet fixed debt-service payments to the United States, assuming no defaults or adjustments [1]	900	900	0	0
Remainder available to foreign countries for other purposes	6,500	1,500	5,000	77

[1] Approximate contractual amounts due United States for interest and amortization of foreign dollar bonds and of war debts. Actual payments to the United States under these headings totaled about $380,000,000 in 1932.

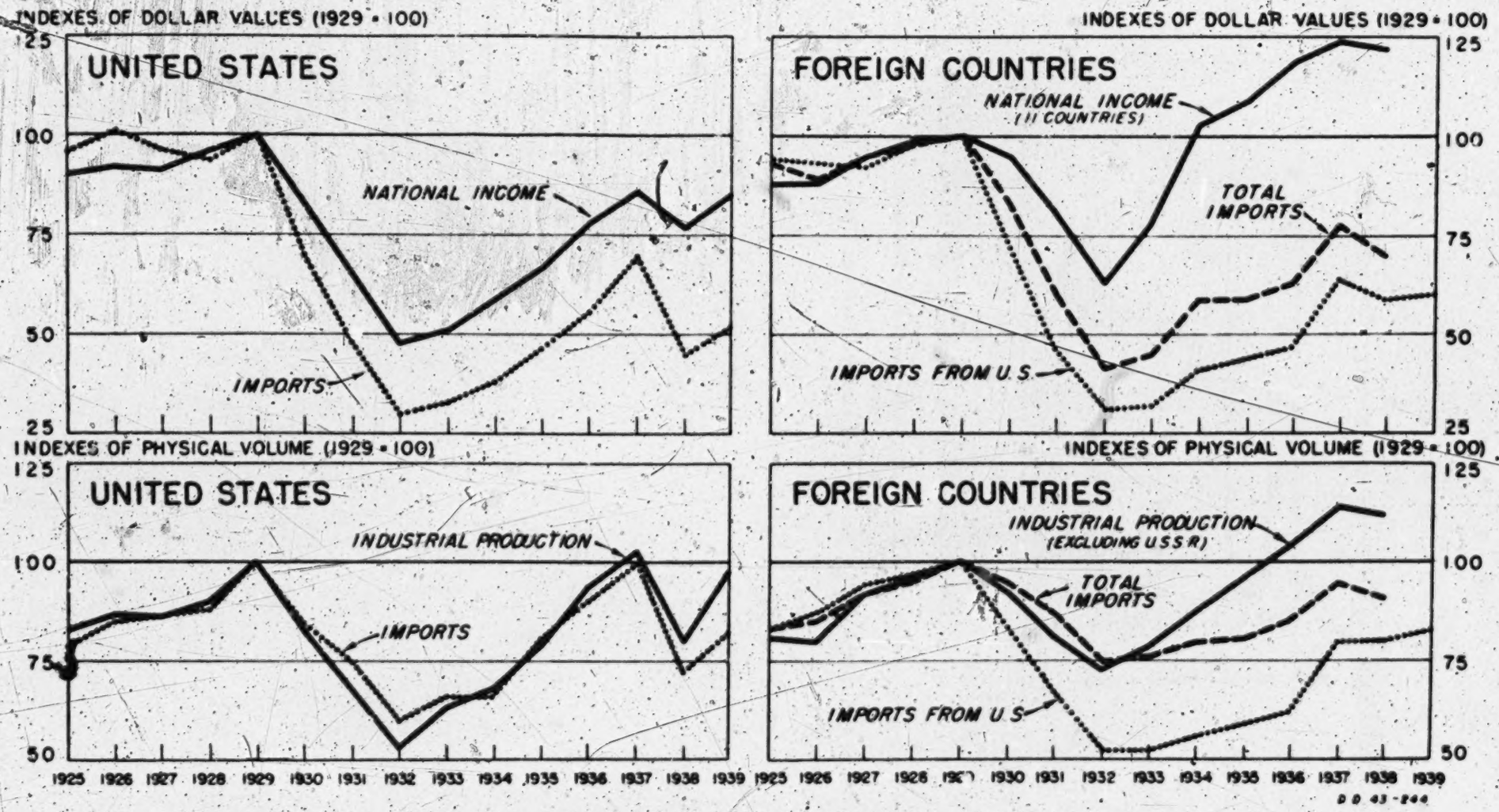

Chart 2.—Indexes of economic activity and international trade.

Note.—Index of national income for foreign countries is based on data for United Kingdom, Canada, Australia, New Zealand, Denmark, Norway, Sweden, France, the Netherlands, Germany, and Japan.

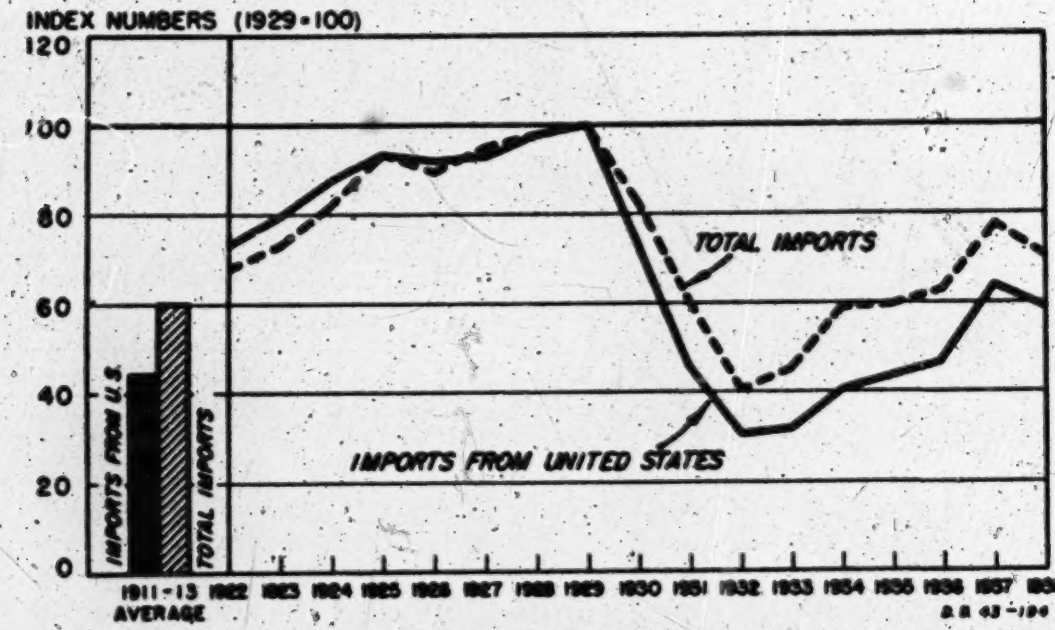

Chart 9.—Imports from the United States and total imports of all foreign countries. (Indexes of dollar values.)

***Note.*—Imports from the United States are as recorded in United States export statistics.**

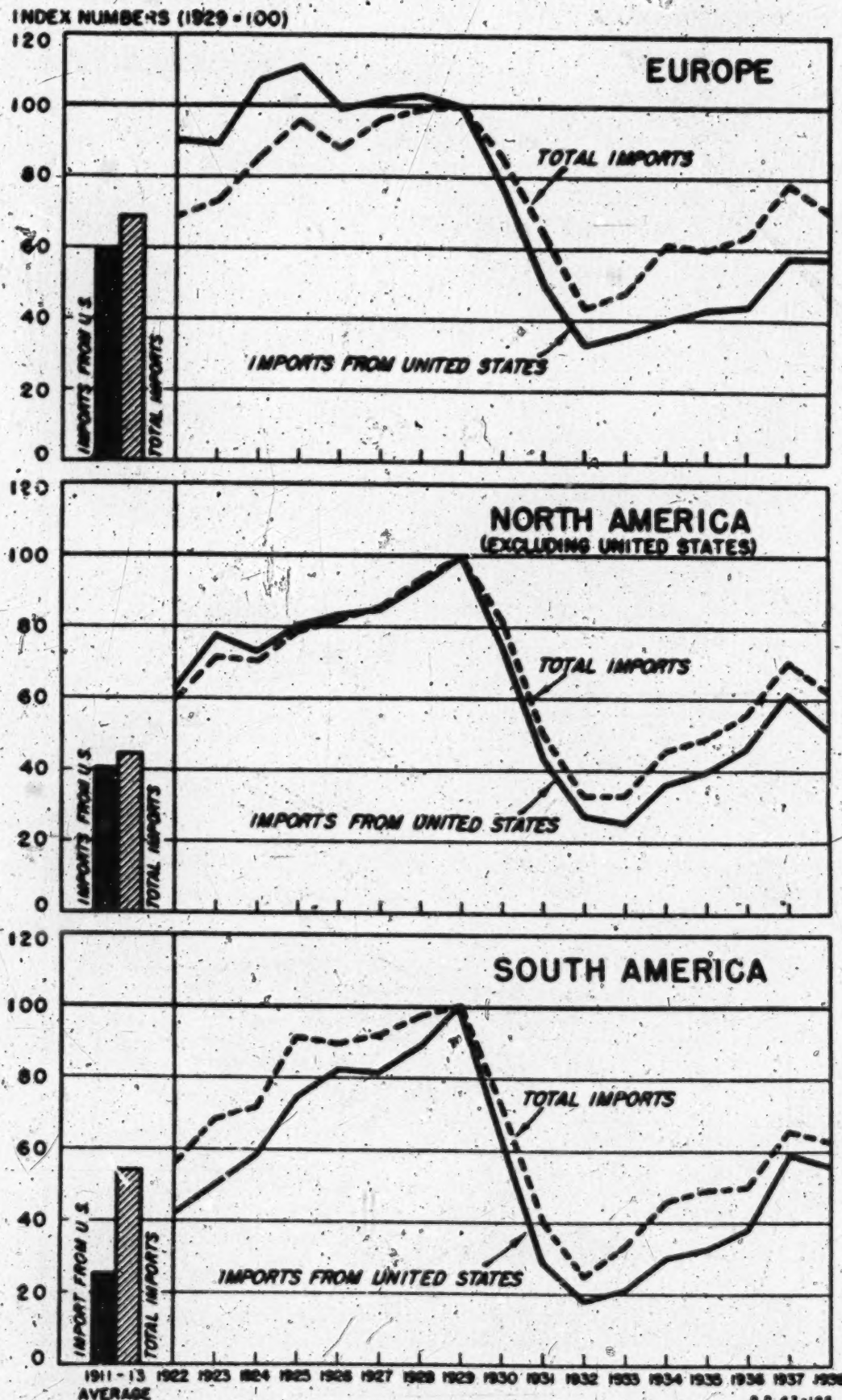

Chart 18-A.—Imports from the United States and total imports of foreign countries, grouped by geographic regions. (Indexes of dollar values.)

Note.—Imports from the United States are as recorded in United States export statistics.

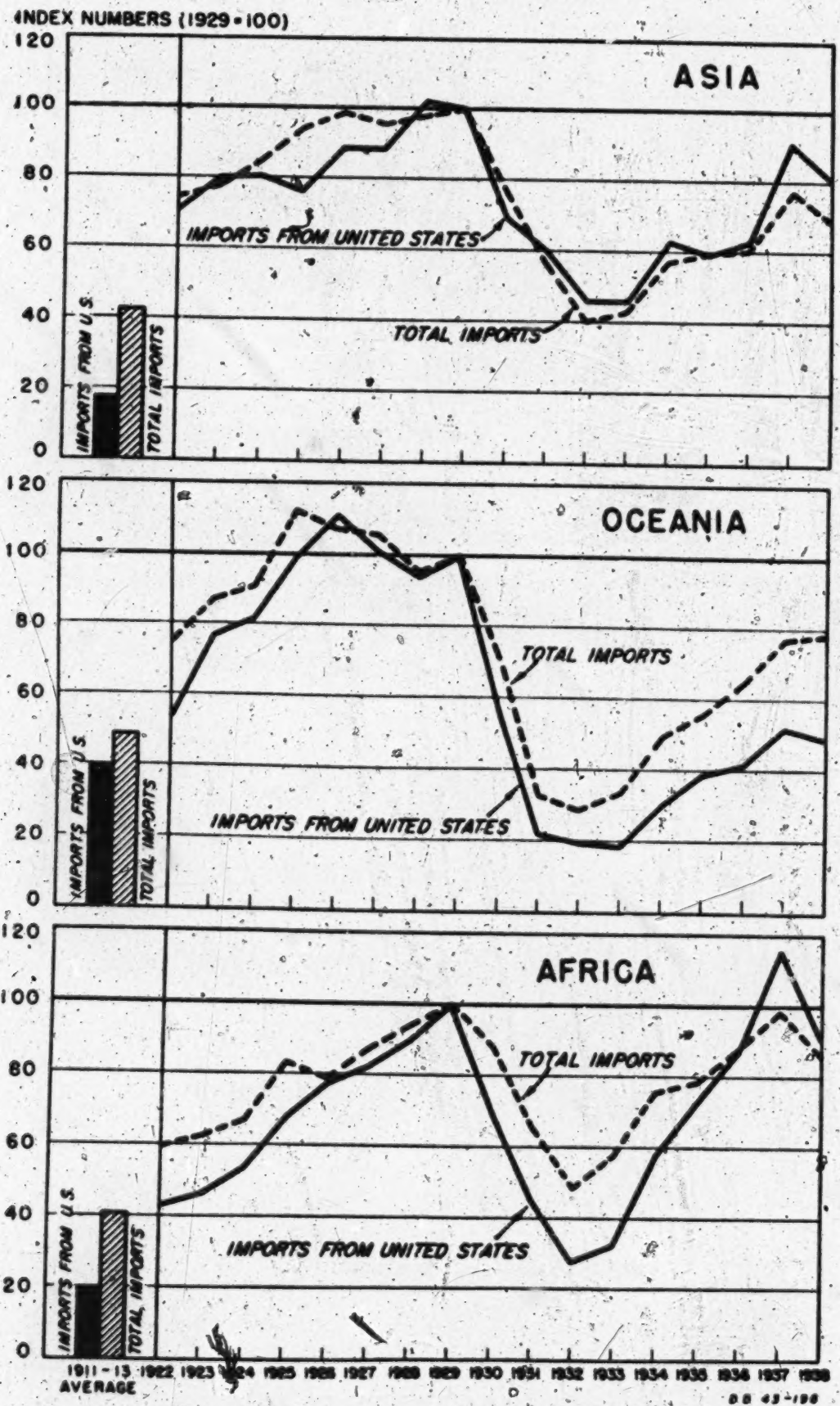

Chart 10-B.—Imports from the United States and total imports of foreign countries, grouped by geographic regions. (Indexes of dollar values.)

Note.—Imports from the United States are as recorded in United States export statistics.

575473—44——5

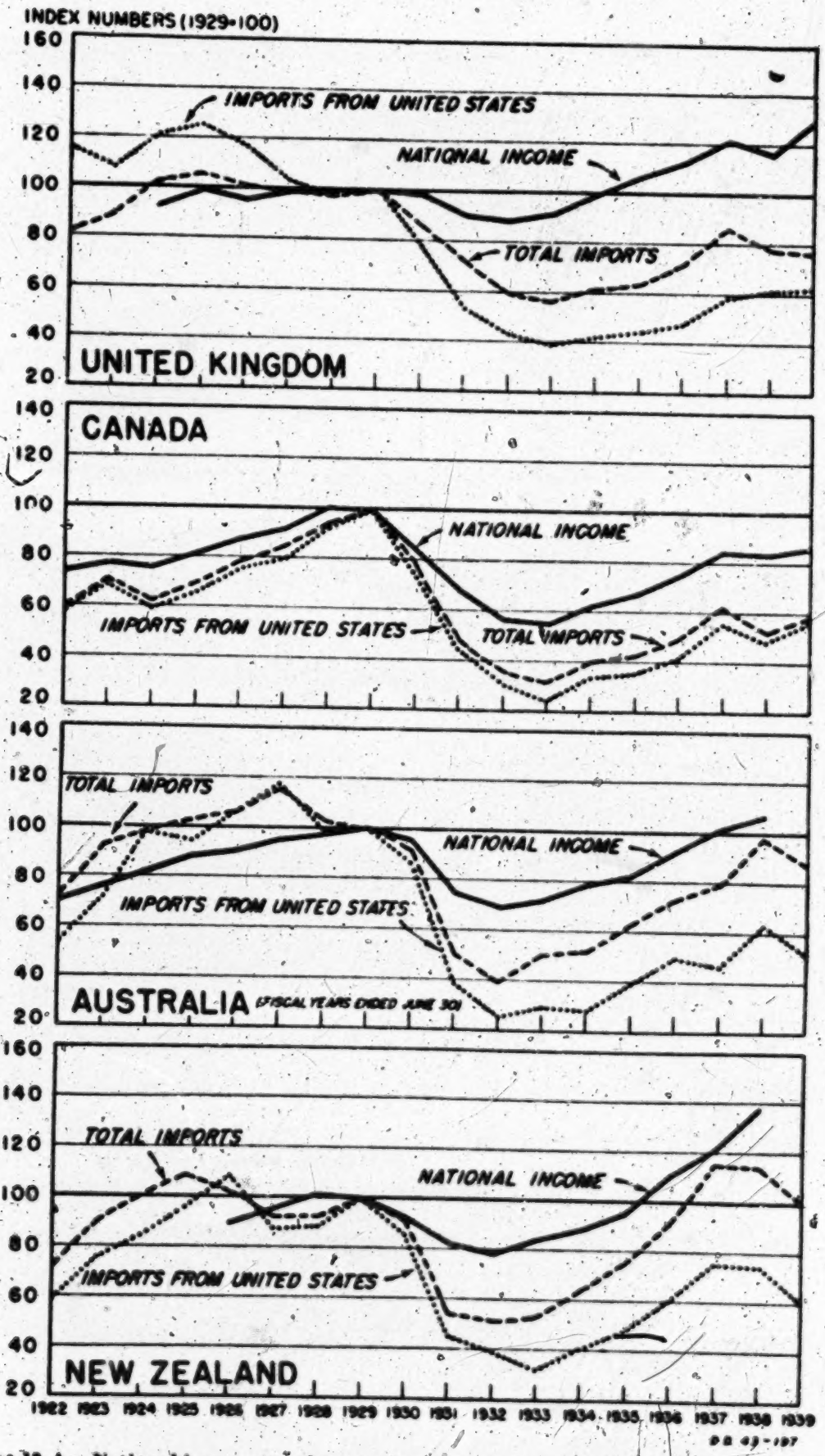

Chart 13-A.—National income, total imports, and imports from the United States of selected foreign countries. (Indexes of value in national currencies.)

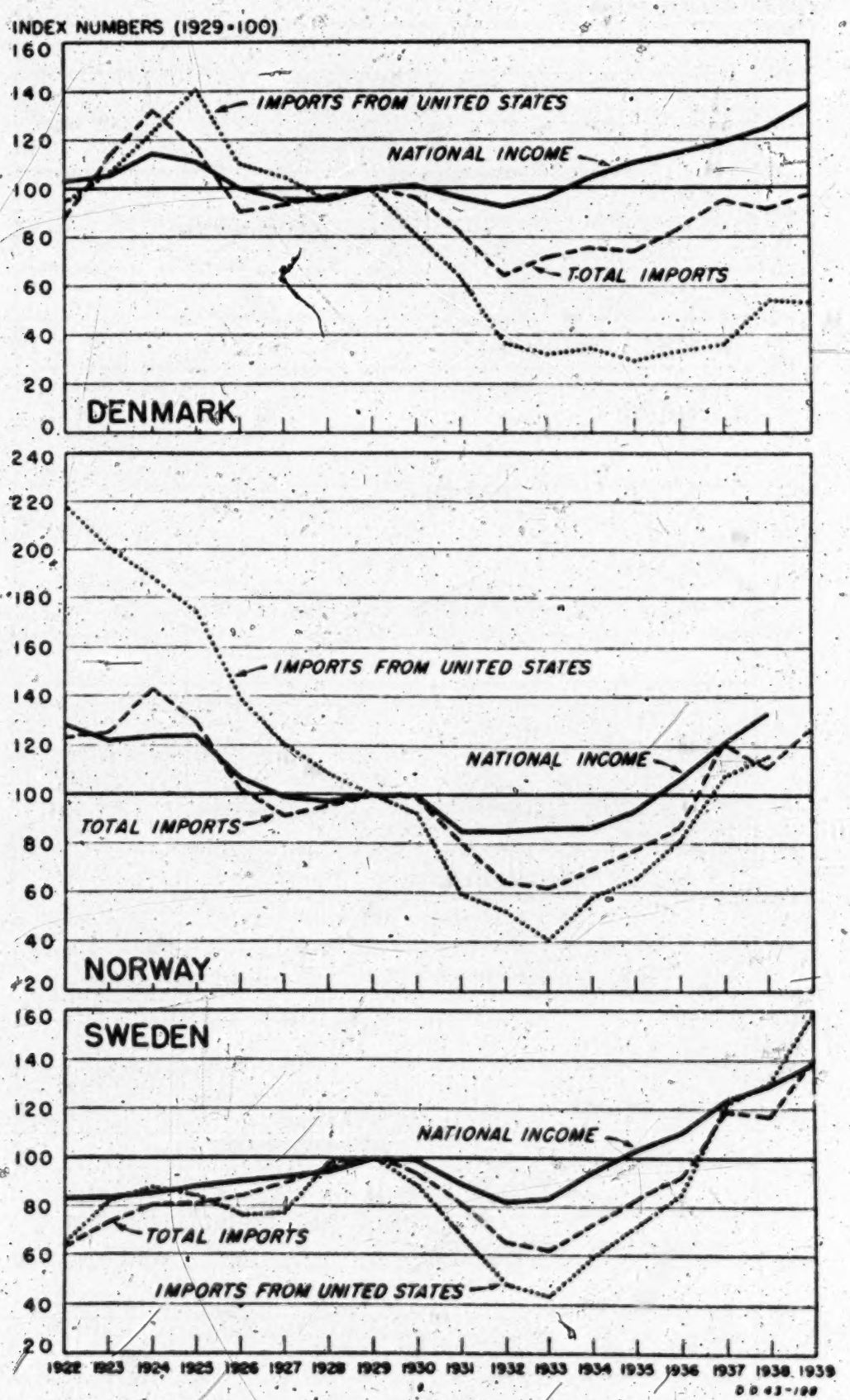

Chart 13-B.—National income, total imports, and imports from the United States of selected foreign countries. (Indexes of value in national currencies.)

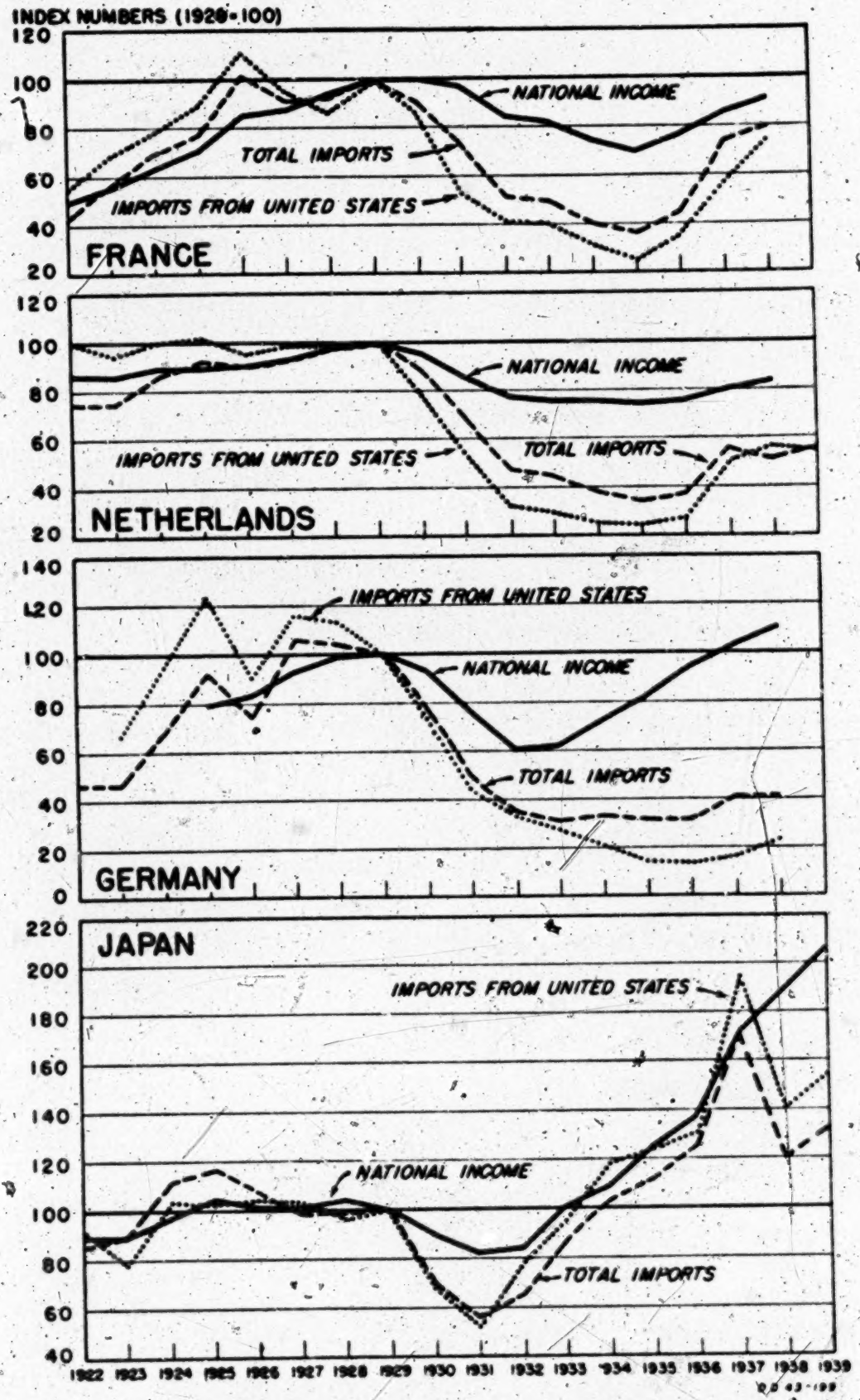

Chart 13-C.—National income, total imports, and imports from the United States of selected foreign countries. (Indexes of value in national currencies.)

[fol. 5280] DEFENDANT'S EXHIBIT 173

United States Tariff Commission

Washington

Antifriction Bearings

Tariff Act of 1930—Paragraph 321

Summary of Tariff Information

Prepared in Response to Senate Resolution 334

72d Congress, 2d Session

October 1934

[fol. 5281] Antifriction Bearings

Tariff Act of 1930—Paragraph 321

Antifriction balls and rollers, metal balls and rollers commonly used in ball or roller bearings, metal ball or roller bearings, and parts thereof, whether finished or unfinished, for whatever use intended, 10 cents per pound and 45 per centum ad valorem.

Comparison of Tariff Rates

1930, par. 321—10 cents per pound and 45 percent
1922, par. 321—10 cents per pound and 45 percent
1913, par. 106—35 percent

Description and Uses

Antifriction balls, rollers, and bearings are used to reduce friction to a minimum between a revolving part and a fixed part in many mechanical devices. Complete bearings consist of metal balls or rollers which are fitted between two metal cases or race rings so that a shaft may be inserted into the inner ring, and the outer ring may be fitted into the machine frame. In some instances, the outer case for the balls or rollers is an inherent part of the machine or device, while the shaft forms the inner race, in which case only the balls or rollers are supplied by the bearing manufacturer.

Antifriction bearings are used in many types of machines, in airplanes, in railway cars, machine tools, electric motors, hardware articles, etc. The automobile industry is the greatest consumer in the United States and Europe of both ball and roller bearings, but the proportion used for this purpose is considerably larger in the domestic industry than in Europe.

[fol. 5282] One of the leading domestic automobile producers owns two large bearing plants, one manufacturing ball bearings and the other roller bearings. The bearings from these plants are sold also to the general trade.

Two of the principal domestic ball bearing companies are principally foreign owned—one Swedish and the other English, while one domestic manufacturer has affiliates in several European producing countries.

Foreign Production

The principal foreign producing countries are Sweden, Germany, Italy, the United Kingdom, France, and Switzerland, probably ranking in the order named. Roller bearings are a rather recent development of the industry and are of less importance in relation to total production than in the United States.

The principal foreign company is Swedish controlled, and is known in the trade as S.K.F. It has 3 plants in Sweden, 2 in Germany, 2 in France, 1 in England, 1 in Czechoslovakia, and 3 in the United States, and has nearly 200 agencies and offices throughout the world. This company owns rich iron ore mines in Europe and is equipped to produce bearings from raw material to finished product. In its Swedish plant over 1,000 standard types of bearings are manufactured, while its foreign factories concentrate on the production of types most in demand in their respective areas. Its normal capacity for ball bearings is 190,000 daily and it supplies approximately one-third of the world markets. S.K.F. bearings produced in Sweden represent about 95 percent of the total production of bearings in Sweden. Production in Sweden amounted to $9,370,000 in 1930, and to $6,410,000 in 1931. Approximately 99 percent of the total bearings exported from Sweden are S.K.F. bearings. Total Swedish exports amount to about 90 percent of production.

[fol. 5283] It is reported that approximately four-fifths

of the German consumption, placed at $20,000,000 annually, is supplied by S.K.F. subsidiaries in Germany.

There is one large producer in Italy specializing in the production of automobile ball bearings. This company is a subsidiary of an Italian automobile company which also has a bearing plant in France.

There are about six producers in France, four of which are affiliated with companies in other countries, including a subsidiary of an American roller bearing company.

Production in the United Kingdom amounts to about $10,000,000 annually.

Production methods in Europe are similar to those in the United States, and in many instances the machines used are of the same type and are largely American made. Foreign producers are as favorably situated in relation to high grade iron ore as are the domestic manufacturers.

Ball bearings were first produced in Europe where the metric system is in general use. The metric system is also used in the United States in the manufacture of ball bearings, both European and American producers using standard S.A.E. metric specifications. Roller bearings were first made in the United States where inch-measurements were established, but in Europe they are made both to inch and to metric measurements. Ball bearings, and roller bearings made to inch-measurements are generally interchangeable.

[fol. 5284] No statistics are available on the number of bearings exported as parts of automobiles, machine tools, and industrial machines, but they far exceed those of separate bearings shown in table 12.

Factors affecting exports

Domestic and foreign bearings are generally of high quality. Foreign producers have plants in the principal consuming European countries and can produce bearings at a lower cost than can domestic producers. This gives the foreign producers an advantage in price not only in their home markets but in all sections of the world.

There is a market for domestic bearings in Canada due to the establishment of branch factories of American automobile companies which is not so largely affected by prices.

Domestic exports to principal markets

Domestic bearings are exported principally to Canada with lesser amounts going to European countries, Latin American countries, Japan, Australia, and the Philippine Islands with occasional large shipments to Soviet Russia. Export statistics, by principal markets, are given in the following table:

• • • • • • •

[fol. 5285] Character of exports as to types and grades

Exports from the United States are principally bearings used in the manufacture of automobiles in Canada in plants affiliated with American automobile producers. The balance of the exports are largely repair and replacement parts for American-made machines and devices, and types of bearings not produced in Europe.

Competitive Conditions

The United States is the largest world market for bearings, due principally to the extensive use of automobiles, electrical devices, and other machinery.

Domestic production is far in excess of any other country, amounting to $120,000,000 in 1929 and to $41,000,000 in 1933. Imports amount to less than one percent of production. The domestic producers have established a high reputation through high quality products and service. Mass production methods are generally used in the American plants, and two of the largest bearing factories are owned by one of the principal domestic automobile producers.

Production in Europe is principally in Sweden, Italy, Germany, the United Kingdom, and France. The principal foreign company is Swedish controlled (S.K.F.) and has plants in each of the above countries, except Italy, and in the United States and Czechoslovakia and has agencies and offices throughout the world. This company is as favorably situated as the domestic producers in relation to raw material, equipment, and skilled workmen, and produces high quality bearings. Imports into the United States are principally from the S.K.F. plants and from [fol. 5286] Hoffman of England. These imports go largely to their American affiliates and are largely sizes and types

which they do not advantageously produce here. In earlier years large quantities of bearings came from Italy. There is no foreign competition in domestic markets in cheap bearings which represent a very small part of the total domestic consumption.

Production costs in Europe are lower than in the United States, but under the present rate of duty, the price advantage is not sufficient to overcome the prestige of the domestic bearings. Neither would imported bearings replace the bearings used by the domestic automobile company which has two large bearing factories.

[fol. 5287] Lines of expansion of exports

As production costs are higher in the United States than in Europe, and as foreign bearings are generally of the same high quality as domestic, there is little likelihood of any material expansion in exports. Encouragement in the exportation of antifriction bearings can probably be best accomplished by attempting to increase exports of the articles of which they are integral parts.

(Here follows 1 Paster, folio 5288)

[fol. 5288]

Table 4.—Ball and roller bearings and parts: Exports of principal producing countries

(Calendar years)

Country of destination	Italy					Germany					Sweden		
	1929	1932 [1]	1933 [1]	1934 [1]	1935	1929	1932	1933	1934	1935	1929	1932	1933
Total exports	$1,109,373	$4,702,784	$2,127,313	$2,323,582		$3,154,163	$3,640,277	$3,688,088	$2,482,994		(2)	$4,688,449	$4,293,115
France	277,351	75,245	24,858	21,098		145,709	100,934	141,298	159,863		(2)	261,328	352,903
Italy	—	—	—	—		154,042	80,272	55,543	68,906			103,618	108,054
United Kingdom	5,455	2,351	6	116		159,994	28,737	54,932	109,857			198,032	335,934
Switzerland	15,086	12,698	26	4,647		277,370	123,733	99,488	73,238			50,996	44,955
Germany	116,509	83,239	77,509	83,881		—	—	—	—			277,133	544,993
United States	152,306	4,233	338	—		131,662	94,759	102,235	113,794			11,922	85,106
Czechoslovakia	9,857	7,524	18	2,324		453,316	234,167	187,685	233,888			167,813	200,357
Soviet Union	423	4,313,393	1,869,591	2,048,284		31,189	2,187,301	1,868,916	275,626			2,120,503	494,484
Canada	—	(2)	(2)	(2)		(2)	(2)	(2)	17,719			[3] 71,604	[3] 112,729
Belgium	135,328	31,979	36,381	(2)		128,090	47,736	94,911	90,169			113,850	166,827
Netherlands	32,614	19,752	16	28,301		197,611	81,935	115,968	132,300			106,253	149,124
Sweden	1,545	(2)	(2)	(2)		158,089	83,597	128,175	197,663			—	—
Spain	41,382	14,579	53	10,828		133,328	66,973	94,911	99,225			139,894	121,442
Japan	—	(2)	(2)	(2)		72,378	65,785	142,213	176,794			381,589	633,512
Denmark	836	470	—	(2)		85,235	38,474	47,303	93,319			97,428	185,105
Norway	5,446	—	6	1,115		19,999	10,925	18,311	16,537			100,920	69,328
Argentina	63,137	17,400	10,169	12,594		81,663	45,123	50,965	30,319			102,486	54,576
Australia	36,730	10,816	49	11,153		12,857	9,500	16,480	15,750			(2)	76,658

Country of destination	France					Switzerland					United States		
	1929	1932 [1]	1933 [1]	1394 [1]	1935	1929	1932	1933	1934	1935	1929	1932	1933
Total exports	$287,559	$127,961	$159,744	$280,553		(2)	$153,661	$201,086	$248,963		$3,236,217	$719,505	$777,492
France	(2)	—	(2)	(2)		(2)	8,266	12,766	(2)		22,375	20,249	26,560
Italy		(2)					2,277	8,247			1,408	421	4,901
United Kingdom		12,681					1,313	3,667			94,588	37,634	23,933
Switzerland		2,930					—	—			628	464	67
Germany		4,108					30,724	26,310			11,183	3,050	9,869
United States		6,923					895	301			—	—	—
Czechoslovakia		(2)					16,169	23,625			160	1,028	—
Soviet Union		(2)					25,047	1,887			742,606	8,074	49,390
Canada		(2)					(2)	(2)			1,955,065	473,138	499,314
Belgium		30,288					23,640	46,545			1,860	10,100	7,985
Netherlands		(2)					4,439	16,030			601	413	2,507
Sweden		589					719	772			34,106	3,127	7,124
Spain		15,381					5,020	5,666			3,627	2,128	2,878
Japan		(2)					4,707	1,564			70,880	56,455	38,438
Denmark		(2)					(2)	(2)			2,051	1,036	1,147
Norway		(2)					898	2,111			724	373	1,495
Argentina		(2)					2,894	3,087			12,769	6,061	7,854
Australia		(2)					752	(2)			8,134	16,693	12,480

[1] Prorated.
[2] Not available.
[3] Not available by countries.
[4] Exports to British North America including Canada.
Source: Official trade statistics for each exporting country.

producing countries

Sweden					United Kingdom				
1929	1932	1933	1934	1935	1929	1932	1933	1934	1935
(2)	$4,688,449	$4,293,115	$7,357,732		$2,059,963	$724,329	$1,266,848	$1,508,172	
(2)			(2)					(2)	
	261,328	352,903			216,913	47,384	73,106		
	103,618	108,054			60,240	10,129	33,823		
	198,032	335,934			—	—	—		
	50,996	44,955			(2)	(2)	(2)		
	277,133	544,993			95,336	23,743	57,811		
	11,922	85,106			255,108	37,820	69,115		
	167,813	200,357			(2)	(2)	(2)		
	2,120,503	494,484			283,559	19,725	124,461		
	71,604	112,729			57,792	25,619	48,952		
	113,850	166,827			58,210	9,126	7,245		
	106,253	149,124			(2)	(2)	(2)		
	—	—			24,537	6,549	13,261		
	139,894	121,442			(2)	(2)	35,157		
	381,589	633,512			47,617	47,917	39,695		
	97,428	185,105			(2)	(2)	(2)		
	100,920	69,328			(2)	(2)	(2)		
	102,486	54,576			(2)	(2)	(2)		
	(2)	76,658			314,813	108,734	175,633		

United States					Total exports of principal producing countries.				
1929	1932	1933	1934	1935	1929	1932	1933	1934	1935
$3,236,217	$719,505	$777,492	$1,429,184		(2)	$14,756,966	$12,513,686	$15,631,180	
					(2)		(2)	(2)	
22,375	20,249	26,560	23,174			513,406			
1,408	421	4,901	6,198			196,717			
94,588	37,634	23,933	36,906			280,748			
628	464	67	59			190,821			
11,183	3,050	9,869	16,335			421,997			
—	—	—	—			156,552			
160	1,028	—	145			426,701			
742,606	8,074	49,390	69,127			8,674,043			
1,955,065	473,138	499,314	1,059,624			570,361			
1,860	10,100	7,985	4,225			266,719			
601	413	2,507	3,976			212,792			
34,106	3,127	7,124	9,836			94,581			
3,627	2,128	2,878	3,371			243,975			
70,880	56,455	38,438	50,378			556,453			
2,051	1,036	1,147	3,631			137,408			
724	373	1,495	362			113,116			
12,769	6,061	7,854	8,465			173,964			
8,134	16,693	12,480	16,107			146,495			

[fol. 5289]

Table 5.—Antifriction bearings: Balls and rollers, ball and roller bearings and parts:

Calendar year	Rate of duty	Imports for consumption: Quantity	Value	Unit value	Computed duty	Computed: Ad valorem rate	Computed: Specific rate
		Pounds				Percent	Per pound
1919	35 percent	—	$81,989	—	$28,697	35.0	—
1920	Do.	—	1,436,043	—	502,615	35.0	—
1923	10 cents per pound and 45 percent	829,158	845,898	$1.020	463,570	54.8	$0.559
1924	Do.	778,963	825,440	1.060	449,344	54.4	.577
1925	Do.	950,486	924,895	.973	511,251	55.3	.538
1926	Do.	1,168,964	985,158	.843	560,218	56.9	.479
1927	Do.	1,000,574	860,933	.860	487,477	56.6	.487
1928	Do.	1,086,998	898,754	.827	513,139	57.1	.472
1929	Do.	1,514,386	1,285,772	.849	730,036	56.8	.482
1930	Do.	1,080,927	784,217	.726	460,990	58.8	.426
1931	Do.	510,810	354,980	.695	210,823	59.4	.413
1932	Do.	283,399	167,976	.593	103,929	61.9	.367
1933	Do.	458,139	274,124	.598	169,170	61.7	.369
1934							

Table 6.—Antifriction bearings: Balls and rollers:

Imports for consumption

Calendar year	Rate of duty	Quantity	Value	Unit value	Computed duty	Computed	
						Ad valorem rate	Specific rate
		Pounds				Percent	Per pound
1923	10 cents per pound and 45 percent	94,580	$84,900	$0.898	$47,663	56.1	$0.504
1924	Do.	34,947	33,203	.950	18,436	55.5	.528
1925	Do.	79,055	63,485	.803	36,474	57.5	.461
1926	Do.	133,549	103,526	.775	59,942	57.9	.449
1927	Do.	153,519	91,084	.593	56,340	61.9	.367
1928	Do.	190,686	108,275	.568	67,792	62.6	.356
1929	Do.	301,448	203,212	.674	121,590	59.8	.403
1930	Do.	108,871	63,276	.581	39,361	62.2	.362
1931	Do.	55,124	28,267	.513	18,233	64.5	.331
1932	Do.	27,865	12,892	.463	8,588	66.6	.308
1933	Do.	23,000	14,909	.648	9,009	60.4	.392
1934							

[fol. 5290]

Table 7.—Antifriction bearings: Ball bearings and parts

Calendar year	Rate of duty	Imports for consumption				Computed	
		Quantity	Value	Unit value	Computed duty	Ad valorem rate	Specific rate
		Pounds				Percent	Per pound
1923	10 cents per pound and 45 percent.	698,390	$718,978	$1.029	$393,379	54.7	$0.563
1924	Do.	662,954	712,317	1.074	386,838	54.3	.584
1925	Do.	744,450	743,321	.998	408,939	55.0	.549
1926	Do.	705,234	648,816	.920	362,491	55.9	.514
1927	Do.	619,756	578,819	.934	322,444	55.7	.520
1928	Do.	487,802	461,141	.945	256,294	55.6	.525
1929	Do.	594,744	590,212	.992	325,070	55.1	.547
1930	Do.	571,222	476,172	.834	271,399	57.0	.475
1931	Do.	334,301	254,239	.761	147,838	58.1	.442
1932	Do.	224,168	136,396	.608	83,795	61.4	.374
1933	Do.	297,394	191,406	.644	115,872	60.5	.390
1934							

Table 8.—Antifriction bearings: Roller bearings and parts

Imports for consumption

Calendar year	Rate of duty	Quantity	Value	Unit value	Computed duty	Computed	
						Ad valorem rate	Specific rate
		Pounds				Percent	Per pound
1923	10 cents per pound and 45 percent	36,188	$42,020	$1.161	$22,528	53.6	$0.623
1924	Do.	81,062	79,920	.986	44,070	55.1	.544
1925	Do	126,981	118,089	.930	65,838	55.8	.518
1926	Do.	330,181	232,816	.705	137,785	59.2	.417
1927	Do.	227,299	191,030	.840	108,693	56.9	.478
1928	Do.	408,510	329,338	.806	189,053	57.4	.463
1929	Do.	618,194	492,348	.796	285,376	57.6	.458
1930	Do.	400,834	244,769	.611	150,230	61.4	.375
1931	Do.	121,385	72,474	.597	44,752	61.7	.369
1932	Do.	31,366	18,688	.596	11,546	61.8	.368
1933	Do.	137,745	67,809	.492	44,289	65.3	.322
1934							

[fol. 5291]

Table 10.—Antifriction bearings: Balls and rollers, ball and roller bearings and parts: General imports into the United States from principal sources

	1923	1925	1927	1929	1931	1932	1933	1934
Quantity (pounds)								
Germany	225,989	156,779	95,946	234,832	303,904	154,239	205,895	
Italy	534,474	357,757	336,758	187,339	2,676	6,595	—	
Sweden	81,456	215,265	422,334	771,001	112,530	30,463	188,226	
United Kingdom	28,708	101,721	104,962	307,366	102,956	58,324	96,761	
France	17,585	29,067	84,678	131,314	16,070	12,025	—	
All other	161,653	11,394	13,782	25,124	8,558	1,222	3,255	
Total	1,049,865	871,983	1,058,460	1,656,976	546,694	271,868	494,137	
Value								
Germany	$196,085	$142,549	$84,807	$189,542	$223,387	$85,481	$130,675	
Italy	525,710	334,571	348,273	173,466	2,077	3,677	—	
Sweden	144,815	226,976	313,287	651,662	54,938	16,705	86,282	
United Kingdom	41,898	114,028	108,978	316,352	98,147	37,048	74,535	
France	13,178	20,464	48,346	70,345	8,994	6,302	—	
All other	137,274	7,093	9,568	14,760	4,724	1,205	3,853	
Total	1,058,960	845,681	913,259	1,416,127	392,267	150,418	295,345	
Unit Value								
Germany	$0.868	$0.909	$0.884	$0.807	$0.735	$0.554	$0.635	
Italy	.984	.935	1.034	.926	.776	.558	—	
Sweden	1.778	1.054	.742	.845	.488	.423	.458	
United Kingdom	1.459	1.121	1.038	1.029	.953	.635	.770	
France	.749	.704	.571	.536	.560	.524	—	
All other	.849	.623	.694	.587	.552	.986	1.184	
Average	1.009	.970	.863	.855	.718	.553	.598	
Percent of total value								
Germany	18.5	16.9	9.3	13.4	57.0	56.8	44.3	
Italy	49.6	39.6	38.1	12.3	.5	2.5	—	
Sweden	13.7	26.8	34.3	46.0	14.0	11.1	29.2	
United Kingdom	4.0	13.5	11.9	22.3	25.0	24.6	25.2	
France	1.2	2.4	5.3	5.0	2.3	4.2	—	
All other	13.0	.8	1.1	1.0	1.2	.8	1.3	
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	

(Here follows 1 Paster, folio 5292)

[fol. 5292]

Table 11.—Balls and rollers, ball and roller bearings and parts: Imports for consumption, from principal sources, 1929, 1933, 1934, and 1935

Country	Pounds				Value				Unit value				Percent of total value			
	1929	1933	1934 (Preliminary)	1935	1929	1933	1934 (Preliminary)	1935	1929	1933	1934	1935	1929	1933	1934	1935
Balls and rollers:																
Sweden	158,313	357	—		$105,094	$70	—		$0.664	$0.196	—		51.7	0.5	—	
United Kingdom	77,326	10,636	16,897		62,354	8,285	$13,393		.806	.779	$0.793		30.7	55.6	69.4	
Germany	38,703	11,968	12,068		20,588	6,509	5,900		.523	.544	.489		10.1	43.6	30.6	
France	21,974	—	—		10,589	—	—		.482	—	—		5.2	—	—	
All other	5,132	39	—		4,587	45	—		.894	1.154	—		2.3	.3	—	
Total	301,448	23,000	28,965		203,212	14,909	19,293		.674	.648	.666		100.0	100.0	100.0	
Ball bearings and parts:																
Sweden	192,113	96,520	286,025		242,196	53,293	244,226		1.261	.552	.854		41.0	27.8	47.2	
United Kingdom	77,108	62,434	75,035		98,015	46,439	65,559		1.271	.744	.874		16.6	24.2	12.7	
Germany	104,912	134,760	190,237		92,891	87,608	204,548		.885	.650	1.075		15.7	45.8	39.6	
Italy	104,766	654	—		92,819	331	—		.886	.506	—		15.7	.2	—	
France	97,799	239	—		53,999	123	—		.552	.515	—		9.2	.1	—	
All other	18,046	2,787	3,874		10,382	3,612	2,817		.575	1.296	.727		1.8	1.9	.5	
Total	594,744	297,394	555,171		590,212	191,406	517,150		.992	.644	.932		100.0	100.0	100.0	
Roller bearings and parts:																
Sweden	424,909	91,349	159,307		302,630	32,919	78,042		.712	.360	.490		61.5	48.5	48.4	
United Kingdom	156,894	23,691	36,298		156,401	19,811	34,057		.997	.836	.938		31.8	29.2	21.1	
Germany	35,979	22,276	68,187		33,114	14,883	48,896		.920	.668	.717		6.7	22.0	30.4	
All other	412	429	88		203	196	107		.493	.457	1.216		—	.3	.1	
Total	618,194	137,745	263,880		492,348	67,809	161,102		.796	.492	.611		100.0	100.0	100.0	

[fol. 5293]

Table 13.—Ball and roller bearings and parts: Domestic exports to principal markets

	1923	1925	1927	1929	1931	1932	1933	1924
Quantity (pounds)								
Canada	2,374,459	971,867	1,790,479	2,733,905	1,158,930	—	—	
United Kingdom	316,309	316,750	151,897	241,500	215,553	—	—	
Soviet Russia	—	6,770	1,528	717,589	667,927	—	—	
France	10,458	17,470	5,963	33,348	37,002	—	—	
Japan	140,811	129,728	18,966	78,672	59,293	—	—	
Australia	59,088	21,113	12,269	7,361	7,021	—	—	
Philippine Is.	7,349	7,296	22,033	6,814	3,031	—	—	
Cuba	63,050	74,032	23,763	28,010	13,121	—	—	
Mexico	180,156	140,073	44,227	36,284	16,920	—	—	
All other	138,522	150,894	238,103	412,743	144,628	—	—	
Total	3,290,248	1,835,993	2,309,228	4,296,226	2,323,426	—	—	
Value								
Canada	$1,387,429	$708,995	$1,482,179	$1,955,065	$828,672	$473,138	$499,314	
United Kingdom	152,454	177,661	98,385	94,688	114,943	37,634	23,933	
Soviet Russia	—	6,020	3,314	744,268	542,482	8,074	49,390	
France	12,162	11,296	5,913	22,375	26,945	20,249	26,560	
Japan	126,995	94,309	17,428	70,880	57,858	56,455	38,438	
Australia	39,929	24,927	11,798	8,134	7,439	16,693	12,480	
Philippine Is.	8,807	9,716	12,266	7,884	3,911	11,948	15,364	
Cuba	29,350	53,531	21,888	21,925	14,331	5,560	7,419	
Mexico	28,326	27,944	21,448	30,109	15,206	14,089	18,057	
All other	112,464	155,726	130,082	280,889	139,058	75,665	86,537	
Total	1,897,916	1,270,125	1,804,701	3,236,217	1,750,845	719,505	777,492	

Table 13—Continued

UnitValue							
Canada	$0.584	$0.730	$0.828	$0.715	$0.715	—	—
United Kingdom	.482	.561	.648	.392	.533	—	—
Soviet Russia	—	.889	2.169	1.037	.812	—	—
France	1.163	.647	.992	.671	.728	—	—
Japan	.902	.727	.919	.901	.976	—	—
Australia	.676	1.181	.962	1.105	1.060	—	—
Philippine Is.	1.198	1.332	.557	1.157	1.290	—	—
Cuba	.466	.723	.921	.783	1.092	—	—
Mexico	.157	.199	.485	.830	.899	—	—
All other	.812	1.032	.546	.681	.961	—	—
Average	.577	.692	.782	.753	.754	—	—
Percent of total value							
Canada	73.1	55.8	82.1	60.4	47.3	65.8	64.2
United Kingdom	8.0	14.0	5.5	2.9	6.6	5.2	3.1
Soviet Russia	—	.5	.2	23.0	31.0	1.1	6.4
France	.7	.9	.3	.7	1.5	2.8	3.4
Japan	6.7	7.4	1.0	2.2	3.3	7.9	4.9
Australia	2.1	2.0	.6	.3	.4	2.3	1.6
Philippine Is.	.5	.8	.7	.2	.2	1.7	2.0
Cuba	1.5	4.2	1.2	.7	.8	.8	1.0
Mexico	1.5	2.2	1.2	.9	.9	1.9	2.3
All other	5.9	12.2	7.2	8.7	8.0	10.5	11.1
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0

[fol. 5294]

DEFENDANT'S EXHIBIT 174

United States Tariff Commission

REGULATION OF IMPORTS BY EXECUTIVE ACTION IN COUNTRIES WITH INDEPENDENT TARIFF JURISDICTION

With particular reference to developments between the two World Wars

Under the Provisions of Section 338
Title III, Part II, Tariff Act of 1930

Miscellaneous Series

[fol. 5295]

COUNTRIES WITH FOREIGN-EXCHANGE CONTROL

European countries	Latin-American countries	Other countries
Portugal,[1] September 1924 to October 1937.	Uruguay, May 1931.	Turkey, March 1930.
Spain, July 1930.	Chile, July 1931.	Iran, March 1936.
Germany, July 1931.	Brazil, September 1931.[3]	Japan,[2] July 1932.
Hungary, July 1931.	Colombia, September 1931.	China, March 1938.
Greece, September 1931.	Argentina, October 1931.	Afghanistan,[3] April 1938.
Austria, October 1931.	Nicaragua, December 1931.	Egypt, September 1939.
Bulgaria, October 1931.	Costa Rica, January 1932.	
Czechoslovakia,[3] October 1931.	Bolivia, May 1932.	
Estonia, October 1931.	Ecuador,[4] May 1932.	
Latvia, October 1931.	Paraguay, June 1932.	
Yugoslavia, October 1931.	Honduras, June 1934.	
Denmark, November 1931.	Venezuela,[4] December 1936.	
Iceland, February 1932.	Cuba,[3] June 1939.	
Rumania, May 1932.		
Italy,[2] September 1931.	British countries	
Lithuania, October 1935.		
Poland, April 1936.	New Zealand, December 1938.	
Albania, April 1939.	Australia, September 1939.	
France, September 1939.	Canada, September 1939.	
Finland,[3] October 1939.	Newfoundland, September 1939.	
Sweden, February 1940.	Union of South Africa, September 1939.	
Belgium,[3] May 10, 1940.	United Kingdom, September 1939.	
	Eire (Ireland), September 1939.	
	India, September 1939.	
	Burma, September 1939.	

[1] Not restrictive on imports from 1929.
[2] Not restrictive on imports until 1937.
[3] Applies only to receipts from exports.
[4] Not continuously in effect.
[5] Not restrictive on imports from February 1937.
[6] Not restrictive on imports until October 1940.
[7] Not restrictive on imports from free-exchange countries until early 1935.
[8] Exchange limitations introduced in 1931 were allowed to expire in the same year. This was the time when Finland went off the gold standard.
[9] Exchange control introduced on Mar. 18, 1935, was revoked on Apr. 28, following. Belgium devalued its currency during this period.

[fol. 5296]

DEFENDANT'S EXHIBIT No. 175

Value of Exports and Imports of Ball and Roller Bearings of Selected Countries in 1934 and 1938

(In U. S. Dollars)

Country	1934			1938		
	Imports	Exports	Export Surplus (+) or Import Surplus (−)	Imports	Exports	Export Surplus (+) or Import Surplus (−)
Sweden	$377,000	$7,644,000	$7,267,000	$428,400	$13,028,400	$12,600,000
Italy	326,800	2,330,600	2,003,800	234,578	1,918,017	1,683,439
Germany	977,120	2,484,564	1,507,444	2,530,590	3,282,732	752,142
United States	697,545	1,429,184	731,639	738,603	2,647,835	1,909,232
United Kingdom	1,113,024	1,511,463	316,160	2,167,675	3,160,093	992,418
Austria	200,340	415,980	215,640	202,797	132,300	−70,497
Switzerland	253,627	246,146	−7,481	426,531	551,062	124,531
Spain	84,129	—	−84,129	57,587	—	−57,587
Japan	263,734	—	−263,734	525,005	—	−525,005
Netherlands	400,950	10,110	−390,840	899,790	30,250	−869,540
Belgium	598,733	14,688	−584,045	954,754	39,950	−914,804
France	923,472	281,886	−641,586	931,596	570,024	−361,572

Source: The official trade statistics of each country, with the values converted into dollars at 1934 and 1938 rates respectively.

[fol. 5297]

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Imports and Exports of Ball and Roller Bearings Into and Out of Belgium 1934 and 1938

Imports

Country	1934				1938			
	Ball and roller bearings		Balls for ball bearings		Ball and roller bearings		Balls for ball bearings	
	Quantity (metric quintals)	Value (thousand francs)	Quantity (metric quintals)	Value (thousand francs)	Quantity (metric quintals)	Value (thousand francs)	Quantity (metric quintals)	Value (thousand francs)
Total	3,106	12,010	293	729	4,913	26,806	389	1,275
Germany	589	2,124	271	636	776	3,582	360	1,074
France	148	863	—	—	93	884	—	—
Italy	250	1,133	—	—	705	3,573	—	—
United Kingdom	175	928	—	—	352	2,564	—	—
Sweden	1,483	5,125	—	—	2,217	12,313	—	—
Switzerland	290	984	—	—	464	2,078	—	—
United States	138	720	—	—	281	1,654	—	—

Exports

Total	90	432	—	—	184	798	11	52
Germany	22	78	—	—	—	—	—	—
Netherlands	10	54	—	—	35	146	—	—
Belgian Congo	—	—	—	—	65	278	—	—
Sweden	—	—	—	—	28	128	—	—

Source: Union Economicque Belgi-Luxembourgeoise Bulletin Mensuel du Commerce aver les Pays Etrangers. Publie par le Ministre des Finances de Belgique:
1934 figures: 1934 Bulletin, Section XVI, p. 460.
1938 figures: 1938 Bulletin, Section XVI, p. 440.

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[fol. 5298]

Imports and Exports of Ball and Roller Bearings and Parts Thereof, Including Balls and Rollers, Into and Out of Germany by Countries of Origin and of Destination in 1934 and 1938

Country	1934				1938			
	Imports		Exports		Imports		Exports	
	Weight (100 kg.)	Value (1000 Reichsmarks)	Weight (100 kg.)	Value (1000 Reichsmarks)	Weight (100 kg.)	Value (1000 Reichsmarks)	Weight (100 kg.)	Value (1000 Reichsmarks)
Total	7,579	2,480	16,681	6,306	16,675	6,295	24,520	8,166
Previous year	5,978	2,485	21,040	12,085	8,182	2,946	25,643	9,581
Great Britain	130	80	708	279	2,185	935	6,012	1,157
Italy	387	227	342	175	4,630	2,150	266	169
Austria	248	153	477	243	—	—	—	—
Sweden	5,634	1,526	1,314	502	7,125	2,264	1,433	608
Switzerland	292	206	313	186	210	118	359	178
Czechoslovakia	647	182	1,032	594	1,883	482	1,819	870
United States	145	59	818	289	—	—	1,546	489
Saar Territory	—	—	265	183	—	—	—	—
Belgium	—	—	484	229	—	—	710	239
Denmark	—	—	605	237	—	—	595	259
Poland	—	—	255	144	—	—	859	371
Argentina	—	—	—	—	—	—	665	173
France	—	—	710	406	588	308	734	269
Netherlands	—	—	1,519	336	—	—	784	292
Rumania	—	—	161	83	—	—	414	213
Spain	—	—	476	252	—	—	133	99
Hungary	—	—	359	201	—	—	925	411
Union of Soviet Socialist Republics	—	—	1,976	700	—	—	1,178	399
Japan	—	—	1,224	449	—	—	2,565	931

Source: Monatliche Nachweise uber den auswartigen Handel Deutschlands.
1934 figures: December 1934, p. 274 (Berlin: Verlag fur Sozialpolitik, Wirtschaft und Statistik G.m.b.H. Berlin SW68. 1935)
1938 figures: December 1938, p. 282. (Berlin: Verlag fur Sozialpolitik, Wirtschaft un Statistik, Paul Schmidt, Berlin SW68. 1939)

[fol. 5298a]

Imports and Exports of Ball Bearings Into and Out of the Netherlands, 1934 and 1938

Year and Country of origin	Imports		Exports	
	Weight (metric tons)	Value (thousands of guilders)	Weight (metric tons)	Value (thousands of guilders)
1934				
Total—1931	355	1,023	17	39
1932	273	667	14	34
1933	338	706	10	22
Total—1934	402	729	11	15
Germany	114	208	*	*
Belgium-Luxembourg	45	26	*	*
Great Britain	25	69	*	*
France	1	2	*	*
Czechoslovakia	2	2	*	*
Sweden	156	299	*	*
Italy	19	62	*	*
Austria	2	5	*	*
Switzerland	10	24	*	*
United States	28	31	*	*
1938				
Total—1935	411	644	20	25
1936	575	868	14	19
1937	779	1,328	13	38
Total—1938	607	1,335	17	55
Germany	128	229	6.6	21
Belgium-Luxembourg	61	31	*	*
Great Britain	45	161	*	*
France	3.4	4.5	*	*
Czechoslovakia	2.7	2	*	*
Sweden	251	635	*	*
Italy	53	105	*	*
Austria	2.6	11	*	*
Switzerland	22	51	*	*
United States	36.6	102	*	*
Netherlands Indies	—	—	4.5	17

* The amount exported was insignificant.

Source: Nederland. Centraal Bureau voor de Statistiek.
Jaarstatistiek van den In-Vit- en Doorvoer
1934 figures: Jaarstatistiek over 1934. Decl.I.p.64.
1938 figures: Jaarstatistiek over 1938. Decl.I.p.69.

[fol. 5298b]

Imports of Bearing Balls Into Japan by Countries of Origin in 1934 and 1938

Country of origin	Import—1934		Import—1938	
	Quantity (kin)	Value (yen)	Quantity (kin)	Value (yen)
Great Britain	21,495	52,734	45,107	91,873
France	—	—	25,417	46,638
Germany	311,530	468,760	445,020	750,486
Switzerland	—	—	206	287
Sweden	107,914	152,239	177,317	291,026
United States	96	2,507	31,449	132,202
Total	441,035	676,240	724,516	1,312,512
Total—previous year	396,338	566,928	765,419	1,100,712

Source: 1934 and 1938 Annual Return of The Foreign Trade of Japan. Part I. The Department of Finance. Tokyo. 1934, p. 490–491.
1938, p. 1067.

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[fol. 5298c]

Exports and Imports of Ball a r Roller Bearings and Parts Thereof Out of and Into Sweden, 1934

Country of origin	Total—Ball and roller bearings including parts thereof		Ball bearings or parts thereof		Ball bearings or parts thereof		Balls and rollers for ball and roller bearings	
	Quantity (tons)	Value (million of kronor)	Quantity (tons)	Value (million of kronor)	Quantity (tons)	Value (million of kronor)	Quantity (tons)	Value (million of kronor)
			Exports *					
Total	7,220	29.4	3,950	18.7	2,763	9.6	507	1.0
			Imports					
Total	250	1.45	72	0.500	140	0.750	38	0.183
Germany	206	1.10	47	0.300	122	0.630	37	0.167
United Kingdom	13	0.10	6	0.055	7	0.045	—	—
United States	16	0.14	9	0.086	7	0.058	—	—

* The breakdown of exports by countries of destination was not given.

Source: Sveriges Varuutforsel till olika Lander ar 1934.
Preliminar Redogorelse av Kommerskollegium ,p. 295.
(For export data).
Sveriges Varuinforsel fran olika Lander ar 1934.
Preliminar Redogorelse av kommerskollegium, p. 184.
(For import data).

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[fol. 5298d]

Exports and Imports of Ball and Roller Bearings and Parts Thereof Out of and Into Sweden, 1938

	Total—Ball and roller bearings including parts thereof		Ball bearings or parts thereof		Ball bearings or parts thereof		Balls and rollers for ball and roller bearings	
			Exports *					
Total	11,351	51.7	6,519	34.2	3,679	15.0	1,054	25.3
			Imports					
Total	262	1.68	76.7	0.671	154	0.840	31	0.179
Germany	192	1.09	33.9	0.283	131	0.666	27.5	0.142
United Kingdom	33	0.27	19.4	0.166	11	0.080	3.0	0.020
United States	18	0.21	10.7	0.133	7.4	0.077	—	—

* The breakdown of exports by countries of destination was not given.

Source: Sveriges Varuutforsel tillolika Lander ar 1938.
Preliminar Redogorelse av kommerskollegium, p. 364.
(For export data).
Sveriges Varuinforsel fran olika Lander ar 1938.
Preliminar Redogorelse av kommerskollegium, p. 232.
(For import data).

[fol. 5298e]

Imports and Exports of Ball and Roller Bearings and Their Parts (With the Exception of Those for Bicycles) Into and Out of Austria in 1934, By Countries of Origin and of Destination Respectively

Country	Imports		Exports	
	Quantity (quintals)	Value in schillings (000)	Quantity (quintals)	Value in schillings (000)
Total—1933	910	775	1,313	1,458
Total—1934	1,410	1,113	3,528	2;311
Germany	739	628	314	382
Italy	32	54	14	10
Switzerland	74	49	33	—?
Czechoslovakia	28	15	317	314
Great Britain	127	116	51	45
Sweden	402	241	8	7
Hungary	—	—	131	123
Russia	—	—	2,404	1,104

Source: Monatshefte der Statistik des Aussenhandels Osterreichs, December 1934, p. 83. (Wien 1935· Herausgegeben vom Bundesmisterium fur Handel und Verkehr.)

[fol. 5298f]

Imports and Exports of Ball and Roller Bearings and Their Parts (With the Exception of Those For Bicycles) Into and Out of Austria in 1938, By Countries of Origin and of Destination Respectively

Country	Imports		Exports	
	Quantity (quintals)	Value in reichsmarks (000)	Quantity (quintals)	Value in reichsmarks (000)
Total	2,371	1,073	1,076	700
Germany	—	—	—	—
Italy	341	142	—	—
Switzerland	348	214	73	61
Czechoslovakia	—	—	137	112
Great Britain	208	110	16	8
Sweden	1,419	580	10	7
Hungary	—	—	91	78
Russia	—	—	513	268

Source: Monatshefte der Statistik des Aussenhandels Osterreichs, December 1938, p. 121 (Wein 1939: Herausgegeben vom Ministerium fur Wirtschaft und Arbeit in Wien.)

(Here follow 1 paster folios 5299-5300)

[fol. 5299]

Imports and Exports of Ball and Roller Bearings of Steel Into Switzerland by Countries of Origin and of Destination, in 1934

Imports by Countries of Origin

Country of origin	Weighing 1 kilogram or more			Weighing from 250 grams up to 1 kilogram			Weighing less than 250 grams			Total	
	Weight (quintals)	Value (thousand of francs)	Average value per net quintal (in francs)	Weight (quintals)	Value (thousand of francs)	Average value per net quintal (in francs)	Weight (quintals)	Value (thousand of francs)	Average value per net quintal (in francs)	Weight (quintals)	Value (thousand of francs)
Total—1933	408	298.4	731	217	173.9	802	499	355.6	713	1,124	827.9
Total—1934	376	211.4	562	307	225.7	735	489	355.5	727	1,172	792.6
Germany	156	94.5	606	47	35.1	740	217	124.6	571	420	254.2
Austria	10	6.3	611	11	8.0	725	6	7.7	1,200	27	22.0
France	5	2.8	468	8	6.5	794	5	7.5	1,544	18	16.8
Italy	9	8.1	871	22	19.1	871	11	10.8	978	42	38.0
Great Britain	7	7.4	960	30	24.4	803	159	88.6	557	196	120.4
Sweden	178	86.0	486	107	115.8	693	83	109.3	1,316	428	311.1
United States	6	4.8	752	19	15.8	828	6	5.6	960	31	26.2

Exports by Countries of Destination

Countries of destination											
Total—1933	802	392.2	489	584	275.5	479	264	138.0	523	1,650	809.7
Total—1934	699	353.5	506	585	274.5	469	286	141.2	494	1,570	769.2
Germany	109	55.9	513	75	36.8	492	100	49.1	492	284	141.8
Austria	36	17.3	478	33	15.4	465	10	4.7	482	79	37.4
France	25	14.7	598	9	5.2	595	5	3.9	705	39	23.8
Italy	26	13.0	508	11	5.1	461	7	3.7	513	44	21.8
Belgium	128	60.7	474	110	49.6	451	54	24.6	456	292	134.9
Great Britain	24	12.7	520	5	2.4	478	3	1.5	477	32	16.6
Spain	43	20.5	480	—	—	—	—	—	—	43	20.5
Sweden	15	7.6	503	15	6.8	463	8	3.8	498	38	18.2
Czechoslovakia	100	45.2	454	158	70.8	448	46	20.7	452	304	136.7
China	24	10.9	451	33	15.0	451	—	—	—	57	25.9

Source: Schweizerische Handelsstatistik, 1934. (Statistique du Commerce Exterieur de la Suisse) Erster Band—Tome Premier
Jahresstatistik des auswartigen Handels der Schweiz, 1934.
(Herausgegeben vonder Eid Genossischen Oberzolldirektion, Bern). p. A 121.

[fol. 5300]

Imports and Exports of Ball and Roller Bearings of Steel Into Switzerland by Countries of Origin and of Destination, in 1934

Imports by Countries of Origin

Country of origin	Weighing 1 kilogram or more			Weighing from 250 grams up to 1 kilogram			Weighing less than 250 grams			Total	
	Weight (quintals)	Value (thousand of francs)	Average value per net quintal (in francs)	Weight (quintals)	Value (thousand of francs)	Average value per net quintal (in francs)	Weight (quintals)	Value (thousand of francs)	Average value per net quintal (in francs)	Weight (quintals)	Value (thousand of francs)
Total—1937	691	370.5	536	439	288.6	657	921	702.7	763	2,051	1,361.8
Total—1938	1,061	634.3	598	406	297.5	733	1,098	930.8	848	2,565	1,862.6
Germany	182	131.9	725	49	43.4	883	305	243.2	797	536	418.5
Austria	14	15.0	1,088	19	17.6	925	21	44.2	2,094	54	76.8
France	14	13.4	980	7	8.9	1,216	4	7.9	2,071	25	30.2
Italy	8	7.4	896	14	12.0	863	10	11.7	1,185	32	31.1
Great Britain	37	52.0	1,397	49	44.7	919	583	417.8	717	669	514.5
Sweden	789	399.8	507	229	137.9	602	160	185.5	1,160	1,178	723.2
United States	14	13.5	941	36	31.9	874	12	17.6	1,459	62	63.0

Exports by Countries of Destination

Countries of destination											
Total—1937	1,513	800.4	529	1,184	689.9	583	537	462.6	1,862	3,234	1,952.9
Total—1938	1,540	991.8	644	1,146	820.9	716	576	593.7	1,031	3,262	2,406.4
Germany	145	115.8	798	27	27.7	1,032	50	71.7	1,447	222	215.2
Austria	178	126.9	713	202	152.8	756	50	46.7	941	430	326.4
France	24	14.2	583	4	5.2	1,346	11	35.4	3,256	39	54.8
Italy	24	20.7	869	13	13.2	989	37	41.1	1,110	74	75.0
Great Britain	124	57.7	465	89	43.7	492	9	13.1	1,381	222	114.5
Sweden	49	29.3	575	25	17.4	708	26	28.3	1,078	100	74.0
United States	25	10.4	414	12	5.6	472	12	18.1	1,476	49	34.1
Belgium	318	185.7	584	120	74.1	618	60	47.7	790	498	307.5
Holland	114	71.8	630	83	56.7	686	41	32.6	797	238	161.1
Norway	34	18.8	560	17	10.1	593	—	—	—	51	28.9
Poland	37	26.3	702	27	21.2	787	13	14.3	1,063	77	61.8
Czechoslovakia	137	108.1	790	283	235.9	833	132	135.5	1,034	552	479.5
Hungary	42	24.4	578	29	20.6	720	30	29.2	979	101	74.2
Union of Soviet Socialist Republics	17	29.7	1,706	—	—	—	—	—	—	17	29.7
Others	24	16.5	—	19	15.0	—	29	25.6	—	72	57.1

Source: Schweizerische Handelsstatistik, 1938. (Statistique du Commerce Exterieur de la Suisse) Erster Band—Tome Premier
Jahresstatistik des auswartigen Handels der Schweiz, 1938.
(Herausgegeben vonder Eid Genossischen Oberzolldirektion, Bern). pp. A 120-121.

[fol. 5301]

Imports and Exports of Ball and Roller Bearings Into and Out of Italy in 1934 By Countries of Origin and of Destination, Respectively

Country	Imports: Radial and axial ball and roller bearings* Quantity (tons)	Imports: Radial and axial ball and roller bearings* Value (million lire)	Imports: Loose balls entirely finished for bearings Quantity (tons)	Imports: Loose balls entirely finished for bearings Value (million lire)
Total—1930	275.7	9.98	95.9	1.73
1931	180.8	6.41	99.3	1.66
1932	186.6	3.92	31.6	0.46
1933	161.9	3.56	49.7	0.59
Total—1934	176.3	3.40	34.9	0.40
Germany	30.9	0.76	33.5	0.37
United Kingdom	28.1	0.77	0.7	0.02
Sweden	—	—	0.7	0.01
	Exports			
Total—1930	1,266.0	48.0	—	—
1931	3,546.7	114.2	—	—
1932	3,580.9	91.8	—	—
1933	1,882.8	31.7	—	—
Total—1934	2,102.4	27.1	—	—
Belgium	26.5	0.7	—	—
France	19.1	0.5	—	—
Germany	75.9	1.9	—	—
United Kingdom	0.1	0.002	—	—
Netherlands	25.6	0.4	—	—
Poland	15.4	0.6	—	—
Rumania	4.4	0.4	—	—
Spain	9.8	0.4	—	—
Union of Soviet Socialist Republics	1,853.3	20.6	—	—
Argentina	11.4	0.3	—	—

* Radial and axial ball or roller bearings, finished and fitted with balls and ball cages, and rings for ball or roller bearings, tempered and rectified.

Source: I-stituto Centrale di Statistica del Regno d'Italia Movimiento Commerciale del Regno d'Italia nell' Anno 1934. Volume I, p. 262.

[fol. 5302]

Imports and Exports of Ball and Roller Bearings Into and Out of Italy in 1938 By Countries of Origin and of Destination, Respectively

Country	Radial and axial ball and roller bearings[a]			
	Imports		Exports	
	Quantity (quintals)	Value (million lire)	Quantity (quintals)	Value (million lire)
Total	1,049[b]	3.79[b]	12,315	36.02[b]
Belgium-Luxembourg	—	—	710	1.98
Czechoslovakia	5	0.02	624	1.94
Germany	230	1.22	4,980	16.13
Poland-Danzig	—	—	705	1.64
Switzerland	690[b]	1.84[b]	25	0.05
Union of Soviet Socialist Republics	—	—	9	0.275
Hungary	**	**	250	1.06
Argentina	—	—	392	1.645
Brazil	—	—	326	1.10
Italian Colonies	**	**	1,608	4.31
	Loose balls entirely finished for bearings			
Total	329	0.63	373	0.17
Italian Colonies	—	—	370	0.16

** Negligible.

[a] Radial and axial ball or roller bearings, finished and fitted with balls and ball cages, and rings for ball or roller bearings, tempered and rectified.

[b] Corrected figure.

Source: Instituto Centrale Di Statistica del Regno D'Italia. Statistica (del Commercio Speciale) DI Importazione e DI Esportazione del Regno D'Italia. Dal 10 gennaio al 31 dicembre 1938 (Dati Provvisori), p. 87. (Roma: Instituto Poligrafico dello Stato. Iibreria. 1939).

[fol. 5303]

Imports of Ball and Roller Bearings and Their Parts Into the United Kingdom by Countries of Origin, 1934

Country of origin	For motor vehicles: Quantity (cwt.)	For motor vehicles: Value (£)	For all other purposes: Quantity (cwt.)	For all other purposes: Value (£)	Total: Quantity (cwt.)	Total: Value (£)
Ball bearings and parts						
Total from British Countries	—	3	—	—	—	3
Sweden	6,621	53,791	1,051	9,214	7,672	63,005
Germany	1,454	17,369	4,287	35,502	5,741	52,871
United States	648	7,327	112	3,596	760	10,923
Other foreign countries	85	1,888	72	1,027	157	2,915
Total from foreign countries	8,808	80,375	5,522	49,339	14,330	129,714
Total Imports	8,808	80,378	5,522	49,339	14,330	129,717
Roller bearings and parts						
Total from British Countries	—	—	10	68	10	68
Sweden	5,551	34,187	2,277	20,825	7,828	55,012
Germany	978	16,020	455	4,800	1,433	20,820
United States	1,273	8,344	456	4,697	1,729	13,041
Other foreign countries	25	489	102	1,735	127	2,224
Total from foreign countries	7,827	59,040	3,290	32,057	11,117	91,097
Total Imports	7,827	59,040	3,300	32,125	11,127	91,165

Source: Annual Statement of the Trade of the United Kingdom, 1934. Volume II, pp. 211-212. (London: His Majesty's Stationery Office, 1935).

[fol. 5304]

Exports of Roller Bearings and Their Parts From the United Kingdom By Country of Destination in 1934

Country of Destination	Roller Bearings and Parts					
	For motor vehicles		For all other purposes		Total	
	Quantity (cwt.)	Value (£)	Quantity (cwt.)	Value (£)	Quantity (cwt.)	Value (£)
Union of South Africa and South West Africa Territory	466	12,335	869	18,323	1,335	30,658
British India and Burma	—	—	195	3,471	195	3,471
Australia	512	11,944	528	10,205	1,040	22,149
New Zealand	—	—	—	—	—	—
Canada	—	—	327	5,896	327	5,896
Other British Countries	239	4,799	272	5,173	511	9,972
Total to British Countries	1,217	29,078	2,191	43,068	3,408	72,146
Germany	111	3,177	81	2,765	192	5,942
Netherlands	—	—	215	2,239	215	2,239
France	258	4,582	132	3,163	390	7,745
United States	—	—	1,011	19,869	1,011	19,869
Denmark	—	—	186	4,048	186	4,048
Poland	—	—	125	2,688	125	2,688
Belgium	161	3,009	129	2,191	290	5,200
Italy	143	2,710	318	5,237	461	7,947
Other foreign countries	718	13,544	478	9,936	1,196	23,480
Total to foreign countries	1,391	27,022	2,675	52,136	4,066	79,158
Total Exports	2,608	56,100	4,866	95,204	7,474	151,304

Source: Annual Statement of the Trade of the United Kingdom, 1934. Volume III, p. 212. (London: His Majesty's Stationery Office, 1935.)

[fol. 5305]

Exports of Ball Bearings and Their Parts From the United Kingdom By Country of Destination in 1934

Country of Destination	Ball Bearings and Parts					
	For motor vehicles		For all other purposes		Total	
	Quantity (cwt.)	Value (£)	Quantity (cwt.)	Value (£)	Quantity (cwt.)	Value (£)
Union of South Africa and South West Africa Territory	266	6,182	749	11,004	1,015	17,186
British India and Burma	284	5,820	268	4,332	552	10,152
Australia	987	20,690	570	11,191	1,557	31,881
New Zealand	—	—	171	3,881	171	3,881
Canada	—	—	354	3,988	354	3,988
Other British Countries	241	6,298	372	6,409	613	12,707
Total to British Countries	1,778	38,990	2,484	40,805	4,262	79,795
Soviet Union	—	—	10	432	10	432
Finland	—	—	298	4,811	298	4,811
Sweden	—	—	100	1,875	100	1,875
Germany	54	487	94	1,856	148	2,343
Netherlands	37	1,217	87	2,334	124	3,551
France	—	—	145	2,955	145	2,955
Switzerland	—	—	278	3,023	278	3,023
Spain	—	—	119	2,481	119	2,481
Czechoslovakia	11	364	70	1,506	81	1,870
Japan and Formosa	187	2,768	670	10,188	857	12,956
United States	1	12	118	1,795	119	1,807
Other Foreign Countries	978	17,414	719	13,336	1,697	30,750
Total to Foreign Countries	1,268	22,262	2,709*a*	46,592	3,977*a*	68,854
Total Exports	3,046	61,252	5,193	87,397	8,239	148,649

a Given figures add to 2,708 and 3,976 respectively.

Source: Annual Statement of the Trade of the United Kingdom, 1934. Volume III, p. 209. (London: His Majesty's Stationery Office, 1935.)

[fol. 5306]

Imports of Ball and Roller Bearings and Their Parts Into the United Kingdom by Countries of Origin, 1938

Country of origin	Ball bearings and parts					
	For motor vehicles		For all other purposes		Total	
	Quantity (cwt.)	Value (£)	Quantity (cwt.)	Value (£)	Quantity (cwt.)	Value (£)
Total from British Countries	2	38	9	83	11	121
Sweden	4,974	41,670	6,193	45,720	11,167	87,390
Germany	4,255	65,667	3,882	43,103	8,137	108,770
United States	695	14,545	765	19,511	1,460	34,056
Other foreign countries	466	4,702	1,362	14,956	1,828	19,658
Total from foreign countries	10,390	126,584	12,202	123,290	22,592	249,874
Total Imports	10,392	126,622	12,211	123,373	22,603	249,995
	Roller Bearings and parts					
Total from British Countries	—	3	3	69	3	72
Sweden	5,123	44,969	5,536	46,198	10,659	91,167
Germany	1,689	17,974	1,394	19,399	3,083	37,373
United States	1,605	23,588	1,850	35,849	3,455	59,437
Other foreign countries	233	3,304	168	2,030	401	5,334
Total from foreign countries	8,650	89,835	8,948	103,476	17,598	193,311
Total Imports	8,650	89,838	8,951	103,545	17,601	193,383

Source: Annual Statement of the Trade of the United Kingdom, 1939. Volume II., pp. 212–213. (London: His Majesty's Stationery Office, 1940.)

[fol. 5307]

Exports of Roller Bearings and Their Parts From the United Kingdom By Country of Destination in 1938

Country of Destination	Roller Bearings and Parts					
	For motor vehicles		For all other purposes		Total	
	Quantity (cwt.)	Value (£)	Quantity (cwt.)	Value (£)	Quantity (cwt.)	Value (£)
Union of South Africa and South West Africa Territory	137	2,885	2,043	42,766	2,180	45,651
British India	—	—	891	8,253	891	8,253
Burma	—	—	13	146	13	146
Australia	331	6,285	1,442	29,549	1,773	35,834
Canada	—	—	533	10,144	533	10,144
Other British Countries	252	5,844	454	8,232	706	14,076
Total to British Countries	720	15,014	5,376	99,090	6,096	114,104
Denmark (Including Faroe Islands)	—	—	96	2,569	96	2,569
Poland (Including Danzig)	—	—	169	3,589	169	3,589
Germany	1,021	14,271	366	8,096	1,387	22,367
Netherlands	—	—	130	2,910	130	2,910
Belgium	219	4,102	412	10,110	631	14,212
France	79	1,111	756	15,452	835	16,563
Italy	6	126	—	—	6	126
United States	362	7,907	23	584	385	8,491
Other foreign countries	1,059	22,915	1,370	31,086	2,429	54,001
Total to Foreign Countries	2,746	50,432	3,322	74,396	6,068	124,828
Total Exports	3,466	65,446	8,698	173,486	12,164	238,932

Source: Annual Statement of the Trade of the United Kingdom, 1939. (Volume III, p. 215.) (London: His Majesty's Stationery Office 1940.)

[fol. 5308]

Exports of Ball Bearings and Their Parts From the United Kingdom By Country of Destination in 1934

Country of Destination	Ball Bearings and Parts					
	For motor vehicles		For all other purposes		Total	
	Quantity (cwt.)	Value (£)	Quantity (cwt.)	Value (£)	Quantity (cwt.)	Value (£)
Union of South Africa and South West Africa Territory	268	3,674	1,751	28,791	2,019	32,465
British India	408	5,691	614	11,248	1,022	16,939
Burma	2	41	24	444	26	485
Australia	1,179	19,650	2,880	59,408	4,059	79,058
New Zealand	—	—	335	6,513	335	6,513
Canada	—	—	519	11,412	519	11,412
Other British countries	516	9,586	985	11,468	1,501	21,054
Total to British countries	2,373	38,642	7,108	129,284	9,481	167,926
Germany	2,352	55,198	2,115	32,208	4,467	87,406
Netherlands	156	3,482	183	4,931	339	8,413
Czechoslovakia	80	2,062	494	12,654	574	14,716
Japan	265	4,782	1,045	11,962	1,310	16,744
United States	666	15,366	12	318	678	15,684
Soviet Union	—	—	286	18,253	286	18,253
Finland	—	—	290	5,522	290	5,522
Sweden	—	—	504	7,893	504	7,893
France	—	—	237	6,479	237	6,479
Switzerland	—	—	1,096	11,459	1,096	11,459
Spain	—	—	37	892	37	892
Other foreign countries	955	17,942	1,412	28,107	2,367	46,049
Total to foreign countries	4,474	98,832	7,711	140,678	12,185	239,510
Total Exports	6,847	137,474	14,819	269,962	21,666	407,436

Source: Annual Statement of the Trade of the United Kingdom, 1939. Volume III, p. 215. (London: His Majesty's Stationery Office, 1940.)

[fol. 5309]

Imports of Ball Bearings and Balls for Bearings by Countries of Origin into Spain in 1934*

Country of origin	Balls and bearings		* Balls for bearings and balls set for cycles, motorcycles and side cars	
	Quantity (kilograms)	Value (gold pesetas)	Quantity (kilograms)	Value (gold pesetas)
Germany	21,877	225,566	36,263	329,606
Austria	46	321	55	608
Belgium	34	262	57	811
Czechoslovakia	45	315	73	488
Denmark	521	2,656	—	—
United States	3,965	25,435	5,536	39,002
France	1,252	12,304	2,875	29,339
Great Britain	7,469	51,287	14,232	104,732
Holland	—	—	11	139
Italy	4,501	50,132	6,742	97,515
Poland	—	—	17	215
Sweden	30,645	209,482	36,272	330,059
Switzerland	3,709	23,173	3,649	26,710
Yugoslavia	—	—	20	180
Canada	—	—	42	371
Total	74,064	600,923	105,844	959,775

* There were no exports of either class in 1934.

Source: Ministerio de Hacienda, Dirreccion General de Aduanas. Estadistica del Comercio Exterior de Espana. 1934 figures: Ano 1934—Tomo I—p. 299 (published Madrid: Sucesores de F. Pena Cruz. 1935)

[fol. 5310]

DEFENDANT'S EXHIBIT 176

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Value of United States Domestic Exports of Anti-Friction Bearings* to the United Kingdom, Europe, and the World: 1927–1947

Year	Total	Europe	% of Total	United Kingdom	% of Total	Rest of the World (Col. 1 minus Col. 2)	% of Total
1927	$1,804,701	$152,244	8.4	$98,385	5.5	$1,652,457	91.6
1928	2,325,583	106,781	4.6	34,497	1.5	2,218,802	95.4
1929	3,236,217	1,007,800	31.1	94,688	2.9	2,228,417	68.9
1930	3,260,405	1,496,307	45.9	66,179	2.0	1,764,098	54.1
1931	1,750,845	748,854	42.8	114,943	6.6	1,001,991	57.2
1932	719,505	93,566	13.0	37,634	5.2	625,939	87.0
1933	777,492	143,885	18.5	23,933	3.1	633,607	81.5
1934	1,429,184	187,383	13.1	39,606	2.8	1,241,801	86.9
1935	1,968,420	198,882	10.1	29,499	1.5	1,769,538	89.9
1936	2,248,722	447,945	19.9	60,638	2.7	1,800,777	80.1
1937	3,028,515	454,346	15.0	141,236	4.7	2,574,169	85.0
1938	2,652,835	598,056	22.5	121,193	4.6	2,054,779	77.5
1939	3,061,466	647,137	21.1	297,706	9.7	2,414,329	78.9
1940	8,890,560	2,336,995	26.3	1,946,365	21.9	6,553,565	73.7
1941	16,798,537	4,213,059	25.1	3,887,547	23.1	12,585,478	74.9
1942	33,731,463	11,790,459	35.0	10,128,413	30.0	21,941,004	65.0
1943	36,910,634	19,238,292	52.1	8,977,781	24.3	17,672,342	47.9
1944	36,936,502	18,804,625	50.9	4,887,531	13.2	18,131,877	49.1
1945	18,674,398	6,939,986	37.2	828,533	4.4	11,734,412	62.8
1946	11,164,781	2,492,807	22.3	457,479	18.4	8,671,974	77.7
1947	26,460,043	9,598,492	36.3	2,118,370	8.0	16,861,551	63.7

* The Census Bureau classifications for anti-friction bearings include ball and roller bearings and parts.

Sources: 1927–40. U. S. Bureau of Foreign and Domestic Commerce. Foreign Commerce and Navigation of the United States.
1941–44. U. S. Bureau of the Census. Foreign Commerce and Navigation of the United States.
1945–46. U. S. Bureau of the Census. Report No. FT 410, Section H, Group 7.
1947. U. S. Bureau of the Census. Foreign Trade Division. Telephone report.

(Here follows 1 Paster, folio 5311)

[fol. 5311]

DEFENDANT'S EXHIBIT 177

Value of Import of Antifriction Ball and Roller Bearings and Parts Thereof, Including Balls and Rollers into the United States by Countries of Origin, 1922—1943 and 1947[a]

Year	Austria	Belgium	Canada	Czecho-slovakia	Denmark	France	Germany	Italy	Japan	Netherlands	Norway	Sweden	Switzerland	United Kingdom	Other	Total in thousands of dollars
1922	—	—	$801	—	—	$1,220	$98,750	$375,646	—	—	$4,778	$154,869	$850	$18,823	—	$656
1923	—	—	3,777	—	—	13,178	196,085	525,710	—	$6,144	—	144,815	127,353	41,898	—	1,059
1924	—	—	533	$7,034	—	44,448	190,320	386,667	—	425	3,045	114,827	—	70,926	—	818
1925	—	—	1,265	4,105	—	20,464	142,549	334,571	—	291	—	226,976	1,432	114,028	—	846
1926	—	—	10,888	7,632	—	47,988	95,362	412,342	—	—	—	290,523	71,080	113,890	—	1,050
1927	—	$25	5,260	2,551	—	48,346	84,807	348,273	—	695	—	313,287	1,037	108,978	—	913
1928	$3,981	243	1,257	10,620	—	81,984	85,582	280,088	—	1,345	—	396,586	736	134,308	$712[b]	997
1929	752	23	7,044	6,186	11	70,345	189,542	173,466	—	414	—	651,662	305	316,352	25[c]	1,416
1930	138	—	17,279	—	39	19,463	367,632	—	—	26	—	215,331	338	197,019	—[d]	817
1931	—	—	4,120	—	142	8,994	223,387	2,077	—	—	—	54,938	452	98,147	10[d]	392
1932	—	—	1,089	—	—	6,302	85,481	3,677	—	—	—	16,705	116	37,048	—	150
1933	—	196	3,603	—	54	—	130,675	—	—	—	—	86,282	—	74,535	—	295
1934	306	3	2,215	—	184	58	259,344	49	—	—	—	322,268	109	113,009	—	698
1935	—	8	3,737	—	141	—	357,056	—	$377	564	—	194,793	18	131,584	—	688
1936	1,554	—	2,869	—	295	—	317,261	—	1,201	—	—	292,448	89	208,882	686[e]	825
1937	710	—	5,132	—	—	12,911	423,926	—	525	233	—	450,238	6,980	315,649	—	1,216
1938	—	60	5,241	—	63	10,617	227,170	—	197	650	—	363,009	10,339	121,257	—	739
1939	—	61	9,111	—	15	2,463	117,043	8	12	—	—	244,783	9,267	110,096	—	493
1940	—	—	5,151	—	283	344	8	6	—	—	—	282,222	23,863	66,302	—	378
1941	—	—	5,856	—	—	—	23	—	—	—	—	761,180	26,563	28,139	—	822
1942	—	—	5,060	—	—	—	—	—	—	30	—	53,523	4,720	20,027	—	83
1943	—	—	13,900	—	—	—	—	—	—	—	—	6,588	—	7,830	8[f]	28
1947	—	—	50,934	—	96	172	199	—	—	—	—	16,390	10,090	41,190	300	119

Source: 1923–1943 figures: Foreign Commerce and Navigation of the United States (United States Department of Commerce), Annual editions, 1923–1943.
1947 figures: Report No. FT 110, United States General Imports of Merchandise, calendar year 1947 (United States Department of Commerce, February 1948), p. 126.

[a] The figures for 1922 to 1933 inclusive and for 1947 represent general imports, while those for 1934 to 1943 inclusive represent imports for consumption.
[b] Mexico.
[c] Cuba.
[d] Jamaica.
[e] $587 from Mexico and $99 from Cuba.
[f] Nigeria.

[fol. 5312]

DEFENDANT'S EXHIBIT 178

Value of Production of Ball and Roller Bearings in the United States, Census Years 1925–1933 and 1937–1939[a]

(In Thousands of Dollars)

	Total	Ball Bearings	Roller Bearings	Balls made for Sale as Such and Other Parts	Rolls for Sale as Such and Other Parts
1925....	$99,418	n.a.	n.a.	n.a.	n.a.
1927....	99,849	n.a.	n.a.	n.a.	n.a.
1929....	120,034	66,881	53,153	n.a.	n.a.
1931....	50,528	28,310	22,219	n.a.	n.a.
1933[b]...	40,530	21,154	19,377	n.a.	n.a.
1937....	124,014	58,208	59,725	4,770	1,310
1939[c]...	104,874	51,222	47,432	4,637	1,583

[a] The figures for 1925–1933 inclusive represent complete bearings.
[b] The figures for 1933 are preliminary.
[c] Of the aggregate production in 1939, $2,617,000 were produced outside the industry, and $102,257,000 in the industry.
n.a.—Not available.

Source: 1925–1933 figures: Antifriction bearings, Summary of Tariff Information (Washington, D. C.: United States Tariff Commission, October 1934), p. 5.
1937–1939 figures: United States Department of Commerce, Bureau of the Census. Sixteenth Census of the United States, 1940. Manufactures, 1939, Volume II, Part 2, p. 484. (Washington, D. C.: United States Government Printing Office, 1942.)

[fol. 5313] DEFENDANT'S EXHIBIT 179

United Kingdom Census of Production, 1930

Ball Bearings and Roller Bearings, Including Steel Balls and Steel Rollers for Bearings

Total 1924: £2,268,000
Total 1930: £2,464,000

Source: Industrial Machinery in Principal Foreign Countries, Bureau of Foreign and Domestic Commerce, Trade Information Bulletin No. 825, Washington, 1935 p. 7.

[fol. 5314] Ball and Roller Bearings

As indicated in the table, Sweden's exports of ball and roller bearings in 1933 were valued at 19,485,000 crowns. No distribution by countries is shown in the 1933 export statistics. One manufacturer of these products in Sweden makes practically the entire production, and it is believed that a request was made that the "distribution" be deleted from the official statistics. According to the 1932 statistics,

out of a total of 16,677,471 crowns of ball-bearing exports, 6,316,079 crowns' worth went to Soviet Russia, 1,649,651 crowns to Japan, and the remainder was distributed in large part and fairly evenly to European countries, although exports were made to practically every country in the world.

Roller-bearing shipments in 1932 totaled 8,233,357 crowns; again Soviet Russia took the largest part, 5,164,095 crowns; Germany, 825,861 crowns; France, 827,482 crowns; Japan 303,662 crowns; and the remainder was as widely distributed as in the case of ball bearings.

Information on ball and roller bearings is significant because these form such an important group in the Swedish manufacturing community and because they enter largely, now, into industrial-machinery construction. (p. 57.)

Swedish production	1930 Crowns	1931 Crowns	1932 Crowns
Ball bearings	24,368,300	15,534,051	17,715,000
Roller bearings	10,513,157	9,751,308	10,316,242
Other bearings and transmission parts	5,461,760	3,887,118	3,415,663

(p. 55) Taken from "Industri," Kommerskollegium (Swedish official statistics).

The trade in industrial machinery for 1933, segregated according to principal groups, as in Swedish official statistics, is shown below:

Ball and roller bearings:

Imports: 910,000 crowns
Exports: 19,485,000 crowns

(p. 56) Taken from "Handel". Kommerskollogium (Swedish official statistics).

Source: Industrial Machinery in Principal Foreign Countries, Bureau of Foreign and Domestic Commerce, Trade Information Bulletin No. 825, Washington, 1935.

DEFENDANT'S EXHIBIT 180

Form No. 412

DEPARTMENT OF COMMERCE
OFFICE OF INTERNATIONAL TRADE
WASHINGTON 25, D. C.

DEFENDANT'S EXHIBIT [illegible]

Date: March 12, 1948

Statement of rates of import duty on Ball and Roller Bearings
(Rates effective October, 1947)

TARIFF NO.	AUSTRALIA	British Preferential	General Tariff
	(Figures in parentheses represent additional ad valorem primage duties)		
176(A)	Roller bearings and ball bearings, not being roller bearing or ball bearing plummer or hanger blocks ad valorem	Free (5%)	15% (10%)
176(J)(1)	Machines and machinery not elsewhere included (covers plummer or hanger for machinery shafting) ad valorem	15% (5%)(E.A.)	55% (10%)
	Not liable to sales tax (E.A.) Subject to Exchange Adjustment under British Preferential. (See paragraph 7 of attached tariff application sheet.)		
	Import Restrictions Import licenses were required for all importations from the nonsterling area which included United States, Canada, Newfoundland, Hong Kong and all non-Empire countries. The licenses were obtained by importers in advance of shipment. According to their existing licensing regulations, goods classified under the above tariff items are permitted entry under "Administrative Control". Quota restrictions do not apply and applications for licenses are dealt with individually on their merits by the Department of Trade and Customs at Canberra, Australia. U. S. Imports are dutiable under the General Tariff. Similar Canadian goods take British Preferential rates.		

Form IT-580

DEPARTMENT OF COMMERCE
OFFICE OF INTERNATIONAL TRADE
WASHINGTON 25, D. C.

Date: March 12, 1948

Statement of rates of import duty on Ball and Roller Bearings
(Prevailing rates effective November 15, 1947)

TARIFF NO.	AUSTRALIA	British Preferential	Intermediate Tariff	General Tariff
	(Figures in parentheses represent additional ad valorem primage duties)			
176(A)	Roller bearings and ball bearings not being roller bearing or ball bearing plummer or hanging blocks - ad valorem	Free (5%)	—	12½% (10%)
176(F)(1)	Machines and machinery not elsewhere included (covers plummer or hanger for machinery shafting) - ad valorem	27½% (Exempt)	55% (5%)	57½% (10%)

Not liable to sales tax.
U.S. imports are dutiable under the Intermediate Tariff when specified. Otherwise the General Tariff applies. Similar Canadian goods take the British preferential rates.

Import Restrictions: Licenses are now granted only for those nonsterling goods (see paragraph 9 of attached tariff application sheet) listed by the Australian Government as essential. Ball bearings and roller bearings are included in this list and import licenses will probably be granted for such U. S. products. Goods classified under 176(F)(1) are not specifically mentioned on the essentials list and therefore import licenses for such dollar goods may not be issued.

Form No. 414

2261

DEPARTMENT OF COMMERCE
OFFICE OF INTERNATIONAL TRADE
WASHINGTON 25, D. C.

Date: August 6, 1947

European Division

Statement of rates of import duty on Anti-friction bearings

TARIFF NO.	AUSTRIA	General	Conventional
	(Rates quoted as of 1938, 1938 Tariff temporarily in effect.)	Gold crowns per 100 Kgs. legal net weight.	
387	Ball and roller bearings and their parts, other than bearings for bicycles, weighing:		
	(a) 0.5 kilogram or more.	100.00	80.00
	(b) less than 0.5 kilogram.	150.00	130.00
	Note: Balls for ball bearings and rollers for roller bearings	free	—
458	Bicycle parts, finished:		
	(a) Balls for bicycle bearings.	free	—
	(b) Free-running spur gears, even unfitted rigid hub flange rings, bicycle chains, ball bearing rings, handlebars, chain cases. .	60.00	—

Rwalker:mp

5317

2262

DIVISION OF FOREIGN TARIFFS

DEPARTMENT OF COMMERCE
BUREAU OF FOREIGN AND DOMESTIC COMMERCE
WASHINGTON

Date: 1-30-39

Statement of rates of import duty on Ball and Roller Bearings

TARIFF NO.		Import Duty
	BELGIUM	
1068	Bearings(1), step-bearing , clutche , pulleys, of non-malleable cast iron, weighing:	Francs per 100 kilos gross
	a) 1,000 kilos or more	48.30
	b) 200 kilos and up to 1,000 kilos	64.40
	c) Less than 200 kilos	70.00
1071	Ball and roller bearings, the balls or rollers having a diameter of:	Francs per 100 kilos net
	a) More than 5 millimeters	150.00
	b) 5 millimeters or less	240.00
1072	Balls for ball bearings, of a diameter of:	
	a) More than 5 millimeters	400.00
	b) 5 millimeters or less	720.00

Plus a transmission tax of 2.5 percent of the duty-paid value

(1) Ball bearings contained in the bearings are dutiable separtely. The bronze journals of shafting bearings are also taxed separately if their weight exceeds 10% of the weight of the bearings.

JFS deh

5318

Form No. 412

2263

DEPARTMENT OF COMMERCE
OFFICE OF INTERNATIONAL TRADE
WASHINGTON 25, D. C.

Date: August 8, 1947

Statement of rates of import duty on Antifriction bearings and their components

TARIFF NO.	CZECHOSLOVAKIA	General Tariff Crowns per 100 kilos	Conventional Tariff Crowns per 100 kilos
483	Wares of malleable iron, not specified, including those combined with nonmalleable cast-iron or with wood:		
	a. Finely worked: Ball and roller bearings other than for bicycles, weighing each:		
	1. More than 25 kilos	800.00	90.00
	2. More than 5 but not more than 25 kilos	850.00	96.00
	3. More than ½ but not more than 5 kilos	960.00	108.00
	4. ½ kilo or less	1,060.00	120.00
	Turnover tax: 3% of duty-paid value		
	Tara: 9% in cases and casks, 2% in hampers		
484	Wares of iron combined with common materials: ball and roller bearings other than for bicycles	1,350.00	360.00
	Turnover tax: 3% of duty-paid value		
	Tara: 9% in cases and casks 2% in hampers		
ex 552a	Bicycle parts: Ball-bearing rings, balls of 10 mm. or less in diameter	950.00	—
	Turnover Tax: 3% of duty-paid value		
	Tara: 9% in cases and casks 2% in hampers		

*Conventional duties are assessed at the rate of 120 crowns in the case of bearings and components weighing more than 1 kilo and at the rate of 360 crowns for all other bearings and components

Yugoslavia: None

March 12, 1948 Statement of important duties on Ball and Roller Bearings and Parts

Tariff No	France* (Duties unchanged 1-1-48)	Minimum Rate (Applies to U.S. & Algeria)	General Rate 3 times minimum
1675	Ball and roller bearings -	25%	
1676A	Parts of ball and roller bearings	28% or 32% according to kind	
	Rough rings - - - -	Dutiable at 17½% of finished value 20% of cast iron rings	
	Additional taxes levied on imports are approximately 12.36% of the value of the goods These taxes are not enumerated		
33029	Effective 1-1-48		

5320

DEPARTMENT OF COMMERCE
BUREAU OF FOREIGN AND DOMESTIC COMMERCE
WASHINGTON

Date: July 1, 1946

Statement of rates of import duty on Ball and Roller-Bearings and Parts.

TARIFF NO.	France (Duties temporarily suspended July 8, 1944).	General Rate	Minimum Rate	Rate to U.S. A
533 septies	Annular and thrust ball bearings, roller bearings or cylindrical bearings, for all purposes, with or without their balls or cylinders:			
	A. Simple ball bearings, weighing per unit:	Francs per kilo net		
	25 grams or less	400.00	100.00	100.00
	26 to 50 grams	300.00	75.00	75.00
	51 to 100 grams	168.00	42.00	42.00
	101 to 200 grams	112.00	28.00	28.00
	201 to 500 grams	64.00	16.00	16.00
	501 to 1000 grams exclusive	54.00	13.50	13.50
	1000 grams or more	40.00	10.00	10.00
	B. Roller or cylindrical bearings, weighing per unit:			
	25 grams or less	400.00	100.00	100.00
	26 to 50 grams	300.00	75.00	75.00
	51 to 100 grams	184.00	46.00	46.00
	101 to 200 grams	72.00	18.00	18.00
	201 to 500 grams	52.00	13.00	13.00
	501 to 1000 grams exclusive	44.00	11.00	11.00
	1000 grams or more	32.00	8.00	8.00
	C. Double-row bearings and bearings with axial and radial loads (slanting bearings):			
	Simple ball bearings, weighing per unit:			
	25 grams or less	448.00	112.00	112.00
	26 to 50 grams	336.00	84.00	84.00
	51 to 100 grams	188.00	47.00	47.00
	101 to 200 grams	125,40	31.35	31.35
	201 to 500 grams	71.60	17.90	17.90
	501 to 1000 grams exclusive	60.40	15.10	15.10
	1000 grams or more	44.80	11.20	11.20
	Roller or cylindrical bearings, weighing per unit:			
	25 grams or less	448.00	112.00	112.00
	26 to 50 grams	336.00	84.00	84.00
	51 to 100 grams	206.00	51.50	51.50
	101 to 200 grams	80.60	20.15	20.15
	201 to 500 grams	58.20	14.55	14.55
	501 to 1000 grams exclusive	49.20	12.30	12.30
	1000 grams or more	35.80	8.95	8.95

2266

European Division

Form No. 419

DEPARTMENT OF COMMERCE

BUREAU OF FOREIGN AND DOMESTIC COMMERCE

WASHINGTON

Date: July 1, 1946

Statement of rates of import duty on Ball and Roller-Bearings and Parts.

TARIFF NO.	France (Cont'd)	General Rate	Minimum Rate	Rate to U.S.
			France per kilo net	
533 septies (cont'd)	D. Balls for bearings, of common metal, calibrated, i.e., with regular shape, having a diameter of:			
	Less than 2 millimeters	400.00	100.00	100.00
	2 to 3 millimeters exclusive	300.00	75.00	75.00
	3 to 3.5 millimeters exclusive	64.00	16.00	16.00
	3.5 to 5 millimeters exclusive	44.00	11.00	11.00
	5 millimeters or more	32.00	8.00	8.00
	E. Rollers and cylinders	52.00	13.00	13.00
	F. Component parts of annular ball, roller or cylindrical bearings; component parts of thrust bearings of common metals (except balls, rollers and cylinders):			
	Caps and rough parts	28.00	7.00	7.00
	Finished (worked) parts, weighing:			
	1 to 25 grams exclusive	200.00	50.00	50.00
	26 to 50 grams exclusive	120.00	30.00	30.00
	50 grams or more	60.00	15.00	15.00

Production tax: 10% of the duty-paid value.

Transaction tax: 1% of duty-paid and tax-paid value.

Import license required.

VCH/gml

5322

Date: 3-21-38

Statement of rates of import duty on Ball and Roller Bearings

Tariff No.		General Rate	Conventional Rate	1938 General	1938 Conventional
	GERMANY	Reichsmarks per 100 kilos			
836 A	Ball-end roller bearings and parts thereof, also those with balls or rollers:				
	Weighing each, net:				
	Over 1 kilo.....	50.00	---	50	50
	Over 500 grams to 1 kilo.....	75.00	---	75	70
	Over 100 grams to 500 grams.....	100.00	---	100	90
	100 grams or less....	150.00	---	150	150

TARE: Cases or barrels, 10%

JLG deh

2263

Form No. 412

DEPARTMENT OF COMMERCE
OFFICE OF INTERNATIONAL TRADE
WASHINGTON 25, D. C.

Date: March 2, 1948 ~~July 10, 1947~~

Statement of rates of import duty on Ball Bearings

TARIFF NO.	ITALY	General Tariff	Conventional Tariff
665 bis	Radial and axial ball or roller bearings, finished and fitted with balls and ball cages, and rings for ball or roller bearings, tempered and rectified, all these weighing	Lire per 100 kilos net legal wt.	
	A. more than 4 kilos - - - - - - - - -	4.60	- -
		Lire per 100 kilos real legal wt.	
	B. more than 2.5 and up to 4 kgs.	7.35	- -
	C. more than 2 and up to 2.5 "	8.80	- -
	D. more than 1 and up to 2 "	11.00	- -
	E. more than 400 grams and up to 1 kilo . - - - - - - - -	12.80	- -
	F. more than 200 and up to 400 grams - - - - - - - - - - - -	18.35	- -
	G. more than 100 and up to 200 grams - - - - - - - - - - - -	25.70	- -
	H. more than 50 and up to 100 grams - - - - - - - - - - -	39.60	- -
	I. Up to 50 grams - - - - - - - - - -	52.80	
665 ter	Loose balls, entirely finished for bearings, of a diameter of:	Lire per 100 kilos net real wt.	
	A. More than 16 mm. - - - - - - - - -	9.90	
	B. " " 10 " and up to 16 mm.	11.20	
	C. " " 6 " " " " 10 "	13.20	
	D. " " 3 " " " " 6 "	14.15	
	E. Up to 3 mm. - - - - - - - - - - - -	39.60	
	Import license required Import license fee: 4% c.i.f. value Sales tax, 4% duty-paid value.		
[illegible]			

5324

NETHERLANDS

Date:

Statement of rates of import duty on

TARIFF NO.		1938 General	1928
155 VII	Roller bearings,	6%	Same

2270

Form No. 412

European Division

DEPARTMENT OF COMMERCE
OFFICE OF INTERNATIONAL TRADE
WASHINGTON 25, D. C.

Date June 26, 1947

Statement of rates of import duty on Anti-Friction Bearings and Parts, including Steel Balls.

TARIFF NO.	PORTUGAL	Maximum Tariff	Minimum Tariff
		Gold escudos per kilogram, net	
	Separate machine parts of metal, not specified (probably includes bearings and parts):		
708-A	- Weighing up to 20 kilograms each.....	0.60	0.30
709	- Weighing from 20 to 2,000 kilograms each.....	0.14	0.07
	Surtax: 20% of the duty when carried in Portuguese ships. 28% of the duty when carried in United States ships.		

TWH

2271

Form No. 412

European Division.

DEPARTMENT OF COMMERCE
OFFICE OF INTERNATIONAL TRADE
WASHINGTON 25, D. C.

March 12, 1948

Date: June 25, 1947.

Statement of rates of import duty on Anti-Friction Bearings and Parts, including Steel Balls.

TARIFF NO.	SPAIN	First Tariff	Second Tariff
		Gold pesetas per 100 net kilograms	
	*Castings of steel or malleable iron, not lathed, adjusted or polished: (includes bearings):		
C 286	- Weighing more than 100 kilograms.....	79.20	26.40
C 287	- Weighing from 25 to 100 kilograms.....	95.04	31.68
C 288	- Weighing from 1 to 25 kilograms.....	126.72	33.00
C 289	- Weighing up to 1 kilogram.....	158.40	54.80
	Articles of iron or steel, wrought or stamped, in the rough: (includes bearings and balls):	126.72	37.20
315	- Weighing more than 100 kilograms.....	126.72	35.20
316	- Weighing from 25 to 100 kilograms.....	150.48	41.80
317	- Weighing from 1 to 25 kilograms.....	145.20	48.40
318	- Weighing from 1 gram to one kilogram....	187.44	62.70
		per net kilogram	
723bis	Balls and bearings.....	9.60	3.30
Ex-723	Balls for bearings and ball sets for cycles, motorcycles and sidecars, provided they are no larger than those for motorcycles.. D	9.60	2.64
	Note to all items: Use and Consumption tax, 10% of duty-paid value. Surtax, 20% of customs duties.		
	*When articles included under first heading are lathed, adjusted or polished, they pay a surtax of 50%.		
	C - Certificate of origin required.		

TWH

2272

Form No. 412

DEPARTMENT OF COMMERCE
OFFICE OF INTERNATIONAL TRADE
WASHINGTON 25, D. C.

Date: 12-19 July 25, 1947

Statement of rates of import duty on: Bearings and parts.

TARIFF NO. Statistical No.	SWEDEN	
	Malleable iron and steel and manufactures thereof:	
	Ball and roller bearings and also parts thereof:	ad valorem
1527	Ball bearings and also parts thereof, other than separate balls	10 %
1528	Roller bearings and also parts thereof other than separate rollers	10 %
1529	Balls and rollers for ball and roller bearings	10 %
	Machines, apparatus and implements, not electric:	
	Drive mechanisms, hereunder included smooth shafts, provided with key grooves or otherwise adapted; bearings n.o.s., and bearing bonns, flywheels without governor, belt pulleys, and rope pulleys, n.o.s., also gear wheels with unworked teeth, weighing each:	Swedish crowns per 100 kilograms
1764	not more than 500 kg.	M 6:-
1765	not more than 500 kg.	M 4:-
	Note 1: A shaft with other parts of drive mechanisms mounted thereon is regarded as one piece.	
	Note 2: Intermediate drive mechanisms, entered together with the machine for which they are intended, are dutiable according to provisions stipulated for the machine.	
	Note 3: Belt pulleys of plate are classified under plate articles and sheet articles, n.o.s.	
	Note 4: For articles, classified under nos. 1764-1765, the duty shall (in each case be equivalent to at least ___ % of the value of the article and may), in the case of articles classified under No. 1765 in no case be assessed with	

(continued)

5328

Form No. 412

2273

DEPARTMENT OF COMMERCE
OFFICE OF INTERNATIONAL TRADE
WASHINGTON 25, D. C.

Date:

Statement of rates of import duty on: Bearings and parts. (continued)

TARIFF NO.				
	Sweden (continued)			
	Note 4 (continued): an amount of less than 30 ercres for each. Note 5: For articles, classified under Nos. 1764-1765, the duty shall in each case be equivalent to at least 15% of the value of the article.			
	Note - Letter "p" preceding the import duty indicates that the duty is computed on the actual net weight.			
	Note - Import licenses are required for the importation of articles classified under Stat. Nos. 1527, 1528, and 1529.			

H/S/mjs

5329

2274

Form No. 412

DEPARTMENT OF COMMERCE
OFFICE OF INTERNATIONAL TRADE
WASHINGTON 25, D. C.

Date: July 16, 1947

Statement of rates of import duty on Ball and roller bearings

TARIFF NO.	SWITZERLAND	Import duty Francs per 100 kilos	Additional Tare Percentage	Sales tax Francs per 100 kilos gross
	Ball and roller bearings of steel, weighing each:			
839a1	1 kilogram or more	50.00	15	44.00
839a2	From 250 grammes up to 1 kilogram exclusive.	65.00	15	59.00
[illegible]3	Less than 250 grammes.	80.00	15	85.00
872a[illegible]				

5330

2275

Form No. 412

DEPARTMENT OF COMMERCE
OFFICE OF INTERNATIONAL TRADE
WASHINGTON 25, D. C.

Dec.
Date: July 16, 1957

Statement of rates of import duty on Anti-friction bearings and components

TARIFF NO.	TURKEY	General Turkish customs permits per 100 kilos (gross wt.)	Conventional Turkish customs permits per 100 kilos (gross wt.)
69A	Other instruments and apparatus not mentioned either expressly or by way of assimilation in the other tariff items	200.00	90.00
	(Those used in the industry and imported under permit from the Ministry of Economy)	80.00	—

Mimeo

2276

Form No. 412

DEPARTMENT OF COMMERCE
OFFICE OF INTERNATIONAL TRADE
WASHINGTON 25, D. C.

Date:

Statement of rates of import duty on Roller Bearings and Ball Bearings

TARIFF NO.	UNITED KINGDOM	RATE OF DUTY	
Group I (10) & (11)	Ball bearings and parts thereof	20% ad valorem	Free*
	Roller bearings and parts thereof	33-1/3% ad valorem	Free*

*To qualify for the preferential rate, at least 50% of these manufactured articles' value must have been derived from expenditure of a prescribed kind which has been incurred in the British Empire or the U. K. in respect of materials grown or produced or work done in the British Empire or the United Kingdom.

Import Licensing

Most goods imported into the United Kingdom at the present time are subject to import licensing arrangements. In addition to import license being required for every shipment of roller bearings or ball bearings, and exchange permit is required in order to transfer funds in dollars.

5332

2277.

Form No. 412

DEPARTMENT OF COMMERCE
OFFICE OF INTERNATIONAL TRADE
WASHINGTON 25, D. C.

Date: Mar. 11, 1948

UNION OF SOUTH AFRICA

Statement of rates of import duty on ball and roller bearings

TARIFF NO.		Minimum duty	Intermediate duty	Maximum duty
118	Machinery, apparatus, appliances and implements, n.e.e., but excluding material, domestic machines and vehicles:			
	(g) Other for manufacturing and industrial purposes, n.e.e. etc. ad valorem	Free (to United Kingdom only)	5%	5%
	Under the General Agreements on Tariffs and Trade, when ratified by the South African Parliament the rates will be... ad valorem	Free to U.K.	3%	—
12	Motor cars, excluding radio apparatus:			
	(h) Parts and accessories, but excluding electric lamp bulbs, batteries, tires and tubes, and parts specially provided for in this item ad valorem	20%	20%	20%
	Under General Agreements on Tariffs and Trade, the prevailing rate of 20% was bound, no preference.			
13	Motor trucks and motor vans for the conveyance of goods, and steam wagons, and motor char-a-bancs, omnibuses, ambulance vans and hearses:			
	(e) Parts and accessories, but excluding electric lamp bulbs, batteries, tires and tubes and parts specially provided for in this item ad valorem	20%	20%	20%
	Under General Agreements on Tariffs and Trade, the prevailing rate of 20 percent was bound, no preference.			

Note: The intermediate rate applies to all countries not mentioned under the minimum rate column. Imports from the United States dutiable at intermediate rate. Maximum rate used chiefly in bargaining between countries.

5333

2273

Form No. 412

DEPARTMENT OF COMMERCE
OFFICE OF INTERNATIONAL TRADE
WASHINGTON 25, D. C.

Date: January 20, 1948

Statement of rates of import duty on

Air Cleaners

TARIFF NO.	BRITISH INDIA	Standard Rate of Duty	Rate to the United Kingdom
Ex.63(25)(ii)	Wire netting, not of British manufacture.....	1-1/2 times the excise duty leviable for the time being on steel ingots produced in British India, plus 60 rupees per ton plus 1/5 of the total duty	Same
	Note: The rate of excise duty on January 1, 1946 and until further notice, on steel ingots produced in British India is 4 rupees per ton. The rupee is worth about $0.30.		
71	Hardware, ironmongery and tools, all sorts not otherwise specified.....	30% ad valorem	Same
72(3)	Component parts of machinery as are essential for the working of the machine or apparatus and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose.....	10% ad valorem	Same
73	Electrical instruments, apparatus and appliances not otherwise specified.....	36% ad valorem	24% ad valorem

The Standard Rate of Duty applies to imports from all countries except the United Kingdom and Burma. Bearings for machinery are dutiable under Tariff Item No. 72(3), quoted above.

5334

2273

Form No. 412

DEPARTMENT OF COMMERCE
OFFICE OF INTERNATIONAL TRADE
WASHINGTON 25, D. C.

Date: February 17, 194

Statement of rates of import duty on

Motor Trucks

TARIFF NO.	BRITISH INDIA	Standard Rate of Duty	Rate to United Kingdom & Colonies	Rate to Burma
75(3)	Motor omnibuses; chassis of motor omnibuses, motor vans and motor lorries; and parts of mechanically propelled vehicles and accessories not otherwise specified, excluding rubber tyres and tubes and such parts and accessories of motor vehicles included in this item as are also adapted for use as parts and accessories of motor cars.....	A D V A L O R E M 30 %	21 %	6 %

Standard Rate of Duty applies to imports from the United States., subject to an import license to be obtained by the importer.
Bearings for motor busses, trucks etc. are dutiable under this item.

5335

2280

Form No. 412

DEPARTMENT OF COMMERCE
OFFICE OF INTERNATIONAL TRADE
WASHINGTON 25, D. C.

Date: March 1948

Statement of rates of import duty on

Automobiles

TARIFF NO.	LIBYA	Standard Rate of Duty	British Preferential Rate	Rate to Imports from Burma
		AD VALOREM		
Ex.75(1)	Motor cars and articles (other than rubber tires and tubes) adapted for use as parts and accessories thereof.....	45 %	36 %	24 %
	Imports from the United States are entered under the Standard Rate of Duty. Bearings for motor cars are classified, for customs purposes, as parts of motor cars, and are subject to the same rate of duty.			

5336

DEFENDANT'S EXHIBIT 181

2781

Reprint from FOREIGN COMMERCE WEEKLY

SUMMARY OF IMPORT LICENSE AND EXCHANGE CONTROL REGULATIONS IN PRINCIPAL FOREIGN COUNTRIES

Prepared in the Areas Division, Office of International Trade, Department of Commerce

In many countries foreign goods may not be imported unless covered by an import permit which must be obtained by the importer and in certain cases must have been granted before the order for the goods has been placed. Also in many countries, owing to the extreme scarcity of foreign exchange, particularly dollar exchange, the authorities require that an exchange permit be obtained before the goods may be paid for. Before shipping his goods, the exporter should make certain that the importer has obtained these permits, if required. He should insist upon being advised as to the number of the documents.

The following tabulation of the import and exchange permits required in foreign countries has been prepared as a guide to exporters regarding these regulations. More detailed information may be obtained by writing the Areas Division, Office of International Trade of the Department of Commerce.

Country	Is import permit necessary?	Is exchange permit required?
Argentina	No, except for a selected list of commodities.[1] Certain products are subject to import quota.	Yes; *for all* imports; granted only for "listed" products. Application should be filed prior to confirmation of purchase order.
Australia	Yes	Yes.
Austria	Yes	Yes; import permit does not automatically carry the right to foreign exchange.
Belgium-Luxembourg	Yes; for about 30 percent of the items of the customs tariff. Licenses are granted to importers who are entitled to "certificates of priority."	Yes.
Belgian Congo	Yes	Yes.
Bolivia	Yes; for all imports reported not being granted for luxury goods until exchange situation improves.	No; the import permit authorizes purchase of exchange, but is not a guarantee that exchange will be granted.
Brazil	Yes; for rubber goods, used machinery, and certain other items including jewelry, toilet preparations, cosmetics, plastic articles, manufactures of hides and skins, tin and tin plate, and chemical fertilizer.	Yes.[2]
Bermuda British East Africa British Malaya British West Africa British West Indies British Guiana British Honduras	Yes	Yes; import permit generally assures release of foreign exchange.
Bulgaria	Yes	Yes.
Burma	Yes	Yes.
Canada	Yes, for many products.[3]	Yes.
Ceylon	Yes	Yes.
Chile	Yes; must be obtained prior to shipment of goods.	Yes; in the form of a notation on the import permit.
China	Yes; certain goods are also subject to quota allocation.[4]	Yes; exchange is made available through approved banks for licensed imports.[5]
Colombia	Yes, with certain exceptions, must be obtained prior to purchase of goods.[6]	No, but import permit necessary to obtain foreign exchange.
Costa Rica	No	Yes; foreign exchange is rationed.
Cuba	No	No.
Czechoslovakia	Yes	Yes; import permit carries the right to foreign exchange.
Denmark	Yes, on almost all commodities.	Do.
Dominican Republic	No	No.
Ecuador	Yes; must be presented in order to obtain the consular invoice.	Yes; import permit carries the right to foreign exchange "Central Bank of Ecuador."
Egypt	Yes, unlicensed imports are subject to confiscation.	Yes.
Eire	For a few products only	Yes.
El Salvador	No	No.
Finland	Yes	Yes; import permit carries the right to foreign exchange.
France	Yes; obtainable for "essentials" only.	Yes; issued simultaneously with the import permit.
French Colonies	Yes	Yes; import permit carries the right to foreign exchange.
French Indo China	Yes	Yes.
Germany	Imports controlled by the occupation authorities.	Payment is made by occupation authorities.
Greece	Yes; permits granted only for limited number of essential products.	Yes; import permit carries the right to open a letter of credit.
Guatemala	Understood to have become effective for certain articles Jan. 29, 1948.	No.
Haiti	No	No.
Honduras	No	Yes.
Hong Kong	Yes	Yes; a permit to purchase foreign exchange must be obtained from the Finance Department prior to the granting of an import permit by the Hong Kong Customs authorities.
Hungary	Yes	Yes.
Iceland	Yes	Yes; unless otherwise stated on the permit, the import permit carries the right to foreign exchange.
India	Yes	Yes; import permit ordinarily carries the right to foreign exchange.
Iran	No	Yes.
Iraq	Yes; goods exported before a license is obtained are confiscated.	Yes; permits are obtained through licensed dealers.
Italy	Yes	Yes; through the Bank of Italy or its agents.[7]
Japan	Yes	No; trade with the United States is in United States dollars.
Korea	Yes	No.
Liberia	For arms and ammunitions only.	No.
Luxembourg	(See Belgium-Luxembourg.)	
Mexico	There is a long list of products which are prohibited from importation, and another list of commodities requiring an import permit.	No.
Morocco (French)	Yes	Yes.
Netherlands East Indies	No	Yes.
Netherlands West Indies	Yes; quota system	Yes.
Netherlands	Yes	Yes ("payment attest").
Newfoundland	No; except for food products.	Yes.
New Zealand	Yes	Yes; import permit carries the right to foreign exchange.
Nicaragua	Yes; none are being issued except for certain goods in short supply.	No.
Northern Rhodesia	Yes	Yes.
Norway	Yes	Yes; import permit carries the right to foreign exchange.
Pakistan	Yes	Yes; import permit ordinarily carries the right to foreign exchange.
Palestine	Yes; goods exported before the importer obtains the import permit will be confiscated.	Yes; import permit carries the right to foreign exchange.
Panama	No.	No.
Paraguay	No	Yes.[8]
Peru	Yes	Yes.
Philippine Republic	No; some system of import controls may be adopted by the Philippine Congress which convened Jan. 16, 1948.	No.[9]
Poland	Yes	Yes.
Portugal	Yes, for a considerable list of nonessential products.	No; no restrictions on dollar transactions.
Portuguese Colonies	Yes; for a (relatively) few products.	No; no restrictions on dollar transactions.
Rumania	Yes	Yes
Saudi Arabia	No	No.
Siam	No; import licenses have been discontinued.	Yes; the government controls on the major part of foreign exchange are still in effect.
Spain	Yes; largely limited to essential raw materials.	Yes; the import permit carries an allotment of foreign exchange.
Southern Rhodesia	Yes	Yes.
Spanish Colonies	Yes	Yes; the import permit carries an allotment of foreign exchange.
Spanish Zone of Morocco	Yes	Do.
Sweden	Yes; rigid controls. Special "free list" exempt from import license.	Yes; rigid exchange control in operation.
Switzerland	Yes, for a few commodities, chiefly those under international allocation.	No difficulty in regard to exchange.
Syria and Lebanon	Yes	Yes.
Tangier	No	No.
Turkey	Yes	Yes; special exchange license from the Control Office.
Union of South Africa (including South West Africa, Basutoland, Bechuanaland and Swaziland)	No, except for a few products, usually those under international allocation.	Yes; exchange permits are easily obtained.
United Kingdom	Yes except for a few products.	Yes.
Uruguay	Yes; must be obtained.	No; import permit carries the right to foreign exchange.
U. S. S. R.	Yes; importing government agencies responsible for securing own permit.	Yes; all exchange allocated by U. S. S. R. State Bank upon receipt of import permit.
Venezuela	No; except for 24 tariff items.	Import permit when required authorizes foreign exchange.
Yugoslavia	Yes	Yes.

[1] American exporters may obtain information regarding the import controls on their products by writing the Areas division or one of the field offices of the Department of Commerce.

[2] All exchange transactions amounting to more than $5,000 in currencies require an exchange permit from the Banco do Brazil.

[3] Details of China's import and exchange controls may be obtained from the Far East Branch of the Office of International Trade.

[4] The importer buys his dollar exchange on the basis of the daily free market rate.

[5] Importers must conclude a contract for purchase of exchange with the Bank of Paraguay before purchasing abroad.

[6] A Foreign Funds Control Office is established in Manila, but blanket licenses are issued to banks for exchange transactions by bona fide firms.

U. S. GOVERNMENT PRINTING OFFICE: 1948

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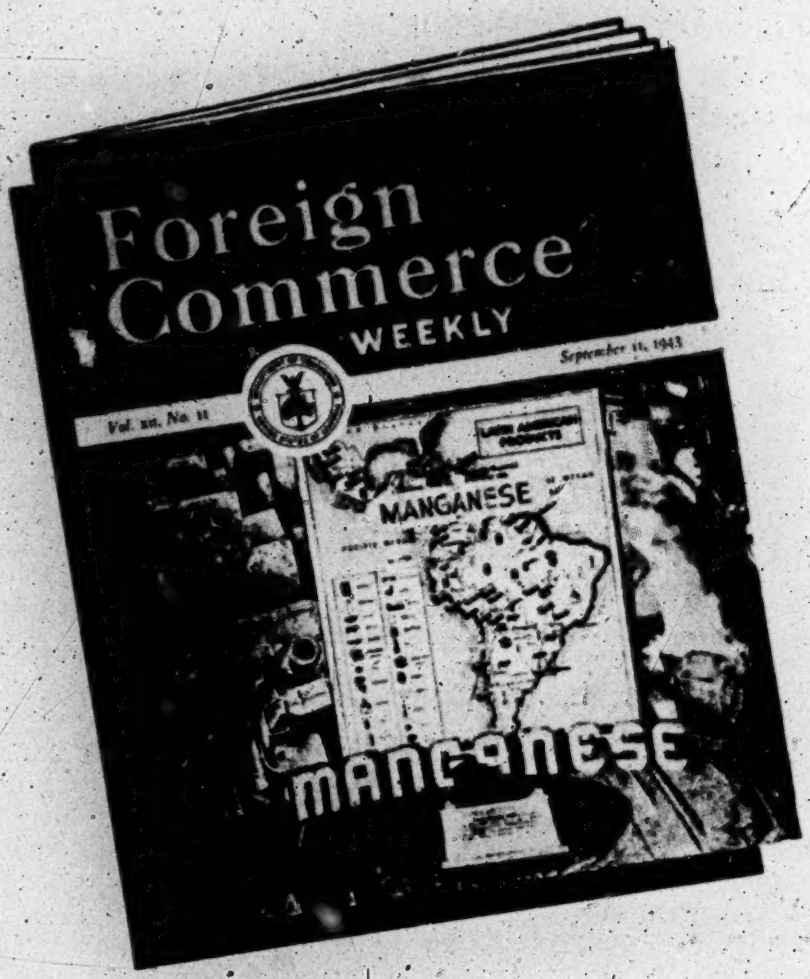
DEFENDANTS EXHIBIT 181



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Case No. 2421-4 Civil
DEFENDANT'S EXHIBIT
No. 181

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DEFENDANT'S EXHIBIT 182 2283

United States Import Duties

June 1946

1. TITLES I AND II OF THE TARIFF ACT OF 1930
(Dutiable and Free Lists)

2. CHANGES IN IMPORT DUTIES SINCE 1930
(Prepared by the United States Tariff Commission)

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1946

SCHEDULE 3.—*Metals and manufactures of*—Continued

Par. No.	Articles	Rate before change	Rate after change	Effective date and basis of change
318	Woven-wire cloth: Gauze, fabric, or screen, made of wire composed of steel, brass, copper, bronze, or any other metal or alloy, not specially provided for:			
	With meshes not finer than 30 wires to the lineal inch in warp or filling.	25% ad val.	1¢ per sq. ft., but not less than 12½% nor more than 25% ad val.	Jan. 1, 1939; Canada (T. D. 49752).
	With meshes finer than 30 and not finer than 90 wires to the lineal inch in warp or filling.	40% ad val.	5¢ per sq. ft., but not less than 20% nor more than 40% ad val.	Jan. 1, 1939; Canada (T. D. 49752).
318	Cylinder wires having more than 55 meshes per lineal inch in warp or filling, and			
318	Fourdrinier wires, suitable for use in paper-making machines (whether or not parts of or fitted or attached to such machines), and	50% ad val.	75% ad val.	Apr. 15, 1931; sec. 336 (T. D. 44745).
318	Woven-wire cloth having more than 55 meshes per lineal inch in warp or filling and suitable for use in the manufacture of Fourdrinier wires or cylinder wires.			
319 (a)	Iron or steel anchors and parts thereof	25% ad val.	15% ad val.	Jan. 1 1939; United Kingdom (T. D. 49753).
321	Antifriction balls and rollers, metal balls and rollers commonly used in ball or roller bearings, whether finished or unfinished, for whatever use intended.	10¢ per lb. + 45% ad val. 8¢ per lb. + 35% ad val.	8¢ per lb. + 35% ad val.* 8¢ per lb. + 25% ad val.	Aug. 5, 1935; Sweden (T. D. 47785). Jan. 1, 1939; United Kingdom (T. D. 49753).
321	Metal ball or roller bearings, and parts thereof, whether finished or unfinished, for whatever use intended.	10¢ per lb. + 45% ad val.	8¢ per lb. + 35% ad val.	Aug. 5, 1935; Sweden (T. D. 47785).
322	Relaying and rerolling rails	1/20¢ per lb. + additional duty on alloy content.	Duty-free [1]	Mar. 14, 1942; Pub. Law 497, 77th Cong. (T. D. 50585).

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323	Axles and parts thereof, axle bars, axle blanks, and forgings for axles, of iron or steel, without reference to the stage or state of manufacture, not specially provided for, valued at not more than 6 cents per pound.	5/20¢ per lb.	5/20¢ per lb.	Jan. 1, 1939; Canada (T. D. 49752).
325	Anvils of iron or steel, or of iron and steel combined, by whatever process made, or in whatever stage of manufacture, weighing 5 pounds or more each.	3¢ per lb.	2¢ per lb.	Aug. 5, 1935; Sweden (T. D. 47785).
327	Cast-iron pipe of every description	25% ad val.	15% ad val.	June 15, 1936; France (T. D. 48316).
327	Cast-iron fittings for cast-iron pipe	25% ad val.	15% ad val.	June 15, 1936; France (T. D. 48316) Jan. 1, 1939; Canada (T. D. 49752).
327	Cast-iron andirons, plates, stove plates, sadirons, tailors' irons, hatters' irons, but not including electric irons, and castings and vessels wholly of cast iron, including all castings of iron or cast-iron plates which have been chiseled, drilled, machined, or otherwise advanced in condition by processes or operations subsequent to the casting process but not made up into articles, or parts thereof, or finished machine parts.	20% ad val.	10% ad val.	Jan. 1, 1939; Canada (T. D. 49752).
327	Castings of malleable iron for heel and other plates for boots and shoes.	20% ad val.	10% ad val.	Jan. 1, 1939; United Kingdom (T. D. 49753).
327	Molders' patterns, of whatever material composed, for the manufacture of castings.	50% ad val.	25% ad val.	Jan. 1, 1939; Canada (T. D. 49752).
329	Chain and chains of all kinds, made of iron or steel:			
	Less than ¼ and not less than ⅜ of 1 inch in diameter.	1½¢ per lb.	¾¢ per lb.	Jan. 1, 1939; Canada (T. D. 49752).
	Less than ⅜ and not less than ½ of 1 inch in diameter.	2½¢ per lb.	1¼¢ per lb.	
329	Chains of iron or steel, used for the transmission of power, of not more than 2-inch pitch and containing more than 3 parts per pitch, and parts thereof, finished or unfinished, all the foregoing if valued at not less than 40 cents per pound	40% ad val.	25% ad val.	Jan. 1, 1939; United Kingdom (T. D. 49753).

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* Superseded

[1] See emergency duty exemptions (No. 8), p. 9

[fol. 5342]

Defendant's Exhibit 183

Ball Bearings: Equivalent Ad Valorem Rates, According To Weight Of Bearing, Based On 1929 Invoice Analysis

Weight of bearing Pounds	Invoice price	Specific duty, 10¢ per lb.	Equivalent ad valorem of specific duty Percent	Ad valorem rate Percent	Total equivalent ad valorem rate Percent
.088	$0.209	$0.009	4.3	45.0	49.3
.154	.246	.015	6.1	45.0	51.1
.220	.194	.022	11.3	45.0	56.3
.238	.204	.024	11.8	45.0	56.8
.850	.614	.085	13.8	45.0	58.8
.857	.346	.086	24.9	45.0	69.9
1.10	.712	.110	15.4	45.0	60.4
1.19	.355	.119	33.5	45.0	78.5
1.45	.401	.145	36.2	45.0	81.2
1.53	.810	.153	18.9	45.0	63.9
3.41	1.93	.341	17.7	45.0	62.7
9.13	4.64	.913	19.7	45.0	64.7
11.1	2.24	1.110	49.6	45.0	94.6
11.7	1.79	1.170	65.4	45.0	110.4
13.1	1.79	1.310	73.2	45.0	118.2
14.6	2.66	1.460	54.9	45.0	99.9
24.2	3.77	2.420	64.2	45.0	109.2
54.6	8.14	5.460	67.1	45.0	112.1

Source: United States Tariff Commission Study. "Antifriction Bearings." (Prepared in Response to Senate Resolution 334, 72d. Congress, 2d. Session). October 1934, p. 27.

[fol. 5343]

Annual Tariff Rate and Calculated Duty on Antifriction Balls and Rollers in the United States, 1926–1943

No. 7690.000—Antifriction Bearings, Balls and Rollers

Year	Rate of duty	Calculated duty	Imports for consumption		Equivalent ad valorem duty	Average price per pound
			Pounds	Value		
1926	10¢ lb. plus 45%	$59,942	133,549	$103,526	57.9%	$0.775
1927	"	56,340	153,519	91,084	61.9	0.593
1928	"	67,792	190,686	108,275	62.6	0.568
1929	"	121,590	301,448	203,212	59.8	0.667
1930	"	39,361	108,871	63,276	62.2	0.581
1931	"	18,233	55,124	28,267	64.5	0.513
1932	"	8,588	27,865	12,892	66.6	0.463
1933	"	9,009	23,000	14,909	60.4	0.648
1934	"	11,579	28,965	19,293	60.0	0.666
1935	"	14,546	41,669	27,627	52.7	0.663
1936	8¢ lb. plus 35% A.R.	17,937	50,884	35,346	50.7	0.695
1937	"	27,502	73,481	53,738	51.2	0.731
1938	"	11,872	25,366	24,991	47.5	0.985
1939	8¢ lb. plus 25% A.R.	20,438	98,110	44,401	46.0	0.453
1940	"	9,487	53,259	20,907	45.4	0.393
1941	"	3,377	16,637	8,165	41.4	0.491
1942	"	214	128	815	26.3	6.367[a]
1943	"	99	84[b]	430[b]	26.1[b]	5.119[a]

A.R. Agreement rate.

[a] 42 pounds valued at $732 were admitted from the United Kingdom in 1942, and 15 pounds valued at $378 in 1943, which give a strong upward bias to the average price per pound in each of these years.

[b] 31 pounds valued at $50 were admitted free from Canada.

Source: (For all data except average price per pound): United States Department of Commerce. Foreign Commerce and Navigation of the United States. Annual editions, 1926–1943. (The average prices per pound were computed from the given figures.)

[fol. 5344]

Annual Tariff Rate and Calculated Duty on Antifriction Ball Bearing- and Parts in the United States, 1926–1943

No. 7690.100—Antifriction Ball Bearings and Parts

Year	Rate of duty	Calculated duty	Imports for consumption		Equivalent ad valorem duty	Average price per pound
			Pounds	Value		
1926	10¢ lb. plus 45%	$362,491	705,234	$648,816	55.9%	$0.920
1927	"	322,444	619,756	578,819	55.7	0.934
1928	"	256,294	487,802	461,141	55.6	0.945
1929	"	325,070	594,744	590,212	55.1	0.992
1930	"	271,399	571,222	485,172	55.9	0.849
1931	"	147,838	334,301	254,239	58.1	0.761
1932	"	83,795	224,168	136,396	61.4	0.608
1933	"	115,872	297,394	191,406	60.5	0.644
1934	"	288,235	555,171	517,150	55.7	0.932
1935	"	239,589	500,826	460,225	52.1	0.919
1936	8¢ lb. plus 35% A.R.	263,970	733,344	483,492	54.6	0.659
1937	"	334,457	840,945	641,767	52.1	0.763
1938	"	196,940	507,681	379,816	51.9	0.748
1939	"	130,761	314,064	267,107	49.0	0.850
1940	"	65,767	189,124	144,677	45.5	0.765
1941	"	275,057	481,549	675,809	40.7	1.403
1942	"	21,245	29,402	54,228	39.3	1.844
1943	"	5,673	10,416[a]	19,659[a]	39.1[a]	1.887

A.R. Agreement rate.

[a] 3,032 pounds valued at $5,137 were admitted free from Canada.

Source (For all data except average price per pound): United States Department of Commerce. Foreign Commerce and Navigation of the United States. Annual editions, 1926–1943 (The average prices per pound were computed from the given figures.)

[fol. 5345]

Annual Tariff Rate and Calculated Duty on Antifriction Roller Bearings and Parts in the United States, 1926–1943

No. 7690.200—Antifriction Roller Bearings and Parts

Year	Rate of duty	Calculated duty	Imports for consumption		Equivalent ad valorem duty	Average price per pound
			Pounds	Value		
1926	10¢ lb. plus 45%	$137,785	330,181	$232,816	59.2%	$0.705
1927	"	108,693	227,299	191,030	56.9	0.840
1928	"	189,053	408,510	329,338	57.4	0.806
1929	"	283,376	618,194	492,348	57.6	0.796
1930	"	150,230	400,834	244,769	61.4	0.611
1931	"	44,752	121,385	72,474	61.7	0.597
1932	"	11,546	31,366	18,688	61.8	0.596
1933	"	44,289	137,745	67,809	65.3	0.492
1934	"	98,884	263,880	161,102	61.4	0.610
1935	"	119,373	447,834	200,426	59.6	0.448
1936	8¢ lb. plus 35% A.R.	170,626	730,144	306,447	55.7	0.420
1937	"	291,510	253,633	520,799	56.0	0.415
1938	"	192,665	897,504	333,796	57.7	0.372
1939	"	97,106	407,076	181,351	53.5	0.445
1940	"	107,214	410,057	212,595	50.4	0.518
1941	"	78,063	372,993	137,781	56.7	0.369
1942	"	11,311	17,500	28,317	39.9	1.618
1943	"	3,477	7,424	8,237	42.2	1.110

A.R. Agreement rate.

Source (For all data except average price per pound): United States Department of Commerce. Foreign Commerce and Navigation of the United States. Annual editions, 1926–1943. (The average prices per pound were computed from the given figures.)

DEFENDANT'S EXHIBIT 184 2291

DEWEY ALVES EXHIBIT

UNITED STATES TARIFF COMMISSION

Section 4

METALS AND MANUFACTURES

Reprint from

POST-WAR IMPORTS AND DOMESTIC PRODUCTION OF MAJOR COMMODITIES

A report made to the United States Senate
in response to Senate Resolution 341
(78th Cong., 2d sess.)

United States
Government Printing Office
Washington : 1945

Duty increased by 50 percent.—The total value of imports might be 20 to 30 percent below that with 1939 duty rates prevailing. Imports then might be about 3 percent of consumption and might have a foreign value of about $800,000 (1.4 million dollars landed value). Production for the domestic market then would be around 48¾ million dollars.

Exports

Before the war, United States exports of these wire products consisted very largely of screening. The Philippines, Mexico, Venezuela, Cuba, and Canada took about half of the total value. It seems reasonable to expect somewhat greater demands abroad for the higher quality screening and woven wire during the long-term post-war period. With per capita income at the 1939 level, exports may be 40 to 60 percent greater than in 1939, or 1.2 million dollars. With per capita income at the higher level and a larger use of nonferrous and alloy steel wires, exports may be 20 to 30 percent greater, or about 1.5 million dollars.

Employment

According to commercial directories, 100 to 125 concerns produce these commodities. No separate data are available regarding employment, as most of these wire-drawing mills make other classes of wire products in the same plants. Employment may not increase under greater production in the same proportion, owing to improvement in mechanization.

ANTIFRICTION BEARINGS

Tariff paragraph	*Commodity*	*Rate of duty*	*Equivalent ad valorem (1939)*
321	Antifriction bearings:		
	Balls and rollers	8¢ per lb. +25% ad val.	46%
	Ball bearings and parts (except balls).	8¢ per lb. +35% ad val.	49%
	Roller bearings and parts (except rollers).	8¢ per lb. +35%	54%

NOTE.—The rate fixed in the Tariff Act of 1930 was 10 cents per pound plus 45 percent ad valorem. This was reduced to 8 cents plus 35 percent, effective August 5, 1935, pursuant to the trade agreement with Sweden, and on January 1, 1939, the rate on balls and rollers was further reduced to 8 cents plus 25 percent, pursuant to the United Kingdom trade agreement.

GENERAL

Data on United States production, imports, and consumption for 1939 are given below:

Item	Production			Imports	Apparent consumption	Ratio of imports to consumption
	Total	For export	For domestic market			
Value ($1,000)	101,874	3,062	101,812	[1] 493	102,305	*Percent* 0.48
Persons employed (number)	Less than 20,000					

[1] Foreign value.

NOTE.—Because of many types and sizes, quantities are not informative and are not used herein.

While domestic production, exports, and consumption were not unusual in 1939, the usual correlation between imports of bearings and automobile production was reversed. From 1938 to 1939 motor vehicle production rose while imports of bearings fell. Because of this departure from the normal, this discussion is based on the average consumption for the years 1935–39 ($105,000,000) and the average imports for the same period ($800,000 foreign value). The average ratio of imports to consumption was three-fourths of 1 percent.

Ball and roller bearings (antifriction bearings) are widely used in machinery and vehicles. They are practically essential in many articles of both consumers' and producers' equipment; for many other articles they are superior. The largest pre-war user was the automobile industry, which took from 50 to 60 percent of the output. Other large uses are in machine tools, agricultural implements, and airplanes. In armaments they are of the greatest importance.

In the United States there are 20 to 30 manufacturers, the largest of which is a subsidiary of an automobile manufacturer. Two large firms are affiliated, respectively, with a Swedish and a British bearing maker.

The Swedish company (commonly called S. K. F.) has a large plant in Sweden and subsidiaries which are the largest producers in Germany and France. The pre-war output of this company is estimated at about one-third of the world supply. The Soviet Union, Great Britain, Italy, and Japan are large producers.

The principal exporting countries before the war were the United States, Great Britain, Sweden, Germany, and Italy. Imports into the United States have consisted mainly of two classes: (a) Shipments from the Swedish and British firms to their affiliates in the United States (these shipments were of certain types of bearings which were not in great demand here and which these companies could supply to better advantage from the home plants); and (b) shipments of competitive products, principally from Germany. If any bearing in the first class should come to be in substantial demand, its production would probably be undertaken in domestic plants. Imports into the United States during recent pre-war years were very small (less than 1 percent) in relation to domestic production. The many types required for stock to meet the users' needs, and the exactitude specified by consumers in the United States are obstacles to a general import trade on a large scale.

It is probable that the cost of producing those types of bearings which are made on a small scale is lower in Sweden than in Great Britain, and possibly lower in both than in the United States.

Inasmuch as the largest users of antifriction bearings are the motor-vehicle producers, production of antifriction bearings will tend to follow the same trend as the production of automobiles; the latter is especially sensitive to changes in national income. Price may in a few cases influence the choice between antifriction and plain bearings, and to that extent affect consumption of the former.

POST-WAR SHORT TERM

After manufacturing plants have been reconverted to regular production, the production of motor vehicles will probably reach an annual output of about 6 million units. At the same time the output

of other machinery requiring ball and roller bearings is likely to be at a high level. In the first few years following the war it may be expected that annual domestic production of bearings will be substantially above the 1939 level. Imports of bearings may not be above the 1939 level, as Germany was then an important source and probably will not be able to produce on a large scale for some time after the war. Moreover, the demand for bearings in foreign producing countries themselves is likely to restrict the quantity exported to the United States.

POST-WAR LONG TERM

Consumption, Production, and Imports

Per capita income at 1939 level.

The production of automobiles was abnormally low in 1939 in relation to national income, so it seems probable that even with the same income production might be about 30 percent greater, or 15–20 percent above the average for 1935–39. Allowing for a parallel increase in consumption of other kinds of machinery, consumption of bearings might increase to a value of 120–140 million dollars annually. What effect changes in the duty may have on import trade is highly uncertain. At lower rates of duty the market for bearings of special types and sizes might be more largely supplied by imports, whereas at higher rates of duty there would be a tendency for more such bearings to be produced in the United States.

Duty as in 1939.—It seems probable that imports would remain at about the same ratio to consumption, approximating a foreign value of 0.9–1.0 million dollars annually. This range is also consistent with the past correlation between automotive production and imports of bearings.

Duty reduced by 50 percent.—A decrease in duty might possibly tend to expand imports by as much as 5 or 6 times, compared with what they would be under the 1939 rate of duty. But there could be no assurance that the imports would expand appreciably, say, by more than 50 percent. Consequently the imports might amount to 1.5–5 million dollars (foreign value).

Duty increased by 50 percent.—As the duty under these conditions would approximate 75 percent, a sharp reduction in imports might occur. American subsidiaries might tend toward domestic production, and imports might fall to $250,000 or $500,000, foreign value.

Per capita income 75 percent higher than in 1939.

Automotive production of 6–7 million vehicles might be reached and the consumption of other machinery might be doubled. This would indicate a consumption of bearings about 75–100 percent above the average of 1935–39, amounting to 200–225 million dollars.

Duty as in 1939.—With no change in duty there seems no reason to expect a change in the relation of imports to domestic consumption. Imports might then range from 1½–2 million dollars, foreign value.

Duty reduced by 50 percent.—The considerations discussed under the assumption of the lower income might lead to imports with a range as wide as 2–10 million dollars, foreign value.

Duty increased by 50 percent.—This might result in a proportionate decrease of imports similar to that under the lower income, of $500,000 to $750,000, foreign value.

Exports

In 1939 direct exports were about 3 percent of production. Canada was the principal market. Canadian branches of American automobile companies use a large part of these bearings. Canadian production of motor vehicles is about 4 percent of the American output. Other pre-war markets for United States bearings were Japan, the Soviet Union, France, and Great Britain. In addition to direct exports, automobiles and machinery exported in very large volume contain many antifriction bearings.

Employment

Employment in this industry is reported together with that in the production of gears, chains, and other power transmission apparatus. The value of bearings produced is more than half the total value of output of the group. Total wage earners in the group in 1939 amounted to 30,000, and would probably increase or decrease about in ratio with the value of United States output.

February 17, 1948

NUMBER OF BEARING SIZES MADE BY THE TIMKEN ROLLER BEARING COMPANY EACH YEAR

Year	Cone Sizes Added	Total Cone Sizes	Cup Sizes Added	Total Cup Sizes	Thrust Bearing Sizes Added	Total Thrust Bearing Sizes	Steering Gear Bearing Sizes Added	Total Steering Gear Bearing Sizes
1903	2	2	2	2				
1904	9	11	7	9				
1905	7	18	5	14				
1906	42	60	19	33				
1907	33	93	2	35				
1908	18	111	5	40				
1909	28	139	11	51				
1910	74	213	25	76				
1911	24	237	10	86				
1912	23	260	9	95				
1913	25	285	6	101				
1914	25	310	7	108				
1915	22	332	2	110				
1916	9	341	4	114				
1917	13	354	3	117				
1918	23	377	10	127				
1919	5	382	6	133				
1920	30	412	8	141				
1921	21	433	4	145				
1922	37	470	24	169				
1923	49	519	18	187				
1924	68	587	27	214	4	4		
1925	89	676	26	240	5	9		
1926	106	782	54	294	35	44		
1927	105	887	65	359	10	54		
1928	107	994	77	436	7	61		
1929	182	1176	96	532	3	64	5	5
1930	134	1310	72	604	2	66	2	7
1931	142	1452	67	671	4	70	1	8
1932	152	1604	100	771	4	74		
1933	130	1734	91	862	20	94	7	15
1934	123	1857	100	962	8	102		
1935	232	2089	203	1165	12	114	2	17
1936	274	2363	179	1344	22	136	10	27

Case No. 142 of Civil
DEFENDANT'S EXHIBIT
No. 185

2296

DX YC DEFENDANT'S EXHIBIT 185

5351

February 17, 1948 Page #2

NUMBER OF BEARING SIZES MADE BY THE TIMKEN ROLLER BEARING COMPANY EACH YEAR

Year	Cone Sizes Added	Total Cone Sizes	Cup Sizes Added	Total Cup Sizes	Thrust Bearing Sizes Added	Total Thrust Bearing Sizes	Steering Gear Bearing Sizes Added	Total Steering Gear Bearing Sizes
1937	105	2468	91	1435	7	143	2	29
1938	146	2614	85	1520	5	148	1	30
1939	165	2779	109	1629	4	152		
1940	137	2916	106	1735	8	160		
1941	89	3005	41	1776	3	163		
1942	68	3073	34	1810	1	164		
1943	51	3124	29	1839	1	165		
1944	51	3175	69	1908	1	166		
1945	163	3338	103	2011	4	170		
1946	99	3437	63	2074	2	172	1	31
1947	97	3534	65	2139	2	174		
1948	12	3546	9	2148				
	3546	3546	2148	2148	174	174	31	31

2297

5352

2293

DEFENDANT'S EXHIBIT 186

CAPITAL STOCK

BRITISH TIMKEN LIMITED

Value of Shares £ 1 Each

Date	Total Shares Outstanding	Portion Held by The Timken Roller Bearing Company Directly or Indirectly	
		No. of Shares	Per Cent of Total
June 1928	50,000	26,250	52.50
December 1929	50,000	26,250	52.50
" 1930	50,000	26,250	52.50
" 1931	50,000	26,250	52.50
" 1932	100,000	52,500	52.50
" 1933	100,000	52,500	52.50
" 1934	250,000	131,250	52.50
" 1935	250,000	75,650	30.26
" 1936	250,000	75,650	30.26
" 1937	300,000	90,780	30.26
" 1938	360,000	108,936	30.26
" 1939	360,000	108,936	30.26
" 1940	400,000	121,040	30.26
" 1941	400,000	121,040	30.26
" 1942	400,000	121,040	30.26
" 1943	400,000	121,040	30.26
" 1944	400,000	121,040	30.26
" 1945	400,000	121,040	30.26
" 1946	400,000	121,040	30.26
" 1947	400,000	121,040	30.26

J. A. RILEY

4-13-48

DX 186

5353

CAPITAL STOCK

FRENCH TIMKEN

Value of Shares - 100 Francs Each

Date	Total Shares Outstanding	Portion Held by The Timken Roller Bearing Company Directly or Indirectly	
		No. of Shares	Per Cent of Total
June 1928	30,000	22,010	73.37
December 1929	30,000	22,010	73.37
" 1930	30,000	18,015	60.05
" 1931	50,000	30,025	60.05
" 1932	70,000	42,035	60.05
" 1933	100,000	60,050	60.05
" 1934	100,000	60,050	60.05
" 1935	100,000	50,000	50.00
" 1936	100,000	50,000	50.00
" 1937	100,000	50,000	50.00
" 1938	100,000	50,000	50.00
" 1939	110,000	55,000	50.00
" 1940	110,000	55,000	50.00
" 1941	110,000	55,000	50.00
" 1942	110,000	55,000	50.00
" 1943	110,000	55,000	50.00
" 1944	110,000	55,000	50.00
" 1945	110,000	55,000	50.00
" 1946	110,000	55,000	50.00
" 1947	110,000	55,000	50.00

J. A. RILEY

4-13-48

2300

CAPITAL STOCK

GERMAN TIMKEN

Date	Total Capital Outstanding in Reichsmarks	Portion Held by The Timken Roller Bearing Company Directly or Indirectly	
		RM Amount	Per Cent of Total
Dec. 1928	400,000	227,625	56.91
" 1929	400,000	227,625	56.91
" 1930	400,000	271,845	67.96
" 1931	400,000	271,845	67.96
" 1932	400,000	271,845	67.96
" 1933	400,000	271,845	67.96
" 1934	400,000	271,845	67.96
" 1935	400,000	198,857	49.71
" 1936	400,000	198,857	49.71
" 1937	400,000	198,857	49.71
" 1938	400,000	198,857	49.71
" 1939	400,000	198,857	49.71
" 1940	400,000	198,857	49.71
" 1941	Written Off	198,857	49.71

J. A. RILEY

4-13-48

DEFENDANT'S EXHIBIT 187

Case No. 2 4214 Civil
DEFENDANT'S EXHIBIT
No. 187

DIVIDENDS AND ROYALTIES RECEIVED

THE TIMKEN ROLLER BEARING COMPANY AND SUBSIDIARIES

	DIVIDENDS Less Tax			ROYALTIES Less Tax
Year	British Timken	Timken Holdings	French Timken	British Timken
1947	$33,077.72	$ 6,439.00	-0-	$40,877.49 (A)
1946	33,934.27	13,953.38	-0-	18,790.09
1945	30,741.28	4,592.04	-0-	18,609.05
1944	30,701.75	-o-	-0-	25,546.90
1943	30,700.04	-o-	-0-	23,218.64
1942	30,719.28	5,695.00	-0-	18,458.46
1941	30,631.20	5,680.00	-0-	12,415.96
1940	26,810.15	6,661.63	-0-	9,152.67
1939	45,795.21	9,620.26	4,336.61	6,929.70
1938	41,922.57	8,809.71	-0-	9,568.39
1937	35,305.78	7,416.73	-0-	10,533.63
1936	32,609.91	4,980.00	-0-	8,791.05
1935	39,048.55	-o-	-0-	8,123.88
1934	25,181.54	-o-	-0-	9,746.45
1933	23,871.09	-o-	-0-	36,642.97
1932	28,842.19	-o-	27,002.70	23,202.18
1931	24,615.93	-o-	-0-	43,156.44
1930	40,782.00	-o-	4,094.49	51,560.68
1929	-o-	-o-	-0-	50,122.92
1928	-o-	-o-	-0-	40,300.47
	$586,090.46	$73,840.23	$35,433.80	$471,754.02

(A) No tax deducted

CARD

MARK ®

647

Look for the Trade-mark

TIMKEN

TRADE-MARK REG. U. S. PAT. OFF.

When buying tapered roller bearings, fine alloy steel, seamless steel tubes and rock drilling bits. Then you'll be sure of getting *genuine* Timken products.

PERHAPS you never thought of a Timken Bearing and how it affects your daily work. It probably never occurred to you how much of your life, your daily routine, depended on Timken products.

When you sat down this morning to your breakfast of dry or cooked cereal, bacon or ham and eggs, milk, fruit, buttered toast and coffee, you really started a Timken day. The fruit was cultivated, sprayed and hauled to market by implements and vehicles equipped with Timken Bearings. The hogs were fattened on grain and other products cultivated by tractors and equipment which rolled on Timken Bearings. The same thing was true of the milk, cream, toast and butter on your table. Even the coal or gas used to cook your food and heat your home was available because the cars in the mines and the drilling and pumping equipment in the oil or gas field were mounted on Timken Bearings.

Your day's work may have been back of a desk, in a factory, on the highway or in the field. No matter where it is, you are surrounded by Timken Bearings. They are virtually everywhere, in automobiles, trucks and busses, in the elevators of tall buildings, in tractors and farm machinery, in machine tools of all sorts, deep in the earth in mines and quarries, on sea and in the air. Wherever your work may be you are among friends . . . Timken Bearings.

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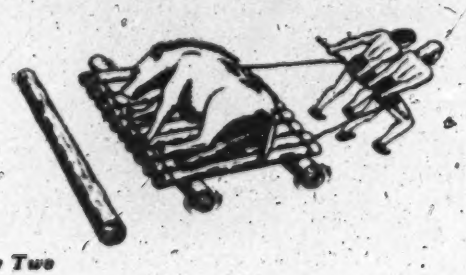
Just What is a Timken Bearing

WHEREVER there is movement there is friction. If you wave your hand in the air, there is friction between your hand and the air. When a wheel turns on a shaft or axle, there is friction. In ordinary work the problem is to reduce friction, because friction causes wear and generates heat.

Our forebears found out somehow that if they applied animal fat to the rubbing surfaces of the wheels and axles of their crude vehicles they moved easier and would wear longer. How to keep the fat in place was another problem and for countless centuries no satisfactory solution was found.

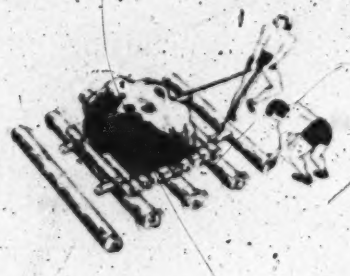
Someone, however, did find a way to introduce balls or rollers between the rubbing surfaces of wheels and axles, and at that moment was born one of the great improvements of industry . . . the anti-friction bearing. For years on end, however, before this took place, primitive man carried his burdens on his back or dragged them along the ground. The first vehicle no doubt employed rollers, made from the trunks of trees, placed under heavy loads. It may have moved a huge animal too heavy to carry, too cumbersome to drag.



Our hairy forebear, having slain the beast, worked out in his sluggish mind a way to transport it to his cave. Having observed how a round stick turned under his foot he applied the same principle to the problem at hand.

First, he lashed together a number of poles to make a crude platform. Underneath he placed other poles after which he put the carcass of the beast on the platform. He found that the entire load moved quite easily. The first rolling conveyance was built!

Step by painful step improvements were made. Someone found a way to introduce small rollers or balls between a shaft and the box. We then had roller or ball bearings. These were tremendous steps forward. In time the limitations of these became apparent. They could not carry a thrust load. The washers put at each end of the box wore thin and had to be replaced. The rollers and balls too would wear and in time break. The crying need was for an anti-friction bearing which would carry all kinds of loads . . . loads from any and all directions and at the same time.



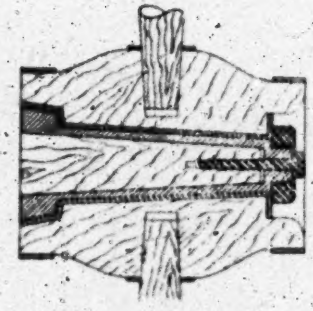


Fig. 1

LIKE many another great invention the solution was extremely simple. In fact it was so close at hand that it was surprising that it had not been discovered sooner.

In the manufacture of heavy duty wagons it was found desirable to make the axle tapered, Fig. 1, to obtain maximum strength. Obviously the skein in the hub likewise was tapered.

Although the primary purpose of the tapered construction was to obtain maximum strength, it was discovered that the tapered surfaces absorbed an appreciable amount of the thrust loads. The remaining thrust was taken on the inner end of the skein and a section of the axle.

In order not to introduce unnecessary friction in the axle box assembly the taper of the axle and the skein were made in such a way that lines produced along the surfaces met at a common point on the centerline of the axle.

Although this type of construction was used by practically all wagon manufacturers it remained for the inventors of the Timken Bearing to see the possibility of improvment. It occurred to these pioneers that by introducing tapered rollers between the axle and skein that the resulting anti-friction bearing would carry both radial and thrust loads.

The first Timken Bearing, (which was the original tapered roller bearing) did not follow the simple profile of the skein and wagon axle. The inventor thought that it was necessary to provide a means of keeping the rollers aligned about the cone. The original Timken Bearing therefore looked like the one shown in Fig. 2.

The first Timken Bearing which contained a full compliment of rollers was found to have certain limitations. While it did reduce friction, carried radial and thrust loads or both in any combination, it lacked stamina.

The rollers, rubbing against each other, generated heat, wore rapidly and soon fell apart. It became evident, even at this early date that some means was needed to separate the rollers and at the same time keep them spaced properly around the cone. The development or rather the addition of the cage, or roller retainer, was given immediate attention and the second major improvement in tapered roller bearing construction was developed.

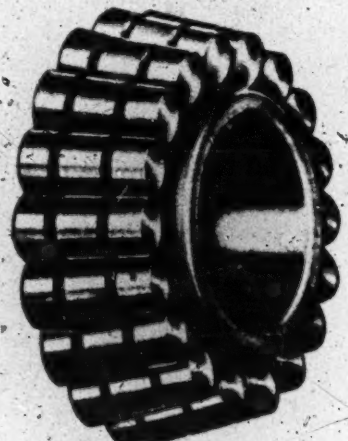


Fig. 2

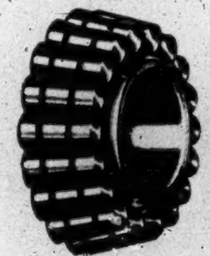


Fig. 3

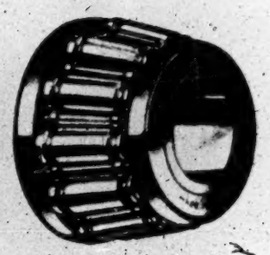


Fig. 4

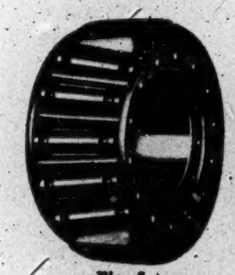


Fig. 5

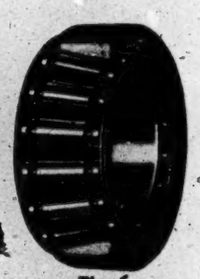
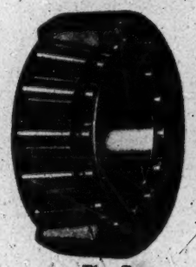


Fig. 6



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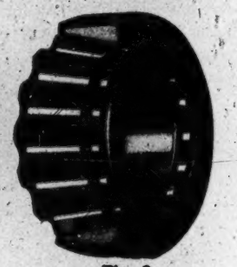

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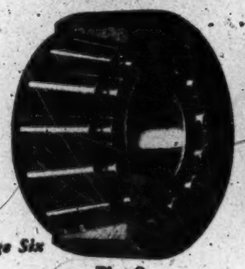

Fig. 9

Fig. 10

PROGRESS

A FEW of the steps in the gradual development of the Timken Bearing through the years may be visualized by referring to Figs. 3 to 10. Each of these represented a forward step, each accomplished something which its predecessor lacked. Each bearing served the purpose for which it was intended. In time each one was supplanted by a superior product, until we have the Timken Bearing of today, Fig. 11, the finest ever produced. In it are embodied features of design and advanced manufacturing practices in keeping with the most exacting requirements of industry.

Fig. 11

Thrust Loads and Radial Loads

THE earliest Timken Bearing as well as each and every Timken Bearing since then is a *tapered roller bearing*. It will carry thrust loads *and* radial loads.

Briefly, *radial loads* are loads imposed at right angles to the axis of the bearing, such as the dead weight of a car or truck, in the case of an automobile wheel bearing. And *thrust loads* are loads parallel to the axis of the bearing, the sideways force you feel when going around a curve in an automobile. Thrust loads are the forces which tend to push bevel gears out of mesh, or any other forces which tend to slide a shaft through a bearing.

As a matter of fact, in actual everyday work the loads or forces exerted on a bear- are rarely, if ever, wholly radial (up and down) or wholly thrust (from the side) but an ever varying combination of both acting simultaneously. The anti-friction bearing, therefore, to be the most nearly ideal must possess versatility and function unhampered when loads are momentarily changing from one direction to the other.

In the development of bearing design, several different methods have been used to take care of these different types of loads. The first method, that of using a separate bearing for each load, although satisfactory in operation, is naturally more expensive. In addition to the cost of the extra bearing, it involves a more complicated and expensive design for the bearing housings and mountings.

The second method, that of using straight roller bearings to carry the radial load, and equipping them with thrust washers to carry the thrust load, is not entirely satisfactory.

In reality it is merely an attempt to lessen the cost of the first method. The force comes at a slanting angle and is not evenly distributed on the washer faces or on the surfaces of the straight rollers. The result is that wear is excessive on the ends of the straight rollers; the washers themselves soon wear thin; and this uneven wear all too soon necessitates replacements.

The advantage, therefore, of a bearing which simultaneously does carry all types of loads is apparent.

The Timken tapered roller bearing was developed for that purpose and, fundamentally, one of the most important reasons for its unprecedented success is its ability to meet imposed loads regardless of the direction from which they come. From its initial application to wagon axles, its use has extended to practically every industrial, railroad and automotive field.

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How the TIMKEN BEARING Carries All Loads

The Timken Tapered Roller Bearing consists essentially of four elements, as shown in the accompanying illustrations:

The inner race, which, because of its mechanical construction, is designated as the cone;

The outer race which fits around the cone and roller assembly and is called the cup;

The tapered rollers which roll between the cup and cone;

The cage which serves as a retainer and maintains proper spacing between the rollers.

The component parts of the bearing are shown in Fig. 12, the appearance of an assembled bearing is illustrated in Fig. 11, and the principle of construction is explained in Fig. 13.

A careful examination of Fig. 13 will show clearly how true rolling motion is obtained, since lines produced coincident with the faces of the rollers, cone and cup meet at a common point on the axis of the bearing.

Fig. 12

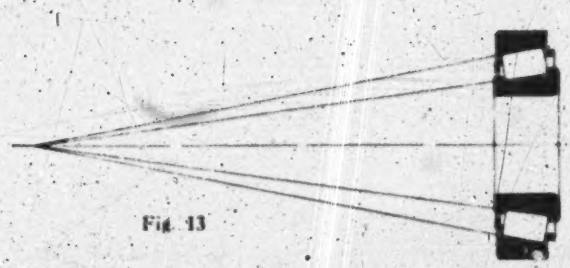

Fig. 13

Figs. 14 and 15 illustrate diagrammatically the way in which both radial and thrust loads are safely carried by the tapered construction of Timken Bearings; whereas this is possible only to a minimum degree in many other types of bearings.

This "dual service ability" of Timken Tapered Roller Bearings . . . their ability to carry radial loads and thrust loads and resultant combination loads . . . result in the following important advantages:

Friction resulting from all types of loads is reduced to a minimum, thus conserving power whether in automotive vehicles or in industrial machinery. Shafts, gears, and wheels are kept in perfect alignment constantly, thus cutting down wear on all parts. The complicated, expensive construction is eliminated which is necessary when separate bearings are installed to carry each load.

The inherent ability of Timken Tapered Roller Bearings to carry all types of loads simultaneously is one of the chief reasons behind their dominance in automotive vehicles and industrial machinery, and their rapidly increasing use in railroad cars and locomotives.

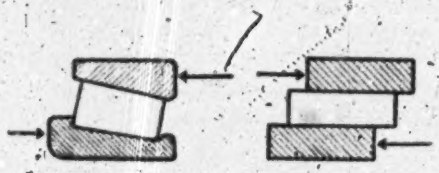

Fig. 14

Fig. 15

Positive Roll Alignment

Fig. 16

Not only does the Timken Bearing present marked advantages by reason of its tapered construction, but also the rolls are positively aligned without guidance by the cage. This refinement in bearing design permits greater load and speed possibilities which are essential to many operations. It assures quieter and cooler bearing operation and is responsible for eliminating much of the initial wear and attendant re-adjustment experienced in early bearing design.

To accomplish the positive alignment of rolls certain improvements were perfected in the rollers as well as in the cone, or inner race, of the bearing. Fig. 16 shows cross section of the cone with a roll in place against the cone rib. A natural and true geometric contact between these two rotating elements is obtained by grinding the roll ends and rib and later by generating the common contact areas by running the assembled bearing at a moderate load and speed while immersed in a lapping agent. This process results in a "Generated Unit Assembly".

As the roll revolves about the cone, there is contact between the end of the roller and the rib or shoulder of the cone in a wide area, Fig. 17. Since this contact is in a wide area, the rollers are compelled to align themselves perfectly at all times. At the same time a full line contact is maintained between the roller and the cone, on the one hand, and the roller and the cup on the other. Thus, with the rollers positively aligned, the cage does nothing more than space the rolls properly about the cone.

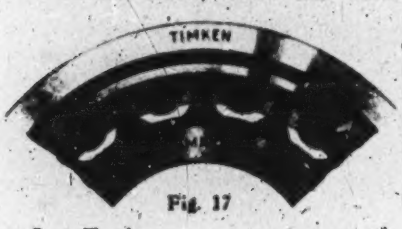

Fig. 17

Greater Load Area

It is easily understandable that any anti-friction bearing to be successful in a variety of applications must combine maximum load area with minimum friction, and at the same time possess stamina. To possess stamina, a bearing needs not only to be built precisely, and of the finest material, but likewise to incorporate features of design which will distribute the unit pressures over as great an area as possible without sacrificing friction reducing qualities.

In the Timken Bearing full advantage is taken of the principle of reducing friction. Without surrounding the discussion with a maze of theoretical technicalities, it may be emphasized that the design of the Timken Bearing permits the distribution of unit pressures over the full length of the roller. Naturally, with an initial distribution of unit pressures over a line of contact there is minimum distortion under load. Translated into terms of bearing life and service, the less distortion, the greater the precision, the greater the rigidity, the less wear and consequently the longer the life of the bearing and the machine parts which it supports. Complementary to the above benefits, manufacturers have found that the rigid mountings made possible by Timken Bearings permit machining practices impossible with any other type of mounting.

Wear Proof

Although some statements have been published to the effect that certain types of bearings do not wear, we believe that it is idle to claim this for any bearing, regardless of type. Wherever there is motion, there must be wear. True, there are times when this wear is so microscopic that the efficiency of the machine is not impaired even after long periods of service. This condition obtains however only in those applications where loads are lightest.

The problem of the bearing designer and builder thus focuses itself on the production of bearings of such quality as to withstand the ravages of wear for the longest possible period. This problem has been given thought and study by Timken engineers and exhaustive tests and experiments have determined the material best suited to the service required. For longest life and freedom from both wear and metal fatigue, it has been found that the cup, cone, and roll having a hardened outer surface with a tough resilient inner core is best suited to service conditions. Consequently, Timken Bearings are case hardened to obtain just that result.

The analysis of the metal and the correct metallurgical structure are equally important. To insure a product of predetermined analysis consistently, complete steel mills were built. These mills are famous the world over as a source of high quality alloy steel.

The Timken Bearing thus combines not only the finest talent from the standpoint of bearing engineering but the equally essential qualities of wear-proof metals, determined by chemical and metallurgical specialists in steel making. Timken steel, Timken tapered construction, and Timken positively aligned rolls give Timken Bearings unequaled resistance to wear.

A PRECISION PRODUCT

The field of usefulness of any manufactured product invariably broadens as the accuracy of manufacture develops. The fact that Timken Bearings are so universally used on the spindles of leading makes of machine tools testifies to their unequaled precision. In order to secure this accuracy of manufacture it was necessary to develop machines which would produce Timken parts consistently within the most narrow limits. Gauges and gauging machines of almost unbelievable accuracy were built to serve as a constant check on parts manufactured. So close are some of the resulting limits maintained on Timken Bearings that angles of cup, cone, and rollers are held to a single second of arc . . . one millionth part of the circumference of a complete circle. Translated into every day language this means an angle made by two lines two miles long and less than an inch apart at the outer end. The angles of the cup, cone and roller are held within these limits.

The capacity and life of a bearing depend in a large measure on the uniform distribution of stresses over the complete set of rollers. It is thus essential that the size of the rollers in any one bearing be absolutely uniform. To maintain this uniformity, machines have been developed which with superhuman accuracy separate the rollers into microscopically identical sizes and deposit them in containers where they are retained until assembled into complete bearings.

To set up a standard is one thing. To maintain it is quite different. It is therefore a matter of pride that more than one-third of the factory personnel in the Timken plant devote their full time to inspection. Thus, the precision of manufacture attained through the development of the finest measuring devices is assured day by day by the most rigid inspection methods.

FRICTIONLESS

Attempts to set up standards of friction in the form of coefficients are apt to be misleading. The results obtained depend quite often on what the experimenter wishes to prove. It would serve no useful purpose to claim that plain bearings, for instance, are in every case grossly inefficient, when even the casual investigator can find numerous cases where this type of bearing has operated for years in a most satisfactory manner.

A plain bearing operating under light or medium load, without end thrust and well lubricated, is remarkably free from friction. It is idle to claim otherwise. But the difficulty of maintaining an oil film in the plain bearing and likewise the complete elimination of thrust loads limit the completely successful use of this type of bearing to a few applications.

Theoretically, it may appear that ball and roller bearings should, under ideal conditions be frictionless. However in actual service such is not exactly the case. This is particularly true as the loads on the bearings are increased. Metal under load deforms ever so slightly—and rolling in a slightly deformed condition produces friction. The Timken Bearing with the full line contact between all rolling elements distorts less than other types of anti-friction bearings and thus retains its full friction reducing qualities under heavier loads. In the last analysis, however, the final test of a bearing is not the amount of friction present under staged, laboratory conditions, but the performance in actual service. Here in most cases we find conditions far from ideal and as a matter of fact often distinctly adverse to what may be found or set up in the laboratory. The behavior of the bearing under these tests is what interests the practical operator of machinery. In the Timken Bearing, with manufacturing limits held to microscopic dimensions and the rolls positively aligned at all times, bearing efficiency approaches most nearly 100 percent. The Timken Bearing therefore with true rolling motion of the rolling elements and possessing the known advantages of tapered construction has been found superior in the great proving ground of bearings . . . everyday service.

Take-Up in Assembly

Quite apart from the advantage of tapered construction in carrying loads from all directions, there is the additional and equally important element of take-up in assembly. Manufacturers find that this feature permits wider machining limits of both shaft and housing, which is an important element in the reduction of costs as well as speeding up assembly.

This feature makes possible the closer adjustment of dependent parts such as spiral bevel gears and pinions. Chatter of machine tool spindles is eliminated and noise of running bearings may be measurably reduced by the close and accurate bearing adjustment which is possible with Timken Bearing construction.

Furthermore it is a recognized engineering fundamental that wherever there is motion wear must follow. In the Timken Bearing the amount of wear is so slight that even after long periods of service it is scarcely measurable even with the most delicate instruments. Should it develop, however, the cup may be advanced on the cone by the tightening of a nut or the removal of a shim. The bearing will then function as satisfactorily as when new.

Types of
TIMKEN BEARINGS

TYPE S
The Standard Single-Row Timken Bearing

In the consideration of the various types of Timken Bearings, obviously the standard bearing, Fig. 18, is the first to discuss. It is this bearing which is so widely used throughout all industry. The principle of the bearing is understood since the design and construction have been described. It will be recognized, however, that almost endless modifications are possible by merely changing the dimensions or angles of the rolling elements. In actual practice, however, it is essential to make certain basic classification or "series". These are established by maintaining a fundamental relation between the various components of the bearing. We thus obtain standard or conventional Timken Bearings with wide races and long rollers; others with narrow races and short rollers; and a third group representing an approximate mean between the other two. This permits the designer to select the bearing best suited to his needs.

Fig. 18

Fig. 19

TYPE SS
The Steep Angle, Single-Row Timken Bearing

In numerous applications, such as power take-offs, worm, gears and bevel gear shafts, the thrust load predominates although there is an appreciable radial load. For these positions the high thrust capacity or steep angle bearing has been developed. It differs from the conventional Timken Bearing in that the angles of the raceways, as well as the rollers, are quite steep. The fundamental principle of the tapered roller bearing is retained in that lines drawn coincident with the surfaces of the cone, cup and rollers meet at a common point on the axis of the bearing, thus assuring true rolling motion. The designer therefore obtains all of the outstanding advantages of the standard Timken Bearing and in addition a product particularly adapted to heavy thrust loads. These bearings have been developed over a period of years, so that today they are available in a wide range of sizes for practically all applications.

TYPE SF
Flanged Cup Bearing

In certain applications, particularly in precision machine tool spindles, it was found difficult to machine conventional cup seats to a shoulder and maintain the desired accuracy. This was brought about by the necessity of removing the tool from the machine after one seat was machined and to set it up in a reverse position to bore the other. Even with the most careful workmanship a variation often occurred so that the cup seats were not in absolute alignment. The required accuracy can now be obtained, however, by boring straight through the housing and facing an outside seat at right angles to the bore. The face thus obtained provides the backing for the flange of the cup.

This bearing is also favored in other machine tool applications such as gear boxes where there is not sufficient space to use conventional mounting methods. In this case the flange on the cup is set against a face machined on the inside of the gear box.

In other industrial applications such as sheaves and car wheels which are frequently cast of manganese steel it is also used extensively. This material is exceptionally difficult to machine, in fact it is necessary to resort to grinding to obtain a finished surface. It would be impractical to attempt to obtain the usual shoulder for cup backing, but here again no difficulty is experienced in grinding a seat on the face of the sheave or wheel hub to locate the flange and thus obtain the required bearing mounting.

The popularity of this bearing has brought about its rapid development so that it is now available in a wide range of sizes.

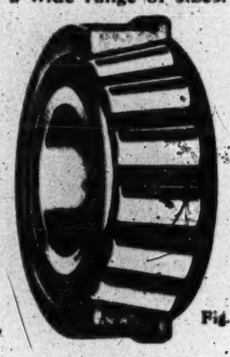

Fig. 20

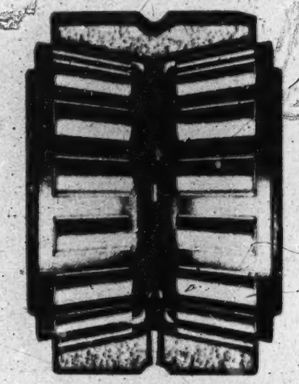

Fig. 21

TYPE DO
Two-Row, Double Cup, Single Cone

This unit employs a double cup with two conventional cones, Fig. 21. Two assemblies are possible, both are identical excepting that in one case a spacer is introduced between the cones so that the set-up or running clearance is established at the time the bearing is assembled. The other, having no cone spacer, requires that the proper set-up be obtained by some form of adjusting device. Either form will give satisfactory service, the one having the spacer is usually preferred in those applications where provision must be made for quick removal and replacement of the bearings or where the operating conditions are such that it is unnecessary to provide for take-up after a long period of service. Numerous applications require that some provision be made to allow for shaft expansion. With this type of bearing it is readily accomplished by securely locking the cones in position and permitting the cup to "float" in the housing. The opposite end of the shaft is usually fixed in position so that the movement is confined to one end. Lubrication may be introduced through the groove and holes in the outside periphery of the cup.

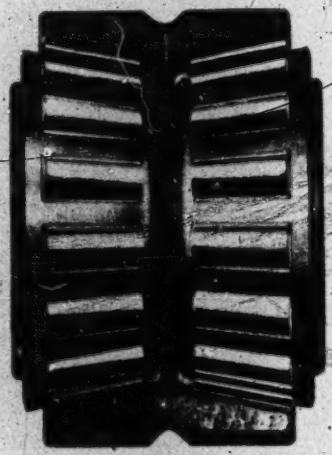

Fig. 22

TYPE NA

Two-Row, Double Cup, Single Cone

Another construction is shown in Fig. 22. Here again we have a double cup and two single cones. In this assembly, however, the cones are butted together so that when the unit is fixed in place the proper running clearance is provided. This class is designated as the "N.A." series and is divided into the conventional and steep angle groups. These bearings like those discussed in the preceding page are suited particularly well to those assemblies where it is not desirable to provide means for take-up in service or where operating conditions require a fixed mounting at one of an assembly and a certain amount of "float" at the other.

This bearing is exceedingly popular and sizes are now available over a wide range of cone bores. The cup is identical with the DO type, having a groove and oil holes.

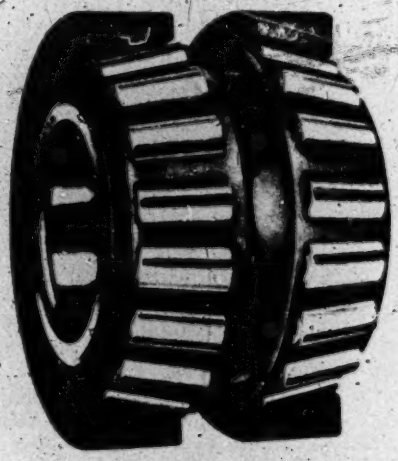

Fig. 23

TYPE DI

Two-Row, Double Cone, Single Cup

The DI, or double inner race bearing is shown in Fig. 23. The cone, as the name indicates, is in a single piece; the cups, however, are the conventional design, and identically the same as those used with a single cone.

There is no need to provide special means for lubrication since it may be readily introduced between the cups. The bearing set-up must be made, of course through the cups.

This unit is frequently selected for positions where it is necessary to secure the capacity of a two-row bearing, yet to obtain a simpler mounting than two standard, single-row bearings. It is often used on the fixed end of a shaft when an allowance must be made for shaft expansion. In this case the bearing used on the opposite end is usually one of the double cup units so set up as to float.

TYPE DIK

Two-Row Bearing, Slotted Double Cone

A bearing, developed for use in light duty pillow blocks, is shown in Fig. 24. It will be noted that slots are provided in the cone to engage in mating projections on a collar, which in turn is secured to the shaft by means of set-screws. This unit is, of course, not limited to pillow blocks, but finds a wide field of usefulness in those applications where cold finished shafting is used. Since cold finished shafting may be held to comparatvely close limits, it is possible to obtain relatively tight fits on the shaft. This type of bearing, however, is not recommended for heavy duty service. It should be kept in mind that the bore of these standard bearings is held to the nominal outside diameter of cold finished shafting, however the Timken Company's manufacturing practice always provides a plus tolerance, while the standard manufacturing tolerance for cold rolled shafting provides for the undersize variation only.

Fig. 24

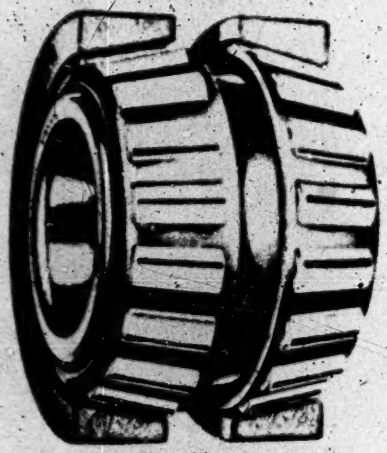

Fig. 25

TYPE DIT

Two-Row Bearing, Tapered Bore, Double Cone, Single Cups

This unit was developed for use on line shafting and in pillow blocks. Like the slotted cone bearing, however, it is by no means limited to such service, but is used extensively in those applications where ease and speed of assembly and disassembly are primary requirements. The usual method of mounting is, to use a sleeve tapered to conform to the taper of the bearing. This sleeve should have a saw-cut lengthwise to permit it to compress as it advances into the bearing bore, which also provides a rigid seat on the shaft.

On line shafting and other positions where it is necessary to be able to slide the complete assembly into position and then fasten it securely this unit is ideally suited. The field of application is unusually extensive since the tapered sleeve permits a rigid seat on the shaft.

This bearing may however be mounted directly on a tapered shaft.

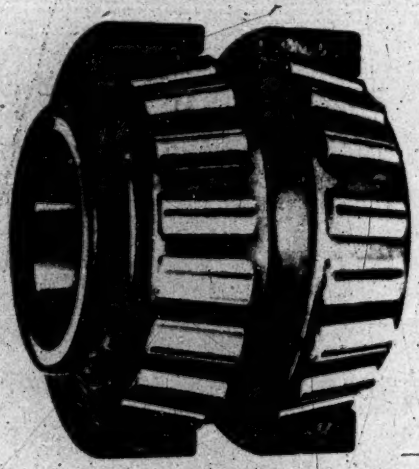

Fig. 26

TYPE DITP

Two-Row Bearing, Tapered Bore, Double Cone with Puller

This bearing is shown in Fig. 26. It differs from the one just described in that a flange is provided on the cone to facilitate removal. The mounting is usually made directly on the shaft. The general field of application covers positions in machines where it is necessary to remove component parts frequently, such as in certain railroad applications, and paper mill machines.

TYPE QO

Four-Row — Heavy Duty

This bearing was developed for those applications where maximum capacity is required in a limited space. As will be seen from Fig. 27 it consists of four sets of rollers. The arrangement is similar to 2 two-row, double cone bearings set side by side, with a double cup carrying the load from the two inner sets of rollers and single cups carrying the load imposed on the outer sets of rollers. In some installations where the speed is slow the bearings are mounted without cup and cone spacer rings. It is recommended however, that spacer rings be included in all applications, as this permits a completely factory adjusted unit with the proper running clearance established at the time of manufacture. The cone spacer also permits clamping the cones securely in position on the shaft or roll neck, thus positively locating the shaft with respect to the bearing and without interfering with the bearing adjustment. Lubrication is introduced through leads in the housing and holes in the spacer rings.

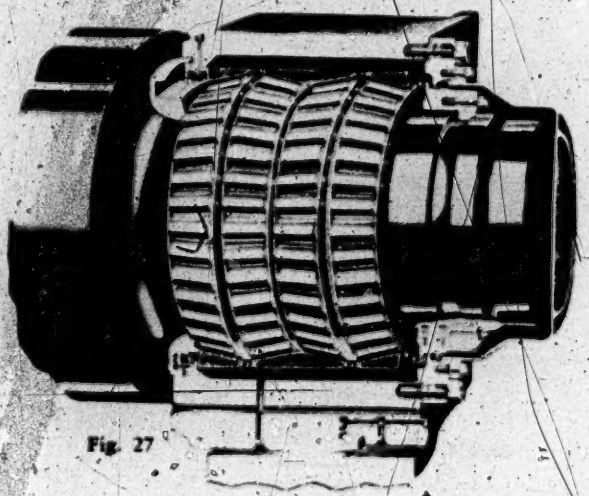

Fig. 27

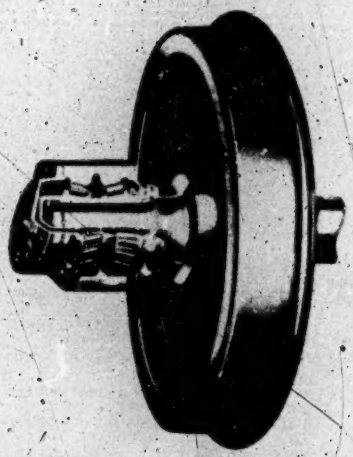

Fig. 28

RAILROAD BEARINGS

Through the application of Timken Bearings to railway rolling stock starting resistance of trains has been reduced 88 percent. Train delays caused by "hot boxes" are a thing of the past. Smooth, easy starting and stopping increase the riding qualities of all kinds of passenger trains. Speeds of seventy, eighty and in some cases over one hundred miles per hour are becoming commonplace. This advancement in rail travel is brought about not only by the use of Timken Bearings but also by the adoption of light weight reciprocating parts made from Timken High Dynamic steel. A new era of high speed freight service will follow the adoption of Timken Bearings on freight cars. The experience gained through the use of Timken Bearings on locomotives, tenders and passenger cars is of inestimable value in solving freight car problems.

Another outstanding advantage is the ease of starting and running in cold weather. There is no need of reducing the length of trains since Timken Bearing Equipped trains are not effected by adverse weather conditions.

TYPE T

Thrust Bearings

Although a combination of radial and thrust loads exists much more frequently than either a purely radial or purely thrust, yet there are numerous occasions where it is necessary to install a bearing to withstand thrust loads only. To meet this condition a series of bearings known as the T-type are available. The bearings are in regular production in bores ranging from five-eighths of an inch, and a capacity of about one thousand pounds, to massive units having a bore of eleven inches and capable of withstanding over two hundred thousand pounds load.

These bearings are manufactured in two distinct types. The one shown in Fig. 29 is designed to meet the demand for a very inexpensive bearing for oscillating or very slowly rotating applications, such as steering knuckles or pivots. The bearing shown in Fig. 30 is suitable for heavy duty rotating applications, such as oil well swivels, extruders and similar applications. Whenever the design includes these bearings it is recommended that the Timken Engineering Department be consulted before final bearing selections are made.

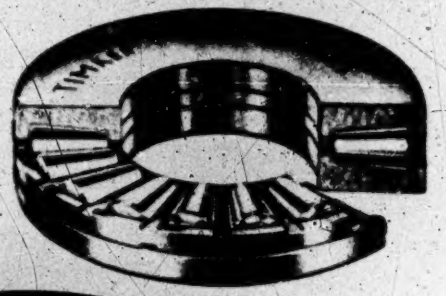

Fig. 30

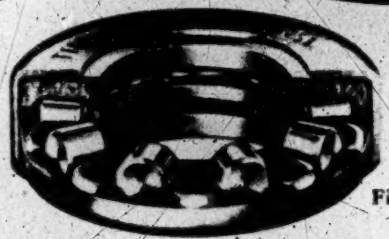

Fig. 29

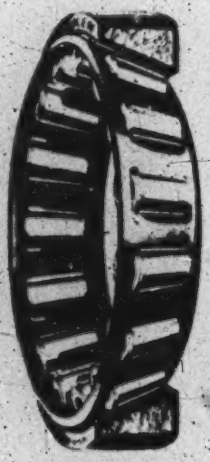

Fig. 31

STEERING GEAR BEARINGS

With the advent of the low pressure tire as standard equipment, automotive engineers were confronted with the problems of providing easier steering. At least a part of the answer was obtained through the development of this series of bearings. They differ somewhat from the conventional Timken Bearing in that the cone is usually formed on the worm at the end of the steering column so that only a cup and roller assembly is needed. The cage differs from that used in the standard Timken Bearing in that it is so constructed that the rolls are retained within the cage itself. This, of course, is a distinct advantage in assembly and disassembly as well as in all service operations. It does, however, offer the same general advantages as the regular Timken Bearing as it carries both radial and thrust loads. This bearing is illustrated in Fig. 31.

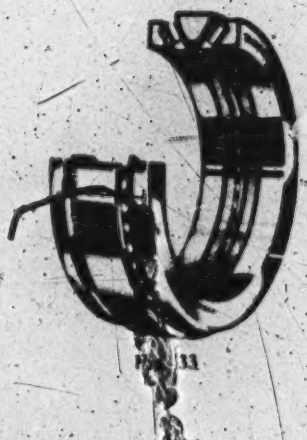

Fig. 33

PROPELLER THRUST BEARING

Adjustable pitch propellers are in almost universal use today. This bearing was designed to take the thrust load and permit easy feathering of the blades.

Other applications of Timken Bearings to aircraft include, landing and tail wheels, rocker arms, engine mounts, carburetor valves and any application where thrust and radial loads are encountered.

Landing and tail wheels are almost universally mounted on Timken Bearings. This is true since they carry both radial and thrust loads. Likewise they permit a close adjustment which eliminates loose wheels and consequent ground looping.

The advantages of Timken Bearings in other aircraft applications include the possibility of wider machining tolerances which may be compensated by the adjustment feature of Timken Bearings. Then, too, the mountings may be made more rigid. All these advantages are important in private, commercial, and military flying.

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Special Bearings

Although standard Timken Bearings will be found suitable for nearly all applications, yet at times problems arise requiring special units. The rocker arm of aircraft engines is such an example. The bearing developed for this position is of the two-row double cup type. In addition to the bearing assembly, that is, the cone, cup and rollers, closures are provided so that the unit becomes a complete self-contained assembly.

The standard Timken Bearing as produced in regular production is held to exceptionally close limits of accuracy, yet in some positions, especially in machine tools, this bearing is not sufficiently precise. For these or similar positions Timken Bearings may be obtained which are held to exceedingly close limits. Engineers requiring bearings of unusual accuracy are requested to consult with the Timken Company's Engineering Department.

Miscellaneous Parts

Numerous equipment manufacturers have expressed a preference for obtaining from us certain parts essential to the proper installation of Timken Bearings. To meet this demand we are in a position to supply certain sizes of tubes, nuts, dust collars, washers, cotter pins and shims. These parts are held to certain standards of precision and when used with Timken Bearings will give satisfactory service.

Timken Steel and Tube Division

THE Timken Roller Bearing Company began the manufacture of steel in 1915. Furnaces were built when it was found difficult to secure a steady supply of high grade steel. The quality standards established by the Timken Steel mill in behalf of The Timken Roller Bearing Company were such that many manufacturers of steel products early seized the opportunity to buy Timken Alloy Steel and Timken Seamless Tubes. As a result the Timken Steel Mill has enjoyed a steady growth.

Today the facilities for producing steel in the Timken Plant include: three 100-ton, open hearth furnaces; one 20-ton, two 35-ton, one 60-ton, one 70-ton and one 100-ton, Heroult, arc-type electric furnaces. The melting capacity is approximately 30,000 ingot tons of electric furnace and 20,000 ingot tons of open hearth steel per month. All furnaces are mechanically charged and the molten steel is all poured into special corrugated ingot molds, using either a refractory or metal hot tops. The Timken Roller Bearing Company, one of the largest producers of electric steel, has made an enviable reputation not only as a manufacturer of bearing steel, but also as a producer of some 200 grades of alloy and stainless steels for applications where quality is the paramount consideration. Timken has pioneered in the development of steels for oil refinery service where resistance to high temperature, oxidation, corrosion and creep are essential requirements.

Timken electric and open hearth carburizing and oil hardening steels for manufacture of transmission and differential gears are well known in the automotive industry.

Timken is a leading producer of magnaflux quality forging steels for aircraft parts.

Timken Graphitic Steels (steels in which part of the contained carbon is present in the form of free graphite), a group of five tool steels, combine the most desirable features of cast iron with the high strength and response to heat treatment of steel. The performance of these steels in cold working dies has been outstanding.

"GRAPH-AL"—Water hardening steel, for tube drawing mandrels, cold heading dies, and impact applications. Good resistant to abrasion. Excellent machining and impact properties.

"GRAPH-M.N.S."—Air hardening steel, for intricate dies, light section parts for cold metal forming, hot working dies and tools. Non-deforming and good resistance to abrasion.

"GRAPH-MO"—Non-deforming oil hardening steel, for tools, dies, oil seals, wear plates, spindles, gages, etc. Good resistance to abrasion and excellent machining properties.

"GRAPH-SIL"—Water hardening steel, for tools, dies, brake drums, cylinder liners, pump tubing, bushings, etc. Good response to heat treatment and high fatigue resistance.

"GRAPH-TUNG"—Water hardening steel, for bar and tube cold drawing dies, deep drawing dies, bushings, general purpose dies and tools, air hammer pistons. Excellent resistance to abrasion and good impact properties.

The billet and bar rolling equipment of the Timken steel plant includes the 35 inch blooming mill, the 28 inch mill, the 22 inch mill and the 10 inch mill. Tube billets for subsequent piercing are produced on the 22 inch mill. In addition to the rolling equipment, adequate facilities are pr ded for reheating, thermal conditioning, pickling, grinding, and chipping.

Billets are available in sizes 1¼ to 9¼ inches square for forging or re-rolling purposes. Bars can be had in 5/16 to 9½ inches diameters for forging or machining. Machining bars are available in hot rolled,

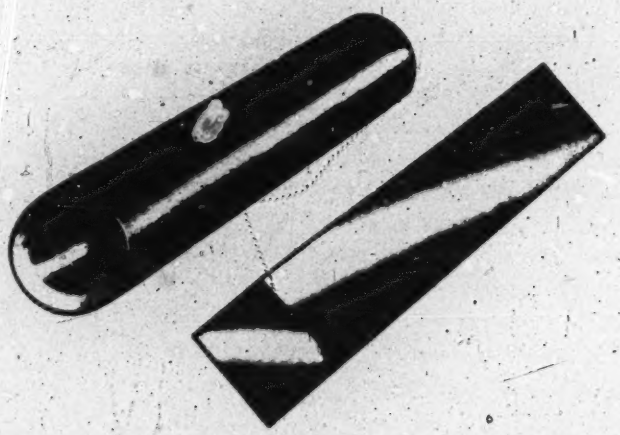
rough turned, cold drawn or centerless ground finishes. A battery of 30 annealing furnaces provide adequate facilities for supplying the customer with whatever steel structure he may require.

Timken operates two Mannesmann type piercing mills for the production of seamless tubing. Timken Seamless Tubes are available in both electric furnace and open hearth grades in a variety of analyses. These are produced for mechanical and pressure applications.

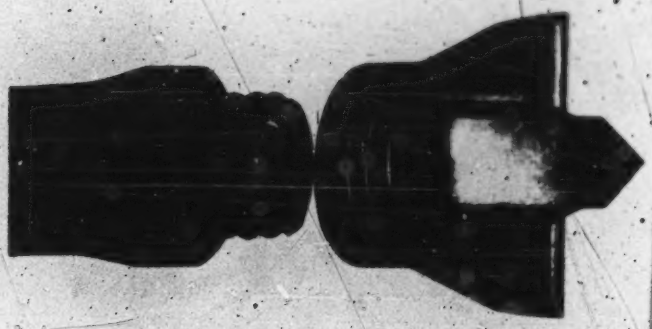
Timken Seamless Tubes for pressure applications are used in the oil refinery, paper pulp, chemical and heat and power industries. The following classifications are available . . . cracking still tubes, condenser, heat exchanger and evaporator tubes, superheater tubes and mechanical tubing, including special grades for roller bearing and ball bearing races.

The use of Timken mechanical tubing to replace bar stock has radically reduced production costs in the manufacture of many products. Timken tubes are available hot rolled in outside diameter 1⅛ inches to 10½ inches with walls in proportion.

Cold drawn tubing is available in outside diameter 3/4 inches to 10 inches. Turned and ground finishes are also produced. Annealing and heat treating facilities are available to guarantee the proper structure and hardness.



TIMKEN ROCK BITS



THE Timken Rock Bit is backed by years of experience in every type of mining, quarrying and contracting operation. It has revolutionized rock drilling costs through

(1) the reduction of forging expense;

(2) faster drilling;

(3) longer life (more footage per bit);

(4) reduced investment in steels;

(5) saving of drillers' time on the job;

(6) reduction of hoisting and tramming time.

Timken Bits are manufactured under the same policy as Timken Bearings — to produce the best product that can be made at the lowest possible price consistent with superior quality. As a result of this policy Timken Bits occupy the same position in their field as do Timken Bearings in the anti-friction bearing field.

Like Timken Bearings, Timken Bits are made from Timken Electric Furnace Alloy Steel produced in the Timken Steel Plant under the direct supervision of Timken metallurgists. The use of Timken Steel combined with Timken experience in heat treatment gives to Timken Bits a superior, uniform deep hardening that assures high drilling speed and long life. Design is a highly important factor in Timken Bit performance. The bit shoulder takes the shock of the hammer blow which is transmitted to the outside of the wings of the bit where most needed. The same feature protects the threads against injury. In the Timken Bit the only function of the threads is to hold the bit on the steel. Between the bottom of the steel and the bit is a definite clearance which prevents the steel upsetting or "bottoming" in the bit. The union of the bit and steel is almost invisible. This, plus the streamlined contour of the bit and steel allows the cuttings to pass unobstructed. Since there is no overhang of any kind for cuttings to lodge behind and wedge the steel, the steel can be easily pulled from the hole.

Authorized Distributors carry full stocks of Timken Bits in all gauges and sizes for immediate delivery. Authorized Conversion Shops will economically convert any size or section of hollow drill steel for use with Timken Bits. They will also furnish new steel in any section or size.

For complete information, write for the Timken Rock Bit Booklet.

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VOLUME

V

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Vol. V

TRANSCRIPT OF RECORD

(Pages 2603 to 3344)

Supreme Court of the United States

OCTOBER TERM, 1940

No. 352

[redacted] COMPANY,
APPELLANT,

vs.

UNITED STATES OF AMERICA

FILED OCTOBER 11, 1940.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 352

THE TIMKEN ROLLER BEARING COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

VOL. V

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JAN. 24, 1951.

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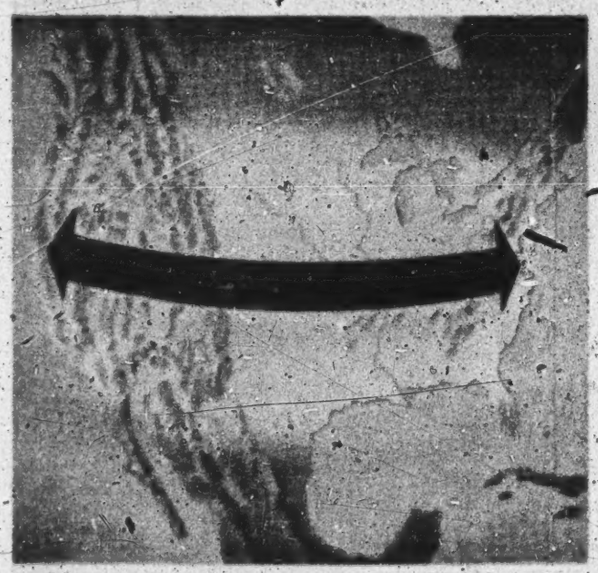
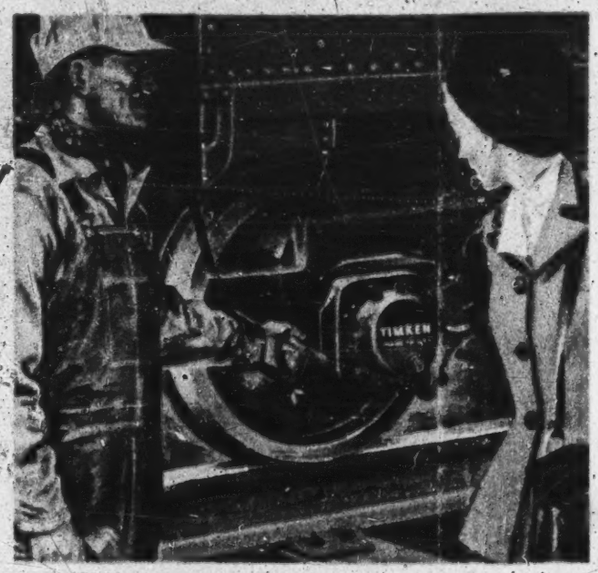
THE NEXT GREAT STEP IN RAILROADING !

1. IT'S FUN TO RELAX in deep-cushioned comfort and watch the world go by. Big, wide windows in the new observation cars offer an unobstructed view of the finest scenery in the world—America's! Modern roller bearings under the cars insure velvet-smooth starts and a gliding ride.

2. YOUR ROOM IS YOUR CASTLE in the newest all-room passenger cars. Here's all the comfort of home—and the privacy, as well. And you arrive fresh and sparkling, thanks to roller bearings which speed you along smoothly and effortlessly.



3. THROUGH SERVICE COAST-TO-COAST without changing cars is one of the latest improvements on the railroads. And it's *fast* service, too! All speed restrictions due to bearings are eliminated when cars are equipped with modern roller bearings.

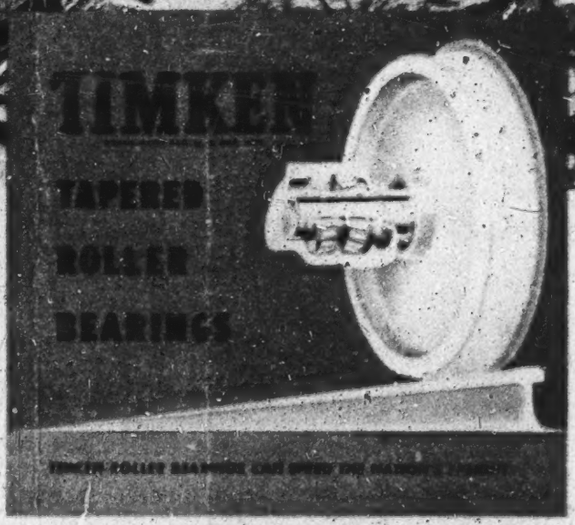


4. THE TIMKEN NAME ON THE JOURNAL BOX is the sign of a modern train. Timken tapered roller bearings reduce starting resistance 88%. They pave the way for sustained high speeds of 100 m.p.h. and more! Delays due to hot "boxes" eliminated!

5. IT'S COMING—the next great step in railroading is "Roller Freight"! When freights replace their friction bearings with Timken tapered roller bearings, freights will roll as fast and smooth as passenger trains.

The things you eat and wear and use will reach you faster—and in better condition. There will no longer be any need for drastic winter cuts in freight tonnage, due to 88% less starting resistance. Maintenance costs on rolling stock will be reduced, equipment life lengthened, and the days of the "hot box" will be over.

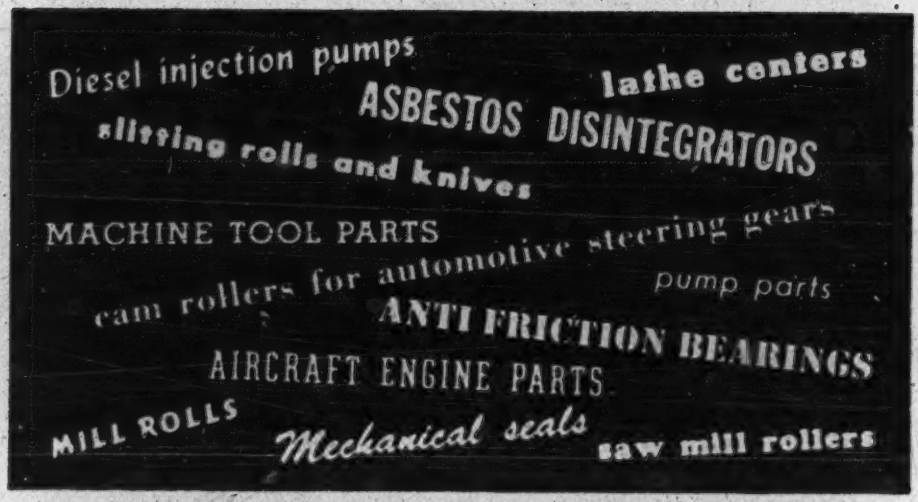
On the railroads and throughout industry, the Timken tapered roller bearing is preferred because it takes any combination of radial and thrust loads. Make sure the trade-mark Timken is on every tapered roller bearing you use. The Timken Roller Bearing Company, Canton 6, Ohio. Tapered Roller Bearings, Alloy Steels and Tubing, Removable Rock Bits.



TIMKEN ROLLER BEARINGS CARRY MORE LOAD AT HIGHER SPEEDS

Design No. [illegible]—B. B. D. & O. Claim 20—The Saturday Evening Post, March 7—Received February 17, 1941—Serial, February 26, 1941

5358



If they've got to be hard to be good . . . use Timken 52100 steel

DEVELOPED primarily for the anti-friction bearing industry, Timken 52100 steel has outstanding advantages for any machined part (such as those listed above) where great strength and exceptional wear resistance are essential.

52100 has extreme hardenability throughout its cross-section, high tensile strength, high fatigue strength and excellent machinability (because of fully spheroidized structure). It can be oil quenched to a maximum hardness of 65/66-Rockwell C. And it withstands working pressure of 200,000 p.s.i.

Uniform quality in every lot of Timken 52100 steel is assured by The Timken Roller Bearing Company's close quality control from melting through final inspection. The Timken Company is one of the world's largest producers and the *only* source of 52100 steel in three finished forms—bars, tubes and wire. A wide range of sizes in each form is made to meet your needs.

Don't overlook the advantages of Timken 52100 steel. For further information write The Timken Roller Bearing Company, Steel and Tube Division, Canton 6, Ohio. Cable address: "TIMROSCO".

TIMKEN
Fine Alloy
STEEL
and Seamless Tubes

Design No. 5941—B B D O Cl 7-530—Mid-Continent Purchaser, May 15, 1948

[fol. 5360] DEFENDANT'S EXHIBIT 189

Agreement

An Agreement made between The Timken Roller Bearing Company. a Corporation organized under the laws of the State of Ohio and having its Office and principal place of doing business in the City of Canton Ohio in the United States of America (hereinafter called "the Licensor") of the one part and The Electric & Ordnance Accessories Company Limited a Company organized under the laws of Great Britain and having its office in the Borough of Aston England (hereinafter called "the Licensee") of the other part.

Whereas the Licensor has been granted or holds the following Letters Patents for the United Kingdom and the Isle of Man viz: No. 14656 of 1898, No. 19634 of 1907 and No. 7925 of 1908 for inventions relating to Roller Bearings and improvements therein.

And Whereas said parties mutually desire to enter into an arrangement whereby the Licensor will grant to the Licensee the right to make use exercise and vend Roller Bearings under said Patents within the United Kingdom and the Isle of Man upon the terms and conditions hereinafter set forth.

Now therefore in consideration of the premises and for the mutual stipulations hereinafter contained and for the further consideration of the sum of One Dollar paid by the Licensee to the Licensor the receipt of which is hereby acknowledged it is mutually agreed between the parties as follows:

[fol. 5361] Article 1

Grant of License Territory

(1) The Licensor hereby grants to the Licensee as from the First day of July 1909 the full and exclusive right license and authority to make use exercise and vend in the United Kingdom and the Isle of Man Roller Bearings of all kinds made under or in accordance with the specifications of the Letters Patent above referred to or made under or in accordance with any Letters Patents which may hereafter be taken out or acquired by the Licensor in the United Kingdom and the Isle of Man during the terms of the three

several Patents above referred to and during the terms of the several Patents which may hereafter be taken out or acquired by the Licensor in the United Kingdom and the Isle of Man and relating to Roller Bearings and improvements therein or in any parts thereof or in the methods of manufacture thereof and during any prolongation or extended term of any of the present or future Patents before referred to.

(2) Hereinafter in this Agreement the United Kingdom and the Isle of Man will be designated as "the said Limits."

Article 2

Restrictions as to Licensor

(1) So long as this Agreement is in force the Licensor will not directly or indirectly make or sell Roller Bearings to others in the said limits nor license others to make or sell Roller Bearings therein under the said Patents nor sell Roller Bearings outside the said limits knowing them to be for shipment into the said limits or into the limits defined in any other Agreement for the time being sub- [fol. 5362] sisting between the parties hereto. But this shall not at any time restrict the Licensor from making selling or licensing others to make or sell Bearings for Automobiles or other vehicles manufactured outside the said limits and outside the limits defined in any other Agreement which may for the time being be subsisting between the parties hereto and which may go into the limits affected by this Agreement or any other Agreement between the parties as aforesaid as parts of and assembled in complete Automobiles or other vehicles.

Article 3

Tools etc. to be Furnished—Cages Furnished

(1) The Licensor will immediately upon being required so to do by the Licensee furnish the Licensee at cost free on board the Cars at Canton Ohio initial sample sets of gauges tools and jigs for the various sizes of Bearings which the Licensee will manufacture hereunder. It will also furnish to the Licensee at the cost charged to the Licensor free on board the Cars at Canton Ohio or at the factory where made the steel stamped cages needed by the

Licensee until such time as the Licensee will need the same in quantity but not in any case longer than twelve months from the date of this Agreement. And after the expiration of such twelve months the Licensee will be expected to purchase cages direct from the Company manufacturing the same for the Licensor or have them manufactured by or for itself. In the event of the Vendor of the said Cages to the Licensor putting up the price for supplying the same to the Licensee beyond the most favourable price at which he shall be at the same time supplying them to the Licensor then until the Licensee shall be able to make other arrangements for obtaining the Cages elsewhere the [fol. 5363] Licensor shall supply the same to the Licensee at the most favourable price charged to the Licensor by the Vendor.

Article 4

Furnish information as to manufacturing

Steel Analyses

(1) The Licensor will furnish the Licensee until such time as the Licensee has its manufacturing business well established complete information as to the factory cost of Bearings including labour material and overhead charges also informing the Licensee as to the prices at which the Licensor sells its various sizes of Bearings to the trade in the United States in general. The Licensor will give the Licensee at all times whilst this Agreement shall be in force full opportunity at the factories of the former to study the business of manufacturing Roller Bearings. The Licensor will also furnish to the Licensee during the same time chemical analyses of the steels from time to time used by it in making Bearings and will furnish the Licensee at all reasonable times with all necessary data relative to the proper manufacture of Timken Roller Bearings.

Article 5

Bearings to be furnished for a time

(1) Subject to the limitations hereinafter provided the Licensor will furnish the Licensee (free on board Cars at Canton Ohio) Bearings for re-sale in the said Limits (not exceeding 10,000 Bearings in all) at prices equal to the

cost of producing the Bearings as shewn by Licensor's Books including therein a proper proportion for overhead charges (not exceeding 150% on production wages) and in addition thereto Fifty per cent (50%) of the total cost.
[fol. 5364] (2) This obligation of the Licensor however will only extend to enabling the Licensee to satisfy the reasonable requirements of the public in the said limits until such time (not later than two years from the date of this Contract) as the Licensee shall be able to manufacture Bearings in sufficient quantities to meet the reasonable requirements of the public as herein provided. The Licensor will not however charge the Licensee with the royalty hereinafter provided for on Bearings furnished by it to the Licensee hereunder.

Article 6

Patent dues

(1) The Licensor will pay all renewal fees and do all such acts and things as may be required by law to maintain and keep on foot the said Letters Patents.

Licensor not to amend specifications

(2) The Licensor shall not amend the specifications of the said Letters Patents or any of them without the consent in writing of the Licensee but such consent shall not be unreasonably withheld.

Revocation

(3) The Licensor shall defend at its own cost every action or proceeding instituted for the purpose of revoking any of the Letters Patents referred to herein whether now in existence or hereafter taken out.

Revocation by Licensees default

(4) If the Licensor shall defend any action or proceeding instituted for the purpose of revoking any of the Letters Patents as last before mentioned and any such Patent shall be revoked solely on some ground which would not have been available if the Licensee had duly performed its obligations under this Agreement then and in any such case the Licensor shall in addition to any other rights which it may have against the Licensee be entitled to recover from the Licensee

[fol. 5365] all costs charges and expenses which it may have reasonably incurred in such defence.

Licensee to manufacture

(5) The Licensee will subject to the provisions of Article 5 hereof so long as this Agreement shall remain in force manufacture Roller Bearings under the said Patents in quantities sufficient to satisfy the reasonable requirements of the public in the said limits as defined by Section 24 of The Patents & Designs Act 1907.

Notice of infringement

(6) The Licensee shall give notice promptly to the Licensor of any infringement or threatened infringement of the said Patents or any of them within the said limits which shall at any time and from time to time come to its knowledge.

Infringement

(7) The Licensor shall protect the said Letters Patents herein referred to whether now in existence or hereafter taken out against infringement if notified by the Licensee that they are being infringed upon so far only as it deems fit same being left entirely to the Licensor's discretion. Provided nevertheless that in the case of any infringement by reason whereof the Licensee shall suffer damage (not being merely nominal damage) and of which the Licensee has given the Licensor written notice with a request that the latter prosecute such infringer then if the Licensor shall not take any legal proceedings in regard to such infringement or shall unreasonably delay taking such proceedings or if the Licensor having taken shall unreasonably delay in prosecuting such proceedings to a conclusion then and in any such case all royalties which would otherwise have been payable hereunder during such period as the Licensor shall take no proceedings or shall unreasonably delay taking or prosecuting proceedings as aforesaid shall cease to be payable either during such period or at any time thereafter. [fol. 5366] In case legal proceedings are brought by the Licensor upon request of the Licensee to prevent infringement of the Patents above mentioned or referred to and any damages are recovered therein such damages shall be applied on the costs and expenses of such proceedings and the

remainder of said expenses shall be borne two-thirds by the Licensor and One-third by the Licensee.

(8) If the damages recovered in any such proceeding exceed the expenses of prosecuting said proceeding the surplus damages recovered shall be payable Two-thirds to the Licensor and One-third to the Licensee.

Article 7

Indemnity of Licensee against infringement. (Signed) A. V., V. G., J. D. M., W. R. T., A. L., R. J. B., Jr

(1) Subject to the provisions contained in Paragraph (3) of this Article the Licensor shall keep indemnified the Licensee and its sub-licensees against all actions proceedings claims and demands or prosecutions whatsoever which may be brought commenced or prosecuted against the Licensee or its sub-licensees and against all the reasonable costs charges and expenses incurred or payable by the Licensee or its sub-licensees in respect of all such actions proceedings claims and demands or prosecutions or any such of them as may be threatened and against all loss or damage whatsoever which the Licensee or its sub-licensees may sustain in consequence of anything made used exercise or vended by the Licensee or its sub-licensees under any Patent of the Licensor and under the terms of this Agreement or any sub-license granted thereunder being alleged or held to infringe the Patent rights of any other person or persons and in the event of any action being brought or threatened against the Licensee or any of its sub-licensees [fol. 5367] in respect of any such matter as aforesaid the Licensee or its sub-licensees will immediately give notice thereof to the Licensor and failing so to do the Licensor shall not be liable to the Licensee or its sub-licensee for any such loss or damages above referred to.

(Signed) A. V., V. G., J. D. M., W. R. T., A. L., R. J. B., Jr

(2) The Licensor shall be permitted to come in and join the Licensee or sub-licensees in conducting the defence against any infringement proceeding brought by others against the Licensee (or its Sub-licensees)

(3) Provided always that if and whenever the sum or sums of money which have been paid or which shall be payable by the Licensor to the Licensee or its sub-licensees un-

der the last two foregoing paragraphs of this Article and under the corresponding provisions in the Agreement between the same parties relating to Foreign Patents in Roller Bearings shall aggregate to the total amount of royalties then already paid or payable by the Licensee to the Licensor whether under this Agreement or under the said Foreign Agreement the Licensor shall only thereafter be liable to pay to the Licensee or its sub-licensees one half of all further sums of money which but for this paragraph and the corresponding paragraph in the said Foreign Agreement would have been wholly payable by the Licensor to the Licensee or its sub-licensees under the said last two foregoing paragraphs of this Article and under the corresponding provisions in the said Foreign Agreement.

Royalties

(4) So long as any of the Patents before referred to whether now in existence or hereafter taken out by the Licensor shall remain in full force the Licensee shall subject to the provisions of Article (6) hereof pay to the Licensor a royalty equal to 15% of the net invoice prices (after deduction of all discounts) of all goods manufactured [fol. 5368] and sold by the Licensee under this Agreement. If all of the said Patents shall cease to remain in full force by reason of some court or other competent authority revoking or declaring the same invalid and if the decision of the Court or other authority making such revocation or declaration shall be reversed on appeal the said royalties shall forthwith again become payable together with all royalties which would have been payable but for the adverse decision.

Payment of Royalties

(5) The said royalties shall be paid on the first days (or within thirty days thereafter) of January, April, July and October of each year for the Bearings made and sold during the quarter year prior to the first day of each said four months respectively the first of such payments to be made on the First day of October 1909.

Statements to be furnished

(6) The remittances of royalty shall be accompanied by statements from the Licensee showing in detail (a) The

number of finished Bearings made during the preceding quarter year (b) The number of Bearings sold during the preceding quarter year and (c) At what prices to whom and when such Bearings were sold after deducting all discounts allowed. The statement to be furnished in July of each year shall also be accompanied by a certified statement prepared by the Auditors of the Licensee's Company for the time being based upon an actual examination of the books and records of the Licensee giving the same data as above required in respect to sales made during the year prior to said month of July. The said statement shall if required by the Licensor be further verified by Statutory Declaration of the Secretary of the Licensees Company for the time being.

(7) If the Licensor so desires it may once each year at its own expense employ a chartered accountant who shall have the privilege of examining the books records and plant [fol. 5369] of the Licensee with a view to determine how many Bearings the Licensee shall have made and sold under this Agreement up to the time of such examination and to whom and when and for what prices.

Article 8

Minimum Royalty. (Signed) A. V., V. G., J. D. M., W. R. T., A. L., R. J. B. Jr. (Signed) A. V., V. G., J. D. M., W. R. T., A. L., R. J. B. Jr.

(1) During each of the 2nd and 3rd years whilst this Agreement shall be in force the Licensee will pay to the Licensor a minimum royalty at the rate of £1000. per annum Provided Always that so soon as the licensee shall prove to the Licensor by a Certificate of its Auditors for the time being that the total expenditure of itself and of its sub-licensees (whether under this Agreement or under the Agreement between the same parties relating to the Foreign Patents on Roller Bearings) in the manufacture exploitation and sale of Roller Bearings under either or both of the said Agreements (less the amount of sales not including the profit on such Sales) aggregates £25,000. then after such proof the Licensee shall be under no further liability whatever to pay to the Licensor a minimum royalty either in respect of the year in which such proof shall be made or any subsequent year.

Payment of Minimum

(2) Any sum due hereunder in excess of the royalty on Bearings actually sold as provided in this clause to make up the minimum annual royalty shall be payable on July first of each year or within Thirty days thereafter for the year to said July first.

Expenditure of Licensee

(3) Without limiting the same to such items the expenditure of the Licensee before referred to shall in any case include the following items, viz:—Expenditure upon material raw wrought or in process, wages, overhead charges, advertising, commercial expenses and every other head of expenditure in connection with making and selling the said Bearings, manufacturing plant, (not including land and [fol. 5370] buildings) patterns, tools, jigs, gauges, fixings and fittings.

How determined in case of dispute

(4) If any difference of opinion shall arise between the parties hereto as to what ought or ought not to be included in the "Expenditure" above referred to in this Article then such difference shall forthwith be referred to and shall be finally and without appeal determined by the President for the time being of the Institute of Chartered Accountants in England or by some independent Chartered Accountant to be nominated by him as an expert and not as an Arbitrator. Within one calendar month after any such difference shall have arisen each party shall deliver to the expert a Statement in writing of its case and the Expert shall forthwith proceed to determine the matter on the footing of such Statements or where one only shall have been put in on the footing of that one which shall have been put in without obtaining from either party without the consent of the other in writing any further explanations or information whether by interviews written communications or otherwise.

(Signed) A. V., V. G., J. D. M., W. R. T., A. L., R. J. B. Jr.

[fol. 5371] Termination of Agreement

(5) Notwithstanding anything to the contrary herein contained the Licensee shall be at liberty to terminate this Agreement at or at any time after the completion of the first year by giving to the Licensor 6 calendar months previous notice in writing. The Licensee shall also be at liberty to terminate this Agreement forthwith without any notice whatever if either of the three Patents specified in the first recital hereof shall at any time hereafter be revoked on any ground whatsoever except the ground that the Licensee has failed to satisfy the reasonable requirements of the public as provided by Section 24 of The Patents & Designs Acts 1907 or the ground that the Licensee has failed to manufacture the said Roller Bearings within the United Kingdom to an adequate extent as provided by Section 27 of the said Act. Provided always that neither of the two last mentioned exceptions shall come into operation until such time as the Licensee shall or ought under the provisions of this Agreement to be in a position to manufacture in the said limits.

(6) If the Licensee shall at any time prior to the completion of the third year prove in the manner provided by Sub-Clause (1) of Article (8) hereof that the total expenditure as defined in Article (8) hereof aggregates £25,000. then the Licensor shall not at any time thereafter whilst the Licensee shall manufacture Roller Bearings under any Patent belonging to the Licensor under the provisions of this Agreement have the right to terminate this Agreement but if such expenditure shall not be so proved prior to the completion of the third year the Licensor shall have the right to call upon the Licensee so to prove it up to and as at the completion of such third year. And if the Licensee [fol. 5372] on being called upon shall fail to prove its total expenditure as aforesaid then the Licensor shall be at liberty to terminate this Agreement at any time during but not later than the end of the fourth year by giving to the Licensee six calendar months previous notice in writing to expire not later than the end of the fourth year. But save as provided in this Article the Licensor shall have no right to terminate this Agreement.

(7) The exercise of this right by the Licensor shall not

deprive it of the right to enforce payment of all royalties due and payable under the terms of this Agreement up to the date of termination.

Article 9

Requirements as to manufacturing

(1) The Licensee agrees to begin the manufacture within the said limits of Timken Roller Bearings under said Patents as soon as the necessary machines, tools, jigs and gauges can be obtained and to furnish and employ all the capital necessary to meet the reasonable requirements of the public for Timken Roller Bearings and will subject to the provisions of Articles 3, 4, and 5 hereof manufacture as quickly as possible such of the different sizes of Bearings shewn by dimension sheet Number A. 790 of Licensor's List a copy of which is set out in the Schedule hereto as will meet the reasonable requirements of the public within the said limits. Subject to the provisions of Article 3 hereof the Licensee agrees to procure or otherwise to furnish itself with the machines, tools, jigs, and gauges, necessary for carrying out their obligations under this Article with all reasonable promptitude.

Salesmen

(2) The Licensee shall employ one or more high class [fol. 5373] traveling salesmen whose duty it will be to solicit the trade generally throughout said limits on behalf of the Licensee for Timken Roller Bearings. Such salesmen shall devote their entire time and energy in placing the Timken Roller Bearings on the market and they shall not be permitted to represent any other line of goods except the Warner Auto Meter.

Advertising

(3) The Licensee will also regularly and adequately advertise the Timken Roller Bearings in two or more standard Automobile Trade Journals. For this purpose the Licensor will furnish to the Licensee such cuts or half-tones of Timken Roller Bearings as are now used by the Licensor

in its own advertisement until such time as the Licensee is able to prepare cuts and half-tones of its own.

Catalogues

(4) The Licensee will also print annually or oftener a Catalogue descriptive of the Timken Roller Bearings and mail same freely to the trade generally in said limits. It is the intent of this Agreement that the Licensee shall aggressively push the business of making and selling said Timken Roller Bearings.

Article 10

Instructions of Licensor to be followed

(1) The Licensee will carefully and faithfully follow all instructions given to it by the Licensor for the manufacture of Timken Roller Bearings particularly those pertaining to the quality of steel used and its analysis the method of case hardening the system of grinding gauging etc. and will not depart from the methods employed by the Licensor and disclosed to the Licensee whilst this Agreement remains in force except under the provisions of Article 13 hereof.

[fol. 5374] Article 11

Licensee sell no other Roller Bearings. (Signed) A. V., V. G., J. D. M., W. R. T., A. L., R. J. B. Jr.

(1) Subject to the provisions of Article 13 hereof the Licensee shall not be permitted to manufacture or sell any anti-friction Bearings except those made under the Patents of the Licensor during the existence of this Contract and except those assembled in other articles manufactured or sold by the Licensee not being the wheels or the hubs of the wheels of vehicles of any kind or in any part of automobiles except accessories for same. And it shall use the word "Timken" exclusively in connection with the Roller Bearings made or sold by it under this Agreement and in connection with the sale of such Bearings. Always provided however that the Licensee shall be entitled to describe itself as sole Licensee within the said limits.

Article 12

May sell remaining stock

(1) If this Agreement shall be terminated under any of the provisions hereof or otherwise howsoever the Licensee and its sub-licensees shall have the privilege of thereafter completing and selling their stocks of Bearings on hand at the termination of the Contract at the prices and upon the terms which would have ruled if the Agreement had not been terminated and subject to the payment of the royalties herein provided for. Such stock of Bearings as the Licensee or its sub-licensees shall not be able to sell within the period of six months after the termination of the Contract the Licensor will take over paying the Licensee or sub-licensee as the case may be therefor the cost of producing the Bearings at the works of the Licensee (overhead charges being taken at 150% on production wages) provided the Licensor finds it feasible to use said stock of [fol. 5375] Bearings in its own business. In case however the Licensor shall not find it feasible to use said stock of Bearings in its own business the Licensor shall not until the Licensee and its sub-licensees shall have disposed of such stock sell Roller Bearings within the said limits at prices lower than those ruling for the disposal of the Licensee's stock.

Article 13

Licensee may change methods when

(1) The Licensee shall have the privilege of submitting to the Licensor any improvements the former may desire to make in the methods of manufacture and in the construction and design of Timken Roller Bearings and upon approval by the Licensor which approval shall not be unreasonably withheld such improvements may be adopted in the manufacture and in the construction and design of Timken Roller Bearings by the License and whatever improvements the Licensee adopts the Licensor shall have the privilege of using the same improvements by paying a reasonable consideration therefor. In the event of the parties failing to agree on such "reasonable consideration" as last mentioned or as to whether such improvements

ought to be approved by the Licensor then the question involved in the disagreement shall be determined under the provisions of the Arbitration Clause herein contained.

Investigation methods

(2) The Licensee shall have the privilege at any time or times during the existence of this Agreement of sending a representative at its own expense to investigate the methods of manufacture of the said Bearings followed by the Licensor at its various factories.

ditto

(3) And the Licensor shall have the privilege at any time or times during the existence of this Agreement of sending [fol. 5376] a representative at its own expense to investigate the methods of manufacture of the said Bearings followed by the Licensee at its various factories.

Article 14

Restrictions as to selling price

(1) The Licensee shall have the privilege of selling Timken Roller Bearings in said limits at any price it may deem advisable. But the deficiency between the lowest price charged for the time being by the Licensor to the trade within the United States and the lowest price charged at the same time by the Licensee to the trade within the said limits shall not exceed the U. S. A. Tariff chargeable on such Bearings from time to time from said limits.

The term "Trade within the United States" shall not include the business between the Licensor and The Timken Detroit Axle Company located at Detroit, Michigan, the same being a subsidiary company of the Licensor.

(2) THE Licensor shall advise the Licensee at the beginning of each yearly season its general trade prices for the United States for the coming season so far as possible.

Article 15

Restrictions as to Licensee

(1) So long as this Agreement is in force then unless authorized so to do by any other Agreement for the time being subsisting between the parties hereto the Licensee will not sell any Roller Bearings outside the said limits or sell them inside the said limits knowing them to be for shipment outside the said limits. But this shall not restrict the Licensee from selling Bearings in said limits for automobiles or other vehicles manufactured within the said [fol. 5377] limits and which may go to countries outside of said limits as parts of and assembled in complete automobiles or other vehicles.

Article 16

Assignable

(1) THE full benefit and advantage of and all obligations of the Licensee under this Agreement may at any time hereafter be assigned by the Licensee with the consent in writing of the Licensor such consent not to be unreasonably withheld.

Article 17

Sub-licenses.

(1) THE Licensee shall be at liberty to grant sub-licenses to vend the said Roller Bearings within the said limits and any Bearings so vended by any such sub-licensees shall for all the purposes of this Agreement be deemed to have been vended by the Licensees.

Article 18

Arbitration Clause

(1) ALL differences and disputes which shall arise between the parties hereto touching this Agreement or anything herein contained or as to the rights duties and liabilities of the parties hereunder or in relation to anything herein contained or as to the meaning or construction of

this Agreement shall be referred to a single Arbitrator under the provisions of the Arbitration Act 1889 or any statutory modification or re-enactment thereof.

[fol. 5378]

Article 19

Marginal Notes

(1) The marginal notes to these presents are for convenience of reference only and shall in no way whatever be construed together with or regarded as forming part of or as in any way affecting the meaning of the text of these presents.

Article 20

Estoppel

(1) Nothing in this Agreement contained shall preclude or estop the Licensee from disputing the validity of any of the Patents within referred to after the determination of this Agreement by notice or otherwise.

Article 21

English Law

(1) In the construction interpretation and performance and observance of these presents the principles of English Law shall prevail and in so far as it may be necessary at any time to obtain a ruling decision verdict or judgment or otherwise of any Court of Law or Equity the proceedings relative thereto shall be conducted in England before an English Tribunal and in accordance with English Law and the Licensor accordingly agrees and declares that it will if and when called upon furnish an address for service of process in England and that in default of its so doing the Licensee shall be at liberty to apply to any Tribunal of competent Authority to fix an address for such purpose.

In witness whereof The Timken Roller Bearing Company [fol. 5379] by the authority of its Board of Directors has caused these presents to be executed in duplicate by its Secretary and its corporate Seal to be hereto affixed on this 16th day of June, A. D. 1909. And the Electric & Ordnance Accessories Company Limited the other party hereto under the authority of its Board of Directors has

also caused its Common Seal to be affixed hereto in duplicate on this 16th day of July, A. D. 1909.

The Schedule before referred to.

Parts Included in Each Annual Replacement Bearing

D.W.F. No.	Hoffman No.	Timken No.	Roll	Cone No.	Cone on Dwg.	Cup (on Dwg. A 788)	Cage (on Dwg. B-671 B)
207	135	259		259	B-727-A	253	251
208	140	277		277	"	274	271
209	145	358	#200 on	358	B-728-A	354	351
210	150	365	B-729	365	"	363	361
211	155	385		385	"	383	381
212	160	397		397	"	394	391
305	325	237		237	B-727-A	233	231
306	330	319		319	B-728-A	313	311
307	335	339		339	"	333	331
308	340	357	#300 on	357	"	353	351
309	345	376	B-401	376	"	373	371
310	350	396		396	"	393	391
311	355	475		475	B-673-A	473	471
312	360	476		476	"	474	471
404		305		305	B-728-A	303	301
405		318	#400 on	318	"	314	311
406		416	B-672	416	B-673-A	413	411
407		441		441	"	434	431
408		459		459	"	454	451

(signed) TIMKEN ROLLER BEARING AXLE CO.
Canton, Ohio
OK Drawn ..... Checked HWA (signed)
Traced .....
WRT Approved HWA 5/27/09 (signed)
Scale .....
2428

[fol. 5380] The Timken Roller Bearing Co., (signed) By W. R. Timken, Secretary.

Executed by The Timken Roller Bearing Company in the presence of (signed) Austin Lynch, Raymond J. Bour, Jr.

The Common Seal of the Electric & Ordnance Accessories Company Limited was affixed hereto in the presence of (signed) —— ——, —— ——, Directors; (signed) J. D. Morrison, Secretary.

It is hereby recited that after the execution of the foregoing Agreement by The Timken Roller Bearing Company, and before it was sealed by The Electric & Ordnance Accessories Company, Limited, certain material changes and alterations therein were made as appear on pages 7, 8, 10,

11, 12 and 15 thereof, each and all of which changes and alterations were then identified by the initial of two of the Directors and of the Secretary of the party of the second part. Thereafter said instrument was duly sealed by the party of the second part.

[fol. 5381] The party of the first part by authority of its Board of Directors has caused the above recited changes and alterations to be initialed by the initials of its Secretary and of the two witnesses to its signature and has caused the foregoing Agreement, so altered as aforesaid, to be executed in duplicate by its Secretary and its corporate seal to be hereto affixed on this 4th day of August A. D. 1909. And The Electric & Ordnance Accessories Company, Limited, the other party to the foregoing instrument, under the authority of its Board of Directors, for the purpose of executing the foregoing Agreement, so altered as aforesaid, has also caused its common seal to be affixed hereto in duplicate on this — day of August A. D. 1909.

(Signed) The Timken Roller Bearing Co.; By W. R. Timken, Secy.

Executed by The Timken Roller Bearing Company in the presence of (signed) Austin Lynch, Raymond J. Bour, Jr.

The Common Seal of The Electric & Ordnance Accessories Company Limited was affixed hereto in the presence of (signed) —— ——, —— ——, Directors; (signed) J. D. Morrison, Secretary.

[fol. 5382] Agreement

Between The Timken Roller Bearing Company and The Electric & Ordnance Accessories Company Limited

Lynch & Day, Attorneys at Law, Canton, Ohio

[fol. 5383] Defendant's Exhibit 190

Parties—Recitals

An Agreement made the sixteenth day of June One thousand nine hundred and nine Between The Timken Roller Bearing Company a Corporation organized under the Laws

of the State of Ohio and having its offices and principal place of doing business in the City of Canton Ohio in the United States of America (hereinafter called "the Licensor") of the one part and The Electric & Ordnance Accessories Company Limited a Company organized under the Laws of Great Britain and having its offices in the Borough of Aston England (hereinafter called "the Licensee") of the other part Whereas by an Agreement (hereinafter called "the Principal Agreement") already prepared intended to bear even date herewith and made between the Licensor of the one part and the Licensee of the other part the Licensor (amongst other things) grants to the Licensee as from the 1st day of July One thousand nine hundred and nine the full and exclusive right license and authority to make use exercise and vend in the United Kingdom and the Isle of Man Roller Bearings of all kinds made under and in accordance with the specifications of the British Letters Patents therein more particularly referred to And Whereas it has been arranged between the parties that simultaneously with the completion of the said recited Agreement this Agreement also shall be completed Now Therefore it is Agreed as follows:

German Patent

1. This Agreement shall come into force on the 1st day of July 1909.

2. The Licensor will at its own expense forthwith take all such steps and do all such acts deeds and things as may be necessary to obtain the grant to the Licensor of Letters Patent or of rights equivalent thereto in Germany in pursuance of Application No. A 15,482 being an Application for a Patent in relation to Roller Bearings or improvements therein including the whole of the subject matter of the [fol. 5384] English Letters Patents No. 14656 of 1898, No. 19634 of 1907 and No. 7925 of 1908. And so far as may be necessary in that behalf the Licensor will at its own expense procure the assistance and concurrence of all such other parties including in any case the original Inventors as may be necessary to complete the grant of the said Letters Patent or other grant equivalent thereto as aforesaid.

French, Russian and German Patents

3. The Licensor shall as to the French Patents No. 279,-295, 383,963 and 388,242 and also as to the Russian Patent No. 6224 forthwith and as to the said German Patent so soon as the Letters Patent or other grant equivalent thereto shall have been obtained as mentioned in Clause 1. hereof grant to the Licensee (a) the full and exclusive right license and authority to make use exercise and vend in the territories covered by the said Patents respectively by Roller Bearings of all kinds made under or in accordance with the specifications of the said Letters Patents during the full terms of the said Letters Patents and any prolonged or extended terms thereof and (b) so long as this Agreement shall remain in force the full and exclusive right license and authority until all the said Patents shall have been granted or after all or any of the said Patents shall have ceased to exist (but only so far as the Licensor can then lawfully do so) to make use exercise and vend articles embodying the subject matter of such Patents or Patent and Roller Bearings of every kind whatsoever in that part of the said territory where the Patents or Patent shall not have been granted or shall have ceased to exist.

All necessary fomalities to be observed by Licensor to complete Licenses

4. The Licensor shall at its own expense do or concur in doing all such acts deeds and things and procure all other necessary parties to do or concur in doing all such acts deeds and things as may be necessary according to the Laws of France Russia and Germany for fully and effectually granting such full and exclusive License or Licenses as mentioned in the last clause hereof and the [fol. 5385] Licensee will concur therein so far as may be necessary. And pending the completion of any License or Licenses in this Agreement provided for the Licensor doth hereby declare that it will hold the Letters Patents under which the same are respectively to be granted including the German Patent (as and when the same shall be granted) as Trustee for the Licensee according to the true intent and meaning of this Agreement.

Licenses Under Further Patents Obtained Where No Patents

5. If and whenever the Licensor or any person on behalf of the Licensor shall obtain Letters Patent or grants equivalent thereto in any of the European Countries (other than France Russia and Germany) or in any of the British Colonies Protectorates or Dependencies except Canada for Roller Bearings or any improvements therein then the Licensor will at its own expense grant and procure the concurrence of all necessary parties in granting to the Licensee the full and exclusive right license and authority to make use exercise and vend in the country covered by each such Patent the subject matter thereof for the term or terms and in like manner as is mentioned in Clause 3 hereof and otherwise subject to and upon the terms of this Agreement. So far as applicable Clauses 3 and 4 hereof shall apply to the Patents or other grants referred to in this Clause and until any such Letters Patents or grants as aforesaid shall be made then so far as the Licensor lawfully can do so in the absence of such Patents or grants the Licensor doth hereby grant unto the Licensee the full and exclusive right license and authority to make use exercise and vend articles embodying the subject matter of the three British Patents before referred to and Roller Bearings of every kind whatsoever (whether covered by Patents or not) throughout Europe (except the United Kingdom France and Russia and Except Germany after the Patent or Grant shall be issued or made there) and throughout the whole of the British Colonies Protectorates and Dependencies except Canada.

Restrictions on Licensor

6. So long as this Agreement is in force the Licensor [fol. 5386] will not directly or indirectly make use or sell Roller Bearings of any kind to others in any of the territory covered by the provisions of this Agreement (hereinafter called "the said territory") nor license others to make use or sell Roller Bearings in such territory whether under any of the Patents already belonging to the Licensor or any which may hereafter belong to them or otherwise nor will the Licensor directly or indirectly sell Roller Bearings outside the said territory knowing them to be for

shipment into the said territory. But this shall not at any time restrict the Licensor from making selling or licensing others to make or sell Roller Bearings for automobiles or other vehicles manufactured outside the said territory and which may go into the said territory as parts of and assembled in complete automobiles or other vehicles.

Steel Cages

7. The Licensor will furnish to the Licensee at the cost charged to the Licensor free on board the Cars at Canton Ohio or at the Factory where made the steel stamped cages needed by the Licensee being part of the Roller Bearings as now manufactured by the Licensor until such time as the Licensee will need the same in quantity for sale in the said territory but not in any case longer than twelve months from the date of this Agreement. And after the expiration of such twelve months the Licensee will be expected to purchase cages direct from the Vendor manufacturing the same for the Licensor or have them manufactured by or for itself. In the event of the Vendor of the said cages to the Licensor putting up the price for supplying the same to the Licensee beyond the most favourable price at which he shall at the same time be supplying them to the Licensor then until the Licensee shall be able to make other arrangements for obtaining the cages elsewhere the Licensor shall supply the same to the Licensee at the most favourable prices charged to the Licensor by the Vendor.

Finished Bearings to be Supplied by Licensor for a Time

8. Subject to the limitations hereinafter provided the [fol. 5387] Licensor will furnish the Licensee free on board the Cars at Canton Ohio Roller Bearings for resale in the said territory (not exceeding 5,000 Bearings in all) at prices equal to the cost of producing the Bearings as shown by the Licensor's books including therein a proper proportion for overhead charges not exceeding One Hundred and fifty per cent (150%) on production wages and in addition thereto fifty percent (50%) of the total cost. This obligation of the Licensor however will only extend to enabling the Licensee to satisfy the reasonable requirements of the public in the said territory until such time not later than two years from the date of this Contract as the Licensee

or any sub-licenses of the Licensee shall be able to manufacture Bearings in sufficient quantities to meet the reasonable requirements of the public as herein provided. The Licensor will not however charge the Licensee with the royalty hereinafter provided for on Bearings furnished by it to the Licensee hereunder.

Renewal Fees

9. The Licensor will pay all renewal fees and do all such acts and things as may be required by law to maintain and keep on foot all Letters Patents belonging to the Licensor and in any way relating to Roller Bearings which may at any time whilst this Agreement shall remain in force be subsisting in any country comprised within the before mentioned territory.

Amendment of Specification

10. The Licensor shall not amend the specification or other document equivalent thereto of any of the Letters Patents referred to in the last preceding clause hereof or do any other act or thing equivalent thereto without the consent in writing of the Licensee but such consent shall not be unreasonably withheld.

Proceedings for Revocation

11. The Licensor shall defend at its own cost every action or proceeding instituted for the purpose of revoking any of the Letters Patents last above referred to or other equivalent grants which may be subsisting at any time in the said territory whilst this Agreement shall remain in [fol. 5388] force whether the same are now in existence or are hereafter taken out.

Licensee's Obligation on Revocation in Certain Cases

12. If the Licensor shall defend any action or proceeding instituted for the purpose of revoking any of the Letters Patents or other grants as last before mentioned and any such Patent or grant shall be revoked solely on some ground which would not have been available if the Licensee had duly performed its obligations under this Agreement then and in any such case the Licensor shall in addition to any other rights which it may have against the Licensee be entitled to recover from the Licensee all costs charges and

expenses which it may have reasonably incurred in such defence.

Manufacturing

13. Within twelve months from the date hereof and so long thereafter as this Agreement shall remain in force the Licensee by itself or its sub-licensees will manufacture Roller Bearings in each Country in the said territory in which there shall exist Patents belonging to the Licensor covering Roller Bearings or improvements therein to such extent only as may be necessary according to law to keep the said Patents in existence. But except to that extent the Licensee shall not be bound to manufacture at all outside the United Kingdom Provided Always that it shall be competent for the Licensee at any time within the said period of twelve months to mail or cable to the Licensor a notice of its intention not to manufacture or to discontinue manufacturing in any particular country and after such notion shall have been mailed or cabled as the case may be the Licensee shall be under no further obligation to manufacture in that country. But nevertheless all the other provisions of this Agreement shall continue to apply to that country until such time as the Licensor or any of its other Licensees or their sub-licensees shall manufacture in such country and thereafter the terms of this Agreement shall cease in all respects to apply to that country and the licensee [fol. 5389] shall cease to be entitled to make use exercise or vend Roller Bearings in that country under the Patents of the Licensor subsisting in that country. Reasonable notice in writing of intention to manufacture shall in any such case be given by the Licensor to the Licensee and the Licensee shall be in any case entitled to use and sell in the country in question such amount of stock as the Licensee shall have got ready for sale in that country.

Notice of Infringement

14. The Licensee shall give notice promptly to the Licensor of any infringement or threatened infringement of the said Patents of grants or any of them within the said territory which shall at any time and from time to time come to its knowledge.

Infringement—Licensor's Liability

15. The Licensor shall protect the said Letters Patents or grants herein referred to whether now in existence or hereafter taken out against infringement if notified by the Licensee that they are being infringed upon so far only as it deems fit the same being left entirely to the Licensor's discretion Provided nevertheless that in case of any infringement by reason whereof the Licensee or any sub-licensee of the Licensee shall suffer damage (not being merely nominal damage) and of which the Licensee has given the Licensor written notice with a request that the latter prosecute such infringer then if the Licensor shall not take any legal proceedings in regard to such infringement or shall unreasonably delay taking such proceedings or if the Licensor having taken shall unreasonably delay in prosecuting such proceedings to a conclusion then and in any such case all royalties which would have otherwise been payable hereunder during such period as the Licensor shall take no proceedings or shall unreasonably delay taking or prosecuting proceedings as aforesaid shall cease to be payable either during such period or at any time thereafter. In case legal proceedings are brought by the Licensor upon request of the Licensee to prevent infringement of the [fol. 5390] Patents above mentioned or referred to and any damages are recovered therein such damages shall be applied on the costs and expenses of such proceedings and the remainder of said expenses shall be borne two thirds by the Licensor and one third by the Licensee.

16. If the damages recovered in any such proceedings exceed the expenses of prosecuting said proceedings the surplus damages recovered shall be payable two thirds to the Licensor and one third to the Licensee.

Indemnity of Licensee

17. Subject to the provisions contained in Clause 19 hereof the Licensor shall keep indemnified the Licensee and its sub-licensees against all actions proceedings claims and demands or prosecutions whatsoever which may be brought commenced or prosecuted against the Licensee or its sub-licensees and against all the reasonable costs charges and expenses payable by the Licensee or its sub-licensees in respect of all such notions proceedings claims and de-

mands or prosecutions or any such as may be threatened within the said territory and against all loss or damage whatsoever which the Licensee or its sub-licensees may sustain by reason of anything made used exercised or vended by the Licensee or its sub-licensees under any Patent of the Licensor or under the terms of this Agreement or any sub-license granted thereunder being alleged or held to infringe the Patent rights within the said territory of any other person or persons. And in the event of any action being brought or threatened against the Licensee or any of its sub-licensees in respect of any such matter as aforesaid the Licensee will immediately give notice thereof to the Licensor and failing so to do the Licensor shall not be liable to the Licensee or its sub-licensees for any such loss or damages above referred to.

18. The Licensor shall be permitted to come in and join the Licensee or sub-licensees in conducting the defence against any infringement proceeding brought by others against the Licensee or its sub-licensees.

[fol. 5391] 19. Provided Always that if and whenever the sum or sums of money which have been paid or which shall be payable by the Licensor to the Licensee under Clause 17 hereof or under the corresponding provisions of the Principal Agreement shall aggregate to the total amount of royalties then already paid or payable by the Licensee to the Licensor under this Agreement and the Principal Agreement the Licensor shall only thereafter be liable to pay to the Licensee one half of all further sums of money which but for this Clause and for the corresponding provision in the Principal Agreement would have been wholly payable by the Licensor to the Licensee under Clause 17 hereof and the corresponding provision of the Principal Agreement.

Royalties

20. So long as any of the Patents under which for the time being the Licensee shall sell Roller Bearings upon the terms of this Agreement shall remain in full force the Licensee shall subject to the provisions of Clause 15 hereof pay to the Licensor a royalty equal to Fifteen per cent of the net invoice prices after deduction of all discounts and Tariffs (where paid by the Licensee) of all goods manufactured and sold by the Licensee under this Agreement.

21. If all the said Patents shall cease to remain in full force by reason of some Court or other competent authority revoking or declaring the same to be invalid and if the decision of the Court or other competent authority making such revocation or declaration shall be reversed on appeal then the royalties which would have been payable but for the adverse decision shall forthwith again become payable.

Payment of Royalties

22. The said royalties shall be paid on the first days or within thirty days thereof of January, April, July and October of each year for the Bearings made and sold during the quarter or prior to the first day of each said four months respectively the first of such payments to be made on the 1st day of October 1909.

[fol. 5392] Remittances and Statements

23. The remittances of royalty shall be accompanied by statements from the Licensee shewing in detail:

(a) The number of finished Bearings made during the preceding quarter year (b) The number of Bearings sold during the preceding quarter year and (c) At what prices to whom and when such Bearings were sold after deducting all discounts allowed.

24. The statement to be furnished in July of each year shall also be accompanied by a certified Statement prepared by the Auditor of the Licensee's Company for the time being based upon an actual examination of the Books and records of the Licensee giving the same data as above required in respect of sales made during the year prior to the said month of July. The said Statement shall if required by the Licensor be further verified by Statutory Declaration of the Secretary of the Licensee's Company for the time being.

25. If the Licensee so desires it may once a year at its own expense employ a Chartered Accountant who shall have the privilege of examining the books, records and plant of the Licensee with a view to determine how many bearings the Licensee shall have made and sold under this Agreement up to the time of such examination and to whom and when and for what prices.

No Minimum Royalties

26. No minimum Royalties shall be payable in respect of the Bearings sold under this Agreement but all Royalties paid on Bearings sold under this Agreement shall go to make up the minimum royalties provided for in the Principal Agreement.

Licensee to Put Goods on Market

27. The Licensee shall employ all such means as shall be reasonably necessary for putting the said Roller Bearings upon the market within the said territory.

Termination

28. Notwithstanding anything to the contrary herein contained the Licensee shall be at liberty to terminate this Agreement at or at any time after the completion of the first year by giving to the Licensor six calendar months previous notice in writing. The Licensee shall also be at [fol. 5393] liberty to terminate this Agreement forthwith if any Patent covering any part of the said territory shall at any time hereafter be revoked on any ground whatsoever other than the ground of non-manufacture within the country covered by the Patent whilst the Licensee shall be bound to manufacture in order to keep the same Patent in existence as herein provided.

Ditto

29. If the Licensee shall at any time prior to the completion of the third year prove in the manner provided by the Principal Agreement that the total expenditure as defined in the Principal Agreement aggregates £25,000. then the Licensor shall not at any time thereafter whilst the Licensee shall make use exercise or vend Roller Bearings in the said territory under the provisions of this Agreement have the right to terminate this Agreement. But if such expenditure shall not be so proved prior to the completion of the third year the Licensor shall have the right to call upon the Licensee so to prove it up to and as at the completion of such third year. And if the Licensee on being called upon shall fail to prove the total expenditure calculated as aforesaid then the Licensor shall be at liberty to terminate this Agreement at any time during but not later than the end of

the fourth year by giving to the Licensee six calender months previous notice in writing to expire not later than the end of the fourth year. But save as provided in this Clause the Licensor shall have no right to terminate this Agreement.

30. The exercise of this right by the Licensor shall not deprive it of the right to enforce payment of all royalties due and payable under the terms of this Agreement up to the date of termination.

Licensee to Follow Instructions

31. The Licensee will carefully and faithfully follow all instructions given to it by the Licensor for the manufacture of Timken Roller Bearings particularly those pertaining to the quality of steel used and its analysis the method of case hardening the system of grinding gauging, etc. and [fol. 5394] will not depart from the methods employed by the Licensor and disclosed to the Licensee while this Agreement remains in force except under the provisions of Clause 34 hereof.

Restrictions on Licensee. (Signed) A. V., V. G., J. D. M., W. R. T., A. L., R. J. B. Jr.

32. The Licensee shall not be permitted to manufacture or sell any anti-friction Bearings except those made under the Patents of the Licensor or where no such Patents exist except under the provisions of this Agreement and except those assembled in other articles manufactured or sold by the Licensee not being wheels or hubs of wheels of vehicles of any kind or in any part of automobiles except accessories for same during the existence of this Agreement. And it shall use the word "Timken" exclusively in connection with the Roller Bearings made or sold by it under this Agreement and in connection with the sale of such Bearings. Always provided however that the Licensee shall be entitled to describe itself as sole licensee within the said territory.

Sale of Stock on Termination

33. If this Agreement shall be terminated under any of the provisions hereof or otherwise howsoever the Licensee and any sub-licensee of the Licensee shall have the privilege of thereafter completing and selling the stock of bearings

on hand at the termination of the Agreement at the prices and upon the terms which would have ruled if the Agreement had not been terminated and subject to the payment of the royalties herein provided for. Such stock of Bearings as the Licensee or any of its sub-licensees shall not be able to sell within the period of six months after the termination of the Contract the Licensor will take over paying the Licensee or sub-licensee as the case may be therefor the cost of producing the Bearings at the works of the Licensee (overhead charges being taken at 150% on production wages) provided the Licensor finds it feasible to use said stock of Bearings in its own business. In case however the Licensor shall not find it feasible to use said stock of Bearings in its own business the Licensor shall not until [fol. 5395] the Licensee and all of its sub-licensees shall have disposed of such stock sell Roller Bearings within the said territory at prices lower than those ruling for the disposal of the Licensee's stock.

Licensee's improvements

34. The Licensee shall have the privilege of submitting to the Licensor any improvements the former may desire to make in the methods of manufacture and in the construction and design of Timken Roller Bearings and upon Approval by the Licensor which approval shall not be unreasonably withheld such improvements may be adopted in the methods of manufacture and in the construction and design of Timken Roller Bearings by the Licensee and whatever improvements the Licensee adopts the Licensor shall have the privilege of using the same improvements by paying a reasonable consideration therefor. In the event of the parties failing to agree on such "reasonable consideration" as last mentioned or as to whether such improvements ought to be approved by the Licensor then the question involved in the disagreement shall be determined under the provisions of the Arbitration Clause herein contained.

Investigation of Licensor's methods

35. The Licensee shall have the privilege at any time or times during the existence of this Agreement of sending a representative at its own expense to investigate the methods of manufacture of the said Bearings followed by the Licensor at its various factories.

Investigation of Licensee's methods

36. And the Licensor shall have the privilege at any time or times during the existence of this Agreement of sending a representative at its own expense to investigate the methods of manufacture of the said Bearings followed by the Licensee at its various factories.

Prices on sales

37. The Licensee shall have the privilege of selling Timken Roller Bearings in all parts of the said territory at any price it may deem advisable But the deficiency between the lowest price charged for the time being by the Licensor to the trade within the United States and the lowest price [fol. 5396] charged at the same time by the Licensee in any part of the said territory shall not be greater than the U. S. A. tariff on Bearings from that part plus in cases where Bearings are sent from the United Kingdom to any part of said territory and the customer therein pays the duty the duty so paid. The term "trade within the United States" shall not include the business between the Licensor and The Timken-Detroit Axle Company located at Detroit Michigan the same being a subsidiary of the Licensor.

Licensor to advise prices

38. The Licensor shall advise the Licensee at the beginning of each yearly season its trade prices for the United States for the coming season so far as possible.

Restrictions on Licensee

39. So long as this Agreement is in force then unless authorised so to do by any other Agreement for the time being subsisting between the parties hereto the Licensee will not sell any Roller Bearings outside the said territory or sell them inside the said territory knowing them to be for shipment outside the said territory. But this shall not restrict the Licensee from selling Bearings in said territory for automobiles or other vehicles manufactured within the said territory and which may go to countries outside of said territory as parts of and assembled in complete automobiles or other vehicles.

Agreement assignable

40. The full benefit and advantage of and all obligations of the Licensee under this Agreement may at any time hereafter be assigned by the Licensee with the consent in writing of the Licensor such consent not to be unreasonably withheld.

Sub-licenses

41. The Licensee shall be at liberty to grant sub-licenses to make use exercise and vend the said Roller Bearings within the said territory or any part of parts thereof and any Bearings so made used exercised or vended by any sub-licensee shall for all the purposes of this Agreement be deemed to have been vended by the Licensee.

[fol. 5397] Arbitration

42. All differences questions and disputes which shall arise between the parties hereto touching these presents or anything herein contained or any matter in any way connected with these presents or as to the rights duties and liabilities of the parties hereunder or as to the meaning or construction of these presents or any Clause thereof shall be referred to a single arbitrator under the provisions of the Arbitration Act 1889 or any Statutory modification or re-enactment thereof.

Marginal notes

43. The marginal notes to these presents are for convenience of reference only and shall in no way whatever be construed together with or regarded as forming part of or as in any way affecting the meaning of the text of these presents.

Estoppel

44. Nothing in this Agreement contained shall preclude or estop the Licensee from disputing the validity of any of the Patents herein referred to after the determination of this Agreement by notice or otherwise.

English Law & Jurisdiction

45. In the construction interpretation and performance and observance of these presents the principles of English Law shall prevail and in so far as it may be necessary at any time to obtain a ruling decision verdict of judgment or

otherwise of any Court of Law or Equity the proceedings relative thereto shall be conducted in England before an English Tribunal and in accordance with English Law and the Licensor accordingly agrees and declares that it will if and when called upon furnish an address for service of process in England and that in default of its so doing the Licensee shall be at liberty to apply to any Tribunal of competent authority to fix an address for such purpose.

In Witness whereof The Timken Roller Bearing Company by the authority of its Board of Directors has caused these presents to be executed in duplicate by its Secretary and its Corporate Seal to be hereto affixed on the 16th day of June A. D. One thousand nine hundred and nine and The Electric & Ordnance Accessories Company Limited the other party hereto under the authority of its Board of Directors has also caused its Common Seal to be affixed in duplicate on this 16th day of July A. D. One thousand nine hundred and nine.

[fol. 5398] (signed) The Timken Roller Bearing Co.; By W. R. Timken, Secy.

Executed by The Timken Roller Bearing Company in the Presence of (signed) Austin Lynch, Raymond J. Bour, Jr.

The Common Seal of The Electric & Ordnance Accessories Company Limited was affixed hereto in the presence of (signed) ——— ———, ——— ———, Directors; (signed) J. D. Morrison, Secretary.

It is hereby recited that after the execution of the foregoing Agreement by The Timken Roller Bearing Company, and before it was sealed by The Electric & Ordnance Accessories Company, Limited, certain material changes and alterations therein were made as appear on page 12 thereof, each and all of which changes and alterations were then identified by the initials of two of the Directors and of the Secretary of the party of the second part. Thereafter said instrument was duly sealed by the party of the second part.

The party of the first part by authority of its Board of Directors has caused the above recited changes and alterations to be initialed by the initials of its Secretary and of

the two witnesses to its signature and has caused the foregoing Agreement, so altered as aforesaid, to be executed in duplicate by its Secretary and its corporate seal to be hereto affixed on this 4th day of August A. D. 1909.

And The Electric & Ordnance Accessories Company, Limited, the other party to the foregoing instrument, under the authority of its Board of Directors, for the purpose of executing the foregoing Agreement, so altered as aforesaid, has also caused its common seal to be affixed hereto in duplicate on this — day of August A. D. 1909.

(signed) The Timken Roller Bearing Co.; By W. R. Timken, Secy.

Executed by The Timken Roller Bearing Company in the presence of (signed) Austin Lynch, Raymond J. Bour, Jr.

The Common Seal of the Electric & Ordnance Accessories Company Limited was affixed hereto in the presence of (signed) —— ——, —— ——, Directors; (signed) J. D. Morrison, Secretary.

[fol. 5399] Agreement

Relating to Foreign Patents

The Timken Roller Bearing Company and The Electric & Ordnance Accessories Company, Limited

Lynch & Day, Attorneys at Law, Canton, Ohio

[fol. 5400] Defendant's Exhibit 191

Dated 6th April, 1920.

The Timken Roller Bearing Company and Wolseley Motors Limited

Agreement

Supplemental to Agreement, Dated 16th June 1909 with regard to Patent Rights for Great Britain.

[fol. 5401] An Agreement made this 6th day of April One thousand nine hundred and twenty Between The Timken Roller Bearing Company a Corporation organized under

the laws of the State of Ohio in the United States of America and having its office and principal place of business in the City of Canton in the State of Ohio aforesaid (hereinafter called "the Licensor Company") of the one part and Wolseley Motors Limited a Joint Stock Company incorporated under the laws of the United Kingdom of Great Britain and Ireland and having its registered office at Adderley Park Birmingham in the Kingdom of England (hereinafter called "the Licensee Company") of the other part Supplemental to an Agreement (hereinafter referred to as "the Principal Agreement") dated the Sixteenth day of June and the Sixteenth day of July One thousand nine hundred and nine between the Licensor Company of the one part and the Electric and Ordnance Accessories Company Limited of the other part being a license for the manufacture and sale of Timken Roller Bearings in the United Kingdom of Great Britain and Ireland and the Isle of Man Whereas the benefit of the Electric and Ordnance Accessories Company Limited under the Principal Agreement is now vested in the Licensee Company And Whereas the parties hereto are desirous of modifying the terms of the Principal Agreement as more particularly hereinafter appears Now it is Hereby Agreed as follows:

1. The Principal Agreement shall be modified so far as necessary in order to give effect to the following provisions of this Agreement.

2. For purposes of this Agreement "the Licensees' area" means and includes the United Kingdom of Great Britain and Ireland and the Isle of Man and "the Licensor's area" means and includes the whole of the world outside the Licensee's area and "Timken Roller Bearings" means and includes Roller Bearings of the kind from time to time manufactured by the Licensor Company and commonly known as Timken Bearings.

3. The Licensor Company shall be entitled to make and to license others to make Timken Roller Bearings in the Licensor's area and to sell and to License others to sell Timken Roller Bearings made in the Licensors' area to [fol. 5402] manufacturers in the Licensor's area for use in their respective products notwithstanding that such Roller Bearings may be intended for shipment into the Licensee's area and the manufacturers hereinbefore mentioned other than the Licensor Company shall be entitled to import any

such Roller Bearings into the Licensees' territory for use in their respective products.

4. The Licensee Company shall be entitled to make and to license others to make Timken Roller Bearings in the Licensee's area and to sell and to license others to sell Timken Roller Bearings made in the Licensees' area to manufacturers in the Licensees' area for use in their respective products notwithstanding that such Roller Bearings may be intended for shipment into the Licensor's area and the manufacturers hereinbefore mentioned other than the Licensee Company shall be entitled to import any such Roller Bearings into the Licensor's territory for use in the respective products.

5. The Licensor Company shall supply to the Licensee Company Timken Roller Bearings made by the Licensor Company in the Licensor's area and delivered f. o. b. Canton or Columbus Ohio of such kinds and sizes for the time being manufactured by the Licensor Company and in such quantities as the licensee Company shall order within a period of four months after receiving each order at prices which shall not exceed by more than ten per centum the respective lowest prices (after allowing for all rebates allowances and discounts except any discount for cast not exceeding five per centum) at which the Licensor Company is for the time being supplying Roller Bearings of the same kind and size to any of its customers in the Licensors' area except in the case of front wheel bearing sets supplied to the Ford Motor Car Company of Detroit The Licensor Company shall supply to the Licensee Company Ford front wheel bearing sets made by the Licensor Company and consisting of four bearings with two dust washers and felts at the price of three dollars and seventy-five cents delivered f. o. b. Canton or Columbus Ohio within a period of four months after receiving each order. And the Licensee Company shall not sell or authorize others to sell in the Licensees' area Ford Replacements Sets for use in Ford Cars at a less price than [fol. 5403] the equivalent of four dollars and eighty-six cents plus freight insurance and charges to the Licensees' area per set of four bearings with two dust washers and felts. The Licensor Company is at liberty to increase or reduce the said price of three dollars and seventy-five cents in accordance with a rise or fall in its manufacturing costs including labour material and overhead charges.

6. The Licensee Company shall in the year ending on the Thirty first day of December One thousand nine hundred and twenty-one manufacture and put on the market a minimum quantity of Four hundred thousand Timken Roller Bearings and in each subsequent year during the continuance of the Principal Agreement a minimum quantity of Five hundred thousand Timken Roller Bearings.

7. Neither of the parties hereto shall be liable for any failure to perform any of the obligations contained in this Agreement if such failure shall be directly or indirectly attributable to fire strikes lock-outs labour difficulties or other cause beyond the control of the party under such obligation interfering with or delaying the performance of such obligation and in particular the Licensee Company shall not be bound to manufacture and put on the market the minimum quantities hereinbefore mentioned in the event of a change not now within the contemplation of the parties which shall radically restrict the use of Roller Bearings in motor cars provided that the Licensee Company manufactures and puts on the market Timken Roller Bearings in quantities sufficient to satisfy the reasonable requirements of the public in the Licensees' area as defined by Section 24 of the Patents and Designs Act 1907.

8. The Licensee Company shall from time to time report in writing to the Licensor Company as to the production and sale of Timken Roller Bearings in the Licensees' area and shall from time to time furnish to the Licensor Company all such further information as the Licensor Company shall require so far as it lies within the power of the Licensee Company.

9. The parties hereto place on record their desire and intention without accepting any legal obligation in that behalf to develope the sale of Timken Roller Bearings in all territories to the advantage of both parties and to procure that all Timken Roller Bearings made in the territory of one of the parties hereto and sold in the territory of the [fol. 5404] other party hereto shall not be sold at prices which shall be unreasonable and unfair to the party in whose territory the Roller Bearings are sold.

10. If the Licensee Company shall go into liquidation either voluntary or compulsory except for the purpose of reconstruction or shall fail to put on the market Timken Roller Bearings in compliance with the provisions of

Clauses 5 and 6 of this Agreement or shall after the expiration of two years from this date fail to put on the market Timken Roller Bearings in quantities sufficient to satisfy the reasonable requirements of the Public in the Licensees' area as defined by Section 24 of the Patents and Designs Act 1907 then and in such case the Licensor Company may by notice in writing to the Licensee Company rescind the Principal Agreement and this agreement and if the Principal Agreement shall be rescinded the Licensee Company shall abandon the use of the name "Timken" as part of its name (if so used) and in all oth r ways and shall execute and do all such acts and deeds as may be necessary in order to secure to the Licensor Company the exclusive use of such name.

11. The provisions of the Principal Agreement shall remain in full force except so far as the same are modified by this Agreement.

12. Each of the parties hereto hereby releases the other of them from all claims in respect of anything done or omitted to be done previous to the date hereof contrary to the provisions of the Principal Agreement.

In Witness whereof the Licensor Company have signed this Agreement by (signed) Heman Ely as Agent for them and on their behalf and Wolseley Motors Limited have hereto caused their Common Seal to be affixed the day and year first above written.

(Signed) Heman Ely.

Signed by the said (signed) Heman Ely, in the presence of (signed) R. Plumridge, 21 Leadenhall Street, EC. Clerk.

[fol. 5405] The Common seal of Wolseley Motors Limited was hereto affixed by order of the Board in the presence of ——— ———.

(Signed) ——— ———, Directors; ——— ——— Secretary.

[fol. 5406] DEFENDANT'S EXHIBIT 192

Dated: 6th April, 1920

The Timken Roller Bearing Company and Wolseley Motors Limited

Agreement with regard to foreign patents

[fol. 5407] An agreement made this 6th day of April One thousand nine hundred and twenty between The Timken Roller Bearing Company a Corporation organized under the laws of the State of Ohio in the United States of America and having its office and principal place of business in the City of Canton in the State of Ohio aforesaid (hereinafter called "the Licensor Company") of the one part and Wolseley Motors Limited a Joint Stock Company incorporated under the laws of the United Kingdom of Great Britain and Ireland and having its registered office at Adderley Park Birmingham in the Kingdom of England (hereinafter called "the Licensee Company") of the other part Supplemental to an Agreement (hereinafter referred to as "the Principal Agreement") made the Sixteenth day of June One thousand nine hundred and nine between the Licensor Company of the one part and the Electric & Ordnance Accessories Company Limited of the other part being a license for the manufacture and sale of Timken Roller Bearings in the Continent of Europe and the British Colonies except as therein more particularly described Whereas the benefit of the Electric & Ordnance Accessories Company Limited under the Principal Agreement is now vested in the Licensee Company And Whereas the parties hereto are desirous of modifying the terms of the Principal Agreement as more particularly hereinafter appears Now It Is Hereby Agreed as follows:

1. The Principal Agreement shall be modified so far as necessary in order to give effect to the following provisions of this Agreement.

2. For the purposes of this Agreement "the Licensees' areas" means and includes the territory as defined by the Principal Agreement and "the Licensors' area" means and includes the whole of the world outside the Licensees' area except the United Kingdom of Great Britain and Ireland and the Isle of Man and "Timken Roller Bearings" means and includes Roller Bearings of the kind from time to time

manufactured by the Licensor Company and commonly known as Timken Bearings.

3. The Licensor Company shall be entitled to make and to license others to make Timken Roller Bearings in the [fol. 5408] Licensors' area and to sell and to license others to sell Timken Roller Bearings made in the Licensors' area to manufacturers in the Licensor's area for use in their respective products notwithstanding that such Roller Bearings may be intended for shipment into the Licensees' area and the manufacturers hereinbefore mentioned other than the Licensor Company shall be entitled to import any such Roller Bearings into the Licensees' territory for use in their respective products.

4. The Licensee Company shall be entitled to make and to license others to make Timken Roller Bearings in the Licensees' area and to sell and to license others to sell Timken Roller Bearings made in the Licensees' area to manufacturers in the Licensees' area for use in their respective products notwithstanding that such Roller Bearings may be intended for shipment into the Licensors' area and the manufacturers hereinbefore mentioned other than the Licensee Company shall be entitled to import any such Roller Bearings into the Licensors' territory for use in the respective products.

5. The Licensor Company shall supply to the Licensee Company Timken Roller Bearings made by the Licensor Company in the Licensors' area and delivered f.o.b. Canton or Columbus Ohio of such kinds and sizes for the time being manufactured by the Licensor Company and in such quantities as the Licensee Company shall order within a period of four months after receiving each order at prices which shall not exceed by more than Ten per centum the respective lowest prices (after allowing for all rebates allowances and discounts except any discount for cash not exceeding Five per centum) at which the Licensor Company is for the time being supplying Roller Bearings of the same kind and size to any of its customers in the Licensors' area except in the case of front wheel bearing sets supplied to the Ford Motor Car Company of Detroit The Licensor Company shall supply to the Licensee Company Ford front wheel bearing sets made by the Licensor Company and consisting of four bearings with two dust washers and felts at the price of Three Dollars and Seventy-five Cents delivered f.o.b. Canton or Columbus Ohio within a period of

four months after receiving each order And the Licensee Company shall not sell or authorize others to sell in the Licensees' area Ford Replacement Sets for use in Ford Cars at a less price than the equivalent of Four Dollars [fol. 5409] and eighty-six Cents plus freight insurance and charges to the Licensees' area per set of four bearings with two dust washers and felts The Licensor Company is at liberty to increase or reduce the said price of Three Dollars and Seventy-five Cents in accordance with a rise or fall in its manufacturing costs including labour material and overhead charges.

6. The Licensee Company shall in the year ending on the Thirty-first day of December One thousand nine hundred and twenty-one manufacture and put on the market a minimum quantity of Four hundred thousand Timken Roller Bearings and in each subsequent year during the continuance of the Principal Agreement a minimum quantity of Five hundred thousand Timken Roller Bearings.

7. Neither of the parties hereto shall be liable for any failure to perform any of the obligations contained in this Agreement if such failure shall be directly or indirectly attributable to fire strikes lock-outs labour difficulties or other cause beyond the control of the party under such obligation interfering with or delaying the performance of such obligation and in particular the Licensee Company shall not be bound to manufacture and put on the market the minimum quantities hereinbefore mentioned in the event of a change not now within the contemplation of the parties which shall radically restrict the use of Roller Bearings in motor cars provided that the Licensee Company manufactures and puts on the market Timken Roller Bearings in quantities sufficient to satisfy the reasonable requirements of the public in the Licensees' area as defined by Section 24 of the Patents and Designs Act 1907.

8. The Licensee Company shall from time to time report in writing to the Licensor Company as to the production and sale of Timken Roller Bearings in the Licensees' area and shall from time to time furnish to the Licensor Company all such further information as the Licensor Company shall require so far as it lies within the power of the Licensee Company.

9. The parties hereto place on record their desire and intention without accepting any legal obligation in that behalf to develop the sale of Timken Roller Bearings in

all territories to the advantage of both parties and to procure that all Timken Roller Bearings made in the territory of one of the parties hereto and sold in the territory of [fol. 5410] the other party hereto shall not be sold at prices which shall be unreasonable and unfair to the party in whose territory the Roller Bearings are sold.

10. If the Licensee Company shall go into liquidation either voluntary or compulsory except for the purpose of reconstruction or shall fail to put on the market Timken Roller Bearings in compliance with the provisions of Clauses 5 and 6 of this Agreement or shall after the expiration of two years from this date fail to put on the market Timken Roller Bearings in quantities sufficient to satisfy the reasonable requirements of the public in the Licensees' area as defined by Section 24 of the Patents and Designs Act of 1907 then and in such case the Licensor Company may by notice in writing to the Licensee Company rescind the Principal Agreement and this Agreement and if the Principal Agreement shall be rescinded the Licensee Company shall abandon the use of the name "Timken" as part of its name (if so used) and in all other ways and shall execute and do all such acts and deeds as may be necessary in order to secure to the Licensor Company the exclusive use of such name.

11. The provisions of the Principal Agreement shall remain in full force except so far as the same are modified by this Agreement.

12. Each of the parties hereto hereby releases the other of them from all claims in respect of anything done or omitted to be done previous to the date hereof contrary to the provisions of the Principal Agreement.

In Witness whereof the Licensor Company have signed this Agreement by Heman Ely as Agent for them and on their behalf and Wolseley Motors Limited have hereto caused their Common Seal to be affixed the day and year first above written.

(Signed) Heman Ely.

Signed by the said Heman Ely in the presence of ——.

[fols. 5411-5416] The Common Seal of Wolseley Motors Limited was hereto affixed by order of the Board in the presence of ——.

—— ——, Directors; —— ——, Secretary.

[fol. 5417] DEFENDANT'S EXHIBIT 194

An Agreement made the Thirty-first day of December, One thousand nine hundred and twenty-four between The Timken Roller Bearing Company, a corporation organized under the Laws of the State of Ohio in the United States of America and having its office and principal place of business in the City of Canton in the State of Ohio aforesaid (hereinafter called "the Licensor Company") of the one part and British Timken Limited a Joint Stock Company incorporated under the Laws of Great Britain and having its registered office at Adderley Park Birmingham in the Kingdom of England (hereinafter called "the Licensee Company") of the other part

Supplemental to:

(1) An Agreement hereinafter referred to as "the First Principal Agreement") dated the Fourth day of August One thousand nine hundred and nine and made between the Licensor Company of the one part and The Electric and Ordnance Accessories Company Limited of the other part being an Agreement to grant Licenses for the manufacture and sale of Timken Roller Bearings in Europe outside the United Kingdom of Great Britain and Ireland and in the British Colonies Protectorates and Dependencies except the Dominion of Canada.

(2) An Agreement (hereinafter referred to as "the Second Principal Agreement") dated the Sixth day of April One thousand nine hundred and twenty and made between the Licensor Company of the one part and Wolseley Motors Limited of the other part whereby the terms and conditions of the First Principal Agreement were modified.

[fol. 5418] (3) An Agreement (hereinafter referred to as "the First French Agreement") dated the Twelfth day of July One thousand nine hundred and twenty-two and made between the Licensee Company of the one part and La Societe de Mecanique de Gennevilliers (hereinafter called "the French Company") of the other part being an agreement or Licence for the manufacture and sale of Timken Roller Bearings in France and its Colonies and

(4) An Agreement (hereinafter referred to as "the Second French Agreement") dated the twenty-ninth day of August One thousand nine hundred and twenty-four and made between the Licensee Company of the first part and

the Licensor Company of the second part and the French Company of the third part being an agreement which provides for the payment by the French Company direct to the Licensor Company of certain sums by way of royalty in substitution for like amounts which but for the Second French Agreement would have been payable by the French Company to the Licensee Company under the First French Agreement and like amounts which but for the Second French Agreement would have been payable by the Licensee Company to the Licensor Company under the First Principal Agreement.

Whereas the benefits and obligations of the Electric and Ordnance Accessories Company Limited under the First Principal Agreement with the consent of the Licensor Company were assigned by the Electric and Ordnance Accessories Company Limited to Wolseley Motors Limited previous to the date of the Second Principal Agreement and [fol. 5419] were assigned by Wolseley Motors Limited to the Licensee Company after the date of the Second Principal Agreement and previous to the date of the First French Agreement.

And whereas the parties hereto are desirous of further modifying the terms of the First Principal Agreement and of modifying the terms of the Second French Agreement as more particularly hereinafter appears.

Now these presents witness and it is hereby declared and agreed by and between the parties hereto as follows (namely):

1. The First Principal Agreement as modified by the Second Principal Agreement shall be further modified so far as necessary in order to give effect to the following provisions of this Agreement.

2. The royalty payable under Clause 20 of the First Principal Agreement shall be equal to Five per cent of the net invoice prices therein mentioned instead of Fifteen per cent.

3. The royalty payable by the French Company to the Licensor Company under the First French Agreement and under the Second French Agreement shall be reduced from Seven and a half per cent to Five per cent of the net invoice prices therein mentioned and the Licensor Company and the Licensee Company shall take such steps as may be

necessary to communicate and confirm such reduction to the French Company.

4. This Agreement shall take effect as from the First day of January One thousand nine hundred and twenty-four and the First Principal Agreement as modified by the Second Principal Agreement and this Agreement shall con-
[fol. 5420] tinue for a term of five years from the First day of January One thousand nine hundred and twenty-four and thereafter unless and until one party shall determine the same at the end of the said term of five years or at any time afterwards by at least six months previous notice in writing to the other party.

5. In the territories covered by the First Principal Agreement the name "Timken" shall belong exclusively to the Licensor Company and during the continuance of the First Principal Agreement as modified from time to time the Licensee Company and its sub-licensees shall be deemed to be using the said name as part of the subject matter of the Licence contained in the First Principal Agreement and shall have the right to use the said name accordingly and upon the expiration or other determination of the First Principal Agreement as modified from time to time the Licensee Company and its sub-licensees will cease to have any right in the said name or to make use of the same in any way and during the continuance and after the expiration or sooner determination of the First Principal Agreement as modified from time to time the Licensee Company will execute and do at the expense of the Licensor Company such acts and things as may be reasonably necessary to secure for the Licensor Company so far as practicable an exclusive right to use the said name in the said territories in connection with bearings and other products dealt in by the Licensor Company and to secure and protect so far as practicable the property and rights of the Licensor Company in the said territories in respect of the said name and
[fol. 5421] enable the Licensor Company to obtain or preserve in the said territories the exclusive right, aforesaid.

In witness whereof these presents have been signed by or on behalf of The Timken Roller Bearing Company and British Timken Limited have caused their common seal to be hereunto affixed the day and year first above written.

(Signed) Heman Ely, Vice President and Treasurer.

Witness to the signature of Heman Ely, Vice President and Treasurer for and on behalf of The Timken Roller Bearing Company

The Common Seal of British Timken Limited was affixed hereto by order of the Board in the presence of

—— ——, Directors. —— ——, Secretary.

[fol. 5422] Dated: 31st December, 1924.

The Timken Roller Bearing Company and British Timken Limited

Agreement with respect to the Continent of Europe and British Colonies

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[fol. 5423] DEFENDANT'S EXHIBIT 195

Memorandum

In consideration of an Agreement executed as of the First day of January One thousand nine hundred and twenty eight between The Timken Roller Bearing Company (hereinafter called "the American Company") and British Timken Limited (hereinafter called "the British Company")

It is hereby acknowledged by the above named companies that the Agreements specified in the Schedule hereunder written are all terminated and cancelled as from the First day of January One thousand nine hundred and twenty eight except as follows:

(a) All royalties and other monies which may be due and payable under these Agreements to the British Company or the American Company in respect of the period down to the First day of January One thousand nine hundred and twenty eight shall be paid and retained in accordance with such Agreements unaffected by the said Agreement dated the First day of January One thousand nine hundred and twenty eight

(b) The Agreements specified in Part II of the Schedule hereto shall continue in force so far as regards the French Company named in the said Schedule from the First day of

January One thousand nine hundred and twenty eight until the Agreement between the British Company and the French Company dated the Twelfth day of July One thousand nine hundred and twenty two is terminated on the Thirtieth day of June One thousand nine hundred and twenty eight except that the French Company has been relieved from the payment of all royalties which may be due and payable by the French Company to the British Company or the American Company under any Agreements in respect of the period after the First day of January One thousand nine hundred and twenty eight and down to such termination.

Dated this First day of January One thousand nine hundred and twenty eight.

The Schedule above referred to

Part I

(a) 1909, June 16, July 16—The Timken Roller Bearing Company (1) and The Electric and Ordnance Accessories Co. Ltd. (2) Agreement applying to the United Kingdom.

(b) 1920, April 6—The Timken Roller Bearing Com- [fol. 5424] pany (1) and Wolseley Motors Ltd. (2) Agreement modifying Agreement (a)

(c) 1925, Jan. 1—The Timken Roller Bearing Company (1) and British Timken Ltd. (2) Agreement modifying Agreements (a) and (b).

Part II

(d) 1909, June 16, July 16, Aug. 4—The Timken Roller Bearing Company (1) and The Electric and Ordnance Accessories Co. Ltd. (2) Agreement applying to countries on the Continent of Europe.

(e) 1920, April 6—The Timken Roller Bearing Company (1) and Wolseley Motors Ltd. (2) Agreement modifying Agreement (d)

(f) 1924, Aug. 29—British Timken Ltd. (1) The Timken Roller Bearing Company (2) La Societe Mecanique de Gennevilliers (3) Agreement with respect to royalties payable by the said Societie under an Agreement dated the 12th day of July 1922 between the said British Company (1) and the said French Company (2)

(g) 1924, Dec. 31—The Timken Roller Bearing Company (1) and British Timken Ltd. (2) Agreements modifying Agreements (d) and (e)

For The Timken Roller Bearing Company:
John Frederic Strough, Secretary and Treasurer.

For British Timken Limited:
M. B. U. Dewar, Managing Director.

[fol. 5425] Dated: 1st January 1928

The Timken Roller Bearing Company and British Timken Limited

Acknowledgement with respect to termination of existing Agreements

[fol. 5426] DEFENDANT'S EXHIBIT 196

This Agreement executed as of the First day of January One thousand nine hundred and twenty eight by and between The Timken Roller Bearing Company a Corporation having its principal office in the City of Canton, Ohio in the United States of America (hereinafter for convenience called "the American Company") and British Timken Limited having its registered office at Birmingham in the Kingdom of England (hereinafter for convenience called "the British Company").

Supplemental to another Agreement (hereinafter called "the Principal Agreement") already executed as of the same date by and between the same parties and providing inter alia for reciprocity in the matter of patent rights between the said parties in their respective territories in the Principal Agreement referred to as the territory of the American Company and the territory of the British Company respectively.

Now the parties hereto Agree as follows:

The Principal Agreement shall be read and take effect as if the following Section 2 and been included therein in the place of Section 2 of the Principal Agreement:

"2. (a) Each of the parties hereto will as fully and freely as its patent and contractual rights and obligations permit and free of expense to the other party except as to out-

of-pocket expenses inform the other party as to all inventions discoveries improvements and practices useful in connection with the manufacture of bearings whether patented or not.

(b) The American Company will so far as its patent and contractual rights and obligations permit and free of expense to the British Company except as to out-of-pocket expenses license the British Company to operate manufacture and sell bearings in the territory of the British Company during the life of this Agreement under any Letters Patent or other patent rights now or hereafter from time to time owned by the American Company and pertaining to the manufacture of sale of bearings in the territory of the British Company.

(c) The British Company will so far as its patent and contractual rights and obligations permit and free of expense to the American Company except as to out-of-pocket expenses assign absolutely and for all time to the Ameri- [fol. 5427] can Company or its nominees all Letters Patent or other patent rights now or hereafter from time to time owned by the British Company and pertaining to the manufacture or sale of bearings in the territory of the American Company.

(d) The British Company if and when requested by and at the expense of the American Company will execute and do or cause to be executed and done all deeds acts and things which the American Company may consider necessary or desirable in order that any inventions discoveries improvements or practices useful in connection with the manufacture of bearings which may come to the knowledge of the British Company and which the British Company shall be entitled to communicate to the American Company for this purpose may be protected by Letters Patent or other patent rights in such parts of the territory of the American Company and in such names as the American Company shall specify with a view to such patent rights being assigned to or otherwise vested in the American Company or its nominees in accordance with the provisions hereinbefore contained.

(e) The British Company hereby irrevocably appoints the American Company with power of substitution to be its Attorney for it and in its name and on its behalf but at the expense of the American Company to execute and do

all deeds acts and things which the American Company or its substitutes from time to time may consider necessary or desirable for the purpose of giving effect to the agreements on the part of the British Company contained in this Section.

(f) Provided however that nothing in this Agreement contained shall obligate either party to acquire or enlarge its interest in any Letters Patent or other patent rights."

In Witness whereof the Timken Roller Bearing Company by the authority of its Board of Directors has caused these presents to be executed in duplicate by its Secretary and its corporate Seal to be hereto affixed and British Timken Limited under the authority of its Board of Directors has caused its Common Seal to be affixed hereto in duplicate [fol. 5428] as of the day and year first above written.

The Common Seal of British Timken Limited was hereunto affixed in the presence of:

M. B. U. Dewar, Wm. Dallow, Directors; R. O. Squire, Secretary. (Seal.)

The Timken Roller Bearing Company by John Frederic Strough, Secretary & Treasurer. (Seal.)

[fol. 5429] Dated: 1st January, 1928

The Timken Roller Bearing Company and British Timken Limited

Supplemental Agreement

[fol. 5430] DEFENDANT'S EXHIBIT 197

Agreement between The Timken Roller Bearing Company of Canton, Ohio, U.S.A. (The American Company) British Timken Limited of London England (The British Company) and Michael Bruce Urquhart Dewar of London, England (Mr. Dewar).

1. The parties hereto undertake that they will so soon as practicable cause the following Agreements and other matters to be brought into force and made effective:

(a) New Articles of Association of the British Company as already approved.

(b) Bye laws of the British Company as to Voting, Directors &c, as already approved.

(c) Agreement between the British Company and Mr. Dewar as to Managing Directorship as already approved.

(d) Agreement between the American Company and Mr. Dewar as to options on shares in the British Company &c. as already approved.

(e) License Agreement between the American Company and the British Company as already approved.

(f) Reconstitution of Deutsche Timken G. M. b. H. (The German Company) in accordance with an Agreement which has been signed.

(g) Formation of a French Company upon terms to be agreed between Mr. Dewar and Mr. A. J. M. Duncan.

(h) License Agreement between the British Company and the German Company on the model of and in accordance with the License Agreement (e).

(i) License Agreement between the British Company and the French Company when formed on the model of and in accordance with the License Agreement (e).

Dated: March 13, 1928.

M. B. U. Dewar; The Timken Roller Bearing Company, by J. F. Strough, Secretary & Treasurer.

For British Timken Ltd. M. B. U. Dewar, Director; R. O. Squire, Secretary.

[fol. 5431] Dated: 1928

The Timken Roller Bearing Company

British Timken Limited and M. B. U. Dewar, Esquire

Copy

Draft. Agreement with respect to carrying into effect certain Agreements and other matters

Stibbard Gibson & Co., 21 Leadenhall Street, London, E.C.3.

[fol. 5432] DEFENDANT'S EXHIBIT 198

British Timken Limited

At an Extraordinary General Meeting of the above-named Company duly convened and held at 4, Central Buildings, Westminster, S. W., on Friday the 20th day of April, 1928, the following Resolutions were duly passed as Ordinary Resolutions, namely:

Ordinary Resolution No. 1

That pursuant to Article No. 64 of the Articles of Association of the Company and with the consent in writing under hand of the holders of a majority of the "A" shares at present issued and of the holders of a majority of the "B" shares at present issued (which consents have been read to this meeting) the following by-laws as to voting be and the same are hereby adopted.

By-laws as to Voting

1. For the purposes of these by-laws the expression "the first control period" shall mean the period from the date of the adoption of these by-laws until the date in or after the year 1929 of the holding of an ordinary meeting of the Company at which, for the first time either (i) accounts of the Company are submitted which show that during the financial year or period covered by such accounts the net profits earned by the Company for such year or period (before charging income tax or any other tax on profits) have been at a rate which is less than £15,000 per annum plus £15 per annum in respect of every sum of £100 paid up (whether by way of capital or premium) on any shares issued after the date of the adoption of these by-laws otherwise than by way of capitalisation of profits (hereinafter referred to as "the minimum rate of profits"); or (ii) no [fol. 5433] dividend is declared on any shares of the Company, or the dividend or dividends declared (including as dividends declared or part thereof any interim dividends already paid in respect of that year or period) are at a rate which does not require for the payment thereof (in the gross and subject to deduction of tax) a sum equal to five-sixths of the minimum rate of profits for such year or period.

2. No member other than a member holding "A" shares

or "B" shares shall be entitled to attend or vote at any meeting of the Company.

3. On a show of hands every member present in person and entitled to vote shall have one vote. For the purposes of this by-law a corporation represented at the meeting by a proxy or other duly authorised representative not being himself a member entiled to vote shall be deemed to be present thereat in person.

4. On a poll taken on an ordinary resolution

(i) During the first control period each "A" share shall carry four votes and each "B" share one vote only.

(ii) After the termination of the first control period, each "B" share shall carry four votes and each "A" share one vote only.

5. On a poll taken on an extraordinary or special resolution each "A" share and each "B" share shall carry one vote.

Ordinary Resolution No. 2

That pursuant to Article No. 74 of the Articles of Association of the Company and with the sanction in writing under hand of the holders of a majority of the "A" shares at present issued and of the holders of a majority of the "B" shares at present issued (which sanctions have been read to this meeting) the following by-laws as to Directors be and the same are hereby adopted.

[fol. 5434] By-laws as to Directors

1. For the purposes of these by-laws the expression "the first control period" shall have the same meaning as in the by-laws as to Voting adopted by the Company pursuant to Article 64.

2. The Directors shall not be less than three nor more than five in number.

3. The Directors shall be appointed either by the holders of the "A" shares or by the holders of the "B" shares and each of such classes of shareholders shall be entitled to appoint and be represented by two Directors and during the first control period the holders of the "A" shares and after the termination of such period the holders of the "B" shares shall be entitled to appoint and be represented by a third Director. The Company in general meeting shall have no power to appoint or remove Directors.

4. For the purpose of giving effect to the foregoing by-laws and subject to the foregoing limitations upon the number of Directors to be appointed by each class of shareholders the "A" shareholders or the "B" shareholders may at any time and from time to time appoint any person to be an "A" shareholders' Director or a "B" shareholders' Director (as the case may be) and (subject to the following by-law No. 6) remove from office any "A" shareholders' Director or any "B" shareholders' Director (as the case may be) and if thought fit appoint another Director in his place.

5. Of the present Directors Michael Bruce Urquhart Dewar and William Dallow shall be deemed to be "A" shareholders' Directors and Andrew Jameson Matthews Duncan shall be deemed to be a "B" shareholders' Director for all the purposes of these by-laws.

6. The said Michael Bruce Urquhart Dewar shall not be liable to removal from office as an "A" Shareholders' Director so long as he continues to hold not less than 20 per cent. of the share capital of the Company for the time being issued.

[fols. 5435-5436] 7. All appointments and removals of Directors by the holders of a class of shares under these by-laws shall be effected by writing under the hands of the holders of a majority of the issued shares of that class left at or sent to the Registered Office of the Company and shall take effect as and when such writing is received at such office.

8. Every Director appointed under these by-laws shall hold office until he is removed under the foregoing by-laws by the class of shareholders whom he represents or dies or vacates office under Article 76 of the Articles of Association. Provided that if at the termination of the first control period the "A" shareholders have their full representation upon the Board, they shall forthwith remove one of the "A" shareholders' Directors from office or procure one of them to resign office and in default of their so doing within seven days after the termination of the first control period the "B" shareholders may at any time thereafter by writing under the hands of the holders of a majority of the "B" shares for the time being issued remove from office one of the "A" shareholders' Directors to be selected by them and if so thought fit appoint another person to be a "B" shareholders' Director in his place.

9. The remuneration of the Directors shall be at such rate or of such amount as the Company in general meeting may from time to time by ordinary resolution with the sanction in writing under hand of the holders of a majority of the issued "A" shares and a majority of the issued "B" shares determine. Such remuneration shall in default of any direction to the contrary given by the resolution voting the same or of any agreement to the contrary between the Directors be divided between the Directors equally. A Director holding office for part only of a year shall be entitled to a proportionate part of a full year's remuneration. The Directors shall also be entitled to be repaid by the Company all such reasonable travelling (including hotel and incidental) expenses as they may incur in attending meetings of the Board, or of Committee of the Board, or general meetings, or which they may otherwise incur in or about the business of the Company.

10. Any Director who by request performs special services, or goes or resides abroad for any purposes of the Company, may be paid such extra remuneration by way of salary, percentage of profits or otherwise as the Board may determine.

[fol. 5437] DEFENDANT'S EXHIBIT 199

The Companies Acts, 1908 to 1917

Company Limited by Shares

Memorandum and Articles of Association of

British Timken Limited

Incorporated the 4th day of June, 1920

Linklaters & Paines, 2, Bond Court, Walbrook, E.C. 4.

[fol. 5438] Extraordinary Resolution

Of the Ordinary Shareholders of British Timken Limited

Passed 2nd day of February 1926

Filed 8th day of February, 1926

At an Extraordinary General Meeting of the ordinary shareholders of the above Company, duly convened and held at Adderley Park, Birmingham, on Tuesday, the 2nd

day of February, 1926, the following Extraordinary Resolution was duly passed:

Resolution

"That the Capital of the Company be increased to £100,000 by the creation of 50,000 new Shares of £1 each ranking for dividend and in all other respects *pari passu* with the existing Shares in the Company."

G. Ward Grazebrook, Chairman of Meeting.

[fol. 5439] The Companies Acts, 1908 to 1917

Company Limited by Shares

Memorandum of Association of British Timken Limited

1. The name of the Company is "BRITISH TIMKEN LIMITED."

2. The registered office of the Company will be situated in England.

3. The objects for which the Company is established are:

(a) To enter into and carry into effect, with or without modification, an agreement, a draft whereof has already been prepared and signed for identification by Mr. Gerald Lacy Addison, Solicitor, and which is expressed to be made between Wolseley Motors Limited of the one part and the Company of the other part, providing for the acquisition by the Company of the assets and rights therein more particularly defined.

(b) To manufacture, build, repair and deal in all parts of and accessories to motor cars and vehicles of every description, cycles, engines, chassis and bodies, and aircraft, including electric motors and other electric appliances, and all kinds of machinery, tools, appliances and materials for use in relation to the manufacture, running, storage and repair of motor cars, vehicles, cycles, engines, chassis, bodies and aircraft [fol. 5440] respectively, or the parts or accessories thereof respectively, and to apply for and take out letters patent in connection therewith.

(c) To supply and deal in petrol and other volatile oils and spirits, and all kinds of lubricating oils and other lubricants and all kinds of fuel for developing locomotive power.

(d) To manufacture, supply and deal in all kinds of personal and other equipment for the use of drivers, tourists and the public generally, for use in connection with motor cars, aircraft, including (without prejudice to the generality of this clause) wearing apparel and maps and guide books.

(e) To carry on business as mechanical and electrical engineers, and to buy, sell, manufacture, repair and deal in machinery, metals, implements and hardware of all kinds.

(f) To acquire by grant, purchase, licence, or exchange, and to use, work and sell or otherwise turn to account any patent or patent rights, *brevets d'invention*, or other rights which may be deemed to be in the interests of the Company.

(g) To purchase, take on lease, or otherwise acquire and undertake, all or any part of the business, property and liabilities of any person or company carrying on any business which the Company is authorised to carry on, or possessed of property suitable for the purposes of the Company, and to acquire, hold and deal in the shares or securities of any such company or of any other company whatsoever.

(h) To remunerate any person or company for services rendered or to be rendered, in placing, or assisting to place, or guaranteeing the placing of any of the shares of the Company's capital, or any debentures or other securities of the Company, or in or about the formation or promotion of the Company, or the conduct of its business, or of any other company promoted or financed by this Company.

[fol. 5441] (i) To purchase, take on lease, or in exchange, hire or otherwise acquire, any real or personal property and any rights or privileges which the Company may think necessary or convenient for the purposes of its business, and to construct, maintain and alter any buildings or works necessary or convenient for the purposes of the Company.

(j) To borrow or raise money on mortgage, debentures or debenture stock, or in such other manner as the Company shall think fit, and to charge all or any of the Company's property or assets, present or future, including its uncalled capital, and to lend money on such terms as to repayment or otherwise as may be

necessary or convenient for the purposes of the Company.

(k) To subscribe for, take, purchase, or otherwise acquire and hold, shares or other interests in, or securities of, any other company having objects altogether or in part similar to those of this Company, or carrying on any business capable of being conducted so as directly or indirectly to benefit this Company, or to promote such company.

(l) To pay all expenses of and in connection with the incorporation or promotion of this or any other company which this Company is hereinbefore authorised to promote, and the obtaining the subscription of any shares or securities thereof, and procuring or obtaining settlements and quotations upon the London or Foreign, Colonial or Provincial Stock Exchanges of any such shares or securities.

(m) To draw, make, accept, indorse, discount, execute, and issue promissory notes, bills of exchange, bills of lading, warrants, debentures or other securities of the Company.

(n) To sell or dispose of the undertaking of the Company or any part thereof in such manner and for such consideration as the Company may think fit, and in particular for shares (either fully or partly paid [fol. 5442] up), debentures or securities of any other company, and to improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company.

(o) To distribute among the Members of the Company in kind any property of the Company, and in particular any shares, debentures, or securities of other companies belonging to this Company, or of which this Company may have the power of disposing.

(p) To do all such other things as are incidental or the Company may think conducive to the attainment of the above objects or any of them.

4. The liability of the Members is limited.

5. The capital of the Company is £50,000, divided into 50,000 shares of £1 each.

Any of the said shares for the time being unissued, and any new shares from time to time to be created, may from

time to time be issued with such preferred, deferred or other special rights, or such restrictions, whether in respect of dividend, voting return of capital or otherwise, as the Company may from time to time by Special Resolution determine, but so that the special rights or privileges belonging to the holders of any shares issued with preferred or other special rights shall not be affected, modified, abrogated or dealt with, except with such sanction as is provided by the Articles of Association of the Company for the time being.

[fol. 5443] We, the several persons whose names, addresses, and descriptions are subscribed are desirous of being formed into a Company in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite to our respective names.

Names, Addresses and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
ARTHUR JOHN McCORMACK, Middle Park, Paignton. Director of Public Company.	One
GEORGE WARE GRAZEBROOK, Greys Mallory, Warwick. Director of Public Company.	One

Dated the 1st day of June, 1920.

Witness to the above Signatures—

J. F. English, 581, Bordesley Green, Birmingham.
Commercial Clerk.

[fol. 5444] British Timken Limited

At an Extraordinary General Meeting of the above-named Company duly convened and held at 4, Central Buildings, Westminster, on Thursday the 5th day of April, 1928, the subjoined resolutions were duly passed, and at a subsequent Extraordinary General Meeting duly convened and held at the same place on Friday the 20th day of April, 1928, the Resolutions were duly confirmed as Special Resolutions, viz:—

Resolutions

1. That the 100,000 shares of £1 each in the present capital of the Company be divided into 50,000 "A" shares and 50,000 "B" shares, the "A" shares to consist of the 25,000 issued shares at present Numbered 1 to 13,502 inclu-

sive and 23,753 to 35,250 inclusive (to be re-numbered A1 to A25,000 inclusive) and 25,000 of the unissued shares, and the "B" shares to consist of the 25,000 issued shares at present numbered 13,503 to 23,752 inclusive and 35,251 to 50,000 inclusive (to be re-numbered B1 to B25,000 inclusive) and the remaining 25,000 unissued shares.

2. That the "A" shares and the "B" shares in the capital of the Company do confer upon the holders thereof respectively the special rights and privileges expressed to be annexed to the same by the new Articles of Association adopted by resolution passed and confirmed at the meetings at which this resolution is passed and confirmed respectively or by any by-laws made pursuant thereto and for the time being in force.

3. That the Articles of Association contained in the printed document which has been laid before this meeting and subscribed for identification by the Chairman be and the same are hereby adopted as the Articles of Association of the Company in substitution for and to the exclusion of all existing Articles of Association and regulations thereof.

M. B. U. Dewar, Chairman.

[fol. 5445] The Companies Acts, 1908 to 1917

Company Limited by Shares

Articles of Association of British Timken Limited
Adopted by Special Resolution passed and confirmed the 5th day of April and the 20th day of April, 1928

Preliminary

1. The regulations in Table "A" in the first schedule to the Companies (Consolidation) Act, 1908, shall not apply to the Company.

2. In these presents, if not inconsistent with the subject or context, the words standing in the first column of the table next hereinafter contained shall bear the meanings set opposite to them respectively in the second column thereof.

Words.	Meanings.
The Statutes.	The Companies Acts, 1908 to 1917, and every other Act for the time being in force concerning joint stock companies and affecting the Company.
The Act.	The Companies (Consolidation) Act, 1908.
These presents.	These Articles of Association, as originally framed, or as from time to time altered by special resolution.

[fol. 5446]

The Office.	The Registered Office of the Company.
The Seal.	The Common Seal of the Company.
The United Kingdom.	Great Britain and Northern and Southern Ireland.
Year.	Year from the 1st January to the 31st December inclusive.
In writing.	Written, or expressed by any substitute for writing, or partly one and partly the other.
Writing under hand.	In the case of a corporation a writing signed on behalf of the Corporation by its secretary or some other person duly authorised to sign on behalf of the Corporation.

And the expressions "Debenture" and "Debenture Holder" shall include "Debenture Stock" and "Debenture Stockholder," and the expression "Secretary" shall include a temporary or assistant Secretary and any person appointed by the Directors to perform any of the duties of the Secretary.

Save as aforesaid any words or expressions defined in the Statutes shall, if not inconsistent with the subject or context, bear the same meaning in these presents.

Private Company

3. The Company is a Private Company and accordingly:—

(a) The right to transfer shares in the Company shall be restricted in manner hereinafter appearing.

(b) The number of members of the Company (exclusive of persons who are in the employment of the Com-
[fol. 5447] pany, and of persons who, having been formerly in the employment of the Company, were, whilst in such employment, and have continued after the determination of such employment to be, members of the Company) shall be limited to fifty; provided that where two or more persons hold one or more shares in the Company jointly they shall for the purposes of this paragraph be treated as a single member.

(c) No invitation shall be given to the public to subscribe for any shares or debentures of the Company.

Business

4. Any branch or kind of business, which the Company is either expressly or by implication authorised to undertake, may be undertaken by the Directors at such time or times

as they may think fit, and further may be suffered by them to be in abeyance, whether such branch or kind of business may have been actually commenced or not, so long as the Directors may deem it expedient not to commence or proceed with the same.

5. No part of the funds of the Company shall be employed in the purchase of or in loans upon the security of the Company's shares.

Capital

6. The share capital of the Company at the date of the adoption of these Articles is £100,000 divided into 50,000 "A" shares and 50,000 "B" shares of £1 each of which 25,000 "A" shares and 25,000 "B" shares have been issued. The "A" and the "B" shares shall confer upon the holders thereof respectively the special rights or privileges as regards voting, appointing directors and otherwise conferred by or pursuant to these presents, but except as otherwise provided by or pursuant to these presents the "A" and the "B" shares shall rank *pari passu* as a single class of Ordinary Shares and the expression "Ordinary Shares" as hereinafter used means and includes both the "A" shares and the "B" shares.

[fol. 5448] Modification of Rights

7. The special rights attached to the "A" shares and the "B" shares respectively may, with the consent in writing under hand of the holders of a majority of the said shares of each class for the time being issued (but not otherwise), be modified or abrogated, and may be so modified or abrogated either whilst the Company is a going concern or during or in contemplation of a winding up. The special rights attached to any other class of shares in the Company's capital at any time issued with special rights may be modified or abrogated either with the consent in writing under hand of the holders of three-fourths of the shares of the class for the time being issued or with the sanction of an extraordinary resolution passed at a separate general meeting of such holders, but not otherwise. To every separate general meeting of any class of shareholders (whether held pursuant to this article or to any other provision of these presents) all the provisions of these presents relating to general meetings or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall

be two persons at least holding or representing by proxy one-tenth of nominal amount of the shares of the class for the time being issued (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those members who are present shall be a quorum), and that the holders of shares of the class shall, on a poll, have one vote in respect of every share of the class held by them respectively.

Shares

8. Except as otherwise authorized by writing under the hands of the holders of a majority of the "A" shares for the time being issued and of the holders of a majority of the "B" shares for the time being issued, no further shares shall be issued unless the further shares so issued shall consist of equal numbers of "A" shares and "B" shares and unless the further "A" shares so issued are issued to the holders of the "A" shares for the time being issued in proportion to the numbers of the "A" shares for the time being held by them respectively and unless the further "B" shares so issued are issued to the holders of the "B" shares for the time being issued in proportion to the numbers of the "B" shares for the time being held by them respectively.

[fol. 5449] 9. Subject to the provisions of the last preceding Article and to any other express provision of these presents the shares shall be at the disposal of the Directors, and they may allot, grant options over, or otherwise dispose of them to such persons, at such times, and on such terms as they think proper. The Directors shall, as regards any allotment of shares, comply with the provisions of section 88 of the Act, if and so far as such provisions may be applicable thereto.

10. The Company (or the Directors or behalf of the Company) may exercise the powers of paying commissions conferred by section 89 of the Act. Provided that the rate per-cent. or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section, and shall not exceed the rate of 20 per cent. of the nominal amount of the shares in respect whereof the same is paid, or an amount equal to 20 per cent. of the nominal amount of such shares (as the case may be). The Company (or the Directors on behalf of the Company) may

also on any issue of shares pay such brokerage as may be lawful.

11. If any shares of the Company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings, or the provision of any plant which cannot be made profitable for a lengthened period, the Company (or the Directors on behalf of the Company) may, subject to the conditions and restrictions mentioned in section 91 of the Act, pay interest on so much of such share capital as is for the time being paid up, and may charge the same to capital as part of the cost of construction of the works, buildings or plant.

12. No person shall be recognised by the Company as holding any share upon any trust, and the Company shall not be bound by or recognise any equitable, contingent, future or partial interest in any share, or any interest in any fractional part of a share, or (except only as by these presents otherwise provided) any other right in respect of any share, except an absolute right to the entirety thereof in the registered holder.

13. Every person whose name is entered as a member in the register of members shall be entitled without payment to one certificate for all his shares, or upon payment of [fol. 5450] such sum, not exceeding 1s., for every certificate after the first as the Directors shall from time to time determine, to several certificates, each for one or more of his shares. Every certificate shall be issued under the seal, and shall bear the signatures of one or more Directors and the Secretary, and shall specify the shares to which it relates, and the amount paid up thereon. Provided that in the case of a share held jointly by several persons, the Company shall not be bound to issue more than one certificate therefor, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

14. If a share certificate be defaced, lost or destroyed, it may be renewed on payment of such fee (if any), not exceeding 1s., and on such terms (if any) as to evidence and indemnity as the Directors think fit.

Lien

15. The Company shall have a lien on every share (not being a fully paid share) for all moneys, whether presently payable or not, called or payable at a fixed time in re-

spect of such share; and the Company shall also have a first and paramount lien and charge on all shares standing registered in the name of a single member for all the debts and liabilities of such member or his estate to the Company, and that whether the same shall have been incurred before or after notice to the Company of any equitable or other interest in any person other than such member and whether the period for the payment or discharge of the same shall have actually arrived or not, and notwithstanding that the same are joint debts or liabilities of such member or his estate and any other person, whether a member of the Company or not. The Company's lien (if any) on a share shall extend to all dividends payable thereon.

16. The Company may sell, in such manner as the Directors think fit, any shares on which the Company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of the sum presently payable, and giving notice of intention to sell in default, shall have been given to the holder for the time being of the share or the person entitled by reason of his death or bankruptcy to the share.

[fol. 5451] 17. The proceeds of sale shall be applied in or towards payment or satisfaction of the debt or liability in respect whereof the lien exists, so far as the same is presently payable, and any residue shall (subject to a like lien for debts or liabilities not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the time of the sale. The purchaser shall be registered as the holder of the shares and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares

18. The Directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, and each member shall (subject to receiving at least one month's notice specifying the time or times and place of payment) pay to the Company at the time or times and place so specified the amount called on his shares.

19. A call shall be deemed to have been made at the time when the resolution of the Directors authorising the call was passed.

20. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

21. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate, not exceeding 10 per cent. per annum, as the Directors determine, but the Directors shall be at liberty to waive payment of such interest wholly or in part.

22. Any sum which by the terms of issue of a share becomes payable upon allotment or at any fixed date, whether on account of the amount of the share or by way of premium, shall for all the purposes of these presents be deemed to be a call duly made and payable on the date on which, by the terms of issue, the same becomes payable, and in case of non-payment all the relevant provisions of these presents [fol. 5452] as to payment of interest and expenses, forfeiture or otherwise, shall apply as if such sum had become payable by virtue of a call duly made and notified.

23. The Directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid, and in the times of payment.

24. The Directors may, if they think fit, receive from any shareholder willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced, may (until the same would but for such advance become presently payable), pay interest at such rate, not exceeding (unless the Company in general meeting shall otherwise direct) 10 per cent. per annum, as may be agreed upon between the Directors and the shareholder paying such sum in advance.

Transfer of Shares

25. Any share may at any time be transferred to a person who is already a member or (with the consent in writing of the holders of a majority of the shares for the time being issued other than those held by the transferor) to a person who is not already a member.

26. Except in the case of a transfer of shares expressly authorized by the last preceding article, the right to transfer shares in the Company shall be subject to the following restrictions, namely:—

(a) Before transferring or requiring the Company to register a transfer of any shares the person, whether a member of the Company or not, proposing to transfer the same (hereinafter called "a retiring member") shall give a notice in writing (hereinafter called "a transfer notice") to the Company, that he desires to transfer the same. The transfer notice shall state the price per share which the retiring member is willing to accept for the shares comprised therein and shall constitute the Company his agent for the sale of the [fol. 5453] shares therein mentioned or any of such shares at that price (hereinafter called "the prescribed price") to any member of the Company. A transfer notice once given shall not be revocable except with the consent of the Company during the next 90 days following the day on which the notice is given. Shares of different classes shall not be included in the same transfer notice, and a transfer notice which includes shares of different classes may be treated as invalid.

(b) If the Company, within a period of 90 days after receiving a transfer notice shall find members (hereinafter called "purchasers") willing to purchase the shares therein mentioned, or any of such shares, and shall give notice in writing thereof to the retiring member, he shall be bound, upon payment of the prescribed price, to transfer the shares mentioned in the transfer notice, or those for which the Company has found purchasers, to the respective purchasers thereof.

(c) Every notice given by the Company under paragraph (b) stating that it has found a purchaser for any shares shall state the name and address of the purchaser and the number of shares agreed to be purchased by him, and the purchase shall be completed at a place and time to be appointed by the Company, not being more than 28 days after the date on which the notice is given.

(d) If in any case a retiring member, after having become bound to transfer any shares to a purchaser, shall make default in transferring the shares, the Com-

pany may receive the purchase money, and shall thereupon cause the name of the purchaser to be entered in the register as the holder of the shares, and shall hold the purchase money in trust for the retiring member. The receipt of the Company for the purchase money shall be a good discharge to the purchaser, and he shall not be bound to see to the application thereof, and after the name of the purchaser has been entered in the register in purported exercise of the aforesaid [fol.5454] powers, the validity of the proceedings shall not be questioned by any person.

(e) If the Company shall not within a period of 90 days after receiving a transfer notice find members willing to purchase all the shares mentioned in the transfer notice, and give notice in writing thereof to the retiring member, or if the Company shall within the period aforesaid give to the retiring member notice in writing that the Company has no prospect of finding purchasers for such shares, or any of them, the retiring member shall at any time within one month after receiving such notice or the expiration of the said period of 90 days (as the case may be) be at liberty (subject only to the restrictions contained in article 32) to transfer the shares, or those for which the Company has not found purchasers, to any person on a *bona fide* sale of such shares at any price not being less than the prescribed price, but so that before passing any such transfer the Directors may require to be satisfied in such manner as they may reasonably require that the shares included in the transfer notice are being transferred in pursuance of a *bona fide* sale for the consideration stated in the transfer without any deduction, rebate allowance or benefit whatsoever to the purchaser.

(f) All shares included in a transfer notice shall be offered by the Company in the first instance for sale at the prescribed price to all members holding Ordinary Shares (other than the member giving the transfer notice) on the terms and so that in case of competition the shares so offered shall be sold to the members accepting the offer in proportion (as nearly as may be and without increasing the number sold to any member beyond the number applied for by him) to their existing holdings of Ordinary Shares. All offers of shares under this paragraph shall be made by

writing sent through the post in prepaid registered letters addressed to the members at their respective registered addresses as appearing in the register and every such offer shall limit a period of 60 days from the posting of the letters containing the same within [fol. 5455] which the offer must be accepted or in default will be treated as declined.

27. The legal personal representatives of any member dying shall be bound at any time after the expiration of six months from the date of his death, if and when called upon in writing by the Directors so to do, either to apply to be themselves registered as holders of or to give a transfer notice in respect of all the shares registered in the name of the deceased member at the date of his death, or such of the same as still remain so registered, and should such legal personal representatives fail either to apply to be so registered or to give such transfer notice within a period of 14 days after being so called upon, they shall be deemed to have given such transfer notice at the expiration of the said period of 14 days and the provisions of these presents shall have effect accordingly.

28. If any member shall be adjudged bankrupt, his trustee in bankruptcy shall be bound forthwith to give to the Company a transfer notice in respect of all the shares registered in the name of the bankrupt member, and in default of such transfer notice being given within one month of the bankruptcy, the trustee in bankruptcy shall be deemed to have given such notice at the expiration of the said period of one month and the provisions of these presents shall have effect accordingly.

29. The "prescribed price" for any shares of any class included in a transfer notice deemed to be given under either of the two last preceeding articles shall be such sum as the auditors of the Company shall by certificate made at the request of the Directors certify to be, in their opinion, the fair value of a share of that class in the Company.

30. All transfers of shares shall be effected by transfer in writing in the usual common form.

31. The instrument of transfer of a share shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members in respect thereof.

[fol. 5456] 32. The Directors may, in their discretion, and without assigning any reason therefor, decline to register any transfer of shares not being a transfer expressly authorised by Article 25.

33. The Directors may also decline to recognise any instrument of transfer, unless

(a) Such fee, not exceeding 2s. 6d., as the Directors may from time to time require is paid to the Company in respect thereof; and

(b) The instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer.

34. The register of transfers may be closed at such times and for such period as the Directors may from time to time determine, provided always that it shall not be closed for more than thirty days in any year.

35. There shall be paid to the Company in respect of the registration of any probate, letters of administration, certificate of marriage or death, power of attorney or other document relating to or affecting the title to any shares such fee, not exceeding 2s. 6d., as the Directors may from time to time require or prescribe.

Transmission of Shares

36. In case of the death of a shareholder the survivors or survivor where the deceased was a joint holder, and the executors or administrators of the deceased where he was a sole holder, shall be the only persons recognised by the Company as having any title to his shares, but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share jointly held by him.

37. The executors or administrators of a deceased sole holder of shares shall be entitled upon such evidence as to their title being produced as may from time to time be [fol. 5457] required by the Directors and upon their claiming such registration by notice in writing to the Company, to be registered themselves as holders of the shares of the deceased member. They shall also be entitled, unless and until they shall have been so registered themselves and sub-

ject to the restrictions on transfer of shares hereinbefore contained, to sell and transfer the shares of the deceased member.

38. The Trustee in bankruptcy of a member becoming bankrupt shall not be entitled to be registered himself as holder of the shares of the bankrupt member but shall be entitled, subject to the restrictions on transfers of shares hereinbefore contained, to sell and transfer the same.

39. A person becoming entitled to a share in consequence of the death or bankruptcy of a member shall be entitled to receive and may give a discharge for all dividends and other moneys payable in respect of the share, but he shall not be entitled to receive notices of or to attend or vote at meetings of the Company or save as aforesaid to any of the rights or privileges of a member unless and until he shall have become a member in respect of the share.

Forfeiture of Shares

40. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the Directors may at any time thereafter, during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest and expenses which may have accrued.

41. The notice shall name a further day on or before which and the place where the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time and at the place appointed the shares on which the call was made will be liable to be forfeited.

42. If the requirements of any such notice as aforesaid are not complied with any share in respect of which such notice has been given may at any time thereafter before payment of all calls and interest and expenses due in re-
[fol. 5458] spect thereof has been made be forfeited by a resolution of the Directors to that effect.

43. A forfeited share may be sold, re-allotted or otherwise disposed of, either to the person who was before forfeiture the holder thereof or entitled thereto, or to any other person, upon such terms and in such manner as the Directors shall think fit, and at any time before a sale or

disposition the forfeiture may be cancelled on such terms as the Directors think fit.

44. A shareholder whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall notwithstanding the forfeiture remain liable to pay to the Company all moneys which at the date of forfeiture were presently payable by him to the Company in respect of the shares, with interest thereon at seven per cent. per annum from the date of forfeiture until payment.

45. A statutory declaration in writing that the declarant is a Director of the Company and that a share has been duly forfeited on a date stated in the declaration shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and such declaration and the receipt of the Company for the consideration (if any) given for the share on the sale or disposal thereof shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money (if any), nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

Increase of Capital

46. The Company in general meeting from time to time with the sanction in writing under hand of the holders of a majority of the "A" shares for the time being issued, and the holders of a majority of the "B" shares for the time being issued (but not otherwise), may increase its capital by such sum to be divided into shares of such classes and amounts as the resolution of the General Meeting shall prescribe.

[fol. 5459] 47. The new shares shall be subject to the same provisions with reference to payment of calls, lien, transfer, transmission, forfeiture and otherwise, as the shares in the present capital.

Alterations of Capital

48. The Company in general meeting with the sanction in writing under hand of the holders of a majority of the "A" shares for the time being issued and of the holders

of a majority of the "B" shares for the time being issued (but not otherwise) may by ordinary resolution—

(a) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares.

(b) Cancel any shares which, at the date of the passing of the resolution, have not been taken, or agreed to be taken, by any person, and diminish the amount of its capital by the amount of the shares so cancelled.

And may by special resolution—

(c) Sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum of Association (subject, nevertheless, to the provisions of section 41 (1) (d) of the Act), and so that the special resolution whereby any share is sub-divided may with the sanction aforesaid determine that, as between the holders of the shares resulting from such sub-division, one or more of the shares shall have any such preferred or other special rights, or shall have such deferred rights, or shall be subject to such restrictions as compared with the others as the Company has power to attach to unissued or new shares.

(d) Reduce its capital in any manner authorised by law.

General Meetings

49. A General Meeting shall be held in every year, at such time (within a period of not more than fifteen months after the holding of the last preceding general meeting) and [fol. 5460] place as may be determined by the Directors. The general meetings referred to in this article shall be called ordinary meetings. All other general meetings shall be called extraordinary meetings.

50. The Directors may call an extraordinary meeting whenever they think fit, and shall, on the requisition, in accordance with section 66 of the Act, of the holders of not less than one-tenth of the issued capital of the Company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary meeting.

Notice of General Meetings

51. Seven days' notice at the least (inclusive of the day on which the notice is served or deemed to be served and

of the day for which the notice is given) specifying the place, the day, and the hour of meeting, and in case of special business, the general nature of such business, shall be given in manner hereinafter mentioned to such members as are, under the provisions herein contained, entitled to receive notices from the Company. With the consent in writing under hand of all the members entitled to receive notices from the Company, a meeting may be convened by a shorter notice and in such manner as such members may think fit.

52. The accidental omission to give notice to, or the non-receipt of notice by, any member, shall not invalidate the proceedings at any general meeting.

53. Whenever it is intended to pass a special resolution the two meetings may be convened by one and the same notice, and it shall be no objection that the notice only convenes the second meeting contingently on the resolution being passed by the requisite majority at the first meeting.

Proceedings at General Meetings

54. All business shall be deemed special that is transacted at an extraordinary meeting, and also all business that is transacted at an ordinary meeting, with the exception of sanctioning dividends, the consideration of the accounts and balance sheet and the ordinary reports of the [fol. 5461] Directors and Auditors, the election of Auditors and other officers in the place of those retiring, and the fixing of the remuneration of the Auditors.

55. No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. Two members present in person shall be a quorum for all purposes.

56. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum is not present within fifteen minutes from the time appointed for holding the meeting, the meeting shall be dissolved.

57. The chairman (if any) of the Board of Directors shall preside as chairman at every general meeting of the Company. If there be no such chairman, or if at any meeting

he be not present within fifteen minutes after the time appointed for holding the meeting, or be unwilling to act as chairman, the members present shall choose some Director, or if no Director be present, or if all the Directors present decline to take the chair, they shall choose some member present to be chairman.

58. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

59. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by some member present in person or by proxy and entitled to vote. Unless a poll is [fol. 5462] so demanded, a declaration by the chairman that a resolution has been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book shall be conclusive evidence of the fact without proof of the number of proportion of the votes recorded in favour of or against such resolution.

60. If a poll is duly demanded, it shall be taken in such manner as the chairman may direct, and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

61. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a second or casting vote.

62. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time and place as the chairman directs.

63. The demand for a poll shall not prevent the continu-

ance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

Votes of Members

64. The Company in General Meeting with the consent in writing under hand of the holders of a majority of the "A" shares for the time being issued, and the holders of a majority of the "B" shares for the time being issued, may by ordinary resolution adopt, and from time to time rescind or vary by-laws prescribing the rights of attending and voting at General Meetings of the Company to be conferred by or attached to the different classes of shares in the Company's capital. Any by-laws so adopted and for the time being in force shall be as effective and binding upon the Company and all its members as though the provisions thereof were incorporated in these presents. Subject to the provisions of any by-laws of the Company [fol. 5463] adopted pursuant to this article and for the time being in force, on a show of hands every member who (being an individual) is present in person or (being a corporation) is present by a proxy not being himself a member, shall have one vote, and on a poll every member who is present in person or by proxy shall have one vote for every share of which he is the holder.

65. In the case of joint holders of a share the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

66. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, *curator bonis*, or other person in the nature of a committee or *curator bonis* appointed by such Court, and such committee, *curator bonis*, or other person may on a poll vote by proxy.

67. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the Company have been paid.

68. On a poll votes may be given either personally or by proxy.

69. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney

duly authorised in writing, or if the appointor is a corporation either under the common seal or under the hand of an officer or attorney so authorised.

70. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy or he is appointed to act at that meeting as proxy for a corporation.

[fol. 5464] 71. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of such power or authority, shall be deposited at the office not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of 12 months from the date named in it as the date of its execution.

72. An instrument of proxy may be in the following form, or in any other form which the Directors shall approve.

British Timken Limited

I —— of —— being a member of the above named Company hereby appoint —— of —— or failing him ——of —— as my proxy to vote for me, and on my behalf, at the ordinary [*or* extraordinary *as the case may be*] general meeting of the Company to be held on the —— day of ——, 19—, and at any adjournment thereof.

As Witness my hand this —— day of —— 19 —.

73. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or revocation of the proxy, or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the Company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Directors

74. The Company in General Meeting with the sanction in writing under hand of the holders of a majority of the

[fol. 5465] "A" shares for the time being issued and of the holders of a majority of the "B" shares for the time being issued, may by ordinary resolution adopt and from time to time rescind or vary by-laws prescribing the maximum and minimum number of directors, and prescribing and regulating the appointment, removal and remuneration of the directors, and if thought fit their retirement by rotation or otherwise. Any by-laws so adopted and for the time being in force shall be as effective and binding upon the Company and all its members as though the provisions thereof were incorporated in these presents, and so long as any such by-laws are in force directors shall only be appointed and removed from office and be subject (if at all) to retirement by rotation or otherwise as thereby provided.

75. If and whenever there are no by-laws in force adopted pursuant to the last preceding article, the number of the directors shall not be less than three and the Company in General Meeting may by ordinary resolution appoint directors and fix their remuneration and by extraordinary resolution remove any director from office.

76. The office of a Director shall be vacated in any of the following events, namely:—

(A) If (subject as regards a Managing Director to the provisions of any contract between him and the Company) he resign his office by writing under his hand left at the office.

(B) If he become bankrupt or compound with his creditors.

(C) If he be found lunatic or become of unsound mind.

(D) If he be incapacitated by ill-health from performing his duties for a continuous period of six months, and the Directors resolve that his office be vacated.

(E) If he be convicted of an indictable offence.

77. A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with his office of Director, and no Direc-
[fol. 5466] tor or intending Director shall be disqualified by his office from contracting with the Company, either with regard to his tenure of any such other office or place of profit, or as vendor, purchaser or otherwise, nor shall any

such contract, or any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realized by any such contract or arrangement by reason of such Director holding that office, or of the fiduciary relation thereby established, but the nature of his interest shall be disclosed by him at the meeting of the Directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the Directors after the acquisition of his interest. Provided, nevertheless, that a Director shall not vote in respect of any contract or arrangement in which he is so interested, and if he shall do so his vote shall not be counted, but this prohibition shall not apply to any arrangement for giving any Director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the Company, nor to any contract by a Director to subscribe for or underwrite shares or debentures of the Company, and it may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by extraordinary resolution of the Company in general meeting.

Powers of Directors

78. The business of the Company shall be managed by the Directors, who may exercise all such powers of the Company as are not by the statutes or by these presents required to be exercised by the Company in general meeting, subject nevertheless to any regulations of these presents, to the provisions of the statutes, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by extraordinary resolution of the Company in general meeting, but no regulation made by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made. The general powers given by this article shall not be limited or restricted by any special authority or power given to the Directors by any other article.

[fol. 5467] 79. The Directors may establish any local boards or agencies for managing any of the affairs of the

Company, either in the United Kingdom or elsewhere, and may appoint any persons to be members of such local boards, or any managers or agents, and may fix their remuneration, and may delegate to any local board, manager or agent any of the powers, authorities and discretions vested in the Directors, with power to sub-delegate, and may authorise the members of any local board, or any of them, to fill any vacancies therein, and to act notwithstanding vacancies, and any such appointment or delegation may be made upon such terms and subject to such conditions as the Directors may think fit, and the Directors may remove any person so appointed, and may annul or vary any such delegation, but no person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.

80. The Directors may from time to time and at any time by power of attorney under the seal appoint any company, firm or person or any fluctuating body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attornies of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these presents) and for such period and subject to such conditions as they may think fit, and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions vested in him.

81. The Company may exercise the powers conferred by section 79 of the Act with regard to having an official seal for use abroad, and such powers shall be vested in the Directors.

82. The Directors may exercise all the powers of the Company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital, and to issue bonds, debentures, debenture stock, and other securities. Provided that no bonds, debentures, debenture stock or other securities in the nature of loan capital shall be issued without the sanction in writing under hand of the holders of a majority of the "A" shares for the time being issued and of the holders of a majority of the "B" shares for the [fol. 5468] time being issued, but so that nothing herein contained shall be held to restrict the power of the Direc-

tors to obtain (without such sanction) temporary loans from the Company's bankers and others in the ordinary course of business or to create mortgages or charges upon the Company's undertaking or property and to issue debentures or other securities for securing the same.

83. All cheques, promissory notes, drafts, bills of exchange, and other negotiable or transferable instruments, and all receipts for moneys paid to the Company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the Directors shall from time to time by resolution determine.

Managing Director

84. The Directors may from time to time appoint one or more of their body to the office of Managing Director for such period and on such terms as they think fit. Provided that a Managing Director shall *ipso facto* vacate office as such if he cease from any cause to be a Director, or (subject to the terms of any contract between him and the Company) if the Directors resolve that his term of office as Managing Director be determined.

85. A Managing Director shall receive such remuneration (whether by way of salary, commission, or participation in profits, or partly in one way and partly in another) as the Directors may determine, but so that such remuneration shall not exceed such rate or amount as from time to time shall be sanctioned by writing under hand of the holders of a majority of the "A" shares for the time being issued and of the holders of a majority of the "B" shares for the time being issued.

86. The Directors may entrust to and confer upon a Managing Director any of the powers exercisable by them as Directors upon such terms and conditions and with such restrictions as they think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

[fol. 5469] Proceedings of Directors

87. The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. A Director may, and the Secretary on the

requisition of a Director shall, at any time summon a meeting of the Directors. It shall not be necessary to give notice of a meeting of Directors to any Director for the time being absent from the United Kingdom.

88. Questions arising at any meeting shall be determined by a majority of votes and in case of an equality of votes the Chairman shall have a casting vote.

89. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed at any other number shall be two.

90. The continuing Directors or a sole continuing Director may act notwithstanding any vacancies in the Board.

91. The Directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman be elected, or if at any meeting the chairman be not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.

92. A resolution in writing, signed by all the Directors for the time being in the United Kingdom, shall be as effective as a resolution passed at a meeting of the Directors duly convened and held.

93. A meeting of the Directors for the time being, at which a quorum is present, shall be competent to exercise all powers and discretions for the time being exercisable by the Directors.

94. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall in [fol. 5470] the exercise of the powers so delegated conform to any regulations that may be imposed on them by the Directors.

95. The meetings and proceedings of any such committee consisting of two or more members shall be governed by the provisions of these presents regulating the meetings and proceedings of the Directors, so far as the same are applicable and are not superseded by any regulations made by the Directors under the last preceding article.

96. All acts done by any meeting of Directors, or of a committee of Directors, or by any person acting as a Director, shall, notwithstanding it be afterwards discovered that there was some defect in the appointment of any such Director, or person acting as aforesaid, or that they or

any of them were disqualified, or had vacated office, be as valid as if every such person had been duly appointed, and was qualified and had continued to be a Director.

Minutes

97. The Directors shall cause minutes to be made in books provided for the purpose—

(A) Of all appointments of officers made by the Directors.

(B) Of the names of the Directors present at each meeting of Directors and of any committee of Directors.

(C) Of all resolutions and proceedings at all meetings of the Company and of the Directors and of committees of Directors.

The Seal

98. The seal of the Company shall not be affixed to any instrument except by the authority of a resolution of the Board and shall be so affixed in the presence of at least one Director and the Secretary, both of whom shall sign every instrument to which the seal is so affixed in their presence.

[fol. 5471] Alternate Directors

99. Any Director may at any time appoint any person approved by the Board (such approval not to be unreasonably withheld) to be an alternate Director of the Company, and may at any time remove any alternate Director so appointed by him from office. An alternate Director so appointed shall not be entitled to receive any remuneration from the Company.

100. An alternate Director shall (subject to his giving to the Company an address within the United Kingdom at which notices may be served upon him) be entitled to receive notices of all meetings of the Board, and to attend and vote as a Director at any such meeting at which the Director appointing him is not personally present, and generally to perform all the functions of his appointor as a Director in the absence of such appointor.

101. An alternate Director shall *ipso facto* cease to be an alternate Director if his appointor ceases for any reason to be a Director.

102. All appointments and removals of alternate Directors shall be effected by writing under the hand of the Director making or revoking such appointment left at the office.

Dividends and Reserves

103. The profits of the Company available for dividend and resolved to be distributed shall be applied in the payment of dividends to the holders of the "A" and "B" shares *pari passu* as a single class of shares. The Company in general meting may declare dividends accordingly.

104. No dividend shall be payable except out of the profits of the Company, or in excess of the amount recommended by the Directors.

105. All dividends shall be declared and paid according to the amounts paid on the shares in respect whereof the divi- [fol. 5472] dend is paid, but no amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share. All dividends shall be apportioned and paid *pro rata* according to the amounts paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but if any share is issued on terms providing that it shall rank for dividend as from a particular date, such share shall rank for dividend accordingly.

106. The Directors may from time to time pay to the members such interim dividends as appear to the Directors to be justified by the profits of the Company.

107. The Directors may from time to time set aside out of the profits of the Company (including therein premiums obtained on the issue of shares) and carry to reserve or reserves such sums as they think proper, which shall, at the discretion of the Directors, be applicable for meeting contingencies, or for the gradual liquidation of any debt or liability of the Company, or for repairing or maintaining the works, plant and machinery of the Company, or for equalizing dividends, or for any other purpose to which the profits of the Company may properly be applied, and pending such application may, at the like discretion, either be employed in the business of the Company, or be invested in such investments (other than shares of the Company) as the Directors may from time to time think fit.

108. The Directors may deduct from any dividend payable to any member all sums of money (if any) presently

payable by him to the Company on account of calls or otherwise.

109. No dividend shall bear interest as against the Company.

110. Any dividend may be paid by cheque sent through the post to the registered address of the member or person entitled thereto, and in case of joint holders to any one of such joint holders. Every such cheque shall be made payable to the order of the person to whom it is sent.

111. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

[fol. 5473]

Capitalisation of Profits

112. The Company in general meeting may, upon the recommendation of the Directors, and with the consent in writing under hand of the holders of a majority of the "A" shares for the time being issued and of the holders of a majority of the "B" shares for the time being issued, resolve that it is desirable to capitalise any undivided profits of the Company (including profits carried and standing to any reserve or reserves or other special account), and accordingly that the Directors be authorised and directed to appropriate the profits resolved to be capitalised to the members in proportion to the amounts paid up on the issued Ordinary shares held by them respectively, and to apply such profits on their behalf, either in or towards paying up the amounts, if any, for the time being unpaid on the shares held by such members respectively, or in paying up in full unissued shares or debentures of the Company of a nominal amount equal to such profits, such shares or debentures to be allotted and distributed, credited as fully paid up, to and amongst such members in the proportion aforesaid, or partly in one way and partly in the other.

113. Whenever such a resolution as aforesaid shall have been passed, the Directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the Directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise

as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members holding Ordinary Shares into an agreement with the Company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation, or (as the case may require) for the payment up by the Company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

[fol. 5474] Accounts

114. The Directors shall cause true accounts to be kept:—

(a) Of the sums of money received and expended by the Company and the matters in respect of which such receipt and expenditure takes place; and

(b) Of the assets and liabilities of the Company.

115. The books of account shall be kept at the office, or at such other place as the Directors think fit, and shall always be open to the inspection of the Directors. No member (other than a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by statute or authorised by the Directors or by the Company in general meeting.

116. Once at least in every year the Directors shall lay before the Company a proper profit and loss account and a balance-sheet containing a general summary of the capital, the assets, and the liabilities of the Company arranged under suitable heads, both made up to a date not more than six months before the meeting.

117. Every such balance-sheet as aforesaid shall be signed on behalf of the Board by two of the Directors, and shall be accompanied by a report of the Directors as to the state of the Company's affairs and the amount which they recommend to be paid by way of dividend to the members, and the amount (if any) which they have carried or propose to carry to reserve. It shall also have attached

to it, or there shall be inserted at the foot thereof a reference to, the Auditors' report.

118. A copy of the profit and loss account, balance-sheet, and Directors' report shall, seven days previously to the meeting, be delivered or sent by post to the registered address of every member.

Audit

119. The Company shall at every ordinary meeting appoint an Auditor or Auditors to hold office until the next ensuing ordinary meeting.

[fol. 5475] 120. A Director or officer of the Company shall not be capable of being appointed Auditor of the Company.

121. The Directors may fill any casual vacancy in the office of Auditor, but while any such vacancy continues the surviving or continuing Auditor or Auditors (if any) may act.

122. The remuneration of the Auditors shall be fixed by the Company in general meeting, except that the remuneration of any Auditors appointed to fill any casual vacancy may be fixed by the Directors.

123. A person other than a retiring Auditor shall not be capable of being appointed an Auditor at an ordinary meeting unless notice of an intention to nominate that person to the office of Auditor has been given by a member to the Company not less than 14 days before the meeting, and the Company shall send a copy of any such notice to the retiring Auditor and shall give notice thereof to the members not less than 7 days before the meeting, provided that if after a notice of the intention to nominate an Auditor has been so given an ordinary meeting is called for a date 14 days or less after that notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof and the notice to be given by the Company may, instead of being given within the time required by this provision, be given at the same time as the notice of the meeting.

124. The Auditors' report to the shareholders made pursuant to the statutory provisions as to audit for the time being in force shall be read before the Company in general meeting and shall be open to inspection by any shareholder, who shall be entitled to be furnished with a copy of the balance sheet and Auditors' report at such charge not ex-

ceeding sixpence for every hundred words as the Directors determine.

Notices

125. Any notice or document may be served by the Company on any member either personally or by sending it through the post in a prepaid letter addressed to such mem- [fol. 5476] ber at his registered address as appearing in the register of members. In the case of joint holders of a share all notices shall be given to that one of the joint holders whose name stands first in the register of members, and notice so given shall be sufficient notice to all the joint holders.

126. Any member described in the register of members by an address not within the United Kingdom who shall from time to time give to the Company an address within the United Kingdom at which notices may be served upon him shall be entitled to have notices served upon him at such address.

127. Any notice or other document, if served by post, shall be deemed to have been served at the time when the letter containing the same is posted, and in proving such service it shall be sufficient to prove that the letter containing the notice or document was properly addressed, stamped and posted.

128. Any notice or document delivered or sent by post to or left at the registered address of any member in pursuance of these presents shall, notwithstanding that such member be then dead or bankrupt, and whether or not the Company have notice of his death or bankruptcy, be deemed to have been duly served in respect of any share registered in the name of such member as sole or joint holder, unless his name shall at the time of the service of the notice or document have been removed from the register as the holder of the share, and such service shall for all purposes be deemed a sufficient service of such notice or document on all persons interested (whether jointly with or as claiming through or under him) in the share.

Winding Up

129. If the Company shall be wound up the Liquidator may with the sanction of an extraordinary resolution of the contributories divide amongst the contributories in specie the whole or any part of the assets of the Company, and

may with the like sanction vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the Liquidator with the like sanction shall think fit.

[fol. 5477] Indemnity.

130. The Directors, Managing Directors, Auditors, Secretary and other officers for the time being of the Company and the Trustees (if any) for the time being acting in relation to any of the affairs of the Company, and their respective executors or administrators, shall be indemnified and secured harmless out of the assets of the Company, from and against all actions, costs, charges, losses, damages and expenses which they or any of them, their or any of their executors or administrators, shall or may incur or sustain by reason of any act done, concurred in, or omitted in or about the execution of their duty or supposed duty in their respective offices or trusts, except such (if any) as, they shall incur or sustain through their own wilful neglect or default respectively, and none of them shall be answerable for the acts, receipts, neglects or defaults of any other of them, or for joining in any receipt for the sake of conformity, or for any bankers or other persons with whom any moneys or effects of the Company shall be lodged or deposited for safe custody, or for the insufficiency or deficiency of any security upon which any moneys of the Company shall be placed out or invested, or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts, or in relation thereto, except the same shall happen by or through their own wilful neglect or default respectively.

[fol. 5478] Names, Addresses and Descriptions of Subscribers.

Arthur John McCormack, Middle Park, Paignton.
Director of Public Company.
George Ware Grazebrook, Greys Mallory, Warwick.
Director of Public Company.

Dated the 1st day of June, 1920.
Witness to the above Signatures—

J. F. English, 581, Bordesley Green, Birmingham.
Commercial Clerk.

[fol. 5479] The Companies Acts, 1908 to 1917

Company Limited by Shares

Memorandum and Articles of Association of British Timken Limited

Incorporated the 4th Day of June, 1920

Linklaters & Paines, 2, Bond Court, Walbrook, E. C. 4

[fol. 5480] DEFENDANT'S EXHIBIT 200

An Agreement made the 20th day of April 1928 between The Timken Roller Bearing Company of Canton, Ohio, U. S. A. (hereinafter called "the American Company") of the one part and Michael Bruce Urquhart Dewar of 4 Central Buildings, Westminster (hereinafter called "Mr. Dewar") of the other part.

Supplemental to certain Heads of Agreement between the same parties (hereinafter called "the Heads of Agreement") dated the 16th May 1927 and relating to the purchase by the parties hereto of the whole of the issued share capital (50,000 shares of £1 each fully paid) of British Timken Limited (hereinafter called "the British Company").

Whereas the purchase of the said shares contemplated at the date of the Heads of Agreement has since been effected and the said shares have been transferred to the parties hereto or their nominees as provided by Clause 1 of the Heads of Agreement.

And Whereas the Heads of Agreement have in part been carried into effect by means of Special and Ordinary Resolutions of the Company and certain agreements entered into between the American Company and the British Company and between the British Company and Mr. Dewar.

And Whereas the parties hereto are desirous of entering into this present agreement with a view to further carrying the Heads of Agreement into effect.

Now it is Hereby Agreed as follows:—

1. Each of them the American Company and Mr. Dewar hereby declares by way of honourable understanding and not as a legally binding agreement that if the other of them [fol. 5481] or any of his nominees shall give a transfer notice under Article No. 26 of the British Company's new

Articles of Association adopted by one of the said Special Resolutions in respect of all or any of the shares in the British Company owned by the other party and the shares comprised in such transfer notice or any of them are not purchased by the other members of the British Company to whom the same are offered pursuant to the said Article then.

(a) The declaring party will not unreasonably stand in the way of the other party selling such unpurchased shares or any of them to any person (not being a person to whom the declaring party shall object on reasonable grounds) at any price not being less than that at which such shares shall have been offered to the members pursuant to the said transfer notice and

(b) In the event of the other party effecting a sale the declaring party will do all acts and things in his power in order to procure the registration of the transfer of the said shares to the purchaser thereof and in particular will exercise the voting rights conferred by any shares in the British Company held or controlled by the declaring party in such manner and give all such consents and sanctions as may be reasonably required and procure any Directors of the British Company controlled by the declaring party to pass all resolutions necessary for procuring the registration of such transfers.

2. Upon the death of Mr. Dewar or in the event of his being incapacited by ill-health or otherwise for a consecutive period of six months from discharging his duties as a Director of the British Company the American Company shall have an option (exerciseable within three months after the death of Mr. Dewar or after the expiration of the said period of six months as the case may be) of purchasing all the shares in the British Company together with all the shares in any subsidiary Companies belonging to Mr. Dewar at the date of his death or the expiration of the [fol. 5482] said period of six months (as the case may be) at their fair value to be determined failing agreement by an award of two London Chartered Accountants as arbitrators one to be appointed by each party or an umpire to be appointed by the said arbitrators (such reference to arbitration to be deemed for all purposes a reference to arbitration under the English Arbitration Act 1889 or any statu-

tory modification or re-enactment thereof for the time being in force). The said option shall be exerciseable by notice in writing served upon Mr. Dewar or in the case of his death his legal personal representatives within the said period of three months and if it is exercised the sale of the shares shall be completed by delivery of duly executed transfers of and the certificates for the shares against payment of the purchase price within seven days after the price has been agreed or determined by arbitration as aforesaid.

3. If either of the parties hereto shall give a transfer notice under the British Company's new Articles of Association in respect of all or any of the shares in the British Company held by such party and the other party hereto shall purchase such shares the purchasing party shall have an option of also purchasing and if called upon by the selling party so to do shall be bound also to purchase all or a like proportion of the selling party's total shareholding in every subsidiary Company as at the date of the transfer notice. Such option of purchasing or right of putting the said shares in subsdiary Companies shall be exercised if at all by notice in writing served on the other party within 21 days after completion of the purchase of the shares of the British Company included in the transfer notice and the price payable for the shares in subsidiary Companies which the purchasing party elects or becomes bound to purchase shall be determined failing agreement by arbitration and the purchase of such shares shall be completed as provided by Clause 2 hereof.

4. For the purposes hereof the expression "subsidiary Company" means any Company controlled by the British Company so far as regards ordinary business whether by reason of its holding a clear majority of all the issued shares of such Company or shares carrying a voting control or otherwise.

[fols. 5483-5484] 5. The Heads of Agreement shall be completely superseded upon the execution of this Agreement and shall cease to be operative as from the date hereof.

6. This Agreement shall be construed and have effect as an agreement made in England and in accordance with the Laws of England.

In Witness whereof the American Company has caused its Common Seal to be hereunto affixed and Mr. Dewar

has hereunto set his hand and Seal the day and year first above written.

The Timken Roller Bearing Company, by John Frederic Strough, Secretary-Treasurer.

M. B. U. Dewar. Signed, Sealed and Delivered by the above named Michael Bruce Urquhart Dewar in the presence of R. O. Squire, 37 Golden Hillvick Road, Small Heath, Birmingham. (Seal.)

[fol. 5485] DEFENDANT'S EXHIBIT 201

This Agreement dated the Twentieth day of April One thousand nine hundred and twenty eight between The Timken Roller Bearing Company of the City of Canton Ohio United States of America (hereinafter for convenience called "the American Company") British Timken Limited of the City of Birmingham England (hereinafter for convenience called "the British Company") and Michael Bruce Urquhart Dewar of Number 4 Central Buildings Westminster England (hereinafter for convenience called "Mr. Dewar") is Supplemental to two Agreements already executed and made as of the First day of January One thousand nine hundred and twenty eight by and between the American Company and the British Company (hereinafter for convenience collectively referred to as "the Companies Agreement") and another Agreement already executed and made the Twentieth day of April One thousand nine hundred and twenty eight by and between the American Company and Mr. Dewar (hereinafter for convenience referred to as "the Timken Dewar Agreement")

Whereas the parties hereto contemplate that there will hereafter be Companies or Associations engaged in the manufacture or sale of bearings in the British Company's territory as defined in the Companies Agreement which Companies shall be sub-licensees of the British Company and the American Company under the Companies Agreement either immediately or at one or more removes and/or subsidiary Companies as defined in the Timken Dewar Agreement

And whereas the parties hereto desire to make special provision with respect to such Companies which are here-

inafter for convenience referred to as "subsidiary Companies"

Now it is hereby agreed between the parties hereto as follows (namely):

1. Each of the parties hereto shall have the right to have at least one representative on the Board having the chief authority over a subsidiary Company whatever may be the functions or description of such Board whether Directorial Administrative Supervisory or otherwise so long as such party shall hold any stocks shares securities or other proprietary interest in such Company

2. If any of the parties hereto shall at any time hold any stocks shares securities or other proprietary interest [fol. 5486] in a subsidiary Company either in his own name or in the name of a nominee (i.e. a bare trustee for such party) such party shall be entitled at his own will and pleasure to transfer or cause to be transferred the said stocks shares securities or other proprietary interest or any part thereof from himself to a nominee or from a nominee to himself or another nominee as such party may direct.

3. None of the parties hereto shall sell or transfer any stocks shares securities or other proprietary interest in a subsidiary Company belonging to him (except as aforesaid) without first offering the same to the other parties hereto. Every such offer shall be made by notice in writing specifying the interest to which it relates and shall remain open for acceptance by either of the other parties hereto for Thirty days after it is received by such party and any acceptance of an offer shall be signified by notice in writing to the party making the offer. If any such offer is duly accepted the price payable for the interest specified in the offer and if two of the parties hereto accept an offer the allocation of all or part of such interest to one or other of the accepting parties as purchaser shall be determined and the sale and transfer of the interest specified in the offer shall be completed in the manner and at the time which shall be fixed under the provisions hereinafter contained.

4. The parties hereto shall give any consents and exercise any voting powers and execute and do any other deeds acts or things which may be necessary for the purpose of giving effect to this Agreement or any Award made in an Arbitration under this Agreement.

5. If any question shall arise between the parties hereto or any of them with respect to the price or allocation afore-

said or the completion of any such sale or transfer or any matter or thing to be done under this Agreement in connection with such sale or transfer every such question shall in default of agreement be settled by arbitration under the English Arbitration Act 1889 or any statutory modification or re-enactment thereof for the time being in force.

In witness whereof the Timken Roller Bearing Company by the authority of its Board of Directors has caused these [fols. 5487-5488] presents to be executed in triplicate by its secretary and its Corporate Seal to be hereto affixed and British Timken Limited under the authority of its Board of Directors has caused its Common Seal to be affixed hereto in triplicate and the said Michael Bruce Urquhart Dewar has executed this Agreement in triplicate the day and year first above written.

The Timken Roller Bearing Company, By John Frederic Strough, Secretary & Treasurer.

The Common Seal of British Timken Limited was hereunto affixed by order of the Board in the presence of:

M. B. U. Dewar, Wm. Dallow, Directors; R. O. Squire, Secretary.

Signed Sealed and Delivered by the above named Michael Bruce Urquhart Dewar in the presence of:

A. A. Hill, 42 Auderlon Road, Sparkbrook, Birmingham.

[fol. 5489] DEFENDANT'S EXHIBIT 202

British Timken Limited

May 1st. 1928.

J. F. Strough Esq, Messers. The Timken Roller Bearing Company, Canton, Ohio, U.S.A.

Dear Mr. STROUGH:

You will recollect that when you were in London I mentioned the importance of inducing two or three Frenchmen possessing considerable influence of the right kind to become members of the Board of the proposed French Timken Company.

After considerable trouble, I have succeeded in finding two Frenchmen, and one Englishman residing in Paris, who, I think, would prove most suitable and be of great assistance.

The more important of these is Mons. Pierre Marchal, who is the leading manufacturer of electrical equipment for Automobiles in France, and who has great influence in the French automobile industry.

I went to Paris in order to meet Mons. Marchal, who impressed me as a most suitable person to be President of our French Company.

I discussed the proposed Company with him, and he expressed his willingness to act as President of the Board, and to use his influence to further the interests of the company.

[fol. 5490] Another Frenchman who should prove a desirable and useful member of the Board is Mons. A. Senz, who is the President and principal proprietor of Million-Guiet, one of the leading makers of automobile bodies in France. He also possesses considerable influence in the French motor car industry.

The Managing Director of Hotchkiss Motors, Mr. H. M. Ainsworth, should also prove a valuable member of the sireable and useful member of the Board is Mons. A. Sanz, Board, and has already been of assistance to us. I believe I spoke to you about him when you were in London. Both he and Mons. Sanz would be willing to become members of the Board.

I think it most desirable that we should secure the services of these three gentlemen, as they would help us to get into touch rapidly with all the principal manufacturers in the French automobile industry, and their inclusion on the Board would create a very good impression in France.

As Mons. Marchal enjoys a position of considerable importance, and possesses ample financial resources, he would not give his assistance to the Company without adequate inducement. He intimated that he would not be interested in a fixed fee for acting as President, and that he would want some interest in the Capital, in addition to some sort of commission for his services. However, as he thinks very highly of the prospects of the French Company, if it is properly introduced to the French automobile industry, he would be willing to take his remuneration in accordance with the

success of the Company. The least that he would be prepared to accept would be an option on some of the shares, and a small commission on the turnover during the early years of the Company, and would only consider an arrangement that would continue for several years, as he naturally wishes to enjoy the fruits of his work on behalf of the Company.

I sent Mr. Seward over to Paris to negotiate terms in detail with Mons. Marchal, and a provisional agreement has been arrived at, subject to your approval.

[fol. 5491] Briefly, the outline of this proposed agreement is as follows:

A Committee of Management shall be formed consisting of Mons. Marchal, Mons. Sanz, and Mr. Ainsworth. The functions of the Committee shall be principally of an advisory nature, and their powers and duties shall be fixed by the Board.

The members of the Committee shall become members of the Board as and when required by the shareholders.

The Committee shall receive its remuneration as a whole, and the members shall decide themselves in what proportions it is distributed amongst them.

The Committee shall have an option on 16% of the first and subsequent issues of shares for a period of five years. The price of the first issue to be at par, and that of subsequent issues to be fixed by arbitration.

If any member of the Committee ceases to be a member of the Comittee, his shares shall be offered to the other of the Committee, his shares shall be offered to the other arbitration.

The Committee shall receive a commission of 2½% on the turnover, as defined below, until two years after the termination of the year in respect of which a dividend at the rate of 20% per annum on the first issue of shares has been paid and the option on the shares has been exercised.

The turnover shall be the nett sales encashed of the French Company, excluding all sales to British Timken Ltd. or its subsidiary Companies, but excluding all sales to Railway Companies, or similar concerns.

The agreement shall continue for a period of five years, and shall be extended for a second period of five years, if [fol. 5492] the turnover, as defined above, in the fifth year amounts to at least the equivalent of £100,000.

A contract is being drafted by our Lawyer in Paris which will be submitted to Mr. Duncan, and then to you.

The reason for forming a Committee of Management is that the remuneration of its members would not be liable to the French tax of 18% on Directors fees in respect of their remuneration as members of the Committee.

Further, the obligation of the members of the Board to retire annually is not affected, so that if at any time it is considered desirable, the above gentlemen could retire from the Board, but remain as members of the Committee of Management.

When you were in London, it was provisionally agreed that the shares should be held as follows:

Mr. Timken	59%
Mr. Dewar	39%
British Timken	2%

I think that the most equitable arrangement to meet this option of 16% of the share capital would be that in the event of the option being exercised, your holding should come to 52%, mine to 30%, the French Directors 16%, and British Timken 2%.

I would again emphasize that after considerable enquiry and consideration, I am of the opinion that it is most desirable to have these gentlemen as members of the Board, and I think that the terms provisionally agreed are satisfactory considering the importance of the individuals concerned and their probable utility to the Company.

[fol. 5493] Mons. Marchal is in Algiers until about the end of May, so I shall be glad to have your comments or agreement before then.

With kindest regards,
Yours sincerely, M. B. U. Dewar

[fol. 5494] DEFENDANT'S EXHIBIT 203

May 16, 1928

Mr. M. B. U. Dewar, 4 Central Buildings, Westminster SW 1, London, England.

DEAR MR. DEWAR:

This will confirm my cablegram of today, as follows:

We approve French proposals your letter May First

With kindest regards, —— ——, Secretary and Treasurer.

JFS-HG

[fol. 5495] DEFENDANT'S EXHIBIT 204

Stibbard, Gibson & Co.

4th June, 1928.

DEAR SIRS,

French Company

We have settled with Mr. Seward the terms of the Statutes of Incorporation of the French Company, and have also to-day settled with him the terms of a letter to be written by Mr. Dewar to Messrs. Marchal, Sanz, and Ainsworth, outlining the conditions upon which they are to accept office as members of the Technical Committee of the French Company; these conditions have been agreed in principle by Mr. Seward on behalf of Mr. Dewar and Messrs M. S. & A.

Mr. Seward informs us that he expects the incorporation of the French Company to be completed in the course of the present week and that Mr. Dewar purposes visiting Paris next week in order to attend the first meeting of the French Company and comply with the formalities of French Law; he will at the same time complete the arrangements with the three members of the Technical Committee.

The shares in the French Company have to be taken up and paid for at the start of the Company and Mr. Dewar has asked us to advise you that the amount to be paid for [fol. 5496] the shares should be in Paris by the 15th instant; the money should therefore be in this country by the 14th

inst. We have to-day sent you a cable with regard to the money as per copy enclosed.

Yours faithfully, Stibbard Gibson & Co.

The Timken Roller Bearing Company.

P. S. We have received your cable advising that the fund for the French Company will be with the British Company on the 8th instant.

[fol. 5497] DEFENDANT'S EXHIBIT 205

June, 1928.

Mons. P. Marchal, Mons. A. Sanz, Mons. H. M. Ainsworth.

SIRS,

As promoter of the "Societe Anonyme Francaise Timken" (the French Company) which will be incorporated at an early date in Paris and of which I have communicated to you draft Articles of Association, I beg to confirm the following:

(1) I will cause to be moved at the First General Meeting of the Shareholders of the French Company that will be held for Incorporation Purposes, the appointment of yourselves as Directors thereof.

At the same meeting, there shall also be moved that a nominal fee of 2,000 francs per annum be voted for each Director, said attendance fee being doubled for the Chairman of the Board of Directors.

I undertake to move these appointments and fees and to get them passed both as being myself one of the principal shareholders and as answering for the other subscribers of the First Capital Stock of the French Company.

(2) On the other hand, and in virtue of the above quali-
[fol. 5498] fications I also pledge myself:

1. To cause Mons. Marchal to be elected Chairman of the Board of the New Company, at the first Meeting of said Board.

2. To cause you to be elected a Technical Committee.

Those appointments being subject to the following conditions:

(a) The Three Members of the Technical Committee shall reside in France

(b) The Committee shall have no particular powers nor any right of supervision over the Company's operations, the Members of the said Committee being only invited to advise the Board of Directors, when there is occasion, respecting matters of commercial or of a technical character concerning the manufacturing and the sale of the Company's products.

(c) The appointment of the Three Members of the Technical Committee shall be considered as running from the day on which the Company is finally incorporated and the tenure of office of said Members shall come to an end five years, at the latest, after the said date, unless the five years extension foreseen in the following paragraph should become effective. Their duties shall be entirely independent from those which may have been vested in them as Directors by the General Meeting of shareholders. No member on the Technical Committee, shall have the right to resign as a Director so long as he serves as a Member of the Technical Committee.

Should any Member eventually be dismissed from the Board of Directors, this shall not involve dismissal as a Member of the Technical Committee. If any Member of the Technical Committee shall become incapable of performing his functions for a period of six months his office shall be vacated.

[fol. 5499] The above five years' tenure may, however, be extended at your request, for another full period of five consecutive years if, in the course of the fifth and last year of the first term, the net amount of business (turnover) as defined in the next paragraph, reaches or exceed a total amount equivalent to the counter-value in French francs of 100,000 at the exchange rate of Frs. 125.—to say a minimum of Fcs. 12,500,000.

The amount of business (or turnover) just above mentioned shall include the amount of all the sales actually effected by the Company and invoiced after delivery in the course of the year subject to deduction, if there is occasion, of, to wit:

1. Sales effected through the French Company on account of British Timken Ltd. (the British Company) The Timken Roller Bearing Company of Can-

ton, Ohio, U. S. A. (The American Company) or their subsidiaries other than the French Company and concerning goods put by the British Company the American Company or their subsidiaires, at the French Company's disposal with a view to export out of the terri-
[fol. 5500] tories ascribed to the latter's activities under the license or trading agreements between the British Company and the French Company (the French Company's territory).

2. Business treated or exchanges of goods made as between the French Company and the British Company, the American Company or their subsidiaries for reasons of convenience, commercial customary or otherwise.

3. Business treated directly or through the French Company with French or foreign Concerns working or operating normal gauge railroads either in France or in French Colonies, Protectorates or Mandatory territories or even in any other countries of the European Continent and their Colonies.

On the other hand, so long as the French Company will not be manufacturing at their own works the various models of bearings used by the said railroads Concerns, the British Co. the American Co. and their subsidiaries shall be at liberty to, as they may think fit, sell or concede working or selling licenses to either French or Foreign normal gauge Railway Companies or to any other Companies the main and essential object of which is the construction or operation of cars serving for transportation by normal gauge Railways and this all over the French Company's territory.
[fol. 5501] The proceeds from business thus made with such Railway Companies or Companies for the construction or operation of cars serving for transportation by normal gauge railways shall not be taken into account in valuing the French Company's turnover, neither shall be taken into account for this purpose whatever profits may accrue therefrom to foreign Companies outside the Group.

On the other hand the supply of goods destined for the construction of vehicles to be hauled along narrow-gauge railway lines (as for instance to firms engaged in the construction or exploitation of light railways or of tramways) may if necessary be included in the

calculation of the minimum turnover fixed as above (Fcs. 12,500,000)

In the event of it being later decided to have the bearings for rolling stock used by the firms engaged in the construction or operation of normal guage railways manufactured in France, by the French Company, a new arrangement would have to be made between the French Company and the Technical Committee in order mutually to decide under what conditions the assistance of the Members of the Committee should be rewarded concerning those new manufacturings.

[fol. 5502] (3) During the period of five years to run from the final incorporation of the Company, the Members of the Technical Committee shall receive from the French Company an allowance amounting to 2½% of the whole total of the (net) sales actually effected by the French Company and invoiced after delivery during the period in question.

Said allowance of 2½% shall accrue after payment is received for the goods delivered and shall be payable within the fortnight next following the end of every term (three months) and shall be apportioned to the Three Members of the Technical Committee as they may think fit.

4. In virtue of the same qualifications as aforestated I undertake to give the first Members of the Technical Committee up to the end of the five year period to run from the day on which the French Company is finally incorporated, an option to acquire, but only on behalf of each of the three first Members and according to the proportion that may indicate for each one of them, a number of shares in the French Company representing a maximum of sixteen per cent (16%) of the original subscribed capital, i.e. 1,600 shares of Fcs. 100 each in all. These shares will, in principle, be furnished as to 7% by the group of shareholders of American origin, and as to the remaining 9% by my [fol. 5503] own group. In any case I reserve the right to meet the option by transferring class "A" shares registered either in my own name or in that of other shareholders.

If any of the first Members take up this option within the above defined time, the shares shall be sold

to him at the par value of 100 francs per share, and he shall be entitled to one Founder's share per 10 shares taken up on such terms as said Founder's shares are allotted under the Company's Articles of Association.

In the event of the Capital of the Company being increased through an issue of new shares the above option will extend to sixteen per cent of such issue but in this case the sale price shall be determined by mutual agreement or, failing this, by arbitration irrespective of the terms upon which the new shares are issued. If any of the first Members has taken up part of the first mentioned option, his share of the second mentioned option shall be correspondingly reduced.

The first Members of the Technical Committee shall be entitled ~~to~~ the benefit of those various options even in part, but only during the first five years to run from the French Company's incorporation, and it shall be their concern to agree beforehand as to the apportionment of the shares amongst the three as they may think [fol. 5504] fit. Within one month from taking up an option the option holder shall be bound to get registered to his name the registered shares of which he will become the owner.

5. In the event where, having taken full or part avail of any of the purchase option provided for by this Agreement, Mons. P. Marchal should happen personally to vacate office as a Member of the Committee from any cause or for any reason whatsoever, during the above stated period, the shares whether ordinary or Founder's acquired by him under the options shall be re-purchased by me or my nominees at such a price as may be determined by mutual agreement, or, failing this, by arbitration taking into account the situation of the Company's affairs at the moment his functions cease. He and his assigns shall remain bound to regularize the necessary transfers and to do this within the time provided for by the Company's Articles of Association.

6. If Mons. Sanz or Mons. Ainsworth has taken up one or other of the options granted in his favour in whole or in part and ceases to be on the Committee from any cause or for any reason whatsoever, while Mons. P. Marchal remains a Member of the Committee, the

shares which the outgoing Member of the Committee [fol. 5505] is the owner at the time shall be open to purchase by the newly elected Member of the Committee, of French nationality or residing in France, and selected jointly by Mons. Marchal and by the Board of Directors, and for the nomination of such new Member or Members no account shall be taken of any vote cast by Mons. Sanz or Mons. Ainsworth if he is at the time a Director of the Company.

Should the newly elected Members of the Committee not acquire the whole of these shares or should Mons. Sanz or Mons. Ainsworth vacate office as Member of the Committee when Mons. Marchal has already ceased to be a Member thereof, the shares not acquired in the former case and all the shares belonging to the vacating member in the latter case shall be re-purchased by me or my nominees upon the same terms and conditions as above provided with respect to Mons. Marchal's shares.

7. The respective portions of the option rights above mentioned as apportioned to the three first Members of the Technical Committee will continue to be available by the respective Members to whom the same are apportioned notwithstanding the death, retirement, or incapacity of one or both of the other Members.

8. Moreover it is expressly stipulated as an essential [fol. 5506] condition of the present agreement, that if, for each of three consecutive years during the first five years to run from its definitive incorporations the French Company has distributed to its Shareholders an annual dividend equal to or over 20% of the face value of each share having been part of the first capital Stock of the Company and if, the above purchase options respecting shares in the French Company have been taken up in full or in part according to the above conditions, then the allowance of 2½% on the turnover, as herein before provided, shall cease to be paid as from the end of the third of the said three consecutive years.

9. The advantages and renumerations that will thus be ascribed to the three first members of the Technical Committee shall be considered as personal to them and shall in no case be assignable to any, third party or belong to future Members of the Committee unless

the Board of Directors of the French Company do previously, expressly and in writing, assent thereto.

10. Since by reason of the appointments which will be made and of the advantages which will be granted to the Members of the Technical Committee, they will be bound to foster to the best of their power the interests of the French Company, they will undertake [fol. 5507] not to hold nor to accept in the French Company's territory office as Directors, Managers or Managing Directors of any Company or concern whose objects are the manufacturing of bearings that might directly compete with the French Company or have as an important department of their trade dealings in such bearings.

Said undertaking or inhibition shall hold good as regards any Member of the Technical Committee or Director of the Company so long as he receives the benefit of any of the various advantages provided for by this letter.

11. In the event of any dispute arising anont any of the clauses in this letter contained, we agree to submit the matters at stake to the two arbitrators hereinafter nominated. Said arbitrator's award shall be final, each party expressly declaring to waive appeal.

As to their award the arbitrators shall not be bound to abide by Rules of Law, all powers being expressly given to them to decide as compounders (that is to say, to judge according to equity).

By mutual agreement I nominate even now any partner in the firm of Deloitte, Plender, Griffths & Co. Chartered Accountants, of 18, Rue Chauveau-Lagarde, Paris, for myself and you for yourselves and each of you nominate any partner in the firm of M. M. Durand-[fol. 5508] Villette & Pioche, Barristers at law, of 16, Rue d'Aumale, Paris, to act as arbitrators under the above mentioned conditions in the event of any dispute arising.

In the case of disagreement the arbitrators shall have authority to appoint a third arbitrator who shall also be vested with compounding powers. The third arbitrator will consider the case jointly with the two first ones and an award will be made by a majority of votes. Failing the two first arbitrators to agree as to the person to be appointed as third arbitrators to agree

as to the person to be appointed as third Arbitrator, the latter shall be appointed by the President of the Seine Civil Court and, preferably, from amongst the Members of the Private Institute of Conciliation and Arbitration, 163, Faubourg Saint Honore, Paris.

In the event of one of the two first arbitrators departing this life, leaving this country, or declining to act or being prevented from doing duty, he shall be replaced by one appointed by the one of us who was his appointer.

12. It is quite understood that the carrying out of this letter is subject to the precedent condition of the French Company being incorporated in the course of the year 1928, and that, on the said Company being so [fol. 5509] incorporated, the agreements to be entered into shall be executed, according to the provisions hereof and within a fortnight from the Incorporation of the Company.

13. Failing the Company's incorporation on or before the 31st day of December 1928, the foregoing covenants shall be considered as of no avail without any of us being entitled to claim any indemnity nor damages for non-performance.

The above set forth arrangements having already been verbally agreed upon between us, kindly confirm to me your acceptance thereof.

Believe me, sirs, yours faithfully, —— ——.

[fol. 5510] DEFENDANT'S EXHIBIT 206

Societe Anonyme Francaise Timken

Translation of Statutes as published in "Les Annonc Parisiennes"

11th July 1928

Deloitte, Plender, Griffiths & Co., 18, Rue Chauveau-L garde, Paris

[fol. 5511] Translation

Societe Anonyme Francaise Timken

Limited Liability Company, Nominal Capital Fcs. 1,000,0

Registered Office: 5, Quai Aulagnier, Asnieres (Seine)

I.

Following on the terms of an Agreement drawn up wit out the intervention of a notary and executed at Paris o the sixteenth June nineteen hundred and twenty eight, which one of the originals remains attached to the origin schedule of shares subscribed and payments made, r ferred to hereafter, Mr. William Eric Louis Seward, manu facturer, residing at 128 Piccadilly, London W., has estab lished the Statutes of a Limited Liability Company whic he proposed to constitute, from which statutes the follow ing is given as an exact copy:

Statutes

First Section

Formation—Object—Title—Registered Office—Duration

Article No. 1

There is formed according to the terms of the presen Statutes a Limited Company which shall exist between th holders of the shares created hereafter and between th holders of any shares which may be credited later. Thi Company will be subject to the Commercial Code, the cur rent legislation regarding Limited Companies and the pres ent Statutes.

Article No. 2

Object

The main object of the Company is as follows:

The manufacture, purchase, sale, import and export of all types of bearings, roller, ball, annular and otherwise, and of all machines and parts relating to the metal industry and anti-friction processes.

The subsidiary objects of the Company are as follows:

The purchase, construction, installation, development, sale, renting or leasing of all premises, land or buildings, and of all chattels necessary for the object of the Company.

The purchase or acquisition by other means, sale and working of all Trade Marks, Trade Processes, Patents or Licenses referring directly or indirectly to the object of the Company.

The purchase, subscription, or acquisition by other means, sale, transfer or exchange of all Shares, Debentures, Bonds and other scrip of all enterprises or Companies, French or Foreign, at present in existence or to be created, having an object referring directly to that of the present Company.

[fol. 5512] The participation of the Company in all transactions or Companies which may refer directly or indirectly to its own object, either by way of transfer of assets in kind or in cash, creation of new Companies (French or Foreign), subscription or purchase of shares and other scrip or of rights or in any other manner.

Generally, all operations whether commercial, industrial, personal estate, real estate, financial or otherwise, which may refer directly or indirectly to the objects set forth above.

The whole of these powers may be exercised in France and or in any other countries, without any limitation.

Article No. 3

Title

The Company takes the title of:

Societe Anonyme Francaise Timken

Article No. 4

Registered Office

The Registered Office of the Company is established at 5, Quai Aulagnier, Asnieres (Seine).

It may be transferred to any other place in the Departments of the Seine or the Seine-et-Oise by decision of the Board of Directors and elsewhere by virtue of a resolution of an Extraordinary General Meeting of Shareholders, taken in accordance with the terms of Article No. 41 of these Statutes.

Article No. 5

Duration

The duration of the Company is fixed at 99 years, as from the date of its definite constitution, subject, however, to the dissolution at an earlier date or extension of the duration of the Company, as provided for in the present Statutes.

Second Section

Capital—Shares

Article No. 6

Form and Division of Shares

The Nominal Capital is fixed at one million francs. It is divided into 10,000 shares of one hundred francs each, to be subscribed in cash and to be paid up in full at the date of the subscription.

These shares are divided into two categories:

The First category consists of 9,800 shares of one hundred francs each, numbered from 201 to 10,000, and referred to in the present Statutes by the term "A Shares".

The second category consists of 200 shares of one hundred francs each, numbered from 1 to 200, and referred to in the present Statutes by the term "B Shares".

The form and the respective rights appertaining to the shares of each of these two categories are determined by the present Statutes.

[fol. 5513] In addition, one thousand bearer deferred Shares (of no par value and having no voting rights) are created, each having the right to a thousandth part of the portion of the Profits falling to these deferred Shares, as

specified in Article 44, i.e., 47½% of the balance remaining of the Net Profits of the Company up to the date of its expiry and liquidation (even should its duration be extended), after deduction of the allocation to the Statutory Reserve and of a first dividend of 10% per annum, cumulative or non cumulative, payable to the shareholders.

The certificates in respect of the Deferred Shares shall be issued from a counterfoil book, and shall be numbered from 1 to 1,000 and bear the signature of two Directors or of one Director and a person nominated by the Board. One of these signatures may be applied by means of a stamp.

The provisions of Articles 12 and 14 are applicable to the Deferred Shares.

The whole of the Deferred Shares shall be allocated to the subscribers of the shares constituting the Nominal Capital, without distinction of category and in the proportion of one Deferred Share for every ten shares.

The Deferred Shares have no rights as regards the assets of the Company but only to a participation in the Profits.

The holders of the Deferred Shares as such have no right to interfere in the affairs of the Company or to question any Reserves or Depreciation Reserves. They are not entitled to take part in the General Meetings of the Shareholders and are bound for the exercise of their rights (and more particularly the determination of any dividend falling to them) by the Annual Accounts and by the decisions of the General Meeting of Shareholders.

They may not oppose any alterations effected in the Statutes by the General Meeting if the alterations in question do not affect their right to that part of Profits which is attributed to them.

It is also provided that they may not oppose the dissolution of the Company at an earlier date than that laid down in the Statutes, or its amalgamation, or transformation or the disposal either in total or in part, of the assets of the Company.

In the event of the increase or reduction of the Nominal Capital, the rights of the holders of the Deferred Shares to their part of the Profits are not modified; these rights are maintained irrespective of the amount of the Nominal Capital and any reduction in these rights can only be effected with the consent of a General Meeting of the Association of the Holders of Deferred Shares, which will be created as mentioned later.

It is however, expressly stipulated that the consent of the General Meeting of the Association of the Holders of Deferred Shares is not necessary in regard to the following matters:

(a) In the event of an increase in the Nominal Capital, the Holders of Deferred Shares must acquiesce in the deduction of a first dividend of 10% per annum—non cumulative or cumulative, on the additional Capital and must acquiesce in the other rights and privileges of whatever description which may be attributed to any Preference Shares which may be created.

[fol. 5514] (b) In the event of a reduction in the Nominal Capital by reason of trading losses or depreciation in the value of the assets of the Company, the General Meeting of Shareholders may decide that, notwithstanding this reduction, the first dividend of 10% per annum, cumulative or non cumulative, payable to the Shareholders shall be calculated on the original capital prior to the reduction.

An association of the Holders of Deferred Shares shall be created.

Article No. 7

Increase and Reduction of the Capital

The Nominal Capital may be increased from time to time by the creation of new shares, as against the transfer of assets in kind or against subscription in cash, or by the employment of available Reserves or Reserve Funds or by any other means by virtue of a decision of an Extraordinary General Meeting of Shareholders taken in conformity with the provisions of Article 41 hereafter.

Every increase of Capital must be carried out by the creation simultaneously of shares of Categories "A" and "B' in proportion to the Capital subscribed on the formation of the Company, i.e., for every share issued of Category "B", 49 shares of Category "A" must be issued and vice versa. Subject to this provision the General Meeting will determine the conditions of issue of the new shares or will delegate its powers for this purpose to the Board of Directors.

Subject to the observance of the above provisions the Board of Directors is, from now on, authorized to increase the capital of the Society to three millions of francs by the

issue, in one or several instalments, of new shares of one hundred (100) francs each, to be subscribed and liberated in cash, without having recourse to any decision of the General Meeting, which will only be called for the purpose of verifying the subscriptions and payments. The conditions of these issues, including the premium if any payable on the shares, will be fixed without appeal by the Board of Directors.

In the case of an increase in Capital effected by the issue of shares to be subscribed in cash, and unless the General Meeting decides otherwise, the holders of shares previously created, on which all calls have been paid, have (personally or through their assignees) a priority for the subscription of the new shares of each category in proportion to the number of shares in the same category which each shareholder already holds. The exercise of this right shall be subject to such forms, delays and conditions as may be determined by the Board of Directors. Those shareholders who do not possess a sufficient number of shares to allow of their subscribing for a share may combine to exercise their rights, but no subscription for a part of a share can result therefrom.

Subject to the same conditions, the General Meeting may also, by virtue of a resolution passed as stated above, decide to reduce the Capital for any reason and in any manner, more particularly by means of a repayment to the shareholders, redemption of the Company's shares or exchange of old scrip against new for an equivalent or lesser number, with or without the same nominal value, and, if necessary, accompanied by transfer or purchase of old shares so as to allow the exchange to be made, with or without a balance to be paid or received in cash. However, any reduction of capital thus operated must maintain the proportions, as originally determined, of the two categories of shares "A" and "B", i.e., one B share for 49 "A" shares and vice versa.

[fol. 5515]

Article No. 8

Method of Liberating the Shares

The 10,000 shares forming the original capital shall be subscribed and paid up entirely in cash at the time of subscription.

The above provisions (unless modified expressly by a resolution of the General Meeting), and those of Article 9 shall apply to any increase of capital by the issue of shares in cash.

The holders, intermediary assignees and subscribers are jointly and severally liable for the amount of the shares.

All subscribers and shareholders who have transferred their shares, cease to be responsible, two years after the transfer, for any sums not called up on the shares.

Article No. 9

Interest and Proceedings in case of delay

In the case of an increase of the Capital by means of shares not fully paid up at the time of subscription and in default of payment on the shares at the dates determined by the Board of Directors, interest shall automatically accrue due for each day's delay at the rate of six per cent per annum.

The Company may sell shares on which payments are in arrears.

For this purpose the numbers of the shares are published in one of the papers containing legal notices in the town where the Registered Office is situated.

Sixty days after this publication, without any other notification or other formality, the Company is entitled to proceed with the sale of the shares on which all calls due have not been paid up, either as a whole or separately and even consecutively, for the account of and at the risks and peril of the persons in arrears, on the Bourse, through the agency of a Stock-broker if the shares are quoted, or, if this is not the case, by public auction through a notary at a starting price which may be reduced without any limit. The Shares shall be sold as free in respect of calls already made and paid up.

The certificates in respect of the shares thus sold will be automatically cancelled, and new scrip, bearing the same share numbers will be delivered to the purchasers.

Any share which does not carry the proper inscription to the effect that all calls have been met ceases to be negotiable. No dividend shall be paid thereon.

The net product from the sale of the said shares shall be deducted in accordance with the Law, from the amount due

to the Company by the former owner, who continues to be responsible to the Company for any deficit, but must be credited with any surplus.

The Company is also empowered to institute an action against the shareholder and any guarantors either before or after the sale of the shares or at the same time as the sale.

[fol. 5516]

Article No. 10

Forms of Shares—Certificates

The share certificates in respect of any category of shares are, and shall continue to be issued in registered form.

This also applies to any increase in the capital effected under the conditions provided by Article 7 of the present statutes.

Should any shares created by means of an increase of capital not be fully paid at the time of subscription, a receipt in registered form shall be given for the first payment. This receipt shall be exchanged for a provisional share certificate, also in registered form, within three months of the realization of the increase of capital; all subsequent payments shall be inscribed on this provisional certificate with the exception of the final payment, which will be made against the issue of the certificates for the fully paid shares.

Provisional share certificates or certificates for fully paid shares shall be issued from a counterfoil book and shall bear a number in numerical order, the company's stamp and the signature of two directors, or of one director and a delegate of the board; one of these signatures may be applied by means of a stamp.

Article No. 11

Assignments—Transfers by reason of decease, etc.—Transfers—Rights of Pre-emption

In conformity with article 36 of the Commercial Code, the transfer of registered shares is carried out by means of a declaration of transfer signed by the tranferor and the transferee, or by their proxies, and inscribed in a special register kept by the company.

The company may require that the signature of the parties concerned be certified by a public official.

Only those shares on which all payments due have been made are allowed to be transferred.

All transfers, either gratuitous or for valuable consideration, in whatsoever manner they may be effected, as also all transfers arising by the decease of a shareholder or by reason of settlements between living persons, even between shareholders, are invalid and not binding with regard to the company unless previously agreed to by the Board of Directors, which in no case is bound to make known the motives for its acceptance or refusal.

For this purpose, notice of the proposed transfer or assignment shall, in all cases, be given to the company by registered letter, indicating the names, Christian names, profession, and residence of the proposed future shareholder. To this letter shall be attached the share certificate referring to the shares to be transferred, and, if necessary, the documents justifying the transfer or assignment.

In the ninety days following on the receipt of the said letter, the Board of Directors shall decide, by a majority, [fol. 5517] and without need of further intervention on the part of the shareholders of the class of shares concerned, as to the acceptance or refusal of the person presented as the proposed future holder of the shares. Notice of this decision shall be given by registered letter before the expiration of the above mentioned delay to the transferor or donator or, in the case of a decease, to the beneficiary.

When it is desired to obtain the previous consent of the Board to a transfer of shares between shareholders already on the register of the company, the transferor, before agreeing to the transfer to the proposed transferee, must declare to the Board the price at which he proposes to transfer the shares inscribed in his name. The Board may require this declaration to be made by registered letter. The Board must advise this price to shareholders holding shares of the same category. The latter shall have priority, at the price indicated over the proposed transferee, if the latter is not a holder of shares of the same category as these which it is proposed to transfer. Should several of the shareholders of the same category desire to exercise their right of preemption simultaneously to acquire the shares thus offered, then the shares will be allocated to such shareholders in proportion to the number of such shares of the same category owned by them on the day the Board was advised of the transferor's offer.

If the number of shares to be transferred cannot be divided exactly in this proportion, priority will be given for any fractions of shares to that shareholder who first made known his intention of accepting the transfer of the shares offered. If this shareholder does not utilize this right of priority immediately, the Board will dispose of the fractions of shares at its own discretion.

In the case of all transfers or assignments (by reason of decease or otherwise) of shares to persons or companies not yet inscribed on the company's registers at the date when the company is notified in proper form of the proposed offer of cession or of the demand for transfer, the Board has the right, for a period of one month following on the notification given by them of their refusal to register the said transfer or assignment, to have the shares purchased by one or several persons or companies designated or accepted by the Board. Such assignment or transfer shall be effected at a price determinated under the following conditions:

If, on the receipt of the Board of the registered letter conveying the notification, as provided in the 5th para. of this Art., the company has not distributed every year during the three consecutive years immediately preceding the notification a dividend on the category of shares to which the shares transferred or assigned belong, the price of the transfer or assignment shall be equal to the nominal value of the shares transferred or assigned, plus the proportion appertaining to such shares in any free reserves disclosed by the last balance sheet approved by the shareholders at that period, or less a proportion appertaining to the shares of any losses shown by this balance sheet, as the case may be.

In the contrary case the price of the transfer or assignment shall be equal to the capitalised amount, at the rate of 10%, of the average obtained in taking into account the net annual dividends distributed for the three years immediately preceding the above mentioned notification, on the shares of the same category, without ever being less than the nominal value of the shares increased, should the case arise, by the proportion appertaining to these shares in the reserves shown by the last balance sheet approved at that date by the shareholders or, if necessary, less a proportion appertaining to these shares of any losses shown by this balance sheet.

[fol. 5518] Notwithstanding any contrary provisions contained in this article, the Board shall not have the right to oppose the assignment or transfer of the company's shares of whatsoever category, if it is ascertained on the sole responsibility of the Board that the holders of a potential majority of votes at an extraordinary general meeting formally approve the assignment or transfer in favour of the proposed transferee.

The transfer to the name of the purchaser or purchasers designated by the Board will be regularized automatically by the signature of the President or of a delegate of the Board of Directors and by that of the assignee. The signature of the holder of the shares or of his representatives is not required but they will be advised of the transaction by registered letter within fifteen days of the purchase, with notice to present themselves at the registered office to receive the consideration which will not bear interest.

If, the Board of Directors has not designated or accepted a purchaser by virtue of the present dispositions within the period of ninety days mentioned above, the transferee given in the transfer or assignment shall become the definite owner of the shares transferred or assigned and the transfer of the said shares shall be executed in his favour.

Article No. 12

Indivisibility

So far as the company is concerned, fractions of shares are not recognized.

Joint owners of shares must be represented by one of their number with regard to the company.

Article No. 13

Rights Attached to the Shares—Responsibility of the Shareholders

Each share, irrespective of the category to which it may belong, is entitled, so far as concerns the assets of the company, to a part corresponding to the number of shares issued.

The same rule applies to the allocation and distribution of the company's profits, whether distributed annually or on the winding up of the company, either at the expiration of its duration or on dissolution at an earlier date.

On the other hand, at the annual and ordinary general meetings held under the conditions provided for by Articles 35 to 38 of the present statutes, the holders of shares belonging to the first category, called "A" shares, are entitled to one vote only for each share, whilst holders of shares belonging to the second category, called "B" shares, are entitled to fifty votes for each share.

At the general meetings held under the provisions of Articles 39, 40 and 41 of the statutes, and in connection with the modifications provided for by this last article, the "A" and "B" shares will be entitled, without distinction, to one vote only for each share.

[fol. 5519] Shareholders are only liable to the extent of the nominal value of the shares which they possess; no call may be made in excess of this limit.

Article No. 14

The rights and obligations appertaining to the share are not affected by any change of owner. The possession of a share automatically implies admission of the statutes and of the decisions taken by the general meeting.

The heirs or creditors of shareholders cannot, under any pretext whatsoever, claim that seals be fixed on the possessions and papers of the company, nor participate in any manner in its management. They are bound, for the exercise of their rights, by the annual accounts and resolutions of the general meeting.

Section 111

Administration of the Company

Article No. 15

Board of Directors

The company is administered by a Board formed of at least three members and at most seven, chosen among the holders of shares and nominated by the general meeting of shareholders.

Article No. 16

Guarantee Shares of the Directors

Each director shall be the holder of ten shares during the entire duration of his functions.

These shares are entirely affected as guarantee for the acts of the Board, even in respect of the acts of a single Director; they are not transferable, bear a stamp to this effect, and are deposited in the custody of the company.

Article No. 17

Duration of the Functions of the Directors

The Directors are appointed for a period of one year, each Board remaining in office until the holding of the ordinary general meeting called for the purpose of approving the accounts of the company's year.

Article No. 18

Power of Adding to the Board

If the Board consists of less than seven members, it may, if deemed advisable in the interests of the company, appoint additional directors up to the total of seven.

In this event the appointments made by the Board must be submitted for ratification to the next general meeting of shareholders.

[fol. 5520] Similarly, if a vacancy arises on the Board in the interval between two general meetings, the Board may appoint a Director temporarily to fill the vacancy; should the number of directors fall to less than three, the Board is obliged to fill the vacancy within one month after same has occurred. The next general meeting ratifies these nominations.

If these temporary nominations are not ratified by the general meeting, the resolutions passed and the acts accomplished by the Board are not invalidated as regards third parties.

Article No. 19

Chairman, etc. of the Board

Every year, at the Board Meeting following the general meeting, the Board nominates a Chairman among its members, and, if it deems advisable, a Vice-Chairman, the Chairman and Vice-Chairman may always be re-elected.

Should the Chairman and Vice-Chairman be absent, the Board will, for each meeting, select one of the members present to fill the functions of Chairman.

The Board also appoints the person who is to fill the

functions of Secretary, who may be selected outside the shareholders.

Article No. 20

Board Meetings

The Board of Directors shall meet on the convocation of its Chairman or Vice-Chairman, or of the Managing Director, or of one-half of its members, as often as the interests of the company require, and at least twice yearly, either at the registered office, or at any other place mentioned in the letter of convocation.

The Directors may be represented at any meeting by one of their co-directors designated by letter or telegram, but a director cannot act as proxy at any meeting for more than one of his co-directors.

The actual presence of two members, and the representation, either in person or by proxy, of at least one-half of the members of the Board are necessary for the validity of the proceedings.

Resolutions are adopted on a majority of the votes of the members present. A Director who represents one of his co-directors has two votes. In case of division, the Chairman of the Meeting has the casting vote.

It is provided, however, that if the Board of Directors only consists of three members, the actual presence of at least two members is necessary for the validity of resolution.

So far as concerns third parties, proof of the number of Directors present and of their power to act as such results from the inscription in the minutes of each meeting of the resolutions passed and from the mention in any extracts from these minutes of the names of the Directors present and of those absent.

[fol. 5521] Article No. 21

Minutes of the Board

The Resolutions adopted by the Board are recorded by minutes written in a special Minute Book and signed by the Chairman of the Meeting and by another Director, or by the Majority of the Members present.

Copies or extracts of these Minutes, required for production before the Courts or elsewhere, are signed by the Chairman of the Board or in default thereof by another Director.

Article No. 22

Powers of the Board

The board of Directors is invested with the fullest possible powers to act in the name of the Company and to carry out or authorise all acts and operations relative to its objects.

In particular, the Board has the following powers, which are set forth, however, as instances of its powers and not as limiting the same:—

It represents the Company as against third parties and all Public Authorities.

It draws up rules for the management of the Company.

It establishes branches, agencies, depots and offices wheresoever it may deem advisable, in France and in all other countries.

It appoints and dismisses all agents, employees and workpeople of the Company, determines their wages, salaries, fees and gratuities, whether on a fixed or on a percentage basis, together with all other conditions of their employment and retirement, or of their dismissal; if deemed advisable, it may organise any description of sickness and pension funds for the staff.

It carries out all formalities necessary so that the company may conform to the laws of the countries in which it may operate and appoints all responsible agents.

It settles the General Expenses of Management and regulates supplies of all kinds.

It receives all amounts due to the company and pays sums owing.

It determines the investment of funds available and regulates the employment of any Reserve Fund.

It contracts all insurances.

It subscribes, accepts, endorses, negotiates and discharges all commercial bills, bills of exchange and warrants.

It decides on all agreements, contracts and enterprises, whether for fixed sums or otherwise, entering into the objects of the company.

It requests and accepts all concessions, makes all tenders, takes part in all adjudications and furnishes all guarantees.

It authorises all purchases, redemptions, transfers, disposal of Government Stock, Stock Exchange securities, book-debts, patents or licenses of patents of invention, com-

mercial and industrial establishments and all descriptions of rights concerning personal estate.

[fol. 5522] It consents or accepts, grants or cancels, all leases and rentals, with or without promise of sale.

It authorizes and realises all purchases, all exchange of lands and rights to real estate, also the sale of those it may deem useless.

It decides all work, construction, installations, and in particular creates and instals all factories and industrial and commercial establishments.

In all banks, particularly the Bank of France, it opens current accounts and accounts guaranteed by stocks and shares, and issues all cheques and bills for working these accounts. It operates the deposit and withdrawal of all funds and bills.

It contracts all loans by means of open credits or otherwise. However, loans in the form of debenture bonds must be authorized by the General Meeting of Shareholders.

It grants all mortgages, pledges, delegations, surety-bonds, guarantees, endorsements, and other personal and real estate guarantees on the property of the Company.

It establishes all Companies, French or Foreign, or co-operates in their foundation; it grants to companies constituted or to be constituted all transfers of assets under such conditions as it deems advisable; it subscribes, buys and sells all shares, debenture bonds, founders' shares, interest shares and all rights whatsoever; it interests the company in all participations and syndicates.

It exercises all legal actions, whether as plaintiff or defendant.

It authorizes all agreements, transactions, compromises, all acceptances and non-units, as well as all substitutions and priorities, and all withdrawals, and cancellations of charges, distraints, oppositions, and other rights, all either before or after payment.

It draws up reports on the situation, inventories and accounts which should be submitted to the General Meeting of shareholders; it decides on all proposals to be put forward to the General Meeting and settles the Agenda.

Article No. 23

Délegation of Powers

The Board may delegate such powers as it deems advisable to one or more of its members for the purpose of the execution of its decisions and for the current management of the Company.

It may also confer on one or several Managers, members of the Board of Directors or non-members, such powers as it deems advisable for the technical and commercial management of the Company, and may enter into agreements with this or those Managers, defining the duration of their functions, the extent of their powers, and the conditions of their retirement and of their dismissal.

The Board may create all Management Committees and all consultative or technical committees, permanent or otherwise, and the members of those Committees are selected from amongst the Directors or outside of them; it settles the working and the powers of these committees.

[fol. 5523] It settles the amount of the fixed or proportional remuneration of the Managing Directors, of the Managers and of the Management Committee, and these emoluments are debited to the Company's general expense account.

Finally, the Board can confer powers on such persons as it deems advisable, for one or several objects resolved on.

Article No. 24

Authorised Signatures

All documents referring to the Company which are decided upon by the Board, as well as the withdrawal of funds and bills, drafts on bankers, debtors or depositors, and subscriptions, endorsements, acceptances, guarantee signatures or receipts for commercial bills shall be signed by two directors, unless the Board especially delegates its powers to one Director or to a Manager or to any other proxy.

Article No. 25

Responsibility of the Board

No personal or joint obligation with regard to the Company's liabilities is contracted by the Directors as a result of their management of the Company's affairs. The Direc-

tors are only personally responsible should they commit a grave error in the execution of the mandate confided to them, or, again, should they have acted beyond the powers entrusted to them by the Company.

This responsibility shall be incurred collectively if the act giving rise to the claim results from an action of the Board as a whole, and it will only be incurred individually if it can be proved that the act in question results from the personal action of a single director.

In all cases, the responsibility of the Directors is confined strictly to the exact limit of the loss suffered, the burden of proof of the direct relation of cause and effect between the loss suffered and the personal fault of the Directors falling on the shareholder or third party making the complaint.

Article No. 26

Limitation of Interest of Directors in other Companies, etc.

The Directors are forbidden to take or to retain any interest direct or indirect in any enterprise or any contract entered into by mutual agreement with the Company or for its account, unless they have been duly authorised to do so either by the Board of Directors or by the Ordinary or Extraordinary General Meeting of Shareholders, as the case may be. Every year communication is given to the Ordinary General Meeting of the execution of contracts or enterprises thus sanctioned or authorized.

Article No. 27

Allowances, Attendance Fees, Percentage Remunerations

In addition to the special allowances provided for in Article No. 23 above, the Directors shall receive Attendance Fees, of which the amount, fixed by the General Meeting, remains unaltered until such time as modified by any subsequent General Meeting. In addition, they are entitled to a share in the profits of the Company as attributed to them by Article No. 44 hereafter.

[fol. 5524] The Attendance Fees and the proportion of profits are divided by the Board among its members in such proportion as it may decide.

Section IV

Auditors

Article No. 28

Nomination, Powers, Remuneration

Each year the General Meeting nominates one or more Auditors, who may or may not be shareholders, and who are charged with the drawing up of a report to the next General Meeting on the position of the Company, on the Balance Sheet and on the Accounts presented by the Board of Directors.

They may be reelected.

During the quarter preceding the date fixed for the holding of the General Meeting, the Auditors have the right, whenever they may so deem advisable in the general interest, to acquaint themselves with the books and to examine the operations of the Company.

In urgent cases they may convoke a General Meeting.

If the General Meeting nominates several Auditors, one of them may act alone in the case of death, resignation, refusal or impossibility to act of the other.

The Auditors are entitled to remuneration which, fixed by the General Meeting, remains unaltered until such time as modified by any subsequent General Meeting.

Section V

General Meetings

I. Dispositions applicable to both Ordinary and Extraordinary Meetings

Article No. 29

Notices

An annual General Meeting of the shareholders is called by the Board each year, for the first Friday after the third Monday in the month of March, due notice being given of the hour and place in the letter of convocation.

General Meetings may be convoked specially, either by the Board of Directors or, in urgent cases, by the Auditors. With the exception of the instances provided for in Article No. 41 hereafter, the Board must convoke a General Meet-

ing at the request of shareholders representing at least one quarter of the capital of the Company.

Notice as to General Meetings must be given thirty days at least in advance, by registered letter and by telegram addressed to the shareholders duly registered on the books of the Company at the date the Meeting is called. The notice necessary for Meetings may be reduced to six days for Ordinary meetings convoked exceptionally or for a second convocation, subject to the requirements of the law and of the provisions of Article No. 41 hereafter, referring [fol. 5525] to Extraordinary Meetings held after a second or third convocation.

The notices given in respect of Meetings shall indicate briefly the object of the Meeting.

Article No. 30

Composition

All persons who have held shares for at least five days before the meetings may assist at this Meeting without any previous formality. They may be represented by a proxy at the General Meeting.

No one may represent a shareholder at the Meeting unless he is personally a member of this Meeting or the legal representative of a member of the Meeting.

Nevertheless the following are legally represented: minors, prohibited persons and other persons legally incapable, by their guardians or other legal representative; married women by their husbands, limited partnerships with shares of private limited companies, partnerships or Limited Partnerships by their managers or one of their managers, having the power to act alone or furnished with a power by his co-managers, or by a person holding a permanent power of attorney and specially delegated for this purpose; lastly Limited Companies by a delegate of their Board of Directors. In these instances, the guardian, legal representative, husband, manager, holder of a permanent power of attorney, delegate of Board of Directors, need not necessarily be shareholders personally.

The form of the proxies is settled by the Board of Directors.

Article No. 31

Procedure at General Meetings

The Chairman or Vice-Chairman of the Board of Directors presides over the General Meeting or, in their absence, a Director delegated by the Board.

The functions of scrutineers of the votes cast shall be filled by the two shareholders present who represent the largest number of shares and who accept the position. The Meeting appoints a secretary who need not necessarily be a shareholder.

A list of the shareholders attending is drawn up, containing the names and residences of the shareholders present and represented, and the number of shares owned by each of them. This list, which is certified by the person presiding the Meeting, the scrutineers and the Secretary, is deposited at the Registered Office and shall be communicated to any applicant.

Article No. 32

Agenda

The Agenda is drawn up by the Board of Directors if it convoked the Meeting, or by the Auditors if they do so.

The matters contained in the Agenda are limited to proposals eman-ting from the Board or from the Auditors and to proposals, falling within the scope of an ordinary General meeting, which have been communicated to the Board at least one month before the meeting, with the signature of members of the meeting representing at least one quarter [fol. 5526] of the Capital.

Should a communication of this nature be made, its substance should be communicated by the person empowered to convoke the Meeting to each Shareholder by registered letter sent to the last address known to the Company and entered in the Company's Register of shareholders.

No matters other than those mentioned on the Agenda can be discussed by the General Meeting.

Article No. 33

Proceedings

Records of the proceedings of the General Meeting are kept in a special register and signed by the Chairman Scrutineers and Secretary.

Copies or extracts of these proceedings, required for production before the Courts or elsewhere, are signed by the Chairman of the Board or by another Director.

After the Company is dissolved and during its liquidation these copies or extracts are signed by two liquidators or, if there be occasion by the sole liquidator.

Article No. 34

General Powers of the Meeting

The General Meeting regularly constituted represents all the shareholders. It may be ordinary and extraordinary if it combines the necessary conditions.

The resolutions of the Meeting, taken in conformity with the Law and the Statutes are binding on all shareholders, even if absent, incapable or not assenting.

II. Ordinary General Meetings

Article No. 35

Composition

The ordinary General Meeting (annual or convoked specially) consists of shareholders owners of one share at least on which all calls due have been paid.

Article No. 36

Quorum

In order to deliberate validly, the Ordinary General Meeting shall be formed of a number of shareholders representing at least one quarter of the Capital.

If this condition be not fulfilled, the General Meeting shall be convoked again in the manner prescribed by Article No. 29.

The resolutions taken by this second Meeting are valid no matter what number of shares be represented, but they

[fol. 5527] can only refer to the objects mentioned on the Agenda of the first Meeting.

Article No. 37

Voting Rights

Decisions of the ordinary General Meeting are taken by a majority of the votes of members present; should there be an equal division of votes, the President has a casting vote.

As stipulated in Article No. 13 preceding, the members of the Meeting who hold "A" share, or their proxies, are entitled to as many votes as the shares they hold without any limit, and members of the meeting who hold "B" shares, or their proxies, are entitled to as many times fifty votes as they hold shares of this category also without limit.

Article No. 38

Powers

The general Meeting (Whether convoked specially or annually) shall hear the board of Directors' Report on the affairs of the Company, it shall also hear the Auditors' Report on the position of the Company, on the Balance Sheet and on the Accounts presented by the Board.

It shall discuss, approve or rectify the Accounts, it shall fix the dividends to be distributed.

It shall nominate and dismiss Directors and Auditors.

It shall determine the amo-nt to be paid to the Board of Directors in respect of attendance fees, and the remuneration of the Auditors.

It shall authorise all loans effected by the issue of debenture bonds, whether secured by mortgage or otherwise.

It shall deliberate on all other proposals mentioned on the Agenda, if the same do not require to be dealt with by an Extraordinary General Meeting.

Finally, it confers on the Board of Directors the necessary authority in respect of all instances where the powers attributed to the Board are inadequate.

The resolution containing the approval of the Balance Sheet and of the Accounts shall be invalid unless preceded by the Auditor's Report.

III. Extraordinary General Meetings

Article No. 39

Composition

The extraordinary General Meeting consists of all shareholders whatever may be the number of their shares, provided that all calls due thereon have been paid.

[fol. 5528]

Article No. 40

Quorum and Voting Rights

The resolutions shall be taken by a majority of two thirds of the votes of the members present.

As stipulated in Article No. 13, each member of the Meeting disposes without exception of one vote for each share, irrespective of category, without limit.

Article No. 41

Powers

The extraordinary General Meeting has power, but only on the initiative of the Board of Directors to modify the Statutes in any way thought fit, subject, however, to the Laws governing Companies and subject to the restrictions concerning the object of the Company referred to hereunder:

In particular, it may decide on the following matters:

1. The change of the Company's name and the transfer of the registered office to any place outside the Departments of the Seine or the Seine-&-Oise, and more particularly to any place in the French colonies, countries under a protectorate or under a mandate, and even abroad.

2. The methods and conditions relating to the transfer of shares. The increase or reduction of the Capital; its division into shares of another type than that of one hundred Francs. It is provided, however, that any increase or reduction of the capital shall not affect the registered form of the shares, or the conditions laid down regarding their division only into the two categories "A" and "B" the proportion existing between the same at the date of constitution of the Company, and the respective rights and privileges attached to the same as stipulated in Articles Nos. 6 and 7 of the Statutes, unless previously specifically

authorized as regards any of these matters by a resolution of a Special Meeting of the category of shareholders in question, this Meeting having been called prior to the holding of the Extraordinary General Meeting and held in accordance with the last paragraph of the present Article.

3. The extension or reduction of the duration of the Company or its dissolution at an earlier date.

4. The amalgamation or alliance of the Company with other companies, constituted or to be constituted.

5. The transformation to that of a Company of any other form, and more particularly into a Private Limited Company (Societe a Responsabilite Limitee).

6. The transfer or sale to any third parties or transfer in kind to any Company of the whole of the Assets, rights and obligations of the present Company.

7. All alterations in the object of the Company (without, however, changing the object completely or altering it in its essence), as also the division of profits and of assets.

[fol. 5529] In all the instances provided for above, the proper constitution of the Meeting and the validity of its decisions is subject to the attendance, personally, or by proxy, of shareholders representing at least three fourths of the Capital.

So far as regards alterations in the Statutes other than those referring to the object or form of the Company, if at the first Meeting three fourths of the shareholders are not present or represented, a further Meeting may be called which will be properly constituted if attended personally or by proxy by shareholders representing at least one half of the Capital of the Company. And if this second Meeting is not attended by shareholders representing one half of the Capital of the Company, a third Meeting may be called at which the presence, personally or by proxy of shareholders representing one third of the Capital will be sufficient. These second and third meetings are to be called by means of the two advertisements prescribed by law, made at thirty days interval, published both in the bulletin of compulsory legal notices in a newspaper giving legal notices in the place where the registered office is situated and also by registered letter and telegram dispatched at least 30 days before the Meeting.

In any instance where a decision of the General Meeting affects the rights of one category of shares or shareholders,

this decision shall not be final until such time as it has been ratified by a special meeting of the shareholders whose rights are to be modified. This special meeting shall be composed and will deliberate under the conditions determined by the present article and by articles Nos. 39 and 40 above.

Section VI

Six Monthly Statement—Annual Balance Sheet—Reserve Funds—Division of Profits

Article No. 42

Business Year

The Company's year commences January 1st and finishes December 31st, except that the first accounting period of the Company shall extend from the date of the definite constitution of the Company until December 31st, 1929.

Article No. 43

Approximate Statements and Balance Sheet—Right of Communication

Every six months, an approximate statement showing the Assets and Liabilities is drawn up. This Statement is placed at the disposal of the Auditors.

In addition, in conformity with Article No. 9 of the Commercial Code, a detailed Balance Sheet is prepared every year, containing particulars as to the Company's Assets and Liabilities. In this Balance Sheet the various items of the Assets are written down in accordance with the decisions of the Board of Directors.

The detailed Balance Sheet and Profit and Loss Account are placed at the disposal of the Auditors not less than forty days prior to the General Meeting. They are presented to this Meeting.

During the period of fifteen days preceding the General Meeting, any shareholder may acquaint himself at the Reg-[fol. 5530] istered Office with the detailed Balance Sheet and with the list of shareholders and may also obtain at his own expense a copy of the Balance Sheet summarizing the Assets and Liabilities and a copy of the Report of the Auditor or Auditors.

Article No. 44

Basis of estimation of the Annual Profits and Division thereof

The receipts of the Company, as shown by the detailed annual Balance Sheet, after deduction of the general expenses, of expenses of the Company, of all depreciation written off the assets of the Company and of all reserves for commercial or industrial risks, constitute the Net Profits of the financial period.

From these profits are deducted, every year:

1. Five percent to constitute the Reserve Fund prescribed by Law. This allocation ceases to be compulsory when the Reserve Fund reaches a sum equal to one tenth of the Capital of the Company. It is resumed when, for any cause whatsoever, the Reserve has fallen below this proportion of one tenth.

2. Subject to the provisions mentioned later, the sum necessary to pay the shareholders, as a first dividend, ten per cent per annum of the sums paid up and unredeemed on their shares without, however, giving the shareholders any right to claim this payment from the profits of subsequent years, if the profits of any one year did not permit of the payment of the ten per cent, except in so far as it stipulated later.

The balance is divided as follows:

5% at the disposal of the Board of Directors.

47½% to the shareholders without any distinction between the holders of "A" shares and "B" shares.

47½% to the Deferred Shares.

However, the Ordinary General Meeting may, on the proposal of the Board of Directors, decide to set aside out of that part of the Profits falling to the shareholders and to the Deferred shares, such sums as it may deem advisable either to be carried forward to the following year or to be applied as additional depreciation of the assets of the Company or to be carried to an extraordinary reserve fund.

In particular, this Fund may be applied, on the decision of the Extraordinary General Meeting, following on the proposal of the Board of Directors, either to make up the payment to the shareholders of a first dividend of ten per

cent should the profits of one or more years be insufficient, or to purchase and cancel shares or deferred Shares of the Company, or for the total or partial redemption of the shares by the drawing of lots or otherwise. Shares entirely repaid shall be replaced by other shares, ("Jouissance" shares) having the same rights and prerogatives as the ordinary shares, except so far as concerns the first dividend of ten per cent and the repayment of capital.

Article No. 45

Payment of Dividends

[fol. 5531] Dividends are paid annually at the periods and places fixed by the Board of Directors.

The payment of dividends on all shares is valid if effected to the bearer of the scrip.

Dividend not claimed within a period of five years following on the date when payment became due are prescribed according to law.

Section VII

Dissolution—Liquidation

Article No. 46

Loss of three fourths of the Capital of the Company

Should three fourths of the Capital of the Company be lost, the Board of Directors must call a General Meeting of all shareholders, which shall decide whether the Company shall be continued or dissolved. The validity of this General Meeting as regards the quorum and the majority is governed by Articles Nos. 40 and 41 above.

Article No. 47

Expiration—Dissolution—Conditions of Liquidation

On the expiration of the duration of the Company, or in the event of its being dissolved at an earlier date, the General Meeting shall, on the proposal of the Board of Directors, settle the method of liquidation and nominate one or several liquidators whose powers it shall determine.

The nomination of the liquidators will put an end to the powers of the Directors and Auditors.

By virtue of a resolution passed by the Extraordinary General Meeting, the liquidators may transfer to another Company against shares in the latter all or part of the assets rights and obligations of the dissolved company or may transfer the said assets rights and obligations to a Company or any other person.

During the liquidation the General Meeting regularly constituted shall retain the same powers as when the Company was in being; in particular, it retains the power of approving the Accounts of the liquidation and giving a discharge to the liquidators.

After the settlement of the liabilities and charges of the Company, the net product of the liquidation shall be first employed in the redemption of the amounts paid up on the shares, if this redemption has not already been effected, and the surplus is divided 50% to the shareholders without distinction as to the category of the shares and 50% to the holders of deferred shares.

Section VIII

Disputes

Article No. 48

Disputes between Shareholders

[fol. 5532] All disputes which may arise during the existence of the Company or during its liquidation, either between the Company and its shareholders, or between the shareholders themselves, or between the holders of Deferred Shares themselves, or between the Company and the Holders of Deferred Shares, on the subject of matters concerning the Company shall be decided in conformity with the Law of 31st December 1925 and submitted to the Court of Arbitration to be constituted in accordance with the terms of Article No. 49 of these Statutes.

For this purpose, in the event of a dispute, all shareholders must elect domicile at the registered office of the Company and all notices or summons may be properly effected at this domicile.

Should domicile not be elected, notices or summons may be properly effected at the office of the Procurer of the Republic attached to the Civil Court of the Place where the Registered Office is situated.

Any holder of shares who wishes to place before the Court of Arbitration any litigious matter must communicate the same to the Board of Directors, with particulars as to the exact object, motives and conclusion of the matter and must require the Board to communicate the matter to the Court of Arbitration which must meet with the shortest possible delay.

The Board must, within the period of a fortnight, inform the Applicant of the transmission of his demand to each of the members of the Court of Arbitration; these members, after being informed, will settle the procedure to be followed.

In the event of default or negligence on the part of the Board in regard to this matter, the applicant shall be entitled, after the expiration of the delay of a fortnight, to communicate direct with the members of the Court of Arbitration, and in this case the applicant shall be required to pay to the members of the Court such sums as they may consider necessary in respect of deposits for costs.

Should the matter be urgent, the applicant may communicate direct with the member of the Court of Arbitration first named on the list of members, and this member is authorized by the present Article to decide, alone and without the assistance of his colleagues, on any matter submitted for arbitration.

Article No. 49

Stipulations as to the right to bring matters before the Courts

By express agreement and by reason of the mutual abandonment of individual rights, effected in the common interest, all shareholders renounce their separate rights in regard to the bringing of matters before the Courts, authorized by Article No. 17 of the Law of 24th July 1867.

Consequently all shareholders, holders of shares or holders of Deferred Shares, undertake not to place directly before the Courts any litigious matter resulting from a question concerning the Company in connection with which any shareholder could bring any form of action, either for annulment or as regards responsibility, whatever Courts could be involved and whether the action could be brought against the Company or against another shareholder or against a Director or Founder or any other person interested in the Company & this provision applies to any litigious matter

arising out of a question concerning the Company which might be invoked by any shareholder, whether on behalf of all shareholders or personally.

[fol. 5533] By reason of the approbation of the present Statutes in itself all shareholders are bound, both personally and for all other interested parties, to agree to accept as nul- and void any action of this nature, whether appertaining to the Company or individual, which may be brought directly before the Courts, together with any proceedings whatsoever which may result therefrom and are bound, by virtue of the dispositions of the Law of 31st December, 1925, to submit the matter in dispute to a Court of Arbitration, of which the members will be appointed by the General Meeting constituting the Company.

The award of the arbitrators must be given within a delay of three months, as from the day when they received full particulars of the matter from the applicant or applicants, with the exact indications as to the questions submitted for settlement. Nevertheless the Arbitrators shall have power in exceptional cases to extend the period of three months for a further reasonable period without, however, it being possible to postpone their final decision for more than a year from the date they were officially notified of the dispute.

The Arbitrators shall not be obliged to comply with any legal formalities. They shall endeavor to arrive at a solution acceptable to all parties and their decision shall be given only in the last resort and by a majority. The Arbitrators shall decide as to the parties who shall support the fees and expenses of the arbitration and shall fix the amount thereof. The powers to act of the Arbitrators are limited to the year for which they are appointed. The General Meeting may, whenever held, modify the composition of the Court of Arbitration. If no decision is taken on this subject, the powers of the Arbitrators are automatically continued for the following year.

In the event of death, resignation or any other cause by reason of which an Arbitrator would not be able to fulfil his duties, the Board of Directors must provide on the Agenda of the next General Meeting for the nomination of new Arbitrators; should any conflict arise, the Board must also call a General Meeting to proceed with the nomination of Arbitrators.

Section IX

Association of the Holders of Deferred Shares

Article No. 50

1. An Association is formed which shall exist between all the owners, present or future, of the thousand Deferred Shares created above.

II. The object of this Association is to place in common, reunite and centralise all rights and powers which may appertain to the Preferred Shares, so that the Association alone, and not the holders of the Deferred Shares individually, may exercise all the rights and powers attached to the said Shares, and in particular, may conclude with the Company any contract or arrangement in all instances where the same may be necessary and more particularly in case:

Of the increase or reduction of the Capital of the Company if this increase or reduction necessitates any modification in the proportion of the Profits attributed to the Deferred Shares.

Of the creation of an increased number of Deferred Shares.

Of the repurchase of all or part of the Deferred Shares.

[fol. 5534] Of the dissolution or amalgamation of the Company and of the transformation of the Deferred Shares.

The Association shall exercise, without any restriction whatsoever, the rights of the holders of the Deferred Shares for the determination and settlement of all questions affecting the said holders in any way whatsoever, provided, however, that the present Article shall not give the Association of the Holders of Deferred Shares any right of interference in the Affairs of the Company nor any right of attendance at the General Meetings of the shareholders of the Company.

III. This Association takes the title of "Société Civile des Portseurs de parts de fondateur de la Société Anonyme Francaise Timken".

IV. The Registered Office of the Association is at 5 Quai Aulagnier, Asnieres.

The Registered Office may be transferred to any other place by a decision of the Directors of the Association.

V. The Association shall be automatically brought into existence, without any formalities, as from the date when by reason of transfer or assignment the thousand Deferred shares created above shall be owned by several persons.

The Association shall continue to exist until such time as the rights attached to the Deferred Shares are extinguished.

The death, banishment, bankruptcy or insolvency of one or more members does not involve the dissolution of the Association before the expiration of its normal life.

VI. No special share certificates shall be issued by the Association; the Certificates in respect of the Deferred Shares shall be inscribed with reference to the existence of the said association.

The ownership of a Deferred Share implies adhesion to the terms of the present Statutes and to the decisions of the General Meeting of the Holders of Deferred Shares. The rights and powers attached to a Deferred Share appertain to the person holding the Share Certificate in question, no matter in what hands it may pass.

It is provided that, notwithstanding the fact that the rights and powers attaching to the Deferred Shares are placed in common, each of the holders of Deferred Shares retains the personal and exclusive ownership of his Shares and may dispose of them and come to an arrangement by mutual consent with the S. A. Francaise Timken for their repurchase, but may not oppose the compulsory repurchase of all or part of the Deferred Shares decided, as a general measure, by the General Meeting of the Holders of Deferred Shares.

VII. The Association is administered by one or more Directors appointed by the General Meeting of the members of the Association which may revoke these appointments. These Directors need not necessarily be members of the Association.

These Directors may act jointly or separately. The length of their appointment is without limit.

Exceptionally, Mr. Seward is appointed as the first Director.

[fol. 5535] VIII. In the event of death, resignation or dismissal of a sole Director or of one of the Directors, the

vacancy shall be filled up by the General Meeting of the Holders of Deferred Shares & within three months of the event which has given rise to the vacancy.

The resolutions containing the appointment or dismissal of Directors shall be deposited for record with the present Statutes.

IX. The Director or Directors holding office shall have the fullest possible powers to represent the Association of the Holders of Deferred Shares either as against the Company or against third parties. They are authorized more particularly to receive all communications and propositions from the Company and from its Board; convoke General Meetings of the Holders of Deferred Shares; transmit the decisions of these Meetings to the Company and see to their execution; draw up with the Company all agreements which they may consider necessary in the interests of the Association of the Holders of Deferred Shares subject however, to the approbation of the General Meeting of the Holders of these Shares; carry out any agreements agreed to by this General Meeting.

The Director or Directors shall have power to delegate and to transmit all or part of their powers and to create special powers of attorney.

X. Whenever necessary, the Holders of Deferred Shares shall be convoked in General Meeting by the Director or Directors of the Association or by one of them, or by the Board of Directors of the Company or by persons holding at least one fourth of the Deferred Shares.

The Notice convening the Meeting shall be effected by means of an advertisement inserted at least 30 days prior in a newspaper publishing legal announcements, published in the place where the Registered Office is situated and by registered letter and telegram addressed to those holders of Deferred Shares who have communicated their names and addresses to the Registered Office of the Association at the time the notice convening the Meeting is published.

The delays concerning the deposit of certificates, and the formalities relating thereto, necessary in order to assist at the General Meeting, shall be specified in the notice convening the meeting provided, however, that the delay may not exceed 5 days before the Meeting; no matter what d. te the convocation bears.

XI. The General Meeting is composed of all the Holders of Deferred Shares. It is presided by the Director or one of the Directors of the Association, or, in their absence, by the largest holder of Deferred Shares, present and accepting. The two largest holders of shares present and accepting are nominated as scrutineers of votes. The President and Scrutineers nominate the Secretary.

The resolutions of the General Meeting are only valid if the shareholders present represent, either personally or by proxy, two thirds of the number of shares existing.

If, on the first convocation, the Meeting does not represent two thirds of the shares existing, a second Meeting shall be called and the resolutions adopted by this second Meeting shall be valid if it comprises one half of the said shares but only in regard to the matters specified in the Agenda of the first Meeting.

[fol. 5536] Finally if One half of the said shares are not comprised in the second Meeting, a third Meeting shall be convened, and the resolutions of this Meeting shall be valid no matter what number of shares are represented.

These second and third Meetings shall be convened either by the Director of the Directors of the Association, or by one of them, or by the Board of Directors of the Company, or by persons holding at least a quarter of the Deferred Shares, by registered letter and by telegram sent at least thirty days before the Meeting to all such holders of Deferred Shares who have notified the Director or one of the Directors of the Association, their name, Christian name, profession and address at the moment of convocation. Notice convening these second and third Meetings must in any case be published also at lease thirty days in advance in one of the newspapers publishing legal notices of the place in which the Registered Office of the Association is established.

In any case resolutions to be valid must be approved by two thirds of the votes of the shareholders present or represented at the Meeting.

Every member of the Meeting shall have right to as many votes as the shares which he owns or represents without limitation.

No person may represent a holder of Deferred Shares if he himself is not a member of the Meeting.

The proceedings are recorded by Minutes written in a special Minute Book and signed by the President, Scruti-

neers and Secretary. Copies or extracts of these Minutes are certified as correct and signed by the Director or one of the Directors.

XII. The General Meeting considers and decides without appeal on all questions of any nature whatsoever which may interest the Association, provided that particulars of these matters have been indicated in the notice convening the Meeting.

The General Meeting appoints or dismisses the Director or Directors, hears their Reports and gives them "quitus".

It examines, rejects or authorizes all contracts, arrangements compromises and all modifications of the rights of the holders of Deferred Shares, more particularly as to all propositions for the repurchase of shares, and it decides without appeal on all questions affecting the Deferred Shares in any way whatsoever.

It confers on the Directors any additional powers.

Finally, it may modify the present Statutes without any restriction or reserve.

XIII. The General Meeting, regularly constituted, represents the whole of the holders of Deferred Shares; its decisions are binding on the whole of the shareholders even if absent, dissenting or incapable.

XIV. The expenses in connection with the working of the Assoication shall be advanced by the "Société Anonyme Francaise Timken", this Company reimbursing itself out of the proportion of Profits falling to the Deferred Shares. [fol. 5537] Any disputes concerning the carrying out or interpretation of the above provisions shall — decided in accordance with the Law of 31st December, 1925, and referred for settlement to the Court of Arbitration of which the constitution is provided for in the terms of the following Article of the present Statutes.

Section X

Constitution of the Society

Article No. 51

The present Company shall only be considered as definitely constituted after:

1. All the shares shall have been subscribed and fully paid up in cash. Proof of this will be given by a notarial declaration made by the founder of the Company, to which

will be annexed a list of the subscriptions and payments containing the necessary legal declarations.

2. A first General Meeting shall have recognized the veracity of the declaration of subscription and payment, nominated the first Directors and the Auditor or Auditors and ascertained their acceptance of these functions.

This Assembly shall be composed and its resolutions shall be taken according to the Law.

It is specially provided, however, that contrary to the provisions of the present Statutes, each person attending the constitutive Meeting shall have at least one vote and as many votes as shares represented by him either in his personal name or as proxy.

It is also provided that, as a special measure, this Meeting may be called, by a notice of not less than two days by an advertisement inserted in a newspaper of legal notices published in the place where the Registered Office is situated, or by registered letters addressed to the shareholders; it may even be called by notices given verbally and without any delay if all shareholders are present or represented.

Article No. 52

For the purposes of publication of the present Statutes and of all documents and extracts from proceedings relating to the constitution of the Company, full powers are given to the bearer of a copy or an extract from these documents.

[fol. 5538] II

As stated by a *co*dument received by Me Constantin, Notary at Paris, the sixteenth June nineteen hundred and twenty eight, Mr. Seward has declared: that the ten thousand shares of one hundred francs each of the said "Société Anonyme Française Timken", which were to be subscribed in cash, have been subscribed by eight persons, in different proportions and that there has been paid in cash by each subscriber a sum equal to the amount of the shares which he has subscribed, i.e., one million francs in all, which was deposited with Lloyds and National Provincial Foreign Bank Ltd.

And he has produced, in support of the said declaration, a schedule giving the names, Christian names, occupations

and addresses of the subscribers, the number and amount of the shares which they have subscribed, with the schedule of payments which they have each effected, which schedule has been annexed to the said declaration of subscription and payments.

III

From the Minutes (of which a copy has been deposited for record with Me Constantin, Notary at Paris, following a document received by him sixteenth June 1928) of the resolutions passed by the Constitutive General Meeting of the shareholders of the "Société Anonyme Francaise Timken", held sixteenth June 1928, it appears:

Firstly. That the General Meeting, after verification, has recognized the exactitude of the declaration of subscription and payments, made by the founder of the said Company, in the terms of the document received by Me Constantin, Notary at Paris, 16th June 1928.

Secondly. That the General Meeting has appointed as the first Directors, in accordance with the terms of Article 13 of the Statutes:

1. M. Pierre-Louis-Donat Marchal, manufacturer, residing at 38 Boulevard d'Argencon, Neuilly a/Seine.
2. M. Adolphe Sanz, manufacturer, residng at 16 rue Ampere, Paris.
3. M. Harry-Mann Ainsworth, manufacturer, residing at Hotel Majestic, Avenue Kléber, Paris.
4. M. Michael-Bruce-Urquhart Dewar, engineer, residing at 4 Central Buildings, Westminster, London, S.W.
5. M. Andrew-Jameson-Mathews Duncan, solicitor, residing at 21 Leadenhall Street, London E.C.
6. M. William-Eric-Louis Seward, manufacturer, residing at 128 Piccadilly, London W1.

These appointments have been accepted by the Directors or by their proxies.

Thirdly. That the General Meeting has appointed as Auditors:

M. Edmund Heisch, Chartered Accountant, residing at 18 rue Chauveau Lagarde, Paris.
[fol. 5539] and M. George Stevens Murray, Chartered Accountant, residing at the same address.

With power to act jointly or individually and for one to act alone in default of the other.

With the mission of making a report to the General Meeting on the Accounts of the Company for its first financial period and on the position of the Company, in accordance with the Law.

These appointments have been accepted by the proxy of the said Auditors.

Fourthly and Finally. That the General Meeting has approved the Statutes and has declared the Company definitely constituted.

Copies:

Of the document containing the declaration of subscription and payments, dated 16th June 1928, of the Schedule and of the Statutes annexed thereto.

Of the document deposited 16th June 1928 and of the Minutes of the General Meeting annexed thereto.

Have been lodged with the Registrar of the Commercial Tribunal of the Seine and with the Justice of the Peace at Asnieres, 9th July 1928.

Extracted and noted

(Signed) Constantin.

[fol. 5540] DEFENDANT'S EXHIBIT 207

Cablegram

London, Mar. 11, 1929.

LCO Timken, Canton, Ohio

Regarding French capital increase Dewar suggests subject to French legal advice additional capital be authorized by interest bearing preference shares issued as needed we to take entire amount issued Dewar makes plain he desires no further commitment and I am convinced will insist on avoiding personal obligation please instruct stop I accompany Dewar Paris twentieth.

Porter.

[fol. 5541] DEFENDANT'S EXHIBIT 208

Cablegram

March 12, 1929.

Mr. H. J. Porter, Savoy Hotel, London, England

We think quite essential Dewar and ourselves maintain same ratio of interest in French company. Will he not make some proposal along this line. Please give details proposed preference shares as to voting power and dividends.

Strough.

[fol. 5542] DEFENDANT'S EXHIBIT 209

Cablegram

March 14, 1929.

H. J. Porter, Savoy Hotel, London

Have been away. Replying last three cables feel Dewar should have enough confidence in future of French company to obligate for his share inasmuch he controls company and its future also controls its earnings to large extent through its connection with British Timken. Have been able to eliminate tax complication here on interest problem and we could accept five percent net to us if he can make reasonable commitment to gradually reduce principal."

Strough.

[fol. 5543] DEFENDANT'S EXHIBIT 210

Western Union

HB266 Cable—London 123 18/4 10P

Timken, Canton, Ohio

Dewar still insists his interests Timken at maximum and considering that past and future British Timken profits are going back into business he considers that this and other energies he is expending make it decidedly unequal to mortgage his British Timken interests stop He is prepared to come to some arrangement for French Company repaying more than is borrowed and give you all French assets

as security stop Physical assets at conclusion of loan estimated at four one half million francs stop Considering possibility further Citroen orders which are being filled at no profit price by British Timken and in view of visit to Paris on Thursday this matter should have quick decision stop Please reply regular ordinary rate promptly.

Porter.

[fol. 5544] DEFENDANT'S EXHIBIT 211

Cablegram

March 18, 1929.

H. J. Porter, Savoy Hotel, London, England

Cable received have arranged subject to Dewar's approval for French branch National City to loan French Timken six million six percent two years or longer with guarantee from British Timken. Our only alternative would be straight loan to Dewar. Dewar should not object to our desire to keep him equal partner in growing business. Obviously impossible to decide just what amount additional financial risk we should take as fair offset to his efforts. He should receive proper compensation from British and French companies for his efforts and we are reasonable folks.

Strough.

[fol. 5545] DEFENDANT'S EXHIBIT 212

Cablegram

London 232P Mar. 19, 1929.

Timken, Canton, Ohio

Dewar approves British guarantee provided he receives two percent yearly profits estimated eighty thousand pounds this year also salary increase British company starting this year of two thousand pounds and starting next year five hundred pounds each from German and French stop Dewar states devoting all his time and compensation asked below his earning power stop Leaving for Paris Hotel Crillon tomorrow morning stop Address

Todays cable Savoy London later cable to Paris leave Paris for Berlin Hotel Adlon Sunday.

Porter.

[fol. 5546] DEFENDANT'S EXHIBIT 213

Cablegram

March 24, 1929.

H. J. Porter, Hotel Crillen, Hotel Adlon, Paris, France, Berlin Germany

After thorough consideration feel salary question can and should wait until Dewar can come over which we hope can be shortly after your return when all problems can be discussed and better understanding which seems necessary and desirable and feeling arrived at. New salary dating back to January 1st and suggest you investigate comparable salaries in England using National City if desirable. Hope Dewar will approve British Timken guarantee on this basis.

Lothrop.

[fol. 5547] DEFENDANT'S EXHIBIT 214

Postal Telegraph—Commercial Cables

19CH PO 10A 140 VIA RCA

Paris, March 25 1929

LCD Timken, Canton Ohio

Dewar in Berlin where meet him Wednesday stop can almost assure your proposal to delay unsatisfactory stop he feels necessary that arrangement concluded before commitment price and deliveries for one year to Citroen which contract utmost importance and extremely immediate due SMG competition and other effecting factors stop personally at session with Citroen and heard contributing talks and know urgent stop unless closed at once competitive position seriously stronger stop impossible to convey by cable detailed opinion Dewars strength and importance which should be happily concentrated for our interest stop within his power to restrict development within present financial limits and salary compromise he considers conces-

sion below his worth and salary investigation could hardly apply or be satisfactory stop no counter proposal made since his per my cable nineteenth cable reply Paris today if possible.

Porter.

[fol. 5548] DEFENDANT'S EXHIBIT 215

March 29, 1929.

The National City Bank, New York, N. Y.

GENTLEMEN:

The loan which you proposed making to Societe Anonyme Francaise Timken of Paris, France, of 6,000,000 francs for two years at six percent, has our approval, the said loan to be guaranteed by British Timken Limited, Birmingham, England.

We owe 52½% of the capital stock of British Timken and 59% of the capital stock of the Societe Anonyme Francaise Timken at Paris. However, your Mr. Wilson has been informed by us of the special arrangement between ourselves and Mr. Dewar regarding the management control of these two companies. We agree that during the period the above described loan is in effect we will not dispose of our stock ownership in these two companies.

Yours truly, The Timken Roller Bearing Company,
—— ——, President.

JFS/NW.

[fol. 5549] DEFENDANT'S EXHIBIT 216

Western Union

April 23 1929

Dewar Britimken Birmingham England

Porter here referring your cable yesterday would appreciate immediate cable estimating total French sales next year including all Citroen business also total capital required and approximate estimate of net earnings.

Strough.

[fol. 5550] DEFENDANT'S EXHIBIT 217

Western Union

Class of Service Desired — Form 1206 A7

Domestic Telegram
Day Letter
Night Message
Night Letter

Cable
Full rate
Deferred
Cable Letter
Week end Letter

No. Cash or chg.
Check
Time filed.

Patrons should check class of service desired: otherwise message will be transmitted as a full-rate communication.

Newcom Carlton, President

J. C. Willever, First Vice-President

Send the following message, subject to the terms on back hereof, which are hereby agreed to

April 24 1929

J. F. Strough

On basis new Citroen business French turnover next year $1,250,000 to $1,500,000. Total capital required assuming can lease suitable works $600,000. Provits for first two years doubtful, afterwards 10 to 15% on turnover. Am meeting Citroen 13th and 14th to see if suitable agreement for several years manufacture can be arrived at.

Dewar.

[fol. 5551] DEFENDANT'S EXHIBIT 218

Western Union

Class of Service Desired — Form 1206 A

Domestic Telegram
Day Letter
Night Message
Night Letter

Cable
Full Rate
Deferred
Cable letter
Week end letter

No. Cash or Chg.
Check
Time Filed

Patrons should check class of service desired; otherwise message will be transmitted as a full-rate communication.

Newcomb Carlton, President
J. C. Willever, First Vice-President

Send the following message, subject to the terms on back hereof, which are hereby agreed to

April 27 1929

M. B. U. Dewar, 15 Mayfair Place, London, England.

On basis your cable 24th financing plans discussed with Porter now obviously inadequate. You are closer to this problem what do you propose as proper way to finance French plant under plan fair to both you and us. Keep in mind we can furnish hardened cups and cones which will reduce equipment required for example can furnish 356 cup and cone hardened both for about 23¢ Canton other sizes in proportion. Most of labor will still be French labor if that is important and your raw material is now imported we understand. What commitments do you plan to have Citroen make for your protection. Can suitable rearrangements be made with French directors.

Strough.

[fol. 5552] DEFENDANT'S EXHIBIT 219

Postal Telegraph—Commercial Cables
5CH PO 247/246 Cable

Birmingham May 1 1929

NLT Strough, Timken, Canton, Ohio

B157 re French finance assuming total capital required six hundred thousand dollars suggest one hundred thousand dollars ordinary shares and two separate loans of two hundred and fifty thousand dollars each one loan to be definite mortgage debenture on all machinery and the other a loan guaranteed by British Timken on floating assets stop I suggest that these two loans should be called up as required in equal amounts stop in view of Sloans visit which we have much appreciated we feel that capital expenditure on British Timken is practically finished stop our financial position including providing finance for Germany will be all square by end of year when present loans from British

Timken to French Timken are repaid stop we see no reason to expect any reduction in British Timken profits for next year or following years consequently are prepared to undertake to devote one-third British Timken profits after this year to repaying both above loans but feel you should be prepared to extend our 10 years agreement to 15 years stop suggest that as loans are repaid some form of common stock should be issued in their places stop your suggestion regarding import of hardened parts is impracticable as duty per lb on semifinished parts is same as on finished bearings namely 30 cents per lb whereas duty on raw material is only 3 cents per lb stop propose insist on three years contract from Citroen stop consider can modify agreement with French directors.

Dewar.

[fol. 5553]; DEFENDANT'S EXHIBIT 220

Postal Telegraph—Cablegram

May 3 1929

Dewar, c-o Elrafin, Piccy, London, England.

We all feel you should plan coming to New York following your meeting with Citroen and we will meet you there spending only necessary time to reach satisfactory settlement on all matters. We feel this quite essential and well worth your time.

Strough.

[fol. 5554] DEFENDANT'S EXHIBIT 221

Stibbard, Gibson & Co.

Thomas Cooper & Co.

28th May, 1929.

DEAR SIRS:

Societe Francaise Timken

The working Agreement between the British Company and the French Company has now been signed, and I enclose two completed copies.

The working Agreement between the British Company and the German Company will very soon be signed, and I shall then send you copies of that document as well.

With respect to the loan to be made by the National City Bank of New York, this has now been arranged as a fixed loan until the 30th November next, the interest at present being 6%. In connection with it, the British Company has given to the National City Bank a guarantee for the amount to be advanced. The amount guaranteed by the British Company is limited to 6,000,000 Francs, French Currency; the interest on the loan is at present 6% and the National City Bank has undertaken not to call upon the guarantors until after the 30th November.

It is no part of the arrangements with the National City Bank that the French Company is to give them any security, [fol. 5555] but it has been arranged between the British Company and the French Company that they are to give the British Company such security as they can, so as to protect them against loss under the Guarantee.

British Company

We had a Board Meeting of the British Company on Monday. The business of the British Company is proceeding satisfactorily, but the profits are affected by the large output which has been appropriated to the service of the French Company at a price which does not show a profit. This seriously affects the net results of the British Company and will continue to do so for some months yet. In this way, the British Company are submitting to some sacrifice for the French Company to which they could hardly be asked to submit if the British Company and the French Company were independent concerns. It is possible, however, that the present sacrifice may eventually prove to be justified by future benefits to be enjoyed by the British Company in the way of a share of the royalty which will be payable by the French Company to you, the supply of service material to French cars in this country, enlarged prestige for the Timken Name and in other ways. The French Company would, moreover, be quite willing to concede something to the British Company on account of these [fol. 5556] sacrifices. The persons principally concerned are, of course, the independent shareholders of the British Company.

Mr. Dewar also mentioned to me the main object of his visit to New York, and if there are any special interests of yours to be cared for, I daresay that you will be sending me instructions after Mr. Strough's meeting with Mr. Dewar and Mr. Seward.

Yours faithfully, A. J. M. Duncan.

The Timken Roller Bearing Company.

[fol. 5557] DEFENDANT'S EXHIBIT No. 222

New York, N. Y., June 7, 1929.

Mr. M. B. U. Dewar,
New York, N. Y.

DEAR SIR:

Referring to the proposed readjustment of holdings of Deutsche Timken G. m. b. H. (hereinafter referred to as the "German Company"), we propose to you the following outline of procedure:

1. A Swiss corporation will be organized to acquire all of the outstanding shares of the German Company, issuing shares of the Swiss Company in exchange therefor.

2. Two classes of shares similar to the existing classes of shares of British Timken Ltd. will be provided for and will be so issued by the Swiss Company that a system of voting control of the Swiss Company will be established and maintained similar to the system of voting control now in effect in respect to British Timken Ltd. Your retention of control of the Swiss Company will be dependent upon annual net earnings after corporate taxes for the calendar year 1932 and thereafter by the German Company in an amount not less than 15% of the capital investment of the German Company including proceeds of the sale of its outstanding shares, debentures and other similar securities. In the determination of such annual net earnings adjustment shall be made crediting earnings with all interest paid on such debentures and other similar securities.

[fol. 5558] 3. Appropriate provision shall be made in respect to the shares of the Swiss Company whereby such shares shall be subject to the same transfer limitations and

purchase option rights as are now in effect with respect to the shares of British Timken Ltd.

4. British Timken Ltd. will distribute ratably among its shareholders the shares of the Swiss Company which it receives in exchange for its shares of the German Company.

5. Beginning January 1, 1930 you shall receive £500 per annum as compensation for your supervision of the activities of the Swiss Company and the German Company.

It is the purpose of this letter to serve as a memorandum of the outline of procedure agreed upon and your approval hereof by notation hereon will constitute an agreement between us for that purpose subject to modification as to procedure and form in accordance with the mutual recommendations of our respective counsel.

Very truly yours, Timken Roller Bearing Company,
by (S.) M. T. Lothrop, Pres.

Approved: June 7, 1929. (S.) M. B. U. Dewar.

[fol. 5559] DEFENDANT'S EXHIBIT 223

New York, N. Y., June 7, 1929.

Mr. M. B. U. Dewar,
New York, N. Y.

DEAR SIR:

Referring to the proposed financing of S. A. Francaise Timken, (hereinafter referred to as the "French Company"), and contingent upon your securing for that Company a contract with Citroen necessitating additional facilities and working capital, we propose to you the following outline of procedure:

1. The French Company will increase its authorized shares and its existing shareholders will ratably subscribe at par for additional shares of the same respective class in the aggregate par amount of 1,000,000 French francs.

2. A Swiss corporation will be organized to acquire all of the outstanding shares of the French Company issuing shares of the Swiss company in exchange therefor.

3. Two classes of shares similar to the existing classes of shares of British Timken Ltd. will be provided for and will be so issued by the Swiss Company that a system of

voting control of the Swiss Company will be established and maintained similar to the system of voting control now in effect in respect to British Timken Ltd. Your retention of control of the Swiss Company will be dependent upon annual net earnings after corporate taxes for the calendar year 1932 and thereafter by the French Company in an [fol. 5560] amount not less than 15% of the capital investment of the French Company including proceeds of the sale of its outstanding shares, debentures and other similar securities. In the determination of such annual net earnings adjustment shall be made crediting earnings with all interest paid on such debentures and other similar securities.

4. Appropriate provision shall be made in respect to the shares of the Swiss Company whereby such shares shall be subject to the same transfer limitations and purchase option rights as are now in effect with respect to the shares of British Timken Ltd.

5. British Timken Ltd. will distribute ratably among its shareholders the shares of the Swiss Company which it receives in exchange for its shares of the French Company.

6. To the extent that the French Company shall require additional facilities and working capital, we will loan to the Swiss Company an amount up to $500,000 which funds shall be used by the Swiss Company in purchasing additional shares and/or debentures or similar securities of the French Company. Such loan shall be repayable in United States funds and shall bear interest at the rate of 6% per annum payable semi annually also in United States funds, and without deduction or withholding for any tax or taxes.

7. Until such loan shall be paid in full, the British Timken Ltd. to the extent of one-third of its annual net profits beginning with profits for the year 1930, will annually [fol. 5561] subscribe at par for additional shares of the Swiss Company. The proceeds of such subscriptions shall be used in repayment of such loan and interest. The shares of the Swiss Company so acquired by British Timken Ltd. shall be distributed ratably among its shareholders.

8. Beginning January 1, 1930 you shall receive £500 per annum as compensation for your supervision of the activities of the Swiss Company and the French Company.

It is the purpose of this letter to serve as a memorandum of the outline of procedure agreed upon and your approval

hereof by notation hereon will constitute an agreement between us for that purpose subject to modification as to procedure and form in accordance with the mutual recommendations of our respective counsel.

Very truly yours, Timken Roller Bearing Company,
by M. T. Lothrop, Pres.

Approved: June 7, 1929. M. B. U. Dewar.

[fol. 5562] DEFENDANT'S EXHIBIT No. 224

Agreement

Agreement made this 8th day of November, 1929, by and beween Michael Bruce Urquhart Dewar, (hereinafter called "Dewar"), of Number 10, Mayfair Place, London, England, party of the first part, and The Timken Roller Bearing Company, (hereinafter called "Timken Company"), a corporation organized under the laws of the State of Ohio, United States of America, party of the second part;

Witnesseth:

Whereas, Timken Company proposes to enter into a contract with Dewar, copy of which is hereto annexed as Exhibit "A"; and

Whereas, Dewar proposes to control a corporation to be organized under the laws of the Duchy of Luxembourg (hereinafter called "Dewar Corporation", which term for the purposes of this agreement shall include any corporation acquiring all or substantially all of the assets of Dewar Corporation), for the purpose of acquiring and possessing certain of the rights and obligations of Dewar provided for in the provisions of said contract Exhibit "A"; and [fol. 5563] Whereas, Timken Company, as a condition of its entering into the said contract with Dewar, requires that Dewar enter into this agreement with it and undertake and promise to perform the obligations hereinafter set forth;

Now therefore, in consideration of the execution by Timken Company of said contract Exhibit "A", and the undertaking by it of the covenants and obligations therein set forth to be undertaken and performed by it, and in consideration of the mutual covenants herein contained, it is

mutually agreed by and between the parties hereto as follows:

1. Dewar, without the written consent of Timken Company, will not sell, assign, transfer or create any lien or pledge upon any of the shares of Dewar Corporation at any time owned or acquired by him except to members of his immediate family, and he will at all times keep and maintain effective control of said corporation.

2. During such time as 2060 shares of common stock of the Delaware Corporation described in said contract Exhibit "A" hereto are registered in the name of Dewar as provided in Section 2 thereof, (a) Dewar will vote all such shares and will cause Dewar Corporation (or its sub-
[fol. 5564] sidiary corporation as described in said Exhibit "A"), to vote all shares of the common stock of the Delaware Corporation owned by it at all elections of directors of the Delaware Corporation in favor of nominees of Timken Company to the extent of one less than a majority of such Board of Directors.

(b) Dewar will not cause or permit the Delaware Corporation to sell or otherwise dispose of any of the shares of the French Company described in said contract Exhibit "A" or to vote them to effect with respect to said French Company any of the purposes set-forth with respect to the Delaware Corporation in subdivision (g) of Section 5 of its Certificate of Incorporation unless Timken Company shall consent thereto in writing.

3. Dewar agrees at all times to cause the Dewar Corporation (or its said subsidiary corporation), to keep and perform all of the covenants, agreements and obligations set forth in said contract Exhibit "A" hereto to be kept and performed by it, and himself to keep and perform all of the covenants, agreements and obligations therein set forth to be kep. and performed by him.

[fol. 5565] 4. Contingent upon Dewar's causing the shares of the Delaware Corporation owned by him to be transferred to and owned by the Dewar Corporation for the purpose of avoiding any succession of ownership of said shares of the Delaware Corporation arising out of the death of Dewar, Timken Company agrees that in the event that, by reason of any amendments or changes in the laws of the United States of America or the State of Delaware, Dewar Corporation or Dewar or his estate shall become

subject to any taxes of the United States of America or of the State of Delaware, by reason of the organization and existence of the Delaware Corporation under the laws of the State of Delaware which would be avoided if it were organized and existing under the laws of Luxembourg, then and in such event Timken Company will, at its option, either

(a) Indemnify and save harmless Dewar Corporation and/or Dewar and/or his estate from such taxes, or

(b) Cause to be organized a corporation under the laws of Switzerland or Luxembourg or such other jurisdiction as Timken Company may determine with [fol. 5566] the approval of Dewar, which will acquire all the assets and assume all the liabilities of the Delaware Corporation, will issue its stock to Timken Company and Dewar Corporation in the same proportions as the stock of the Delaware Corporation is then held, and will be substituted in the place and stead of the Delaware Corporation for all purposes of this agreement and of said contract Exhibit "A".

In event that Timken Company elects to proceed under the above clause (b), it will pay all costs and expenses in connection therewith, and Dewar will do all acts and things and cause Dewar Corporation to do all acts and things requisite and desirable to carry out said transaction.

5. Until such time as Dewar and/or Dewar Corporation shall cease to own twenty per cent (20%) of the shares of the common stock of the Delaware Corporation, he shall continue to have a right to be a director of such corporation.

6. Insofar as any provision of this agreement or of said contract attached hereto and marked Exhibit "A", conflicts with any provision in any prior agreement heretofore entered into between the Timken Company and Dewar and/or British Timken Limited (a joint stock company incorporated under the laws of the United Kingdom of [fol. 5567] Great Britain and Ireland and having its registered office at Birmingham in the Kingdom of England), said conflicting provision of any said prior agreements shall, for the purpose of this agreement and for the purpose of said contract attached hereto and marked Exhibit "A", be deemed to have been waived and made of no effect.

In witness whereof, the parties hereto have executed this agreement as of the day and year first above written, and for the purpose of evidencing its consent to and acceptance of the provisions of Section 6 above, British Timken Limited, under the authority of its Board of Directors, has caused its Common Seal to be affixed hereto as of the day and year first above written.

Michael Bruce Urquhart Dewar, L. S., Timken Roller Bearing Company, By J. F. Strough, Secretary & Treasurer.

The Common Seal of British Timken Limited was hereunto affixed in the presence of: —— ——, —— ——, Directors.

[fol. 5568] DEFENDANT'S EXHIBIT No. 225

EXHIBIT A

Agreement made this 8th day of November, 1929, between Timken Roller Bearing Company, a corporation organized and existing under the laws of the State of Ohio, (hereinafter called "Timken Company"), party of the first part; and Michael Bruce Urquhart Dewar, of Number 10 Mayfair Place, London, England, (hereinafter called "Dewar"), party of the second part; Witnesseth:

Whereas Industrial & Commercial Investments, Inc. (hereinafter called "Delaware Corporation"), is a corporation organized and existing under the laws of the State of Delaware, having a total authorized capital stock consisting of 5,000 shares of six percent cumulative preferred stock of the par value of One Hundred Dollars ($100) each, and 58,000 shares of common stock with a par value of Ten Dollars ($10) each, of which 3,400 shares of preferred stock and 8,000 shares of common stock are or are presently to be issued and outstanding, Timken Company to be the owner of said 3,400 shares of preferred stock of the Delaware Corporation, and of 4,804 shares of said common stock, and Dewar to be the owner of 3,196 shares of said common stock.

Whereas, S. A. Francaise Timken, (hereinafter called "French Company"), is a corporation organized and existing under the laws of France having a total authorized

and outstanding capitalization consisting of 30,000 shares of common stock, with a par value of 100 francs each, and 1,000 Founders shares all of which are or are to be owned by the Delaware Corporation;

Whereas, Dewar proposes to cause a corporation to be organized under the laws of the Duchy of Luxembourg (hereinafter called "Dewar Corporation"), for the purpose [fol. 5569] of acquiring and holding the shares of the Delaware corporation presently to be owned or hereafter acquired by Dewar, (which shall become a party hereto upon its organzation) at least a majority of the voting shares of which said Dewar Corporation shall be owned by Dewar and all other shares whereof shall be owned by the members of Dewar's immediate family;

Whereas, it is the intention and desire of Timken Company and Dewar that Dewar should have the right to elect a majority of the Board of Directors of the Delaware Corporation and to exercise management thereof upon the conditions hereinafter set forth;

Whereas, Timken Company and Dewar (or Dewar Corporation) respectively desire each to give to the other an option and right to purchase the shares of the common stock of the Delaware Corporation presently to be owned and hereafter acquired by it during the continuance of this Agreement upon the conditions hereinafter set forth;

Whereas, in consideration of the mutual agreements herein set forth and in order to protect and secure the rights and obligations of Timken Company and Dewar (and Dewar Corporation) hereunder, and to facilitate the enforcement and performance of the same, said Timken Company and Dewar (and Dewar Corporation) have agreed to deposit the shares of the common stock of the Delaware Corporation presently to be owned and hereafter acquired by them respectively during the continuance of this Agreement with Bankers Trust Company, a New York corporation, as Depositary, as hereinafter provided, to be held and disposed of on the terms and conditions hereinafter set forth;

Now therefore, it is mutually agreed by and between the parties hereto as follows:

[fol. 5570] 1. For the purpose of this agreement, wherever the context so admits, the phrase "Timken Company" shall be deemed to include Timken Company or any sub-

sidiary corporation all of the outstanding shares whereof shall be beneficially owned by the Timken Company; and the phrase "Dewar Corporation" shall be deemed to include said Dewar Corporation or any subsidiary corporation all of the outstanding shares whereof shall be beneficially owned by the Dewar Corporation.

2. For the purposes of this Agreement, Timken Company will cause 2,060 shares of the said common stock of the Delaware Corporation presently to be owned by it to be registered in the name of Dewar, and Dewar will forthwith assign in blank the certificate for said shares, complete for transfer, and will execute and file with the Delaware Corporation an irrevocable dividend order and assignment directing Delaware Corporation to pay to or upon order of Timken Company all dividends in cash, stock or otherwise, including upon liquidation, which may be declared and paid upon said 2,060 shares of common stock of Delaware Corporation, owned by Timken Company and so registered in the name of Dewar.

3. Timken Company and Dewar will sign and deliver to Bankers Trust Company, (herein called the "Depositary"), a letter in the form of Exhibit A hereto attached, constituting it Depositary or Escrow Agent for the purposes of this Agreement and will deposit forthwith with the Depositary certificates representing all common stock of the Delaware Corporation presently to be issued and outstanding duly assigned in blank, complete for transfer, executed by the registered holders thereof, and Timken and Dewar (and Dewar Corporation) will likewise deposit all additional shares of common stock of Delaware Corporation at any time acquired by them during the con- [fol. 5571] tinuance of this Agreement, to be held by the Depositary subject to the terms and conditions of said letter.

4. Upon the organization of Dewar Corporation, the parties hereto agree that it may and Dewar agrees to cause it to become a party to this agreement with all the rights and the obligations herein provided, such adhesion to this agreement being evidenced by the delivery to Timken Company of a copy of this agreement duly executed by said Dewar Corporation.

Upon Dewar Corporation becoming a party to this agreement as above provided, the Depositary shall, upon the request of Dewar, cause the Certificates owned by Dewar

and theretofore deposited by him with it to be transferred unto the name of Dewar Corporation, provided that at the time of making such request Dewar Corporation shall deliver to the Depositary (1) a copy of the escrow letter herein referred to duly signed by it, and (2) an irrevocable stock power endorsed in blank, duly executed by the Dewar Corporation, covering the shares so to be transferred into its name and further provided that the transfer tax stamps in connection with such transfer shall be furnished the Depositary by Dewar. The new Certificate shall be issued in the name of Dewar Corporation and shall thereupon be substituted for the corresponding certificate originally deposited in the name of Dewar, and shall be held by the Depositary upon the same terms and conditions.

5. If, at any time after January 1, 1933, the French Company shall fail to earn, during any calendar year, at least fifteen per cent (15%) upon its invested capital, as such invested capital is computed as hereinafter provided, evidenced by the written certificate of Messrs. Deloitte, Plender, Griffiths & Co., a copy of which shall be delivered [fol. 5572] to each of the parties hereto (and to the Depositary), then in such event:

(a) Dewar will, upon written, telegraphed or cabled request of Timken Company, execute and deliver proxies to Timken Company or its nominees to vote upon and act with respect to the said 2,060 shares of common stock of Delaware Corporation owned by Timken Company and registered in the name of Dewar as aforesaid.

(b) The Depositary, upon receipt of:

1) The written, telegraphed or cabled request from Timken Company;

2) The above mentioned certificate of Messrs. Deloitte, Plender, Griffiths & Co.;

3) An assignment, in blank, duly executed by Timken Company (or its nominees in case the stock is to be transferred into the names of its nominees) for said 2,060 shares; and

4) An amount sufficient to pay any transfer stamp taxes in connection therewith;

will forthwith cause the certificates for said 2,060 shares to be transferred on the books of the Delaware Corporation

from the name of Dewar into the name of Timken Company, or into the name of its nominees (which shall have filed with the Depositary a copy of the escrow letter herein referred to duly signed by them), and will thereafter hold the certificate or certificates for said 2,060 shares registered in the name of Timken Company, or its nominees, with the instrument of assignment and transfer thereof in blank attached thereto, for the purposes and the purposes only of the options hereinafter set forth.

[fol. 5573] 6. For the purposes of this Agreement the invested capital of the French Company shall be taken to be the sum of its paid in capital stock and the net proceeds of any bonds or other obligations issued by it to the Delaware Corporation and any loans by it from or through the instrumentality of the Delaware Corporation; net earnings shall be credited with the interest paid on any such bonds, obligations or loans, and shall be computed after deduction for depreciation, reserves and all taxes imposed upon the properties, business and income of the French Company, but without deduction for any taxes imposed upon interest and dividends paid by it whether or not such taxes are required to be withheld and paid at the source.

7. Timken Company agrees not to sell, assign or transfor, and Dewar (and Dewar Corporation) agree not to sell, assign or transfer, all or any part of the shares of the common stock of the Delaware Corporation now owned or hereafter acquired by them respectively during the continuance of this Agreement without first offering such shares to the other of them at the price at which it (the offering party) is willing to dispose of the same.

To this end if either Timken Company or Dewar (or Dewar Corporation) shall wish to sell, assign or transfer all or any part of such shares, it shall serve written notice upon the other party and upon the Depositary, stating the price at which it proposes to so dispose of the same, and the other party shall have a period of 90 days from the date on which such notice shall have been received by the Depositary in which to purchase said shares at such price. Such purchase will be made by written notice to the Depositary and payment of the purchase price to the De-[fol. 5574] positary for account of the offering party, and thereupon the Depositary shall deliver to the purchaser certificates for the shares so purchased and make payment thereof to the seller. If such purchase shall not be effected

within the said period of 90 days, then and thereafter the offering party shall be free to dispose of such shares to any other party at the price so specified within a period of one year after the expiration of said ninety day period and the Depositary shall, upon written notice from the offering party and payment to it for account of the offering party of the specified purchase price, deliver the certificates for said shares as the offering party may direct.

The provisions of this section shall not apply:

(a) To the sale and transfer of shares of the common stock of the Delaware Corporation by either Timken Company or Dewar (or Dewar Corporation) to another corporation all of the shares of which are beneficially owned and except for necessary directors qualifying shares are held by the Timken Company or Dewar (and/or members of his immediate family or Dewar Corporation), as the case may be; or (b) To the sale and transfer of shares of the common stock of the Delaware Corporation held by either Timken Company or Dewar Corporation to another corporation, together with all or substantially all of the assets of said selling corporation pursuant to a reorganization, merger, consolidation or the like,

and any such sale or transfer may be made pursuant to the above clause (a) and/or clause (b) without offering such shares to the other; provided, however, that in case of any [fol. 5575] such sale or transfer the corporation acquiring such shares shall, by instrument in writing, delivered to the other parties hereto, assume and agree to perform this agreement and shall thereupon be substituted for all purposes of this agreement, in the place and stead of Timken Company or Dewar (or Dewar Corporation) as the case may be, without, however, relieving the original contracting parties from their obligations hereunder, and such corporation shall likewise sign and deliver to the Depositary a copy of the Escrow Letter hereto attached as Exhibit A; and provided further that in the case of any such sale or transfer by Dewar (or Dewar Corporation) at least a majority of the voting shares of said purchasing corporation (or of its parent corporation owning all of its shares) shall be owned and held by Dewar free and clear in his own right and all other shares of said purchasing corporation

(or of its said parent corporation) shall be owned free and clear by members of Dewar's immediate family and all shares of any said purchasing corporation (or of its said parent corporation) except necessary directors qualifying shares shall be held by Dewar or by members of Dewar's immediate family.

8. Timken Company and Dewar (and the Dewar Corporation) hereby each grant to the other an irrevocable option and right to purchase all of the shares of the common stock of the Delaware Corporation now owned or hereafter acquired by them respectively, at their then value determined as hereinafter provided on the happening of any one of the following events:

(a) Timken Company may exercise said option upon:

1) The death of Dewar; or upon

2) Dewar's ceasing to be an officer and director of the French Company, or being incapacitated by ill- [fol. 5576] health or otherwise from performing his duties as such for a period of six (6) consecutive months; or upon

3) The cessation of the ownership of at least a majority of the voting shares of the Dewar Corporation by Dewar free and clear in his own right, or the ownership of all other shares of the Dewar Corporation by members of Dewar's immediate family;

4) Bankruptcy of the Dewar Corporation;

5) The liquidation of the Dewar Corporation except pursuant to a reorganization, merger, consolidation or the like, as hereinbefore in clause (b) of Section (7) provided.

(b) Dewar (or Dewar Corporation) may exercise such option upon:

1) The bankruptcy of Timken Company;

2) The liquidation of Timken Company except pursuant to a reorganization, merger, consolidation or the like as hereinbefore in clause (b) of Section (7) provided.

Such option shall be exercised by written notice served upon the seller and the Depositary within six (6) months after the happening of any one of the above named contin-

gencies shall have become known to the party entitling to exercise such option.

In the event that the parties or their legal representatives shall fail to agree as to the then value of the respective shares within sixty (60) days after the serving of said notice, then and in that event the then value of said shares shall be determined by an award of two firms of chartered or certified public accountants as arbitrators, one to be appointed by each party and by an umpire to be appointed by the said arbitrators. Such award shall be conclusive upon the parties and the parties will take all appropriate action for the consummation of such purchase and sale as the purchasing party may reasonably request.

[fol. 5577] 9. Timken Company agrees, upon demand by Delaware Corporation, to subscribe at par for authorized and unissued shares of its preferred stock up to an aggregate of 1,600 shares of said stock now authorized and unissued. The proceeds of such additional subscription shall forthwith be applied by the Delaware Corporation:

(a) To the subscription for additional shares of capital stock of the French Company, or

(b) To the subscription for bonds of the French Company, or

(c) To loans to the French Company on open account, or

(d) To all or any of said purposes.

10. So long as any preferred stock of the Delaware Corporation shall be outstanding and owned by Timken Company, Timken Company and Dewar (and Dewar Corporation) agree to use their best efforts to cause British Timken, Ltd., a corporation organized under the laws of England, to declare and pay as dividends an amount equal to at least one-third of its net earnings for each year commencing with the calendar year 1930, such dividends to be declared and paid as promptly as such net earnings may be reasonably determined and as may be consistent with the best interests of British Timken, Ltd., Timken Company and Dewar (and Dewar Corporation) further agree, as and when such dividends are paid, to apply an amount equal thereto to the subscription to common stock of the Delaware Corporation at par up to an aggregate of one-third of the net earnings of British Timken, Ltd., since January 1, 1930, as the

same may be determinable on the date of each such subscription, such obligation to continue until all of the preferred stock of the Delaware Corporation therefore out- [fol. 5578] standing shall have been redeemed or funds provided for the redemption thereof as hereinafter set forth. Such subscriptions shall be made by the parties hereto in the ratio of one hundred five shares subscribed by Timken Company for each ninety-five shares subscribed by Dewar (and Dewar Corporation) and the parties hereto waive their preemptive rights to subscribe to such stock to the extent necessary for the foregoing subscriptions. The proceeds of the issue of such common stock of the Delaware Corporation, together with any amounts received by the Delaware Corporation from the French Company on account of principal of any bonds, obligations or loans (other than by way of amortization of discount), shall be applied by Delaware Corporation forthwith to the redemption of its preferred stock and upon such redemption the preferred capital stock of the Delaware Corporation shall be reduced accordingly. Certificates for all such additional shares of common stock of Delaware Corporation shall be forthwith assigned in blank, complete for transfer, by Timken Company and Dewar (and Dewar Corporation) and deposited with the Depositary.

11. None of the authorized and unissued stock of the Delaware Corporation shall be issued except as herein provided.

12. By mutual agreement of Timken Company and Dewar (and Dewar Corporation), evidenced in writing and filed with the Depositary, any other firm of certified public accountants may be substituted by reason of the liquidation, death or otherwise, in the place and stead of Messrs. Deloitte, Plender, Griffiths & Company for all purposes of audits, determination of invested capital and earnings under this agreement. Messrs. Deloitte, Plender, Griffiths [fol. 5579] & Company or such other firm as may be substituted for them, shall at all times have full and free access to the books and accounts of the Delaware Corporation and of the French Company, and the parties hereto agree to do all things in their power to facilitate such examination at any time; it being understood that the provisions of this agreement relating to the named certified public accountants or any successor to them from time to time, are not

limited, confined or special to them respectively or to their especial judgment.

13. The fees and expenses of the Depositary shall be borne by the parties hereto in accordance with their respective beneficial interest in the stock deposited. Each shall be liable, however, to the Depositary jointly and severally for the full amount of such fees and expenses with right of contribution.

14. This Agreement shall terminate upon the termination or consummation of the option rights arising on the death of Dewar, provided, however, that it may be sooner terminated with the unanimous consent of the beneficial owners of all of the stock deposited with the Depositary as herein provided.

15. All notices hereunder shall be given by letter or cable or radio photostat or by cable or radio confirmed by letter and if to Timken Company shall be sufficient in all respects if sent to The Timken Roller Bearing Company, Canton, Ohio, U. S. A. and if to Dewar or Dewar Corporation if sent to Michael B. U. Dewar, 10 Mayfair Place, London, England.

In Witness Whereof, the parties hereto have executed this Agreement on the day and year first above written.

The Timken Roller Bearing Company, by (S.) J. F. Strough, Secretary and Treasurer. (S.) Michael Bruce Urquhart Dewar.

[fol. 5580] DEFENDANT'S EXHIBIT 226

New York, N. Y.,
November 9, 1929.

Industrial & Commercial Investments, Inc., (a Delaware Corporation).

GENTLEMEN:

S. A. Francaise Timken (a French Corporation) has an authorized capital stock consisting of 30,000 ordinary shares and 1,000 Founders shares. Of said shares 20,000 ordinary and 1,000 Founders shares are full-paid and are owned or controlled by the undersigned the Timken Roller Bearing Company and M. B. U. Dewar. In addition the undersigned Timken Roller Bearing Company has caused

a nominee of the National City Company, Geneva, to subscribe and pay for the remaining 10,000 additional ordinary shares, using for that purpose funds advanced by the Timken Roller Bearing Company.

We make the following proposal to you:

1. We will deliver or cause to be delivered to you in negotiable form certificates for said 30,000 ordinary shares of said French corporation and transfer to you our rights to receive the 1,000 Founders shares above referred to.

2. The Timken Roller Bearing Company will subscribe for 3,400 shares of your preferred stock at par payable from time to time on your demand against issuance of certificates representing the number of shares payment whereof shall have been made.

[fol. 5581] 3. You will cause to be issued 8,000 shares of your full-paid and non-assessable common stock as follows:

Names	Certificate No.	No. of Shares
Timken Roller Bearing Company, Canton, Ohio	1	2,744
Michael Bruce Urquhart Dewar, 10 Mayfair Place, London	2	2,060
Michael Bruce Urquhart Dewar, 10 Mayfair Place, London	3	3,196
		8,000

You will credit to the preferred stock subscription of the Timken Roller Bearing Company above referred to an amount equal to 1,000,000 francs, representing the amount advanced by the Timken Roller Bearing Company to the National City Company, Geneva, above referred to.

In the event of your acceptance of these proposals the certificates (or temporary receipts therefor) representing the above mentioned ordinary shares of S. A. Francaise Timken will be delivered to National City Bank, Paris, for your account and upon confirmation thereof to you you will issue certificates representing the shares of your common stock as above provided.

Your acceptance hereof by notation hereon will constitute an agreement between us.

Very truly yours, Timken Roller Bearing Company, by J. F. Strough, Secretary-Treasurer, Michael Bruce Urquhart Dewar.

Accepted: Nov. 9, 1929.

Industrial & Commercial Investments, Inc., by Grover Higgins, President.

[fol. 5582] DEFENDANT'S EXHIBIT 227

Exhibit A

November 11, 1929.

Bankers Trust Company, 16 Wall Street, New York, N. Y.

DEAR SIRS:

The undersigned, The Timken Roller Bearing Company, an Ohio corporation, of Canton, Ohio (hereinafter called "Timken") and the undersigned, Michael Bruce Urquhart Dewar of No. 10 Mayfair Place, London, England (hereinafter called "Dewar") herewith deliver to you as Depositary certificates for an aggregate of 8,000 shares of the common stock of Industrial & Commercial Investments, Inc., a Delaware corporation (hereinafter called "Delaware corporation") of which certificates for 2744 shares stand in the name of and are owned by Timken, for 2060 shares stand in the name of Dewar but are beneficially owned by Timken, and for 3196 shares stand in the name of and are owned by Dewar. All of said certificates are duly endorsed in blank for transfer or are accompanied by irrevocable stock powers duly endorsed in blank for transfer.

The undersigned and such others as may become parties to this agreement as hereinafter provided, hereby request you to hold such certificates, together with any which may be hereafter deposited with you in substitution therefor or in addition thereto, subject to the following terms and conditions:

1. Any of the parties hereto may from time to time [fol. 5583] deposit certificates for additional shares of common stock of the Delaware corporation hereunder and such certificates shall be accepted and held hereunder provided that they are either duly endorsed in blank for transfer or are accompanied by irrevocable stock powers duly endorsed in blank for transfer. At the time of any such deposit of additional certificates the depositing party shall in writing, filed with the Depositary, declare the beneficial ownership thereof.

2. If at any time after January 1, 1933 S. A. Francaise Timken, a French corporation (hereinafter called "French company") shall fail to earn, during any calendar year, at least 15% upon its invested capital, as such invested

capital is computed as hereinafter provided, evidenced by the written certificate of Messrs. Deloitte, Plender, Griffith & Co., (certified public accountants) a copy of which shall have been delivered to you, then in such event, upon receipt of

(1) the written, telegraphed or cabled request from Timken;

(2) the above mentioned certificate of Messrs. Deloitte, Plender, Griffith & Co.;

(3) an assignment, in blank, duly executed by Timken, (or its nominees in case the stock is to be transferred into the names of its nominees) for 2060 shares; and

(4) an amount sufficient to pay any transfer tax stamps in connection therewith,

you will cause the certificates for 2060 shares standing in the name of Dewar but which are owned by Timken, to be [fol. 5584] presented to the Delaware corporation for transfer into the name of Timken or into the name of its nominees (which shall have filed with you a copy of this letter duly signed by them) and you will thereafter hold the certificate or certificates for said 2060 shares registered in the name of Timken or its nominees, with the instrument of assignment and transfer thereof in blank attached thereto, for the purposes and the purposes only of the options hereinafter set forth.

3. For the purposes hereof the invested capital of the French company shall be taken to be the sum of its paid-in capital stock and the net proceeds of any and all other obligations issued by it to the Delaware corporation and any loans by it from or through the instrumentality of the Delaware corporation; net earnings shall be credited with the interest paid on any such bonds, obligations or loans and shall be computed after deduction for depreciation, reserves and all taxes imposed upon the properties, business and income of the French company, but without deduction for any taxes imposed upon interest and dividends paid by it, whether or not such taxes are required to be withheld and paid at the source.

4. By mutual agreement of the undersigned and of any person or corporation who may become a party hereto as herein provided, evidenced in writing filed with you, any

other firm of certified public accountants may be substituted by reason of the liquidation, death or otherwise in the place and stead of Messrs. Deloitte, Plender, Griffiths & Co. for [fol. 5585] all purposes of audits, determination of invested capital and earnings as herein provided. The Depositary is hereby authorized and directed to rely upon any certificate of Messrs. Deloitte, Plender, Griffiths & Co. or of any such other firm as may be substituted for them, as hereinabove provided, and shall be under no liability whatsoever to investigate the correctness of any such certificate.

5. Timken and Dewar have agreed not to sell, assign or transfer, all or any part of the shares of the common stock of the Delaware corporation now owned or hereafter acquired by them respectively during the continuance of this agreement, without first offering said shares to the other of them at the price at which it (the offering party) is willing to dispose of the same.

To this end if either Timken or Dewar wish to sell, assign or transfer all or any part of such shares, it shall serve written notice upon the other party and upon the Depositary (which notice to the Depositary shall state that such notice has been served upon the other party), stating the price at which it proposes so to dispose of the same, and the other party shall have a period of 90 days from the date at which such notice shall have been received by the Depositary in which to purchase said shares at such price. Such purchase will be made by written notice to the Depositary and payment of the purchase price to the Depositary for account of the offering party, and thereupon the Depositary shall deliver to the purchaser certificates for the [fol. 5586] shares so purchased and make payment thereof to the seller. If such purchase shall not be effected within the said period of 90 days, then and thereafter the offering party shall be free to dispose of such shares to any other party at the price so specified within a period of one year after the expiration of said ninety day period and the Depositary shall, upon written notice from the offering party and payment to it for account of the offering party of the specified purchase price, deliver the certificates for said shares as the offering party may direct.

The provisions of this section shall not apply: (a) To the sale and transfer of shares of the common stock of the Delaware Corporation by either Timken or

Dewar (or Dewar Corporation hereinafter mentioned) to another corporation all of the shares of which are beneficially owned and except for necessary directors qualifying shares are held by Timken or Dewar (and/or members of his family or Dewar Corporation) as the case may be; or (b) To the sale and transfer of shares of the common stock of the Delaware Corporation held by either Timken or any corporation to which Dewar pursuant to clause (a) hereof may have transferred his shares of the common stock of the Delaware Corporation (hereinafter called the "Dewar Corporation") to another corporation, together with all or substantially all of the assets of said selling corporation pursuant to a reorganization, merger, consolidation or the like,

and any such sale or transfer may be made pursuant to the [fol. 5587] above clause (a) and/or clause (b) without offering such shares to the other; provided, however, that in case of any such sale or transfer, the corporation acquiring such shares shall sign and deliver to the Depositary a copy of this letter; and provided further that in the case of any such sale or transfer by Dewar (or Dewar Corporation), at least a majority of the voting shares of said purchasing corporation (or of its parent corporation owning all of its shares) shall be owned and held by Dewar free and clear in his own right and all other shares of said purchasing corporation (or of its said parent corporation) shall be owned free and clear by members of Dewar's immediately family and all shares of any said purchasing corporation (or of its said parent corporation) except necessary directors qualifying shares shall be held by Dewar or by members of Dewar's immediate family.

6. Timken and Dewar hereby each grant to the other an irrevocable option and right to purchase all of the shares of the common stock of the Delaware corporation now owned or hereafter acquired by them respectively, at their then value determined as hereinafter provided on the happening of any one of the following events:

(a) Timken may exercise said option upon:

(1) The death of Dewar; or upon

(2) Dewar's ceasing to be an officer and director of the French Company, or being incapacitated by ill

health or otherwise from performing his duties as such for a period of six consecutive months; or upon

[fol. 5588] (3) The cessation of the ownership of at least a majority of the voting shares of any said Dewar corporation by Dewar free and clear in his own right, or the ownership of all other shares of any said Dewar corporation by members of Dewar's immediate family; or

(4) Bankruptcy of any said Dewar corporation; or

(5) The liquidation of any said Dewar corporation except pursuant to a reorganization, merger, consolidation or the like, as hereinbefore in clause (b) of paragraph 5 provided.

(b) Dewar (or Dewar corporation) may exercise such option upon:

(1) The bankruptcy of Timken;

(2) The liquidation of Timken except pursuant to a reorganization, merger, consolidation or the like as hereinbefore in clause (b) of paragraph 5 provided.

Such option shall be exercised by written notice served upon the seller and upon the Depositary within six (6) months after the happening of any one of the above named contingencies shall have become known to the party entitled to exercise such option.

In the event that the parties or their legal representatives shall fail to agree as to the then value of the respective shares within sixty (60) days after the serving of said notice upon the Depositary then and in that event the then value of said shares shall be determined by an award of two firms of chartered accountants or certified public accountants as arbitrators, one to be appointed by each party and by an umpire to be appointed by the said arbitrators. Such award of said arbitrators shall be conclusive upon the parties.

[fol. 5589] 7. The Depositary shall be under no obligation to make any transfer or delivery of any of the stock deposited hereunder or to take notice of or any other action, pursuant to the exercise or alleged exercise of the option referred to in paragraph 6 hereof unless and until either (a) it shall have been furnished with a written request signed by all of the parties hereto to make any such transfer, delivery or to take any other action in connection therewith or (b)

proof shall have been furnished to it to its satisfaction and to the satisfaction of its counsel that one or more of the contingencies mentioned in paragraph 6 hereof shall have happened, and the option therein referred to shall have been properly exercised and the purchase price of the shares so purchasd shall have been deposited with it to be held by it to or upon the order of the selling party.

8. In the event any parties hereto desire pursuant to clause (a) and/or clause (b) of paragraph 5 hereof to cause any of the certificates deposited hereunder standing in their name or the name of their nominee and owned by them to be transferred to a subsidiary corporation or to a corporation resulting from a reorganization, merger or consolidation or the like of any of the parties hereto which shall acquire all or substantially all of the assets of the selling corporation, they shall in writing notify the Depositary of their desire so to do. The Depositary shall upon receipt of any such notice cause any such certificates on deposit with it hereunder to be presented to the Delaware corporation for transfer [fol. 5590] into the name of such corporation upon receipt of

(1) a copy of this letter duly executed by the transferee corporation;

(2) a certificate signed by the selling party to the effect that the shares of the purchasing corporation are owned by it (or by Dewar and/or his immediate family) in the manner provided in paragraph 5 hereof;

(3) an irrevocable stock power endorsed in blank for transfer duly executed by such transferee corporation covering the number of shares so to be transferred; and

(4) an amount sufficient to pay stock transfer tax stamps due upon such transfer.

The Depositary will hold the new certificates issued in the name of such corporation, together with such assignment and transfer in blank in lieu of the certificates so transferred.

9. The Depositary shall be under no responsibility for the validity of any certificate deposited with it, the value thereof, nor for the sufficiency of any assignment thereof. The Depositary shall be under no liability to any of the parties hereto for any act taken by it in good faith in reliance upon any certificate, writing, advice, notice, instru-

ment, request or instructions purporting to be duly given or executed which it believes in good faith to be genuine and authorized or otherwise in connection herewith except for wilful default or gross negligence. The Depositary may [fol. 5591] act in any matter in connection herewith by agents and it shall not be liable for any default of any such agents selected by it with reasonable care. The Depositary at any time may act in reliance upon advice of counsel and for any action taken or not taken pursuant to such advice, it shall not be liable.

10. The undersigned and all who may become parties hereto by depositing with the Depositary a signed copy of this letter as hereinabove provided shall be jointly and severally liable to the Depositary for its reasonable fees and expenses including counsel's fees and expenses, in connection herewith and shall indemnify and hold it harmless from any and all liability which it may incur by reason hereof, and the Depositary shall have a lien upon any of the deposited stock therefor.

11. This agreement shall terminate upon the termination or consummation of the option rights arising on the death of Dewar, provided, however, that it may be sooner terminated upon the written request of the owners of all of the stock deposited hereunder. Upon any such termination the Depositary shall deliver to the persons entitled thereto the deposited stock according to their respective interests.

12. Any corporation with or into which you may consolidate or merge or which may acquire all or substantially all of your assets shall be substituted as Depositary of the deposited certificates without execution of any further instrument. You may at any time resign as Depositary hereunder upon 60 days prior written notice given to such party hereto. You may be removed as Depositary at any time [fol. 5592] upon 60 days prior notice delivered to you by all of the parties hereto.

13. The word "Timken" and the words "Dewar Corporation" as used herein, shall extend to and include any subsidiary corporation or any successor corporation which shall acquire all or substantially all of their assets respectively.

14. Notices hereunder may be by letter or cable or radio photostat or cable or radio confirmed by letter, addressed

and sent to the parties at their addresses as given in this letter.

Very truly yours,
The Timken Roller Bearing Company, by J. F. Strough

Michael Bruce Urquhart Dewar

[fol. 5593]

DEFENDANT'S EXHIBIT No. 228

Index

Documents	Parties	Date
Heads of Agreement	Dewar and TRB	8/15/34
Agreement with a view to sale of shares	TRB, BT and Dewar	12/29/34
Redistribution Agreement covering interests in FT and G-T	ICI, IBI, TRB, Dewar and Luxembourgh Co. No. 1	12/29/34
Dewar's new management contract	BT and Dewar	3/29/35
Authorization for sale of shares and organization of Timken Holdings, Inc.	Dewar and other shareholders	3/29/35
Cable	Dewar to Hess	4/10/35
Letter	Duncan to TRB	4/10/35
Cable	Dewar to Hess	6/18/35
Cable	Hess to Dewar	6/18/35
Cable	Dewar to Hess	6/19/35
Cable	Dewar to Hess	6/19/35
Cable	Hess to Dewar	6/24/35
Agreement as to subsidiary companies	TRB and BT	7/16/35
Agreement as to limitations on transfer and options on Timken Holdings, Ltd. stock	TRB and Dewar	9/7/35
Agreement for holding shares of BT and G-T in trust with TRB, Lux Co. and Pascoe, Trustees	TRB, Lux Co. (No. 2) and Pascoe	12/10/35

[fol. 5594]

August 15, 1934.

The Timken Roller Bearing Company, Canton, Ohio. Attention—H. H. Timken, President

Gentlemen:

The undersigned, M. B. U. Dewar (hereinafter called Dewar), desires to submit heads of agreement as heretofore negotiated between Dewar and The Timken Roller Bearing Company (hereinafter called the Timken Company).

British Timken, Limited, has authorized, issued and outstanding 50,000 Class A shares and 50,000 Class B shares,

of which Dewar owns or controls 27,000 Class A shares and 20,500 Class B shares, and the Timken Company owns or controls 23,000 Class A shares and 29,500 Class B shares. It is contemplated that such capitalization will, by appropriate action, be increased to 125,000 Class A shares and 125,000 Class B shares, and such increased capitalization be charged to surplus.

In connection with and subject to the consummation of the sale, on or before August 31, 1935, of a fifty per cent stock interest in British Timken, Limited, as described in section 1 below, it is proposed as follows:

1. Dewar and the Timken Company will attempt to negotiate a cash sale of a fifty per cent stock interest in British Timken, Limited, at an aggregate sale price of not less than 150,000 pounds. The fifty per cent stock interest in [fol. 5595] British Timken, Limited, so proposed to be sold will be made available by Dewar and the Timken Company each supplying, for that purpose, one-half of the holdings in British Timken, Limited, owned or controlled by them.

2. In connection with such proposed sale of a fifty per cent stock interest in British Timken, Limited, the share capital of British Timken, Limited, will, by appropriate action, be changed so that all of the shares will be of one class, and all appropriate changes and amendments will be made in the Articles of Incorporation looking to the changing of British Timken, Limited, from a Private Company to a Public Company.

3. Also in connection with such proposed sale of a fifty per cent stock interest in British Timken, Limited, Dewar and the Timken Company will cause the contract between the Timken Company and British Timken, Limited, dated first January, 1928, to be amended, to the end that the amount provided to be paid by the American Company (The Timken Company) to the British Company (British Timken, Limited) in accordance with the provisions of sub-section (b) of Section 7 and the amount provided to be paid by the British Company (British Timken, Limited) to the American Company (the Timken Company) in accordance with the provisions of sub-section (b) of Section 8 shall in each instance be an amount equal to five per centum (5%) of the described net sale prices. Dewar and the Timken Company will also cause said contract to be amended to the end that the amount provided to be paid by the British Company

(British Timken, Limited) to the American Company (the Timken Company) pursuant to the provisions of Section 10 shall be an amount equal to one-half of one per centum [fol. 5596] of the net invoice prices as therein described, instead of an amount equal to four per centum of such net invoice prices, and an adjustment in respect of such reduction shall be made from and after January 1, 1934. The provisions of Section 16 of said contract shall also be amended to the end that the provisions of such contract shall remain in effect for a period of fifteen years from and after the date of the consummation of the proposed sale of a fifty per cent stock interest in British Timken, Limited.

4. Also in connection with such proposed sale of a fifty per cent stock interest in British Timken, Limited, Dewar and the Timken Company will cause appropriate provision to be made, either in the aforesaid agreement between the Timken Company and British Timken, Limited, or otherwise, to the end that Societe Anonyme Francaise Timken, a French corporation (hereinafter called French Timken), or its successor operating in France, shall be under no obligation to pay any license, royalty or service fees either to British Timken, Limited, or to the Timken Company.

5. Also in connection with such proposed sale of a fifty per cent stock interest in British Timken, Limited, Dewar and the Timken Company will cause the aforesaid contract between British Timken, Limited, and the Timken Company to be modified to the end that either the Timken Company or British Timken, Limited, may sell bearings in or to Russia free and clear of the provisions of such contract and on a basis whereby the Timken Company and British Timken, Limited, will share equally the expense of negotiating such [fol. 5597] sales by either company, and whereby the company securing such sales shall pay to the other company an amount equal to two per cent (2%) of the net sales so secured.

6. In the event of the confirmation of the proposed sale of the fifty per cent stock interest in British Timken, Limited, the remaining fifty per cent of the total outstanding shares of British Timken, Limited, owned or controlled by Dewar and the Timken Company, shall be transferred to and held by a Holding Company to be organized for that purpose. The Holding Company will issue to the respective assignors of such shares of British Timken, Limited,

an equal number of shares of the Holding Company. The shares so to be issued by the Holding Company shall be Class A and Class B shares, having such rights and privileges in respect of voting and election of directors, and otherwise, as are provided in the present Articles of Association and the present Ordinary Resolutions Nos. 1 and 2 of British Timken, Limited, together with the accompanying by-laws. The earning and dividend record applicable to the rights and privileges attaching to the Class A and Class B shares will be the earning and dividend record of British Timken, Limited. The shares of the Holding Company issued in respect of the shares of British Timken, Limited, so transferred by Dewar, shall be Class A shares, and the shares of the Holding Company issued in respect of the shares of British Timken, Limited, so transferred by the Timken Company, shall be Class B shares.

In the event of the withdrawal from the Holding Company in the manner hereinafter provided of more than five per cent of the shares of British Timken, Limited, thereto- [fol. 5598] fore assigned to the Holding Company by either the Timken Company or by Dewar, all of the special rights and privileges attaching to such Class A and Class B shares, respectively, shall cease and determine, and all of the shares of the Holding Company shall be deemed to be of one class.

The shares of the Holding Company shall be redeemable by the Holding Company, at the option of the owners thereof, upon not less than sixty days' notice to the Holding Company and surrender to the Holding Company of the respective certificate or certificates representing the shares so to be redeemed. The redemption price of each share of the Holding Company shall be one share of British Timken, Limited, plus an amount equal to a pro rata share of the Holding Company's assets other than the shares of British Timken, Limited. In each instance the shareholder in the Holding Company causing his shares to be redeemed shall assume and pay any tax involved in the transaction.

Appropriate provision shall be made whereby both Dewar and the Timken Company, respectively, shall cause shares owned or controlled by them respectively to be first offered to the Timken Company and Dewar, respectively, on appropriate terms, prior to being sold to outside interests or presented to the Holding Company for redemption as hereinbefore in this section provided.

7. Upon the consummation of the sale of the fifty per cent stock interest in British Timken, Limited, as hereinbefore described, Dewar and the Timken Company will adjust their respective interests and investments in Societe Anonyme Francaise Timken (hereinafter called French Timken), [fol. 5599] Deutsche Timken Gesellschaft m.b.h. (hereinafter called German Timken), Industrial and Commercial Investments, Incorporated (hereinafter called I.C.I.), and International Bearings Investments, Incorporated (hereinafter calling I.B.I.), in such manner as to produce the following ultimate results:

(a) Dewar and the Timken Company will each own or control a one-half interest in French Timken, German Timken, I.C.I., and I.B.I., subject, however, to the obligation of re-payment of advances since December 31, 1933, made by Dewar or the Timken Company.

(b) Dewar will pay in cash to the nominee of the Timken Company, the sum of $250,000, and will cause to be issued to the nominee of the Timken Company a note, bearing no interest, in the amount of $150,000, executed either by Dewar personally or by a Holding Company owned or controlled by Dewar and organized for the purpose of holding a one-half interest in French Timken, German Timken, I.C.I., and I.B.I., as now constituted or as hereafter reorganized, all of which said corporations, French Timken, German Timken, I.C.I., and I.B.I., as now constituted or as hereafter reorganized, are hereinafter called Continental Timken. Payment of such note shall be secured by the pledge of such one-half interest in Continental Timken. The amount of such note shall be due and payable from and only from the proceeds of sale of all or any part of such one-half interest in Continental Timken, or from the proceeds of liquidation of Continental Timken applicable to such one-half interest, or from dividends or other distribution de- [fol. 5600] clared and paid by Continental Timken in respect of such one-half interest in excess of an amount equal to $7500 per year.

8. From and after the consummation of the sale of the fifty per cent stock interest in British Timken, Limited, as hereinbefore described, Dewar, during his lifetime and his active management of the business of French Timken, shall be entitled to nominate and elect a majority of the Board of Directors of French Timken until such time as French Tim-

ken shall fail to pay annually to its shareholders an amount, less French taxes on dividends, equal to $24,000 per year, as dividends or other distribution from accumulated earnings; provided, however, that for the purpose of the provisions of this section, no default in the payment of such distribution shall be effective prior to the year commencing six months after the consummation of the sale of the fifty per cent stock interest in British Timken, Limited, as hereinbefore described. In the event of Dewar's death or retirement from the active management of the business of French Timken, or in the event of the failure of French Timken to make the payments hereinbefore in this section provided, Dewar will, at the election of the Timken Company, cause shares of French Timken equal to one voting unit to be sold to the Timken Company, or its nominee, at the book or par value of such shares.

Your approval hereon in writing will evidence our mutual understanding of the foregoing heads of agreement.

Very truly yours, M. B. U. Dewar.

Approved: September 24, 1934.

The Timken Roller Bearing Company, By W. J. Timken, President

[fol. 5601] Agreement

Dated: December twenty-ninth, One thousand nine hundred and thirty four.

Parties

(1) The Timken Roller Bearing Company Canton Ohio United States of America (the American Company)

(2) British Timken Limited Cheston Road Aston Birmingham England (the British Company)

(3) Michael Bruce Urquhart Dewar Number 10 Mayfair Place London W. England (Mr. Dewar)

Recitals

(A) The British Company is a private company with a share capital of Two hundred and fifty thousand pounds divided into One hundred and twenty five thousand "A" Shares and One hundred and twenty five thousand "B" Shares all of One pound each of which One hundred thou-

sand shares have been issued One hundred and fifty thousand shares have been allotted but are not yet issued and all are fully paid

(B) The British Company is organized and carries on business under inter alia the following deeds agreements instruments etcetera:

(1) Articles of Association adopted by Special Resolution passed and confirmed on the Fifth and Twentieth days of April One thousand nine hundred and twenty eight respectively

(2) By-laws as to voting and By-laws as to Directors adopted by Ordinary Resolutions passed on the Twentieth day of April One thousand nine hundred and twenty eight as altered by an Ordinary Resolution passed on the Eighteenth day of March One thousand nine hundred and twenty nine

(3) Resolutions of the Directors passed on the First day of July One thousand Nine hundred and twenty seven the Twenty fifth day of January One thousand nine hundred and twenty nine and the Nineteenth day of April One thousand [fol. 5602] nine hundred and thirty four with respect to the remuneration of William Dallow as Manager of the British Company and Resolutions of the British Company in General Meeting passed on the Twenty fourth day of April One thousand nine hundred and thirty one and the Twenty eighth day of April One thousand nine hundred and thirty three and of the Directors passed on the Twentieth day of March One thousand nine hundred and thirty three and the Nineteenth day of April One thousand nine hundred and thirty four with respect to the remuneration of Frederick John Pascoe as Financial Adviser of the British Company

(4) Agreement between the American Company and the British Company executed as of the First day of January One thousand nine hundred and twenty eight being an Agreement establishing business relations between the American Company and the British Company (hereinafter called "The Business Agreement")

(5) Agreement between the British Company and Mr. Dewar made the Twentieth day of April One thousand nine hundred and twenty eight being an Agreement with respect to Mr. Dewar's appointment as Managing Director (hereinafter called "Mr. Dewar's Service Agreement")

(6) Agreement between the American Company and Mr. Dewar made the Twentieth day of April One thousand nine hundred and twenty eight being an Agreement with respect (inter alia) to transfers of shares (hereinafter called "the Transfers Agreement")

(7) Agreement between the American Company the British Company and Mr. Dewar made the Twentieth day of April One thousand nine hundred and twenty eight with respect to Directorships of and shares etcetera in Subsidiary Companies (hereinafter called "the Subsidiary Companies Agreement")

(8) Agreement between the British Company and Societe Francaise Timken a Societe Anonyme Incorporated in France (hereinafter called "the French Company") made as at the Sixteenth day of June One thousand nine hundred [fol. 5603] and twenty eight being an agreement establishing business relations between the American Company and the British Company and the French Company (hereinafter called "the French Company Agreeement")

(C) By special Resolutions passed on the Thirtieth day of November One thousand nine hundred and thirty four with the sanction required by clause 46 of its Articles of Association the British Company increased its share capital to Two hundred and fifty thousand pounds by the creation of One hundred and fifty thousand new shares of one pound each divided into Seventy five thousand "A" Shares and Seventy five thousand "B" Shares all of One pound each which shares when issued are to rank pari passu with the Fifty thousand "A" Shares and Fifty thousand "B" Shares already issued and by an Ordinary Resolution passed on the Thirtieth day of November One thousand nine hundred and thirty four the British Company resolved (with the necessary consents) that it was desirable to capitalise a sum of One hundred and fifty thousand pounds standing to the credit of General Reserve Account and authorised and directed the Directors at any time before the Thirty first day of August One thousand nine hundred and thirty five to appropriate and distribute such sum as capital amongst the members in proportion to the amounts paid up on the issued ordinary Shares held by them respectively and to apply such sum in paying for the said Seventy five thousand new "A" Shares and Seventy five thousand new "B" Shares such shares credited as fully paid to be

allotted and distributed to and amongst the members in such proportions that the number of "A" Shares and/or "B" Shares held by each member should be increased by the addition thereto of three new A shares for every two A shares held and three new B shares for every two B shares held

(D) Pursuant to and in accordance with the said resolutions the Directors of the British Company have capitalised and distributed the said sum of One hundred and [fol. 5604] fifty thousand pounds and allotted the said One hundred and fifty thousand new shares credited as fully paid

(E) The shareholders in the British Company are proposing to offer for sale to the public One hundred and twenty five thousand of the said One hundred and fifty thousand new Shares of One pound each and with a view thereto it will be necessary and it is proposed to convert the British Company (which is a private Company) into a Public Company and to adopt new Articles of Association and make other alterations in the organisation of the British Company

(F) In connection with the said proposed offer it has been agreed between the American Company and the British Company to make alterations in the terms of business now subsisting between them with respect to royalties and other matters which are contained in the Business Agreement and it has also been agreed between the parties hereto that other alterations shall be made in the arrangements according to which the British Company is at present organised and carried on but such alterations are to become finally effective only if the said One hundred and twenty five thousand new shares are sold and issued to purchasers in accordance with arrangements to be made between the American Company and the other shareholders in the British Company and Mr. Dewar as the person through whom the said offer of sale is to be made

(G) As a matter of convenience with a view to such offer it is proposed to embody the new arrangements in an Agreement at once and to provide that these new arrangements will take effect in part as from a past date so that the accounts of the British Company for the year One thousand nine hundred and thirty four and the Balance Sheet at the end of that year will show the working results and position of the British Company in accordance with

the new arrangements so far as the same take effect previous to the end of that year but inasmuch as the new arrangements are intended to become finally effective only if the said shares are sold and issued to purchasers as hereinbefore mentioned it is necessary to make provision so that the position may be restored in the event of the said shares not being sold and purchased

[fol. 5605] Agreement

1. (a) The British Company is at liberty at any time before the Thirty first day of August One thousand nine hundred and thirty five when requested by Mr. Dewar to cancel its existing Articles of Association and all by-laws adopted pursuant to such Articles of Association and to adopt new Articles of Association by which amongst other things the British Company will become a public Company and all the shares in the British Company will cease to be divided into A shares and B shares and will become shares of one class

(b) A draft of the new Articles of Association has been submitted to the American Company and to Mr. Dewar and the new Articles of Association shall be in the form of the said draft with such alterations if any therein as may be approved by Messrs. Stibbard Gibson and Company of Number 21 Leadenhall Street London E.C. England (hereinafter called Messrs. Stibbard) on behalf of the American Company and by Mr. Dewar

(c) Messrs. Stibbard are hereby authorised by the American Company to sign consents in the name and on behalf of the American Company to the passing of resolutions by the British Company by which the said existing Articles of Association and by-laws will be cancelled and the said new Articles of Association will be adopted in the place of the said existing Articles of Association and to the passing of resolutions by the holders of any class of shares in the British Company for the purpose of modifying or abrogating the rights attached to the particular class of shares in order to give effect to any of the said resolutions passed by the Britisn Company

2. (a) The American Company and the British Company will forthwith enter into a new Business Agreement in the terms of a draft agreement which has already been prepared but (subject as hereinafter mentioned) the Busi-

ness Agreement shall be cancelled and the said new Business Agreement shall come into operation and effect only [fol. 5606] if and when the said One hundred and twenty five thousand new shares in the British Company have been sold and issued to purchasers as hereinbefore mentioned

(b) The royalty of four per centum payable under clause 10 (a) of the Business Agreement shall be paid in accordance with the Business Agreement in respect of the period ending on the Thirty first day of December One thousand nine hundred and thirty three but provisionally in respect of the period after that date that royalty shall be payable at the reduced rate of one half of one per centum provided for in clause 12 (a) of the said new Business Agreement Provided nevertheless that such reduced royalty is provisional only and will not become absolute unless and until the said One hundred and twenty five thousand new shares in the British Company shall have been sold and issued to purchasers as hereinbefore mentioned

(c) All payments and Book entries which have been made in respect of the said royalty of four per centum for the period after the Thirty first day of December One thousand nine hundred and thirty three in accordance with the Business Agreement shall be reversed and credited or debited to the American Company or to the British Company as the case may require.

(d) No claim shall be made upon the French Company by the British Company or the American Company before the Thirty first day of August One thousand nine hundred and thirty five in respect of any royalty or other charge payable under the French Company agreement previously to that date and if the said One hundred and twenty five thousand new shares in the British Company are sold and issued to purchasers as hereinbefore mentioned all claims upon the French Company for royalty or other charges payable under the French Company agreement shall be cancelled by the British Company and the American Company

3. (a) The British Company shall forthwith enter into a new service agreement with Mr. Dewar in the terms of a draft agreement which has already been prepared and [fol. 5607] which provides for the cancellation of Mr. Dewar's service agreement on the date therein mentioned

(b) All monies payable under Mr. Dewar's Service Agree-

ment shall be made in accordance with Mr. Dewar's Service Agreement in respect of the period down to the date of the new service agreement coming into force

(c) All monies payable under the said new Service Agreement shall be made in accordance with that agreement as from the date of its coming into force.

4. The British Company shall forthwith enter into Service Agreements with Mr. Dallow and Mr. Pascoe in the terms of draft agreements which have already been prepared

5. If and when the said One hundred and twenty five thousand new shares in the British Company have been sold and issued to purchasers as hereinbefore mentioned the Transfers agreement shall be cancelled and at an end

6. The Subsidiary Companies Agreement shall remain unaffected by this Agreement except that if and when the said One hundred and twenty five thousand new Shares in the British Company have been sold and issued to purchasers as hereinbefore mentioned the Subsidiary Companies Agreement shall become an agreement between the American Company and the British Company and Mr. Dewar shall be excluded therefrom and a new agreement shall be entered into between the two Companies alone on that footing

7. If and when the said One hundred and twenty five thousand new shares in the British Company have been sold and issued to purchasers as hereinbefore mentioned the British Company will enter into a new Business Agreement with the French Company in the form of the draft agreement which has already been prepared and the American Company and Mr. Dewar will cause the French Company to enter into such Agreement and thereupon the French Company Agreement shall be cancelled

[fol. 5608] 8. (a) If the said One hundred and twenty five thousand new shares in the British Company shall not have been sold and issued to purchasers as hereinbefore mentioned before the Thirty first day of August One thousand nine hundred and thirty five then and in such case all the deeds agreements instruments etcetera hereinbefore mentioned shall be fully restored so that the British Company shall become a private Company as at present and the contractual and other relations between the parties hereto and also between any of them and the French Company shall be reinstated so as to be the same as before this Agreement

was entered into and all payments and book entries in respect of the said royalty of one half of one per centum made in accordance with the new arrangements as hereinbefore provided for shall be reversed and credited or debited to the American Company or the British Company as the case may require and in lieu thereof payments will be made in respect of the said royalty of four per centum in accordance with the Business Agreement.

(b) The American Company so far as regards the shares in the British Company now registered in its name and Mr. Dewar so far as regards the shares in the British Company now registered in his name and also the shares now registered in the name of Societe Americano Europeenne de Participations and the American Company so far as regards any Director of the British Company nominated by it and Mr. Dewar so far as regards himself and any other person nominated by him as Director of the British Company will cause the voting rights exercisable in respect of such shares or by such Directors to be exercised so far as necessary in order to give effect to the provisions of paragraph (a) of this clause.

In witness whereof this Agreement has been executed by or on behalf of the parties hereto.

Signed and Sealed by or on behalf of the American Company in the presence of Wm. E. Umstattd, President, R. C. Brower, Secretary.

[fol. 5609] Sealed by or on behalf of the British Company in the presence of M. B. U. Dewar, Director, E. N. Arvir, Director, R. O. Squire, Secretary.

Signed sealed and delivered by Mr. Dewar in the presence of A. A. Hill, 65 Cheston Rd. Aston, Birmingham.

[fol. 5610] Dated December twenty-ninth 1934

The Timken Roller Bearing Company (1); British Timken Limited (2); and M. B. U. Dewar Esq. (3).

Agreement with a view to Sale of Shares

[fol. 5611] Agreement

Date

Twenty-ninth day of December One Thousand nine hundred and thirty four

Parties

(1) Industrial and Commercial Investments Incorporated of No. 7, West Tenth Street, Wilmington, Delaware, United States of America, (hereinafter referred to as "the I.C.I. Company")

(2) International Bearings Investments of No. 100, West Tenth Street, Wilmington, Delaware, United States of America (hereinafter referred to as "the I.B.I. Company").

(3) The Timken Roller Bearing Company of Canton, Ohio, United States of America (hereinafter referred to as "the Timken Company").

(4) Michael Bruce Urquhart Dewar of No. 10, Mayfair Place, London W. England (hereinafter referred to as "Mr. Dewar").

(5) Societe Americano Europeene de Participations of Luxembourg (hereinafter referred to as "the Luxembourg Company No. 1").

Recitals

(a) Societe Anonyme Francaise Timken (hereinafter called "the French Company") is a Company incorporated in France and having a Share Capital of Francs Ten million divided into Seventy thousand Ordinary Shares of Francs One hundred each all issued and fully paid and Thirty thousand Six per cent Cumulative Preference Shares of Francs One hundred each all issued and fully paid and One thousand "Parts Beneficiaires" without nominal value and in addition the French Company has taken up Loan Capital to the amount of Francs Eleven million seven hundred and fourteen thousand

(b) Deutsche Timken Gesellschaft mit beschrankter Haftung (hereinafter called "the German Company") is a company incorporated in Germany and having a Share Capital of Reichmarks Four hundred thousand all of which has been issued and is fully paid and in addition the German Company has taken up Loan Capital to the amount [fol. 5612] of Reichmarks 613,930.30

(c) The Luxembourg Company No. 1 is a Company incorporated in Luxembourg and Mr. Dewar is proposing to form another Company in Luxembourg (hereinafter referred to as "the Luxembourg Company No. 2") and Mr. Dewar is the owner of all the issued shares in the Luxembourg Company No. 1 and will become the owner of all the issued shares in the Luxembourg Company No. 2.

(d) The parties hereto are the owners directly or indirectly of Share Capital, Loan Capital and Parts Beneficiaires in the Companies named in the First Column of the First Schedule hereto as shown by the tabulated particulars specified in such Schedule and such Companies are hereinafter referred to as "the owned Companies".

(e) The parties hereto have agreed that the Share Capital, Loan Capital and Parts Beneficiaires in the owned Companies specified in the First Schedule hereto shall be redistributed so that the Share Capital, Loan Capital and Parts Beneficiaires aforesaid shall be owned as shown by the tabulated particulars specified in the Second Schedule hereto and the Share Capital, Loan Capital and Parts Beneficiaires so owned as aforesaid are hereinafter referred to as "the owned interests".

(f) The parties hereto in connection with the said redistribution have further agreed to the effect hereinafter appearing

Agreement

1. Each of the parties hereto will execute and do such deeds acts and things as may be necessary in order that the owned interests except Reichmarks Five thousand eight hundred in the Share Capital of the German Company which are owned by British Timken Limited may be redistributed to the end that the same except as aforesaid may be owned as shown by the tabulated particulars specified in the Second Schedule hereto and accordingly upon such re-distribution being effected each of them the Timken Company and Mr. Dewar directly or indirectly will own or control one [fol. 5613] half of the Share Capital, Loan Capital and Parts Beneficiairies in the French Company and the German Company included in the owned interests except as aforesaid as shown by the said particulars.

2. (a) As consideration for the foregoing re-distribution and coincident therewith Mr. Dewar will pay to the Timken Company or its nominee a sum of Two hundred and fifty thousand dollars cash and also will deliver to the Timken Company or its nominee a promissory note for One hundred and fifty thousand dollars which will be payable and secured in accordance with and subject to the conditions hereinafter contained.

(b) The I.C.I. Company the I.B.I. Company and the Timken Company will arrange between themselves as to the division between them of the consideration to be received by the Timken Company as hereinbefore mentioned and Mr. Dewar and the Luxembourg Company No. 1 and the Luxembourg Company No. 2 will arrange between themselves as to the contribution to be made by each of them in respect of the said sum of cash and the said promissory note.

3. The promissory note to be delivered by Mr. Dewar to the Timken Company as hereinbefore mentioned shall be a promissory note of the Luxembourg Company No. 2 which Company at the time when such promissory note is delivered will own the owned interests which are to be transferred to its ownership according to the particulars contained in the Second Schedule hereto (hereinafter referred to as "Mr. Dewar's Assets") and shall be free from debts liabilities and engagements other than in respect of the said promissory note and the security hereinafter mentioned.

4. The said promissory note shall not carry interest and shall be limited so that it shall be payable only from the sources and in accordance with the conditions to be specified therein (that is to say)

(a) The Luxembourg Company No. 2 will undertake that all monies and other values which from time to time shall be paid or transferred by the French Company or the [fol. 5614] German Company in respect of Mr. Dewar's assets before or after the commencement of a winding up either by way of interest or divided out of profits or by way of payment or distribution out of capital or otherwise in excess of a cumulative sum of Seven thousand five hundred dollars per annum commencing from the First day of January One thousand nine hundred and thirty five down to the date of any such payment by the French Company or the German Company shall be paid to the holder for the time being of the said promissory note in or towards satisfaction of the amount of the said promissory note remaining unpaid until the whole amount of the said promissory note shall be paid and satisfied.

(b) The whole of Mr. Dewar's Assets shall be constituted an absolute security for the payments to be made under the foregoing paragraph of this clause.

5. Each of the parties hereto will execute and do or cause to be executed and done such deeds acts and things as may be necessary to give effect to the following purposes:

(a) Mr. Dewar shall be Managing Director of the French Company and the yearly allowance of Francs Eighty five thousand net free of all taxes which has been assigned to him by the French Company shall be continued and he shall actively engage in the management of the French Company to such an extent as he shall consider neeessary

(b) Mr. Dewar shall have the control of the business of the French Company and shall be entitled to nominate and elect a majority of the Board of Directors of the French Company and the remaining Directors of the French Company shall be nominated by the Timken Company and the remuneration of the Directors Managing Directors and any management or technical committee of the French Company shall be at such rate and of such amount as shall be agreed from time to time in writing between Timken Company and Mr. Dewar.

[fol. 5615] (c) The French Company shall make payments pari passu on account of its Loan Capital and shall declare and pay dividends in respect of its Share Capital as directed by Mr. Dewar.

(d) No part of the Share Capital of the French Company which is owned or controlled by any of the parties hereto shall be sold transferred or otherwise disposed of by such party except upon such terms and conditions as will effectively reserve to such party the control of all voting rights in respect of the part of the Share Capital of the French Company which is in the ownership or control of such party.

(e) The Luxembourg Company No. 2 shall not carry on any business or enter into any engagements except such as are necessary in connection with the holding of the owned interests coming to it under this Agreement without the consent in writing of the Timken Company

(f) The foregoing provisions of this clause shall continue in force until the occurrence of any of the following events—

(i) Mr. Dewar dies

(ii) Mr. Dewar retires from the active control of the business of the French Company

(iii) The undistributed profits as hereinafter defined of the French Company at the end of the year One thousand nine hundred and thirty six or any subsequent year amount to less than Twenty four thousand dollars

(iv) The amount actually paid by the French Company in the year ending on the Thirtieth day of April, One thousand nine hundred and thirty seven or in any subsequent year ending on the Thirtieth day of April by way of dividend or interest or repayment of Capital in respect of the Share Capital or loan capital forming part of the owned interests amounts to less than Twenty four thousand dollars

(g) For the purposes of the previous paragraph of this clause the following shall apply—

[fol. 5616] (i) The undistributed profits at the end of any year means the surplus of the profits over and above losses earned after the Thirty first day of December One thousand nine hundred and thirty three down to the end of such year after making the deductions hereinafter mentioned.

(ii) In ascertaining the profits aforesaid all French Taxes shall be deducted and in addition at the end of the year One thousand nine hundred and thirty seven and any subsequent year there shall be deducted in respect of the year ending on the Thirtieth day of April, On thousand nine hundred and thirty seven and each subsequent year ending on the same day a sum of Twenty four thousand dollars or the amount actually paid in any such last mentioned year by way of dividend or interest in respect of the share capital and loan capital aforesaid whichever is the greater.

(iii) Profits earned means profits earned after such provision has been made for depreciation and bad and doubtful debts as the Auditors of the French Company consider to be reasonable but without any deduction in respect of the debit balance on the Profit and Loss Account of the French Company at the Thirty first day of December, One thousand nine hundred and thirty three or in respect of any transfer made for the purpose of writing down or amortizing the amounts which were shown in the Balance Sheet at

that date under headings Development Account Expenses of increase of Capital or Formation expenses or in respect of any Capitalization of Profits.

(iv) The Sum of Twenty four thousand dollars means either that sum or its equivalent in French Francs at the rate of exchange current at the time of payment.

(h) If and when the foregoing provisions of this clause come to an end then and in such case Mr. Dewar if so requested by the Timken Company will cause one share or other holding of shares in the French Company carrying [fol. 5617] one vote to be transferred to the Timken Company or its nominees at the par value of such share or holding

6. (a) Each of them the Timken Company and Mr. Dewar hereby covenants with the other of them that the covenanting party will not sell transfer or otherwise dispose of or permit to be sold transferred or otherwise disposed of any owned interest owned or controlled by the covenanting party unless the covenanting party has first offered the same to the other party.

(b) Every such offer shall be made by notice in writing specifying the interest to which it relates and shall remain open for acceptance by the party to whom it is made for Ninety days after it is received by such party and any acceptance of an offer shall be signified by notice in writing to the party making the offer.

(c) If any such offer is duly accepted the price payable for the interest specified in the offer shall be the fair value thereof and such value shall be determined and the sale and transfer of the interest specified in the offer shall be completed in the manner and at the time which shall be agreed or in default of agreement shall be settled by arbitration under the provisions hereinafter contained.

(d) The parties hereto shall give any consents and exercise any voting rights and execute and do any other deeds acts or things which may be necessary for the purpose of giving effect to this Agreement or any Award made in an Arbitration under this agreement.

7. If any question shall arise between the parties hereto or any of them with respect to the fair value aforesaid or the completion of any such sale or transfer or any other

matter of thing arising out of this Agreement every such question shall in default of Agreement be settled by arbitration in London under the English Arbitration Act 1889 or any statutory modification or re-enactment thereof for the time being in force.

[fol. 5618] 8. (a) This agreement shall not come into force unless and until the sale of shares to the public under an Agreement made the twenty ninth day of December One thousand nine hundred and thirty four between the Timken Company (1) British Timken Limited (2) and Mr. Dewar (3) has been completed and the said shares have been sold transferred and paid for.

(b) Upon this Agreement coming into effect this following Agreement shall be at an end namely: (a) An Agreement made the Eighth day of November One thousand nine hundred and twenty nine between Mr. Dewar (1) and the Timken Company (2) and (b) An Agreement made the Eighth day of November One thousand nine hundred and twenty nine between the Timken Company (1) and Mr. Dewar (2).

In Witness whereof this Agreement has been executed by or on behalf of the parties hereto the day and year first above written.

THE FIRST SCHEDULE above referred to

Containing Particulars in regard to share and other interests before re-distribution.

Balances on Current account are not affected by this Agreement

R - Registered Shares B - Bearer Shares D - Directors Shares

Company and Authorized Capital.	Issued Capital Nom. Value	OWNERS in names of selves or nominees: I.C.I. Company	I.B.I. Company	Timken Company	Mr. Dewar	British Timken Limited	Luxembourg Company No. 1	Luxembourg Company No. 2
1. French Timken		R. 6,000 D	R.2,000,000					
70,000 Ordinary Shs. Frcs. 100 each 7,000,000	7,000,000	B.4,994,000						
30,000 6% Cum. Pref. Sh. Frcs. 100 each 3,000,000	3,000,000		R.3,000,000					
1,000 Parts Beneficiaires 1,000	1,000	1,000						
Loan Capital	11,714,000		11,714,000					
	21,715,000	5,001,000	16,714,000					

2. German Timken

Share Capital Reichsmarks 400,000	400,000		268,800	125,400	5,800	
Loan Capital Reichsmarks	613,930.30	613,930.30				
	1,013,930.30	613,930.30	268,800	125,400	5.800	

3. I.C.I. Company

58,000 Common Sh. $10. each 580,000	80,000		48,040			31,960
5,000 6% Cum. Pref. Sh/ $100. each 500,000	500.000		500.000			
	580,000		548,040			31,960

4. I.B.I. C[illegible]

Common Sh. [illegible].000 656.000

THE SECOND SCHEDULE above referred to

Containing Particulars in regard to Share and other interests after re-distribution

Balances on current account are not affected by this Agreement.

A - Registered Shares B - Bearer Shares D - Directors Shares

Company and Authorised Capital	Issued Capital Nom. Value	O.M.I.S in name of selves or nominees: I.C.I. Company	I.B.J. Company	Timsen Coy or its nominees	British Timsen Limited	Luxembourg Company No. 1	Luxembourg Company No. 2
1. French Timsen							
7,000 Ordinary Sh. Nom. £100 each £ 7,000,000	£ 7,000,000			R. 3,000 D R. 2,000,000			R. 3,000 D. B. 3,497,000
30,000 6% Cum. Pref. Shs. Nom. £100 each £ 3,000,000	£ 3,000,000			B. 1,497,000 R. 1,500,000			R. 1,500,000
1,000 Parts Beneficiaires 1,000	1,000			500			500
Loan Capital	£11,714,000			5,857,000			5,857,000
	£11,715,000			10,857,500			10,857,500
2. German Timsen							
Shares Capital Reichsmarks 40,000	40,000			197,100.00	5,800		197,100.00
Loan Capital Reichsmarks	615,930.30			306,965.15			306,965.15
	1,012,930.30			504,065.15	5,800		504,065.15

2505

I.C.I. Company		
58,000 Common Sh		
£10. each		
580,000	80,000	80,000
000 6% Cum. Pref.		
Shs.		
£1 . each 500,000	500,000	500,000
	580,000	580,000
I.B.I. Company		
Common Sh.	656,000	656,000
each		

Signed and SEALED by or on behalf of)
The I.C.I. Company in the presence)
of:)

J. Nasir

Alemu

SIGNED and SEALED by or on be-)
half of The I.B.I. Company in)
the presence of:)

President

Secretary

SIGNED and SEALED by or on be-)
half of the Timken Company in)
the presence of:)

President

Secretary

SIGNED SEALED and DELIVERED by)
Mr. Dewar in the presence of:)

Mary H. Wilson
10, Mayfair Place.
Secretary.

Société Américano-Européenne de Participations Société Anonyme LUXEMBOURG

signed and sealed by me on behalf of Société Américano-Européenne de Participations
in the presence of:

Directors

2503 Dated ember twenty ninth 1934

TIMKEN ROLLER BEARING COMPANY

M. B. U. DEWAR Esq. and others

A G R E E M E N T

re-distributing various interests

in Companies.

[fol. 5625] An Agreement made the 29th day of March 1935 between British Timken Limited (hereinafter called "the Company") of the one part and Michael Bruce Urquhart Dewar (hereinafter called "Mr. Dewar") of the other part.

Whereas Mr. Dewar is the present Managing Director of the Company and it is desired to define the terms upon which he is to continue to hold that office.

Now

It is hereby agreed as follows:

1. Mr. Dewar shall be the Managing Director of the Company and so long as he holds office as such no other Managing Director shall be appointed without his previous consent in writing.

2. There shall be entrusted to Mr. Dewar as Managing Director the general supervision and management of the Company's business and affairs which Mr. Dewar shall regard as his principal occupation and to which he shall devote so much of his time and attention as shall be necessary for the proper and efficient conduct thereof.

3. In the performance of his duties and exercise of his powers as Managing Director Mr. Dewar will have regard and conform to any reasonable instructions or regulations given or made by the Board of Directors of the Company and subject to any such instructions or regulations Mr. Dewar will manage and conduct the Company's business and affairs in such manner as he may consider most beneficial to the Company and shall have and be entitled to exercise for this purpose all powers conferred upon the Directors generally by the Company's Articles of Association.

4. Subject as hereinafter provided Mr. Dewar shall hold office as Managing Director from the date when this agreement comes into force until the expiration of a period of five years from the 31st day of December 1934 and thereafter until his appointment as Managing Director shall be determined by either party by at least six months previous notice in writing given to the other party.

[fol. 5626] 5. Should Mr. Dewar at any time be incapacitated by ill-health or otherwise from performing his duties as Managing Director for a continuous period of six months

the Company may at any time whilst such incapacity continues by notice in writing to Mr. Dewar determine his appointment as Managing Director.

6. Mr. Dewar's appointment as Managing Director shall ipso facto cease and determine

(a) If Mr. Dewar vacates office as a Director of the Company.

(b) If the Company in General Meeting by Ordinary resolution decides that Mr. Dewar's appointment as Managing Director shall cease and determine.

7. Mr. Dewar shall be paid by the Company remuneration for his services as Managing Director at the rate of £5,000 per annum or at such higher rate if any as shall from time to time be fixed by the Directors and such remuneration shall be payable by equal monthly installments on the last day of each month.

8. Mr. Dewar shall also be entitled to be recouped by the Company all travelling and other expenses incurred by him in or about the performance of his duties as Managing Director.

9. This Agreement shall come into force only if and when the business agreement dated the 29th day of December 1934 and made between the Timken Roller Bearing Company (1) and the Company (2) comes into operation and effect and thereupon the Agreement dated the 20th day of April 1928 under which Mr. Dewar is acting as Managing Director of the Company shall be cancelled.

In witness whereof the Company has caused its Common Seal to be hereunto affixed and Mr. Dewar has hereunto set his hand and seal the day and year first above written.

The Common Seal of British Timken Limited was hereunto affixed by Order of the Board in the presence of Wm. Dallow, F. J. Pascoe, Directors; R. O. Squire, Secretary. (Seal.)

Signed sealed and delivered by the above named Michael Bruce Urquhart Dewar in the presence of D. Curwen, (Spinster) 10, Mayfair Place, W. 1., Private Secretary. M. B. U. Dewar (L. S.)

[fols. 5627-5628] Dated:

British Timken Limited and M. B. U. Dewar, Esquire

Fac. Sim. Copy

Agreement as to Managing Directorship

Stibbard Gibson & Co., 21, Leadenhall Street E.C.3.

TO MICHAEL BRUCE URQUHART DEWAR

Re BRITISH TIMKEN LIMITED

(hereinafter called "the Company")

PRELIMINARY

(a) The share capital of the Company is Two hundred and fifty thousand pounds divided into One hundred and twenty five thousand "A" shares and One hundred and twenty five thousand "B" shares all of One pound each of which Fifty thousand "A" Shares and Fifty thousand "B" shares have been issued and are fully paid and Seventy five thousand "A" shares and Seventy five thousand "B" shares are at present unissued

(b) The Company on the Thirtieth day of November One thousand nine hundred and thirty four passed a resolution under which the Directors of the Company were authorised to capitalise a sum of One hundred and fifty thousand pounds being part of the undivided profits of the Company standing to the credit of General Reserve Account by appropriating and distributing such sum as capital amongst the members of the Company and applying such sum in payment in full for the One hundred and fifty thousand unissued shares in the Company consisting of Seventy five thousand "A" shares and Seventy five thousand "B" shares all of One pound each to be allotted to and distributed amongst the members of the Company in such proportions that the number of "A" shares and/or "B" shares held by each of the members should be increased by the addition thereto of three new A shares for every two A shares held and 3 new B shares for every two B shares held

(c) Pursuant to and in accordance with the said resolution the Directors of the Company have capitalized and distributed the said sum of One hundred and fifty thousand pounds and allotted the said One hundred and fifty thousand unissued shares credited as fully paid but the said One hundred and fifty thousand shares have not yet been issued or entered in the Share Register of the Company

(d) The Company is proposing to adopt new Articles of Association and to pass resolutions in accordance with which the Company which is now a private

Company will become a public company and the share capital of the Company will be Two hundred and fifty thousand pounds divided into Two hundred and fifty thousand shares of One pound each all of one class so that the shares to be issued in pursuance of the resolution for capitalisation above mentioned will be One hundred and fifty thousand shares of One pound each all of one class uniform with the issued shares of the Company

(e) You are proposing at our request and with our consent to make an offer for sale to the public of One hundred and twenty five thousand of the said One hundred and fifty thousand shares in the Company at present unissued direct or through Brokers or Agents who may purchase firm as a preliminary

(f) You are also proposing to form a new Company (hereinafter called "the New Company") to be called "Tinsun Holdings Limited" and to be constituted with Articles of Association and By-laws substantially the same mutatis mutandis as the Articles of Association and By-laws under which the Company was constituted before the adoption of the New Articles of Association above mentioned but subject as hereinafter mentioned and the share capital of the new Company is to be One hundred and twenty five pounds divided into Two thousand five hundred shares of One shilling each of which One thousand two hundred and fifty shares shall be "A" shares and One thousand two hundred and fifty shares shall be "B" shares and it is intended that the New Company shall create Two thousand five hundred registered obligations or participating rights (hereinafter called "Participating Rights") in accordance with provisions relating thereto to be contained in the Articles of Association of the New Company and in accordance with the particulars contained in the schedule hereto

(g) We have delivered to you the following documents:

(1) A signed letter or signed letters addressed to the Company authorising and requesting the Company to issue the fully paid shares to which we are respectively entitled pursuant to the above allotment to you or your nominees

(2) A signed transfer or signed transfers of the shares in the Company

now issu and held by us in favour of th new Company at the price of One shilling (to be satisfied by the allotment of one fully paid share of One shilling) and one participating right for each Fifty shares transferred

(3) The certificates for the shares in the Company now issued and held by us

N O W

1. With respect to the One hundred and fifty thousand fully paid shares in the Company at present allotted but unissued to which we are entitled pursuant to the above allotment we hereby give you authority to sell One hundred and twenty five thousand of such shares subject to the following conditions:

(a) All of the said One hundred and twenty five thousand fully paid shares are to be offered for sale and if sold are to be sold at one and the same time at the same price and upon and subject to the same terms and conditions either to the Public direct or through Brokers or Agents who may purchase firm as a preliminary

(b) You will receive the proceeds of sale and be entitled to pay out of such proceeds all legal charges brokers charges underwriting commission advertising expenses and other costs charges and expenses in connection with the offer and sale

(c) The whole amount received by you upon the sale of the said One hundred and twenty five thousand fully paid shares less the costs charges and expenses aforesaid shall belong to and be divided between us as the persons entitled to the said One hundred and twenty five thousand shares pro rata according to the number of shares to which we are entitled respectively

(d) The net amount to be received by each of us after deduction of all expenses shall not be less than One pound four shillings in respect of each of the said One hundred and twenty five thousand fully paid shares to which we are respectively entitled

2. YOU are authorised to complete such sale so far as regards the said One

hundred and twenty five thousand fully paid shares to which we are respectively entitled by delivering the letter of authority mentioned above to the Company and instructing the Company to issue such One hundred and twenty five thousand fully paid shares to the purchasers as your nominees

3. SO soon as the said sale has been completed we hereby authorise you to form the New Company and (a) to deliver the signed transfers of the One hundred thousand shares now issued and held by us as above mentioned together with the certificates for such shares to the New Company and (b) to instruct the Company to issue the Twenty five thousand fully paid shares constituting the remainder of the said One hundred and fifty thousand fully paid shares to the New Company subject to the following conditions

(a) The whole of the shares in the Company other than the One hundred and twenty five thousand fully paid shares to be offered for sale as above mentioned shall be transferred to the New Company at the same time and at the same price videlicet One shilling and one participating right of the New Company for each Fifty shares transferred and on the same terms and conditions

(b) The sum of One shilling per Fifty shares part of the purchase price in every case shall be satisfied in fully paid shares of the New Company at par and the shares in the New Company to be received shall be "A" shares or "B" shares in the case of the One hundred thousand shares to be transferred by transfer as above mentioned according as such shares were "A" shares or "B" shares before the consolidation into one class of all the shares in the company and in the case of the Twenty five thousand fully paid shares to be issued as above mentioned according as such shares were allotted in respect of shares which were A shares or B shares before the said Consolidation

(c) Every shareholder in the Company who transfers shares in the Company to the New Company will receive certificates under the Seal of the New Company for the shares and participating rights in the New Company to which he is entitled as the purchase price for the shares transferred

and in accordance therewith you will in due course deliver to us Certificates for shares and participating rights of the New Company according to the number of shares and participating rights set opposite our respective signatures at the foot hereof

(d) The New Company at the start is to have a share capital of One hundred and twenty five pounds in Two thousand five hundred shares of One shilling each all issued and fully paid and is to become the owner of One hundred and twenty five thousand shares of One pound each fully paid in the Company all paid for by means of the issue of the share capital of the New Company credited as fully paid and the issue of the said Two thousand five hundred participating rights and is to be free from all other debts liabilities or engagements

(e) The costs charges and expenses to be incurred by you in forming the New Company and carrying out and completing the transfer to it of the said One hundred and Twenty five thousand shares shall be paid out of the proceeds of sale of the One hundred and twenty five thousand fully paid shares in the Company to be sold as hereinbefore mentioned but the net amount to be received by us shall still not be less than One pound four shillings per share as above mentioned

4. THIS Authority shall continue in force until the Thirty first day of August One thousand nine hundred and thirty five.

5. THIS Authority may be signed in several parts and shall not be operative until it has been signed by the holders of all the shares in the Company and if and when it has been thus signed in several parts it shall then be operative as one single Authority

D A T E D this [illegible] day of March

One thousand nine hundred and thirty [illegible]

THE SCHEDULE ABOVE REFERRED TO

PARTICULARS in regard to the Participating Rights of the New Company

(a) Under the Agreement mentioned in Clause 3 (a) of The Company's Memorandum of Association the Company will agree to purchase 125,000 Shares of £1 each fully paid in a Company incorporated in England and named British Timken Limited and the business of the Company shall include

the holding of the Shares so purchased the management and control of such Shares the exercise of all voting and other rights in respect of such Shares and the receipt and disposal of all monies and other benefits receivable in respect of such Shares

(b) The Company will carry on no business other than the business hereinbefore mentioned without the sanction of a Special Resolution of the Company in General Meeting

(c) The Company will create 2,500 registered Participating Rights which shall be numbered consecutively and every person becoming a shareholder in the Company shall receive one Participating Right in respect of each Share in the Company allotted to him and a Certificate as to the Participating Rights to which he is entitled

(d) The Participating Right granted in respect of each Share in the Company will bear the same distinctive serial number as the Share in the Company in respect of which it is granted and every share in the Company and the Participating Right bearing the same distinctive serial number shall be held together in the same ownership and shall not be transferred or otherwise be allowed to fall into separate ownerships.

(e) If and when a holder of Participating Rights has become entitled under the Articles in the Section of the Company's Articles of Association headed "Transfer of Shares" to transfer any shares with the connected Participating Rights to any person on a bonafide sale then at any time during the period of one month during which he is so entitled such holder shall be entitled to give notice to the Company requiring the Company to redeem all or any of such Participating Rights and thereupon the Company shall redeem the Participating Rights referred to in the notice by transferring to the holder at the expense of the holder (and as nearly as possible in kind) a share of the surplus of the assets of the Company over and above the amount of assets required to make provision for the paid up Share Capital of the Company and the debts and liabilities of the Company if any in the proportion which such Participating Rights bear to the whole of the Participating Rights for the time being outstanding and except as hereinbefore provided the Participating Rights shall be irredeemable PROVIDED ALWAYS that the right to give notice to the company requiring the Company to redeem Participating Rights shall not come into operation unless

the prescribed price for the Shares with the connected Participating Rights which the holder has become entitled to transfer shall be such sum as the Auditors of the Company shall by certificate made at the request of the Directors certify to be in their opinion the fair value of the Shares with the connected Participating Rights

(f) If and when 5% of the Participating Rights which have been granted in respect of the A Shares in the Company or 5% of the Participating Rights which have been granted in respect of the B Shares in the Company have been redeemed all the Shares in the Capital of the Company shall cease to be A Shares or B Shares and shall become Ordinary Shares of one class and all special rights or privileges for the time being attached to either class of Shares shall be abrogated

(g) If and when a Participating Right is redeemed all right to any share or interest in the profits of the Company and all right to any share or interest in the surplus of the assets of the Company over and above the amount required to make provision for the paid up Share Capital of the Company and all voting and other rights conferred by the Share bearing the same distinctive number as the participating Right shall be abrogated and at an end

(h) The holder or holders for the time being of at least 600 participating Rights shall be entitled (i) at any time or times to nominate one person to act as a Director of British Timken Limited and to cancel such nomination and (ii) once in each year at their own expense to employ a Chartered Accountant who shall have the privilege of examining the books of account and records of British Timken Limited and taking notes and extracts therefrom and the Company shall exercise or cause to be exercised any Shareholder's or Director's voting rights vested in it or under its control and execute and do such other acts and things within its power as may be necessary in order to procure the appointment of such nominee as a Director of British Timken Limited and maintain him in that office and procure for the said Chartered Accountant the privilege aforesaid so long in the case of a nominee Director as his nomination has not been cancelled and so long in the case of either (i) or (ii) as the holder or holders aforesaid or some of them continue to hold at least 600 participating rights but so long as a Director of British Timken Limited holds office pursuant to a nomination by a holder of Participating Rights under this provision no

further nomination can be made under this provision by that holder or in respect of the Participating Rights in respect of which such Director was nominated and any person nominated to act as a Director of British Timken Limited shall himself acquire the shares necessary to qualify him as such Director.

Members Signatures	Shares in the New Company to be received		Participating Rights of the New Company to be received
	A Shares	B Shares	
For Timken Roller Bearing Co.	573	738 ~~574~~	1311 ~~1148~~
A. J. McClintock	1		1
J. H. Ballard	1		1
President			
Secretary			
	675	350	1025
		124	124
		25	25
		12½	12½
		1	1
	1250	1250	2500

Société Américaine de Participations Société Anonyme LUXEMBOURG

2521

DATED December twenty ninth 1934

BRITISH TIMKEN LIMITED

AUTHORITY

with respect to SALE of SHARES

5637

2522

WESTERN UNION

Received at

[illegible] VIA RCA=CB LONDON 144 10 =

[illegible] TIVKEN= Figures completed 1/
Received first 4
Value 5 4
CANTON (OHIO)=

[illegible] AM NEGOTIATING WITH BROKERS ON BASIS OF APPROXIMATELY THIRTYONE SHILLINGS AND SIXPENCE PER SHARE FOR ONEHUNDRED TWENTYFIVE THOUSAND SHARES STOP WE PAY BROKERS SIXPENCE PER SHARE COMMISSION STOP ON THIS BASIS OPENING MIDDLE PRICE ON MARKET SHOULD BE THIRTYTWO SHILLINGS STOP UNDER FAVOURABLE CONDITIONS PRICE SHOULD APPRECIATE ONE OR TWO SHILLINGS QUICKLY STOP BIGGEST DIFFICULTY IS SMALL NUMBTR OF SHARES AND AT THIS PRICE BROKERS COULD NOT UNDERTAKE RESERVE TWENTYFIVE THOUSAND SHARES FOR INDIVIDUALS AT CANTON SHALL INSAST RESERVJION TEN THOUSAND WIRE YOUR COMMENTS AND WHETHER YOU WOULD WISH TO PURCHASE SHARES AT OPENING MARKET PRICE AND WITHIN WHAT LIMIT STOP ABOVE PRICE NOT YET DEFINITE AND AMOUNT RECEIVABLE BY AND YOU SUBJECT CERTAIN OTHER EXPENSES NOT HEARD WHICH CANNOT BE ASCERTAINED AT MOMENT STOP PERSONALLY CONSIDER DEAL ON THESE LINES VERY SATISFACTORY EVERY POINT OF VIEW=

DEWAR

[illegible] 12500 shs } 1/
7½
62500
25000
2500 =

QUICKEST, SUREST AND SAFEST WAY TO SEND MONEY IS BY TELEGRAPH OR CABLE TRB slee

[fol.5639] Stibbard, Gibson & Co. (Thomas Cooper & Co.)
21 Leadenhall Street, London, E. C. 3

ENC.

10th April, 1935.

Dear Mr. Hess,

Matters have progressed so far, that I can now send you various of the documents which have been completed and exchanged, and I accordingly enclose the following, except where stated:

1. Agreement No. 1 with a view to sale of shares dated 29th December 1934. This has been sealed by the British Company and signed by Mr. Dewar.

2. New Business Agreement No. 2, dated 29th December 1934. This has been sealed by the British Company.

2A. Collateral Undertaking No. 2A. binding the British Company to pass on the benefit of any unpaid royalty to the French and German Companies dated 29th December 1934. This has been sealed by the British Company.

3. Service Agreement No. 3 between the British Company and Mr. Dewar dated 29th March 1935. This has been sealed by the British Company and signed by Mr. Dewar, and a copy is enclosed.

4A. Mr. Dallow's Service Agreement. The document was prepared on the understanding that Mr. Dallow would sign the Agreement; however, Mr. Dewar now informs me that Mr. Dallow has finally told him that he has never had [fol. 5640] an Agreement and does not wish to have one now, and for that reason he does not propose to sign a Service Agreement. Mr. Dewar informs me that he has already advised this to you, and I fancy that you will be willing to dispense with an Agreement between the British Company and Mr. Dallow.

4B. Service Agreement No. 4B. between the British Company and Mr. Pascoe dated 29th March 1935. This Agreement has been sealed by the British Company and signed by Mr. Pascoe and a copy is enclosed.

5. Authority dated 29th December 1934 addressed to the British Company and authorizing the Company to cancel the existing Articles and substitute new Articles. This authority has been acted on and I shall be sending you

some prints of the new Articles of Association in the course of a few days. In the meantime, I enclose a copy of this authority; the original has been lodged with the British Company.

6. Nomination in favour of Mr. Dewar No. 6 in three parts, one dated 29th December 1934 and the other two dated 29th March 1935. I enclose a copy of the document completed with signatures, etc.

7. Authority for the sale of shares No. 7 dated 29th [fol. 5641] March 1935. This document has been completely signed and I enclose a complete copy. The original will be lodged with the British Company when the time comes.

8. Agreement between the Canton Company and Mr. Dewar No. 8 as to shares and interests in the Holdings Company. This document is standing over for completion when the time comes.

9. Re-Distribution Agreement dated 29th December 1934 No. 9. This has been signed by all necessary parties, but you will notice that although it has been signed by Mr. Pascoe and Mr. Ernst on behalf of the I.C.I. Company, it has not been sealed by that Company. I enclose two signed copies of this Agreement and you might have them sealed by the I.C.I. Company and return one of them. I shall then send you another copy, which you can have sealed in its turn, and you will then have two copies, one for the Canton Company and the other for the I.C.I. and I.B.I. Companies.

10. New French Business Agreement between the British Company and the French Company. This is standing over for completion when the time comes.

The British Company had its Annual General Meeting last week, and will be sending to you the Directors' Report and abridged Balance Sheet and Profit and Loss Account as approved at the meeting so soon as the document [fol. 5642] has been printed.

Mr. Dewar and Mr. Pascoe are in close touch with the Brokers in regard to the sale of shares, and I understand that there is likely to be a meeting shortly to settle various details.

I enclose a stamped transfer to the Holdings Company of shares in the British Company, and I shall be obliged if you will make use of this when the time comes. So soon

as the shares to be marketed have been sold, I shall advise you by cable, and you can then seal and send off this transfer, together with the certificates of all the shares in the British Company in the possession of the Canton Company, including those in the names of Duncan and Bulloch.

Yours faithfully, A. J. M. Duncan.

Don P. Hess, Esqre.,

[fol. 5643] Western Union

KC9 VIA RCA-CD London 59 Jun 18/17 18 Hess Timken Canton-

L167 have signed contract note with brokers for sale of one hundred thirtyfive thousand shares at thirtyfour shillings nett stop Have purchased dollars your account after deducting sterling you will require for purchase of ten thousand shares at thirty five shillings and your share expenses estimated fifteen hundred pounds at four dollars ninetytwo and eleven sixteenths cents-

Dewar 1215P.

[fol. 5644] Postal Telegraph

June 18, 1935.

Dewar Britimken London

Cable received reading 135 thousand shares stop Please cable why 135 thousand instead of 125 thousand.

Hess

[fol. 5645] Western Union

1935 Jun 19.

HW21 VIA RCA-CD London 12 19 1034
Hess Timken Canton (Ohio)

L170 Regret error should be onehundred twentyfive thousand.

Dewar.

[fol. 5646] Western Union

1935 Jun 19.

1Q228 VIA RCA-CD London 19 19
NLT Hess Timken Canton Ohio

L169 Please mail immediately full names and addresses of purchasers of tenthousand Timken shares

Dewar.

[fol. 5647] June 24, 1935

Mr. M. B. U. Dewar, 10 Mayfair Place, London, W.1., England.

DEAR MICHAEL:

In accordance with your recent cable request, we would appreciate your having the new stock certificate covering the purchase of ten thousand shares issued in the name of Continental Bearings Incorporated.

Very truly yours, The Timken Roller Bearing Co.
—— —— Assistant to the President.

DPH:MC

[fol. 5648] This Agreement made the Fifteenth day of July One thousand nine hundred and thirty five between The Timken Roller Bearing Company of the City of Canton Ohio United States of America (hereinafter for convenience called "the American Company") of the one part and British Timken Limited of the City of Birmingham England (hereinafter for convenience called "the British Company") of the other part is

Supplemental to

An Agreement with a collateral Memorandum both dated the Twenty ninth day of December One thousand nine hundred and thirty four and two further Agreements dated the Twenty eighth day of May One thousand nine hundred and thirty five and the Sixth day of June One thousand nine hundred and thirty five and all made between the American Company and the British Company which Agreements and Memorandum are hereinafter for convenience collectively referred to as "the Business Agreement"

Whereas:

(A) The parties hereto contemplate that there will hereafter be Companies or Associations engaged in the manufacture or sale of bearings in the British Company's territory as defined in the Business Agreement which Companies shall be sub-licensees of the British Company and

the American Company under the Business Agreement either immediately or at one or more removes.

(B) The parties hereto desire to make special provision with respect to such Companies which are hereinafter for convenience referred to as "subsidiary Companies."

Now

It is hereby agreed between the parties hereto as follows (namely):

1. Each of the parties hereto shall have the right to have [fol. 5649] at least one representative on the Board having the chief authority over a subsidiary Company whatever may be the functions or description of such Board whether Directorial Administrative Supervisory or otherwise so long as such party shall hold any stocks shares securities or other proprietary interest in such Company.

2. If either of the parties hereto shall at any time hold any stocks shares securities or other proprietary interest in a subsidiary Company either in his own name or in the name of a nominee (i.e. a bare Trustee for such party) such party shall be entitled at his own will and pleasure to transfer or cause to be transferred the said stocks shares securities or other proprietary interest or any part thereof from himself to a nominee or from a nominee to himself or another nominee as such party may direct.

3. (a) Neither of the parties hereto shall sell or transfer any stocks shares securities or other proprietary interest in a subsidiary Company belonging to him (except as aforesaid) without first offering the same to the other party.

(b) Every such offer shall be made by notice in writing specifying the interest to which it relates and shall remain open for acceptance by the other party for Thirty days after it is received by such party and any acceptance of an offer shall be signified by notice in writing to the party making the offer.

(c) If any such offer is duly accepted the price payable for the interest specified in the offer shall be determined and the sale and transfer of the interest specified in the offer shall be completed in the manner and at the time which shall be fixed under the provisions hereinafter contained.

4. The parties hereto shall give any consents and exercise any voting powers and execute and do any other deeds

acts or things which may be necessary for the purpose of [fol. 5650] giving effect to this Agreement or any Award made in an Arbitration under this Agreement.

5. If any question shall arise between the parties hereto with respect to the price aforesaid or the completion of any such sale or transfer or any matter or thing to be done under this Agreement in connection with such sale or transfer every such question in default of agreement shall be settled by arbitration under the English Arbitration Act 1889 or any statutory modification or re-enactment thereof for the time being in force.

In witness whereof The Timken Roller Bearing Company by the authority of its Board of Directors has caused these presents to be executed in duplicate by its Secretary and its Corporate Seal to be hereto affixed and British Timken Limited under the authority of its Board of Directors has caused its Common Seal to be affixed hereto in duplicate the day and year first above written.

Signed and Sealed on behalf of The Timken Roller Bearing Company in the presence of

The Timken Roller Bearing Company, Canton, Ohio, U.S.A., By W. J. Timken, President. Attest: R. C. Brown, Secretary

The Common Seal of British Timken Limited has been hereunto affixed in the presence of

Wm. Dallow, A. J. M. Duncan, Directors. R. O. Squire, Secretary. (Seal.)

[fol. 5651] Dated: 15th July 1935

The Timken Roller Bearing Company and British Timken Limited

Agreement with respect to Subsidiary Companies

A G R E E M E N T made the seventh day of September One thousand nine hundred and thirty five B E T W E E N THE TIMKEN ROLLER BEARING COMPANY of Canton Ohio United States of America (hereinafter called "the American Company") of the one part and MICHAEL BRUCE URQUHART DEWAR of Number 10, Mayfair Place London, W. (hereinafter called "Mr. Dewar") of the other part with respect to a Company incorporated in England on the Thirty first day of August One thousand nine hundred and thirty five and named Timken Holdings Limited hereinafter called "the Holdings Company".

N O W

IT IS HEREBY AGREED as follows :-

1. EACH of them the American Company and Mr. Dewar hereby declares by way of honourable understanding and not as a legally binding agreement that if the other of them or any of his nominees or any Company controlled by him shall give a transfer notice under Article Number 28 of the Articles of Association of the Holdings Company in respect of all or any of the shares in the Holdings Company owned by the other party or his nominees or any Company controlled by him with or without participating rights connected therewith and the shares comprised in such transfer notice or any of them with the connected rights (if any) are not purchased by the other members of the Holdings Company to whom the same are offered pursuant to the said Article then

(a) The declining party will not unreasonably stand in the way of the other party or his nominees or the

controlled Company aforesaid selling such un-purchased shares or any of them with the connected rights (if any) to any person (not being a person to whom the declaring party shall object on reasonable grounds) at any price not being less than that at which such shares and rights (if any) shall have been offered to the Members pursuant to the said transfer notice and

(b) In the event of the other party or his nominees or the controlled Company aforesaid effecting a sale the declaring party will do all acts and things in his power in order to procure the registration of the transfer of the said shares and rights (if any) to the purchaser thereof and in particular will exercise the voting rights conferred by any shares in the Holdings Company held or controlled by the declaring party in such manner and give all such consents and sanctions as may be reasonably required and procure any Directors of the Holdings Company controlled by the declaring party to pass all resolutions necessary for procuring the registration of such transfers.

2. (a) UPON the death of Mr. Dewar or in the event of his being incapacitated by ill-health or otherwise for a consecutive period of six months from discharging his duties as a Director of a Company incorporated in England and named British [illegible] American Company shall have an option (exerciseable within six months after the death of Mr. Dewar or after the expiration of the said period of six months as the case may be) of

purchasing all the shares in the Holdings Company together with the connected participating rights (if any) belonging to Mr. Dewar or his nominees or any Company controlled by him at the date of his death or the expiration of the said period of six months (as the case may be) at their fair value to be determined failing agreement by an award of two London Chartered Accountants as Arbitrators one to be appointed by each party or an Umpire to be appointed by the said Arbitrators such reference to arbitration to be deemed for all purposes a reference to arbitration under the English Arbitration Act 1889 or any statutory modification or re-enactment thereof for the time being in force.

(b) THE said option shall be exerciseable by notice in writing served upon Mr. Dewar or in the case of his death his legal personal representatives within the said period of six months and if it is exercised the sale of the shares and rights if any shall be completed by delivery of duly executed transfers of and the certificates for the shares and rights if any against payment of the purchase price within seven days after the price has been agreed or determined by arbitration as aforesaid.

(a) THE provisions of Clause 2 of this Agreement shall apply also to Forty seven thousand five hundred shares in British Timken Limited at present registered in the name of the Holdings Company and held by that Company as to Forty one thousand shares as nominee (that is, bare Trustee) for Societe Americano Europeenne de Participations and as to Six thousand five hundred shares as nominee for Mr.Dewar.

(b) THE Provisions of Clause 2 of this Agreement (with the substitution of three months for six months) shall apply also to the said Forty seven thousand five hundred shares

in the event of the said Societe or Mr. Dewar desiring to sell or transfer all or any of the said Forty seven thousand five hundred shares and in such event the said Societe or Mr. Dewar as the case may be will give notice in writing of such desire to the American Company and will not sell or transfer such shares or any of them until three months from the date of such notice has expired but will be at liberty to sell or transfer such shares or any of them not purchased by the American Company under the option contained in the said Clause 2 at any time during a period of six months after the expiration of the said period of three months.

4. FOR the purposes of this Agreement all shares in the Holdings Company registered in the name of Societe Americano Europeenne de Participations and the connected participating rights shall be deemed to be shares and rights belonging to Mr. Dewar and under his control.

5. THIS Agreement shall be construed and have effect as an agreement made in England and in accordance with the Laws of England.

I N ITNESS whereof this Agreement has been executed by or on behalf of the parties hereto the day and year first above written.

SIGNED and SEALED by or on behalf of) THE TIMKEN ROLLER
The Timken Roller Bearing Company in) BEARING COMPANY
the presence of ... ...) By :

Canton, Ohio, U.S.A.
Stenographer

President.

SIGNED SEALED and DELIVERED)
by the above named Michael)
Bruce Urquhart Dewar in the)
presence of ... .)

10, Mayfair Place
Stenographer

2911

5655

2533

DATED 7th September 1935.

TIMKEN ROLLER BEARING COMPANY

and

M. B. U. DEWAR, ESQre.

A G R E E M E N T

as to Shares and Interests in

Timken Holdings Limited.

5656

2534

M O R E E A N U

Date

4th December 1935.

A R T I E S.

(1) THE TIMKEN ROLLER BEARING COMPANY of Canton Ohio U.S.A. hereinafter called "the Timken Company"

(2) LA REUNION INDUSTRIELLE SOCIETE ANONYME of No. 69 Boulevard de la Petrusse Luxembourg hereinafter called "the Lux Company"

(3) FREDERICK JOHN PASCOE of No. 10 Mayfair Place London hereinafter called "the third party"

(4) MICHAEL BRUCE CRICHART DEWAR of No. 10 Mayfair Place London hereinafter called "Mr. Dewar"

R E C I T A L S.

(a) The Timken Company and the Lux Company are the proprietors of Shares and Parts Beneficiaires in Societe Anonyme Francaise Timken hereinafter called "the French Company" and of Promissory Notes of the French Company according to the particulars following :

	Description	The property of The Timken Company.	The property of The Lux Company
70,000	Ordinary Shares Fcs. 100 each fully paid		
	60 Directors qualifying shares	30	30
	69,940 Other shares	34,970	34,970
30,000	6% Cumulative Preference Shares	15,000	15,000
1,000	Parts Beneficiaires	500	500
236	Promissory Notes 234 of Fcs. 50,000 each 2 of Fcs. 7,000 each Total Fcs. 11,714,000	118	118
101236		50,618	50,618

313

1

5657

(b) The Timken Company and the Lux Company are the proprietors of Shares in Deutsche Timken m.b.h. hereinafter called the German Company and of loan Capital of the German Company according to the particulars following :

Description.		The property of	
		The Timken Company	The Lux Company
Share Capital Reichsmarks	394200.	197100	197100
Loan Capital Reichsmarks	613930.30	306965.15	306965.15
	1,008130.30	504065.15	504065.15

(c) The certificates for the shares and parts beneficiaires in the French Company (except the 60 Directors qualifying shares) and the Promissory Notes of that Company have been deposited with Westminster Bank Ltd. of 41 Lothbury London hereinafter called "the Bank" in the joint names of the Timken Company the Lux Company and the third party who are hereinafter collectively referred to as "the Trustees".

N O W

IT IS HEREBY DECLARED and AGREED as follows :

1. If at any time the third party desires to retire from his position as a party to this agreement or dies or becomes incapacitated the Timken Company and the Lux Company shall appoint a substitute or if they cannot agree a substitute shall be appointed upon the application of either of them by the President for the time being of The Law Society London and the expression "the third party" when used in this agreement means and includes the third party from time to time original or substituted.

2. (a) All monies and other values which from time to time shall be paid or transferred by the French Company or the German Company in respect of the shares Parts beneficiaires

or Promissory Notes of the French Company or the shares or Loan Capital of the German Company which are the property of the Timken Company shall be paid or transferred to the Timken Company unaffected by this agreement.

(b) All monies and other values which from time to time shall be paid or transferred by the French Company or the Germany Company in respect of the shares parts beneficiaires or Promissory Notes of the French Company or the shares or Loan Capital of the German Company which are the property of the Lux Company including the Lux Company's 30 Directors qualifying shares shall be paid transferred or otherwise disposed of in accordance with the provisions hereinafter contained.

(c) All monies and other values which from time to time shall be paid or transferred by the French Company or the German Company in respect of the shares parts beneficiaires promissory notes or Loan Capital aforesaid shall be paid or transferred in equal shares as between the Timken Company and the Lux Company respectively and upon any such payment or transfer made by the French Company in respect of the Promissory Notes of the French Company held by the Trustees the Trustees shall release to the French Company Promissory Notes of that Company in equal portions from the Promissory Notes of the French Company held by the Trustees on account of the Timken Company and the Lux Company respectively.

(d) If and so far as necessary the parties hereto will execute and do such deeds acts and things as may be required in order to give effect to the provisions herein contained with respect to the payment and transfer of the monies or other values hereinbefore mentioned.

3. (a) All monies and other values which from time to time shall be paid or transferred by the French Company

or the German Company in respect of the shares parts beneficiaires Promissory Notes or Loan Capital of the French Company or the German Company which are the property of the Lux Company including the Lux Company's 30 Directors qualifying shares before or after the commencement of a winding up of the French Company or the German Company either by way of interest or dividend out of profits or by way of payment or distribution out of capital or otherwise in excess of a cumulative sum of £7,500 per annum commencing from the 1st day of January 1935 down to the date of such payment or transfer by the French Company or the German Company shall be paid to the Timken Company until the Timken Company shall have received from this source a sum of £150,000. without interest and thereafter shall be paid and transferred to the Lux Company unaffected by this agreement.

(b) The intention is that the property of the Lux Company hereinbefore mentioned shall be an absolute security for the payment of the said sum of £150,000. but such sum shall not be payable except from that source.

(a) The Trustees from time to time at the request in writing of the Timken Company or the Lux Company will deliver to some company or person nominated by the Trustees any or all of the certificates for shares in the French Company held by the Trustees on account of the Company making such request in order that such shares may be made available temporarily for qualifying or voting purposes at Annual Extraordinary or other General Meetings of the French Company to the intent that the voting rights in respect of such shares shall be exercised in accordance with the instructions of the Company making such request, and the said certificates may also be similarly delivered at the like request in order that they may be stamped or exchanged or otherwise dealt with in connection with any conversion of

shares reorganisation or like occasion.

(b) If at any time the Timken Company or if at any time after the Timken Company has received the said sum of £150,000 the Lux Company shall give notice to the Trustees of its desire that the certificates for shares or parts beneficiaires or promissory notes held by the Trustees on account of the Company giving such notice or any part or parts thereof shall be released to it then and in any such case the Trustees will deliver the certificates and/or promissory notes referred to in such notice to the Company giving such notice or as it may direct Provided Always that none of the promissory notes held by the Trustees shall be released or delivered unless and until effective steps have been taken by the substitution of altered notes agreement or otherwise so as to ensure that the amount payable under the whole of the said notes shall be payable pari passu as between all the holders of the said notes and no holder shall be able to obtain any preference or priority in payment or otherwise over any other holder. Provided also that none of the certificates for shares or Parts Beneficiaires or Promissory Notes held by the Trustees shall be released or delivered unless or until effective steps have been taken by agreement or otherwise so as to ensure that the provisions of this agreement with respect thereto will be duly complied with into whomever hands or ownership the said certificates or notes may come

except with the consent of The Timken Company and The Lux Company

INDUSTRIELLE LUXEMBOURG

5. Each of the parties hereto will execute and do or cause to be executed and done such deeds acts and things as may be necessary to give effect to the following purposes:

(a) Mr. Dewar shall be Managing Director of the French Company and the yearly allowance of Francs Eighty Five thousand net free of all taxes which has been assigned to him by the French Company shall be continued and he shall

5661

actively engage in the management of the Fr n Com any to such extent as he shall consider necessary.

(b) Mr. Dewar shall have the control of the business of the French Company and shall be entitled to nominate and elect a majority of the Board of Directors of the French Company and the remaining Directors of the French Company shall be nominated by the Timken Company and the remuneration of the Directors Managing Directors and any management or technical committee of the French Company shall be at the present rate or amount or at such other rate or amount as shall be agreed from time to time in writing between the Timken Company and Mr. Dewar.

(c) The French Company shall make payments pari passu on account of its Loan Capital and shall declare and pay dividends in respect of its share Capital as directed by Mr. Dewar.

(d) No part of the Share Capital of the French Company which is owned or controlled by any of the parties hereto shall be sold transferred or otherwise disposed of by such party except upon such terms and conditions as will effectively reserve to such party the control of all voting rights in respect of the part of the Share Capital of the French Company which is now in the ownership or control of such party.

(e) The Lux Company shall not carry on any business or enter into any engagements except such as are necessary in connection with the holding of the shares parts beneficiaires Promissory Notes and loan Capital which are the property of the Lux Company without the consent in writing of the Timken Company.

(f) The foregoing provisions of this clause shall continue in force until the occurrence of any of the following events :-

(i) Mr. Dewar dies

(ii) Mr. Dewar retires from the active control of the business of the French Company

(iii) The undistributed profits as hereinafter defined of the French Company at the end of the year 1936 or any subsequent year amount to less than £24,000

(iv) The amount actually paid by the French Company in the year ending on the 30th day of April 1937 or in any subsequent year ending on the 30th day of April by way of dividend or interest or repayment of Capital in respect of the Share Capital parts beneficiaires or Promissory Notes of the French Company hereinbefore mentioned amounts to less than £24,000

(g) For the purposes of the previous paragraph of this clause the following shall apply :-

(i) The undistributed profits at the end of any year ending on the 31st day of December means the surplus of the profits over and above losses earned after the 31st day of December 1933 down to the end of such year after making the deductions hereinafter mentioned

(ii) In ascertaining the profits aforesaid all French taxes shall bededucted and in addition at the end of the year 1937 and any subsequent year there shall be deducted in respect of the year ending on the 30th day of April 1937 and each subsequent year ending on the same day a sum of £24,000 or the amount actually paid in any such last mentioned year by way of dividend or interest in respect of the share capital parts beneficiaires and Promissory Notes aforesaid whichever is the greater.

(iii) Profits earned means profits earned after such provision has been made for depreciation and bad and doubtful debts as the Auditors of the French Company

consider to be reasonable but without any deduction in respect of the debit balance on the Profit and Loss Account of the French Company at the 31st day of December 1933 or in respect of any transfer made for the purpose of writing down or amortizing the amounts which were shewn in the Balance sheet at that date under the headings Development Account Expenses of increase of Capital or Formation expenses or in respect of any Capitalisation of Profits.

(iv) The sum of $24,000 means either that sum or its equivalent in French Francs at the rate of exchange current at the time of payment.

(h) If and when the foregoing provisions of this clause come to an end then and in such case the Lux Company if so requested by the Timken Company will cause one share or other holding of shares in the French Company carrying one vote to be transferred to the Timken Company or its nominees at the par value of such share or holding.

6. (a) Each of them the Timken Company and the Lux Company hereby covenants with the other of them that no share part beneficiaire Promissory Note or Loan Capital of the French Company or the German Company now owned or controlled by the covenanting party will be sold transferred or otherwise disposed of unless the same has been first offered for sale to the other party.

(b) Every such offer shall be made by notice in writing specifying the interest to which it relates and shall remain open for acceptance by the party to whom it is made for 90 days after it is received by such party and any acceptance of any offer shall be signified by notice in writing to the party making the offer.

(c) If any such offer is duly accepted the price payable for the interest specified in the offer shall be the

fair value thereof and such value shall be determined and the sale and transfer of the interest specified in the offer shall be completedin the manner and at the time which shall be agreed or in default of agreement shall be settled by arbitration under the provisions hereinafter contained.

(d) The parties hereto shall give any consents and exercise any voting rights and execute and do any other deeds acts or things which may be necessary for the purpose of giving effect to this Agreement or any Award in an Arbitration under this Agreement.

7. If any question shall arise between the parties hereto or any of them with respect to the fair value aforesaid or the completion of any such sale or transfer or any other matter or thing arising out of this Agreement every such question shall in default of Agreement be settled by arbitration in London under the English Arbitration Act 188[illegible] or any statutory modification or re-enactment thereof for the time being in force.

8. Mr. Dewar hereby guarantees that the Lux Company will duly perform and observe the agreements and conditions hereinbefore contained and on the part of the Lux Company to be performed and observed.

9. The parties hereto declare that for the purposes of this agreement they have or have adopted an English Domicile at the office of the Bank and that the English Courts shall have jurisdiction in any legal proceedings with respect to the interpretation or execution of this agreement.

IN WITNESS etc.

L'REUNION INDUSTRIELLE LUXEMBOURG

THE TIMKEN ROLLER BEARING COMPANY

W. R. Timken

President

Attest: R. C. Brower

Secretary

220

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5665

DATED 10th December, 1935. 2543

THE TIMKEN ROLLER BEARING COMPANY

and

LA REUNION INDUSTRIELLE and OTHERS.

A G R E E M E N T

with

respect to SHARES and other interests in the French and German Timken Companies.

STIBBARD, GIBSON & CO.,
21, Leadenhall Street,
LONDON, E.C. 3.

5666

2544

DEFENDANT'S EXHIBIT 229

THE

TIMKEN

ROLLER BEARING

COMPANY

CANTON 6, OHIO

~~Case No. 24214~~ Civil
DEFENDANT'S EXHIBIT
No. 229

THIS LETTER FROM
CLEVELAND 14, OHIO
1933 UNION COMMERCE BUILDING

NET SALES

OF THE TIMKEN ROLLER BEARING COMPANY AND SUBSIDIARIES

FOR THE CALENDAR YEARS SHOWN BELOW

YEAR ENDED	NET SALES OF BEARINGS
December 31, 1922	$17,000,000
December 31, 1923	22,900,000
December 31, 1924	20,200,000
December 31, 1925	24,756,730
December 31, 1926	24,362,805
December 31, 1927	23,590,179
December 31, 1928	31,860,588
December 31, 1929	35,301,260
December 31, 1930	22,552,750
December 31, 1931	13,541,980
December 31, 1932	6,824,084
December 31, 1933	10,155,435
December 31, 1934	13,966,050
December 31, 1935	19,968,970
December 31, 1936	24,836,705
December 31, 1937	29,984,774
December 31, 1938	15,418,365
December 31, 1939	23,528,644
December 31, 1940	32,106,297
December 31, 1941	51,786,435
December 31, 1942	61,920,991
December 31, 1943	66,787,664
December 31, 1944	72,768,939
December 31, 1945	56,799,269
December 31, 1946	58,671,930
December 31, 1947	77,097,756

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DEFENDENT'S EXHIBIT 230

FOREIGN ROYALTIES

	BRITISH			FRENCH	
	NET ROYALTY RECEIVED	NET SALES (Pounds)	PURCHASES FROM US	NET ROYALTY RECEIVED	NET SALES (Francs)
1910	953		$ 7,397		
1911	8,762		6,292		
1912	11,641	26,694	29,212		
1913	12,218	26,726	16,1[illegible]		
1914	13,689	29,542	27,[illegible]		
1915	15,516	39,619	142,[illegible]		
1916	12,945	35,215	26,[illegible]		
1917	16,241	44,928	28,[illegible]		
1918	35,195	94,398	[illegible]		
1919	37,458	140,683	64,[illegible]		
1920	85,835	212,524	218,[illegible]	5,638	984,145
1921	62,028	145,344	-	5,183	847,793
1922	47,208	139,375	-	4,272	854,451
1923	62,556	178,613	8,811	4,118	1,175,002
1924	61,075	171,378	7,963	5,628	1,569,237
1925	61,313	201,343	7,918	5,208	1,769,949
1926	85,604	240,202	7,431	1,449 1/2 -	1,017,965
[illegible]	[illegible]	60,109	3,162	2,445 =	[illegible]
[illegible]	[illegible]	[illegible]	2715	2,163	[illegible]
[illegible]	[illegible]	[illegible]	5,672	1500	

Blank Page

2546

[fol. 5669] DEFENDANT'S EXHIBIT 231

Western Union

HP 160 Via RCA—CD London 170 26 NLT Henry Timken Junior—Timken Canton (Ohio)—

L220 Situation in France and probability of enforced declaration of foreign assets of French companies and nationals and compulsory repatriation of these assets at existing exchange rates subject to heavy fines if not done makes it essential for SAFT to part immediately with its gold and dollar assets in return for notes held by CBI and Luxemburg Company Stop We propose following Luxemburg Company and CBI authorize Westminster Bank surrender part of notes in exchange for gold and dollar assets Stop SAFT will then have repaid about 3.5 million francs of notes while exchange is favourable Stop Westminster Bank will hold gold and dollars as trustees for CBI and Luxemburg Company Stop Agreement can then be worked out providing for again lending money to SAFT in future as required Stop As the first step is very urgent we ask your agreement immediately Stop Have asked Whinney Murray cable you confirming their agreement to proposed step Stop Please send authority Duncan act for CBI—

Dewar.

[fol. 5670] DEFENDANT'S EXHIBIT 232

June 29, 1936.

Mr. M. B. U. Dewar, 10 Mayfair Place, London, W. 1., England.

DEAR MICHAEL:

We wish to confirm our cable of June 27th reading as follows:

"L220 We agree your thoughts and have cabled Duncan and Westminster Bank proceed conversion of notes STOP Please write giving full details present situation STOP Hold funds for our account in present form."

We attaching hereto copies of our cables to Stibbard, Gibson & Co. and also to the Westminster Bank, giving

them authority in behalf of Continental Bearings to proceed with the conversion of the French Timken notes.

We would appreciate your writing us, giving us the present status of the French Timken affairs. In your cable L220 you state that French Timken will then have repaid about 3½ million francs of notes, and we would like to know whether this figure of 3½ million francs includes discount due them for anticipating their notes and just how many years they are paid in advance. It is our understanding that French Timken had on deposit in England both gold and American dollars, and we are interested in knowing the amount of each on deposit and how much was transferred to the joint account of Luxemburg Company No. 2 and Continental Bearings, Inc. Also, did you use all the funds they had on deposit in England or did you leave them some balance?

After we have heard from you giving us further details, we shall again write you regarding this matter.

Very truly yours, H. H. Timken, Jr.

ref/rw
Encl.

[fol. 5671] DEFENDANT'S EXHIBIT 233

10, Mayfair Place,
London, W. 1.

30th June, 1936.

Mr. Henry Timken Jnr., Timken Roller Bearing Company, Canton, Ohio.

MY DEAR HENRY:

I was so very glad to receive your cable agreeing to the action which we propose to take regarding the finances of the French Timken Company.

It has been obvious for some time that the French financial situation was becoming very bad and there is no doubt that it is now getting worse.

The present Government, unfortunately, in their election speeches, promised not to de-value the franc, so that presumably they will have to fight to maintain the franc to

the bitter end. The alternative result will probably be worse from a de-valuation point of view than if they were to de-value it in the way that Belgium has already done.

At the present time, France cannot be forced off the gold standard as her gold reserve is more than ample. Nevertheless, owing to the fear of the future actions of a Socialist-Communist Government, enormous sums of money have left and are leaving France. This naturally reduces the gold reserve and brings the time of forced de-valuation nearer.

In order to try to bring back some of this money or in any event to prevent further export of French capital, the Government are almost certain to insist on a declaration of financial resources held abroad by French Nationals and French firms, thus following the example already set them by Germany and Italy.

[fol. 5672] S.A.F.T. has, as you know, considerable assets in gold and dollars. We did not want to pay these sums away from the control of the Company except in so far as provided in the agreements between yourselves and me. Unfortunately, we are afraid that if we delay any longer we may be forced to return these sums to France under very severe penalties, such as confiscation of property that we cannot export from France.

Fortunately, we have a perfect reason for paying money out and that is to repay the Notes owing by the Company.

We cabled you that we proposed to do this, and we have just received your concurrence.

As far as the French Company is concerned, the repayment of the Notes owing by it is equivalent to paying the money away from the control of the Company, but as far as our partnership is concerned, I am anxious to keep these funds available for Francaise Timken except for the payments that are provided for under our agreements.

As you know, we have been terribly cramped for room for the last two years and we have been considering the question of moving to a larger works. Fortunately, this has now become unnecessary as we have been able to obtain a lease of the property next door to us on reasonable terms. The two leases of our existing property and our next door property will run together, and will be for a period of twelve years.

In order to make the new property suitable for use would

probably mean an expenditure in total of approximately one million francs.

I shall write you more fully about this in the course of a week or so.

The repayment of the Notes will deal with a matter of some 3½ million francs.

In addition to this sum there is about ½ million francs which is surplus to our immediate requirements, but which [fol. 5673] we shall probably need within the next seven or eight months for normal business purposes.

After consulting our accountants, we came to the conclusion that we could not draw this and convert it into gold as the French authorities would perfectly legitimately say that we were denuding the company of its necessary assets and obviously in order to make a profit on the possible de-valuation of the franc.

I have therefore borrowed the money for six months personally on a 4% basis from French Timken. If the franc is de-valued there will be a profit on this sum which I propose to use for the benefit of those members of the company who have been extremely loyal during a very difficult period and who are bound to suffer from the de-valuation of the franc and whose recompense in any other way would be difficult. If there is a loss on this transaction through the franc not being de-valued, I propose to stand this loss myself.

I trust you will agree to this.

With kind regards,

Yours very sincerely, M. B. U. Dewar.

[fol. 5674] DEFENDANT'S EXHIBIT 234

10, Mayfair Place, London, W. 1

15th July, 1936.

Mr. Henry Timken Jnr., Timken Roller Bearing Company, Canton, Ohio.

MY DEAR HENRY:

Thank you for your letter of June 29th.
S.A.F.T. had the following gold and dollars:

10 bars Gold costing ..... Frcs. 2,122,153.31
and U.S. $100,000

Under the present scheme the French Company is repaying Notes to the total value of Frcs. 4,000,000 under discount as shown below:

Amount	Due date		Discount	
Frcs. 500.000	15.4.37	2½%	9 months	9,375
500.000	15.4.38	"	1 yr. 9 mths.	21.875
500.000	15.4.39	"	2 years "	34.375
500.000	15.4.40	"	" "	46.875
500.000	15.4.41	"	" "	59.375
500.000	15.4.42	"	" "	71.875
500.000	15.4.43	"	" "	84.375
500.000	15.4.44	"	" "	96.875
Frs. 4,000.000				Frs. 425.000

The repayment of these Frcs. 4,000,000 Notes after deduction of discount will absorb the sum of Frcs. 3,575,000.

The French Company will pay this by handing over 10 bars of Gold at cost ..... Frcs. 2,122,153.31
and U.S. $96,856.45 which at the fixed rate of 15 francs to the dollar (applicable to the notes) is equivalent to ..... " 1,452,846.69

" 3,575,000.00

[fol. 5675] The discount on the repayment of these Notes amounts to Frcs. 425,000.

We have decided that this amount should not be credited immediately to the Profit and Loss Account of the French

Company, but should be split up over the period involved as follows:

1936	45.834
1937	91.146
1938	78.646
1939	66.145
1940	53.646
1941	41.146
1942	28.646
1943	16.146
1944	3.645
	Frs.
	425.000

As I have previously explained to you, the above steps have been necessitated by the present position in France with its grave danger of the French having to abandon the Gold standard. Decrees have already been issued in France asking individuals to state the amount of their holdings in foreign currency and gold before the 15th July. Whether or not these decrees will be applied to S.A.F.T., there is little doubt that, unless we had taken action, we should be unable to gain any benefit from our precautions in placing the liquid resources of the French Company in gold and foreign currency should the franc be devalued.

It is our idea that we should modify the agreement of the 10th December 1935 between Timken Roller Bearing Company, La Reunion Industrielle, F. J. Pascoe and M. B. U. Dewar so that the Bank may continue to hold the gold and the dollars in the name of the Trustees, the reason being that a very considerable proportion of these liquid resources will be needed by the French Company during the next twelve months; in particular we have in mind the fact that as soon as the political conditions become more stable in France, we shall expend approximately 1 million francs reconditioning the new premises at Asnieres which we have [fol. 5676] just rented. When we need the resources, we shall make some arrangements whereby Notes are again issued by the French Company.

Yours sincerely,

M. B. U. Dewar

[fol. 5677] DEFENDANT'S EXHIBIT 235

July 31st, 1936.

Mr. M. B. U. Dewar, 10 Mayfair Place, London, W.1, England.

DEAR MICHAEL:

I received your letters of June 30th and July 15th containing some of the details on our recent transfer of S.A.F.T.'s, cash and gold, which were held in England. To some of us here in America the situation is not yet clear. In your letter of June 30th you mentioned having borrowed some money from French-Timken on a 4% basis. However, your letter does not mention the exact amount. This is the only word we have about such a loan.

We are also not clear about how extensive the improvements are which you plan to make at French-Timken and in fact this is the only intimation you have given us of any definite plans either for the rental of new space or the purchase of additional equipment.

With regard to the personal loan from French-Timken we would like to have you arrange so that half of this will be carried by C.B.I. so that we may share any possible losses which result from this transaction. We do not want to place ourselves under the obligation of having you bear their loss as we shall benefit equally with yourself through the proposed bonus to the members of the French-Timken Company. I am sorry to change this arrangement and hope you will notify us in advance if anything similar should come up in the future.

Referring to your suggested modification of the agreement of December 10, 1935 we are agreeable to such a change on the condition that if it becomes necessary to again loan the 3,575,000 francs to French-Timken that the status of the French-Timken notes and also the note secured by the Luxembourg Company will be the same as before this transaction.

Yours truly, H. H. Timken, Jr.

H.H.T/Jr/IL

[fol. 5678]

DEFENDANT'S EXHIBIT 236

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Report	Wooler to TRB	7-27-28-29/26

[fol. 5679]. Copy for Mr. Ely

February 3rd, 1920.
Washington Hotel, Canton, Ohio.

A. McCormack, Esq., c/o Wolseley Motors, Adderley Park, Birmingham, England.

DEAR SIR:

RE—Visit to the Timken Company

We arrived at Canton on Friday morning, and visited the Timken Company in the afternoon, seeing Mr. Ely.

Mr. Ely stated that it was unfortunate that we had arrived at this time, as the relations between the Wolseley Motors and themselves were not clear. The reasons given were—

1. The Timken Company did not view with favor Timken Bearings being made by a motor car manufacturer. It was pointed out to Mr. Ely that our directors

had already decided that Timken Bearings should be made under an entirely separate organization, with separate offices, plants, officials and their staff, and the organization to trade under an entirely different name, that the staff was already appointed and new offices were already being planned. Also that the E. & O. A. Company had made cars since 1913, which circumstances ought not effect the volume of Timken business.

2. They did not recognize that their plans should necessarily be effected by agreements with E. & O. A. Company as they had not acquiesced in any transfers.

3. They were of opinion that as there was considerable business to be done in Europe, it might be better for themselves to plan new arrangements—ie—by developing other arrangements greafer benefit might ultimately accrue to themselves.

4. That because of past experience with the E. & O. A. Company, they were not sure that the Timken business would be prosecuted by the new organization any better than under the E. & O. A. Company. Mr. Ely was informed that their experience with the E. & O. A. Company must not be taken as an indication of the way the Timken business would be prosecuted in [fol. 5680] the future, as the directors controlling the new organization had very much greater facilities than they had over the activities of the E. & O. A. Company; that the Wolseley Cars had standardized Timken Bearings and would be requiring 150,000 to 300,000 bearings per annum at a very early date.

Because of the position indicated above, we were told that while certain information might be given us, Mr. Ely could not at that moment decide to let us have such confidential information which might be included in or covered by blue prints, etc., relating to processes, tools and jigs, or times and costs. After discussion, Mr. Ely agreed that full facilities should be given us in the collection of data relating to—

A—Application Engineering.
B—Bearing capacities and formule.
C—Investigation of fittings at customer's works.
D—With regard to the inspection of plant—this for the time being would be limited.

The Timken Company express themselves unable to co-operate heartily with us until the matters referred to in the first portion of this letter are made clear to them, but in the meantime, we are making full use of facilities offered, and no doubt much more useful information will be gathered than is indicated in A, B, C, and D, by the exchange of views with the Timken Company officials.

Mr. Ely states that he is sailing for England on February 14th, and that he may not be able to make any statement as to how far the Timken Company will co-operate with us until the matter has been investigated in England.

We expect this week to cover the Engineering side of the Timken business, and are making use of the facilities granted that we inspect processes in the steel producing plant. Next week, it is proposed that we visit Detroit and several of the Timken Company's customers in that area, calling on Colonel Alden, who will give us letters of introduction to the suitable motor car plants.

Yours truly, (Signed) G. H. Rodway.

[fol. 5681]

Cablegram

106h ke 25 via Halifax

London, March 29th.

Timken, Canton, Ohio

Give Rodway full detail satisfactory agreement just reached Stp Paris until next Sunday Hotel Continental Sail Adriatic seventh advise Detroit and home.

Ely.

522p

[fol. 5682]

Robin Hood
Penns Lane
Erdington
Birmingham

December 15, 1922.

DEAR MR. ELY:

Don't feel that I can let the season go by without sending over the season's greetings and best wishes for a prosperous New Year.

Also to give you a line which may be considered overdue. It has been difficult to send you usefull news owing to very

indifferent health of Mr. Sharpe. As probably you understand my *position* as determined by Mr. McCormack is engineering, but as determined by personal interest in Timken has been "prodder" or *chora* in the sides of all depts where initiative, advice or help is required.

With Sharpe away, while not given his authority, one is expected to keep the wheels going round and it has thrown considerable extra work on my shoulders during the last 9 months or so.

Now, I believe it is time we got together again quite apart from agreement position.

If you should be coming over let me tell you that our weakest or most *vulnerable* spot is the lack of a real live outside sales organization.

These things are constantly being brought to Mr. Sharpe's notice but I am afraid he hadn't the power to alter things.

Our sales organization should include some young men with pep *and initiative and who have to make their career and operated from the Works* whereas we are in the hands of one old man whose activities are not controlled and are in consequence also at a very great disadvantage for trade expansion.

[fol. 5683] I could be impounded for libel if I was to write here all the things I know.

Am sending herewith report on a *roller* which may be of interest and also photostat showing our connection with the motor trade in 1923 passenger cars. Am having similar information prepared for tractors and trucks and will send you when completed. Will also send you these in blueprint form officially so that you can comment upon them as necessary, and a few pertinent questions are necessary.

Considerable obstacle to furtherance of business, outside lack of sales aggressiveness which would account for a good deal, is question of cost. This is principally due to our overhead or direct labor. With an output of approximately 6,000 bearings per wk our overhead on direct labor including sales charges and Royalty amount to approximately 370% today and even if we operated our plant at its fullest estimated capacity of 10,000 per week our charges would not it is estimated come much below 260% due to certain high fixed expenses. We are producing today approximately 6,000 bearings and believe there are possibilities for *something* like 10,000 or more per week with real live sales policy.

Our associations with our clients on technical grounds are best ever in the history of the company. Our engineers are well received and liked and we are able to do much in keeping dissatisfied clients in our fold.

You have written Mr. Sharpe regarding ball bearing prices in Continent and this country. I made several attempts to obtain periodical reports but could not get the cooperation and am afraid Mr. Sharpe will not bet any more, perhaps less. Quite a number of our agents are Vickers' representatives and battleships are more in their [fol. 5684] line. Furthermore nobody ever checks these people up visiting them and analyzing their sales against possibles. I did something of this nature several months ago against Belgium and France when visiting them but afterwards the thing fell through.

However, perhaps I strove to get too near to perfection but *feel* you will *confirm my news* if you visit us. We don't know how you are doing from the American plants at the moment and some news in this regard might be useful to our sales dept.

With very kind regards,

I remain, G. H. Rodway.

[fol. 5685] February 21, 1923.

DEAR MR. RODWAY:

Referring further to yours of last December, this certainly should have had earlier and more detailed reply. The information you give of your operation leaves much to be desired, and I am wondering what can cure the present situation, particularly to your advantage and also to ours.

In the first place, just what is the cause of British Timken excessively high costs? Would you care to give me your material and labor costs on some commonly used size, without overhead? Of course with your limited volume you have to absorb a terrific lot of overhead, and it does seem with energetic and intelligent direction, your volume could be very materially increased, and thereby cut down the overhead. I am curious to know how much profit or loss the past year's operation by the British Timken Company shows.

I would be interested in knowing what the price comparison is with ball bearings and Timken, at our price to

you without any profit added, but carrying import duties, freight and insurance.

There is an opportunity for the British Timken Company to have a profitable business, I am sure, and it will be a shame if they don't take advantage of the opportunity, to some degree at least. Of course for European consumption the matter of exchange is very much against you, but with your European connections, it does seem as if you could work an exchange of credits in some way so that this would not be so great a handicap as would appear on the surface.

You might be interested in knowing that our production here in 1922, in numbers of bearings, was almost 50% in excess of 1920. This of course is not true in dollar sales value, because our prices have been very materially reduced since 1920; but at that, our total sales were slightly in excess of those of 1920, and the demands upon us at present are just as heavy and we have the same difficulty in keeping our hungry customers satisfied.

Our labor situation is difficult, and it is very difficult to get suitable labor and keep them at all satisfied. Material prices are advancing all along the line. This, however, does not affect us as much as others, because we are so self-contained.

[fol. 5686] We now have operating satisfactorily a briquetting machine which handles our turnings so that we can use 100% of these. We are adding equipment both to our Plant here and at our Columbus Plant, to help carry the peak load this spring, and are putting up another building here at Canton, 60 x 200.

With this activity which we have, and the additional customers we have added, it makes it difficult to understand your situation at the British Timken Company, as it doesn't in any way parallel ours. I am writing Mr. McCormack just a few lines—a pertinent inquiry as to their operations and his views as to the future.

I am always glad to hear from you, and wish to extend to you the good wishes of your many friends here in our organization. We speak of your frequently.

With kind regards, believe me,

Very truly yours, —— ——, Vice Pres. & Treas.

HE.BES

[fol. 5687] February 21, 1923.

Arthur McCormack, Esq., c/o Wolseley Motors, Birmingham, England.

My dear Mr. McCormack,

I dislike thinking of how long it is since we have had any word from you. We don't seem to have kept in touch as we planned and I think we have both suffered from the lack of contact.

In looking at your operations from this side, it would seem as if there must be some very pertinent reasons for the small volume of business the British Timken Company is doing, under present conditions, and I would like an analysis from you as to the reasons for this, and also a statement as to what your operations will be for the balance of this year, and general prospects for the future.

We of course are not at all in close touch with your organization, or your activities, but it would seem you also should show some material increase, that is, in the additional customers secured and further application of Timken Bearings with old customers.

In this connection I would appreciate your writing fully as to the make-up of your Sales Department—just how many men have you, what is their experience, age, and how actively do they solicit the trade? How frequently are the different motor car manufacturers seen?

You will be interested in our operations here. In the year 1922 we produced about 50% more bearings than in our best previous year. This of course was not reflected in the same ratio in sales value, on account of reduction in prices.

We are now running on heavier schedules than any time in our previous history, and find it difficult to keep our hungry customers satisfied. As you have seen by the papers, practically all motor car companies in this country are breaking all previous production records. I fear, however, that they can't maintain the present high speed, and that shortly they will be out of breath.

[fol. 5688] I would very much appreciate an early reply to the above letter, and your opinion of general conditions, and about car conditions in particular from your point of view, as existing now in England and the Continent, and your views of the future.

With kind regards from the writer, we are,
Very truly yours, The Timken Roller Bearing Co.,
—— ——, Vice Pres. & Treas.

HE.BES

[fol. 5689] Wolseley Motors, Limited
London, S.W.1.

6th June 1923.

Heman Ely, Esq., Messrs. The Timken Roller Bearing Co.,
Canton, Ohio.

Dear Mr. Ely,

In the first place I must apologise most sincerely for not replying earlier to your letters re progress of the Timken Department.

I was anxious that Mr. Sharpe, the General Manager of the business, should assist in drawing up the report, and as Mr. Sharpe was expected back from South Africa, where he has been partly for reasons of health and partly for the purpose of assisting in the development of Timken business, I deferred replying until his return.

I gather from our officials that they are at a loss to understand the suggestion that Canton is not sufficiently in touch with our organization and activities, as communications have been regularly sent recording all new applications.

However, I quite understand your point of view. What you want is something of an insight into the possibilities of the future, which cannot be gathered from the ordinary communications.

I am afraid that when you look at the comparatively small amount of business we are able to do in England, it must seem ridiculously small as compared with the enormous business you do in America, and I can quite see the possibility of your Company taking the view that if we pressed harder we could do more business here.

You doubtless have by you some kind of a record of the activities of British Motor Manufacturers, from which it must be clear to you that from a manufacturing point of view we are producing in this country on an extremely small scale.

Shortly after the war there was quite a boom in trade in this country, but this boom was accompanied by labour

difficulties which, while being very helpful to importers of our particular class of commodity, as well as others, at the same time prevented British Manufacturers taking advantage of the opportunity which presented itself.

[fol. 5690] Briefly, our production was paralysed. Unfortunately this was repeated for three successive seasons. In 1920 we had a moulders' strike right in the heart of the season, which killed the season entirely; in 1921 we had a great strike in the transport and coal mines, which affected every industry in the country; last year we had severe disputes with the Amalgamated Unions of Engineers, resulting in a lock-out, which again paralysed our business.

It is not wonderful, therefore, that from a production point of view British Motor Manufacturers, with two or three exceptions, have been working at very much less than half their normal capacity, as far as passenger cars are concerned.

In regard to the Commercial Vehicle industry, this has been practically killed by the extraordinary action of the British Government in dumping thousands of used war vehicles on the British market. The nett result of this is that British commercial vehicle factories are working at less than 10% of their normal capacity. Several of the important ones have been wound up or are working under receivers in bankruptcy, and only two or three out of the whole number are keeping their heads above water.

Fortunately for us the Wolseley Company is one of the few in the Passenger Car section that has been able to keep going at anything like a fair pace, but even we have been operating at very little more than half our full capacity, so that altogether the British Motor industry since the war has had a most unhappy time.

Since we entered into the new agreement in 1920, and organised the Timken Department under the title of British Timken Limited, the business has run and is now running quite satisfactorily.

Mr. Sharpe, the General Manager we appointed, has adapted himself to the business in a most excellent way, and enjoys the confidence of the officials under his control as well as that of the Directors.

Our Engineering Department, still controlled by Mr. Rodway, has dealt very promptly and efficiently with all new applications, and has, I understand, been in constant

communication as necessary with the Technical Department at Canton, and the relations and understandings, so far as this department is concerned, were never on a better footing.

Mr. Hall still controls the outside operations. Our country is a very small one after all, and there are very few manufacturers to call upon. Mr. Hall keeps in touch with the chiefs of design, and in many cases with the Directors, of all British concerns, and has proved most diligent in the execution of his duties. He is ably supported by Mr. Hill, who deals specially with the Service Engineering Department, Mr. Hall confining himself more particularly to the securing of new business from manufacturers.

[fol. 5691] The Sales Department is well handled by Mr. Hobley, who is well known to the officials of your company.

You will see from the above that the organization remains much the same as it was when we established the British Timken Company in 1920.

As regards the development of the business since the original license was granted in 1911, the following table indicates what has happened—

1911	27,125
1912	56,988
1913	57,471
1914	73,028
1915	64,027
1916	50,276
1917	58,437
1918	66,240
1919	127,362
1920	255,848
1921	169,769
1922	177,431

You will remember that up till 1912/13 nearly all the Timken Bearings made in this country were used by the Wolseley Company.

The years 1914/15/16/17/18 were the war years, during which there was practically no production of passenger cars in this country. The bearings made in that period were, therefore, chiefly replacements for war vehicles, British and American, but of course there was a certain amount

of new business in the heavy vehicle trade, and latterly for tanks.

In 1919 there was a distinct advance, and in 1920 we reached the peak of production, when we produced 255,848 bearings.

In 1921 there was a reduced production, owing to the fact that we had accumulated a certain amount of stock in 1920, while at the same time our slump period commenced.

In 1922 things were a little better, and the prospect for the present year is that, at the present rate of turnover, we ought to get back to the 250,000, although, of course, the value will be reduced owing to the drop in material and labour and in selling prices generally.

With regard to the possibilities of further expansion, we have done and are doing everything that is possible to increase the popularity of the Timken Bearing among the manufacturers of this country. We find, however, that it is extremely difficult to get old established Companies to alter the applications in which ball bearings are employed unless they are in trouble.

[fol. 5692] Our officials have had many interviews with the Directors of the Rolls-Royce Company. It has been pointed out that they could get greater efficiency by using Timken Bearings, and save a certain number of shillings per car, but their answer to this has always been to the effect that the saving of a pound was nothing to them and that as the ball bearings they have used have never given them any trouble, they prefer to let well alone.

Similar remarks would apply to our interviews with all old firms, who established their models before the Timken Bearing was strongly introduced in this country.

Our opportunities of success are therefore restricted to:

1. New designs, and

2. The introduction of Timken Bearings in applications where ball bearings have failed.

So much for new business.

As regards the replacement or Service Department, the arrangements we outlined when the British Timken Company was established have been carried into effect. We have established small service agents in various parts of the country, and I am glad to say that the replacement business, particularly for American Cars, is on the increase.

A very great number of American Cars are being brought

into this country at the present time, and we are closely watching developments with a view to strengthening up the Service Stations as necessary to look after the maintenance of these cars.

Regarding our Colonial and Overseas trade, the development of this appears to present somewhat greater difficulties.

It appears that most exporters of American Cars to British Colonies make arrangements for delivery of spares to support their cars, and there is of course nothing to prevent their sending out supplies of Timken Bearings with their cars.

We have done a certain amount of business in Australia, but very little in other Colonies. We are, however, hopeful that the arrangements made by Mr. Sharpe during his recent visit to South Africa will result in increase of business for us in that Colony.

As regards France, the Societe Gennevilliers appear to be faced with even keener competition than we ourselves. Continental ball bearings are extremely cheap, and as the S.M.G. are not laid out to make the 400 or more different [fol. 5693] sizes of Timken Bearings, they must necessarily purchase from ourselves. Their depreciated exchange places them at a very great disadvantage.

To encourage them and help them in every possible way, we have sold to them at a loss to ourselves for the past two years, and today are selling to them at practically cost.

As for Belgium, Motor Car Manufacturers in that country are able to import German ball races at ridiculously low prices, and there is nothing to be done.

Italy—here again we are at a disadvantage, owing to the adverse exchange, but our Agent there has just reported that two of the leading Motor Car Manufacturers in Italy have agreed to give our bearings a trial.

At the present time business in Germany, Russia and Eastern Europe is impossible.

It should be pointed out that for the development of overseas business we have appointed no less than forty Agents, a list of which I understand was sent to Canton some few weeks ago.

I feel that it is very hard for you enormous producers in America to realise the difficulties we have to contend with, and if this brief resume of the position does not entirely satisfy you, and you would like fuller particulars,

we shall be pleased to reply instanter to any points you may raise.

It appears to us that the development of the British Timken business in this country is dependent on the state of the automobile industry in general.

The dumping of American surplus productions in our Home market, as well as in what before the war we used to look upon as our Overseas markets, must obviously have the effect of reducing the production of cars at home. The more open we are to attack, for fiscal or other reasons, the less becomes our production, the higher do our costs become and the smaller our sales.

Our people may wake up some day, and see that the open market, or what in the present conditions amounts to an open market, is a fatal policy. British industry, in many lines of business, was stifled during the war, and has never had a chance of reinstating itself.

I am glad to say that, in spite of all this, a much healthier feeling is beginning to assert itself.

It has always been said of British armies and the British nation in times of distress that we manage to "muddle through," and I hope that this will be the case in the present instance, and that with the return of prosperity and something approaching a settlement of European affairs, our business in Motor Car production and in Timken Bearing production will steadily increase.

[fol. 5694] I am glad to be able to tell you that so far as the Wolseley Company is concerned, we appear to have turned the corner. We have made and sold this year more than twice as many cars as we ever sold in the history of the Company, and we are preparing for bigger production for 1924.

We have not yet reached an average of 200 cars per week, but we are approaching this figure very closely, and we are hopeful that we shall be able to produce and sell an average of more than 200 cars per week in our next financial year.

We have reached this position by cutting our costs down to the water's edge, so that by comparison with our immediate competitors we are offering extremely good value.

Price appears to be a very big factor in these days and it appears to us that it would be a great assistance to the British Timken Company if your Company could see their way to a further reduction of the royalty.

In some directions we are now beginning to feel the effect of the competition from certain firms who have started making taper roller bearings in this country, and who, by reason of the fact that they have no royalty to pay, are able to sell (at a profit) at a price equivalent to our cost price, including royalty.

I do not think that in some cases these people are making the bearings as well as we do; they have no reputation to uphold, and they are building up a good business in the cheap bearings, especially in Ford replacements.

On this particular class of business it will be seen that anything that your Company could do which would help us to compete with such people would beneficially affect your Company, and we suggest that it may be in the interest of your Company to accept a very small royalty, say not more than 2½%, on competitive business such as that to which I have referred.

We have previously suggested a reduction of royalty on this competitive business, but up to the present your Company has not seen their way to help us in this matter, and as a result the business goes to other people.

We are naturally very much interested and pleased to learn that business is so prosperous in Canton, and express the hope that this may long continue. You must indeed be prosperous in America when you cannot get enough people to fill your factories. This is in strong contrast with our conditions in England, where in Birmingham alone there are 45,000 people drawing the unemployment dole from the Government at the present time. An eloquent testimony to the advantages of our Free Trade system!

[fol. 5695] With very kind regards, I remain, Yours faithfully, A. McCormack, Managing Director.

[fol. 5696]. August 27, 1923.

Arthur McCormack, Esq., Managing Director, British Timken Limited, Ward End, Birmingham, England.

Dear Mr. McCormack,

I have read with much interest your letter of June 6th, as this has really been the first advice we have had from you for some time, covering the general situation in England and the Continent, insofar as it affects the motor car industry. You certainly have had your share of problems

to meet, and it is very evident that our problems are of an entirely different nature, and in the main, much more simple, for the time being at least.

We note your suggestion of a decreased royalty on competitive business. If we felt assured that a decreased royalty would sufficiently increase the volume of this business, we would be glad to give it consideration; therefore, suggest that you write us as to the amount the business could be increased with a reduction to 5%, and a reduction to 2½%.

You will of course realize that unless we can get a very material increase in business, any royalty reduction would not be worth while. We would be glad to hear from you on this matter further, and in detail, when we would be glad to give the matter careful consideration.

The writer had the pleasure of meeting Sir William Letts in Mr. Willys' office, of The Willys-Overland Company, last week. Sir William did not seem particularly enthusiastic over your situation in England, but it is my impression he is perhaps profiting to a rather generous extent from his importations of cars, rather than making or losing money on the manufacture of cars.

We would appreciate it if you could see fit to give us a letter similar to yours of the 6th, about every six months, and if there are any phases of the business on which we could be of assistance or help to you, we hope you will point them out to us.

With very kind regards from the writer, we are,

Faithfully yours, The Timken Roller Bearing Co.,
—— ——, Vice Pres. & Treas.

HE.BES

[fol. 5697] Copy

Robinhood. Penns Lane, Erdington, Birmingham,
September 2, 1923.

Dear Mr. Ely,

Was very pleased to have your letter of July 20th which I will reply to in order of importance.

First I ought to tell you that events have been moving during the last few days very rapidly. During last week

we had the news that Mr. McCormack had resigned. I don't know the real cause but can indicate probable ones.

As you would know, Wolseley Company again made a loss on last year's trading, some £70,000. The British Timken Ltd. has for the same year been of some financial assistance to them; our profit has amounted, according to Mr. McCormack, to approximately £25,000.

Whether McCormack resigned because of the adverse balance, or because he couldn't agree with economy measures dictated by Vickers, I don't know.

As an official of the Wolseley Motors he does not therefore now exist, and it is also very probable that he is not retained on any board in London.

Naturally, as a consequence, quite a number of old officials of Wolseley Motors have been dismissed, and same is managed at the moment by a committee of three; i.e., Jacobs, past Secretary; B. Caillard, son of Sir Vincent C.; W. Dallon, associated with E. & O. A. Co., and very strong with Vickers as statistician in connection with their allied concerns. O. Boden, associated with E. & O. A. Co. and Timken in the past, is brought back and made Wolseley Production Manager.

Receivers' erstwhile Superintendent is now styled Technical Manager, whatever that may be!

Mr. McCormack's system of management was undoubtedly wrong, which I believe I took the liberty of mentioning in letters, and it remains to be seen whether the new management will do any better. They certainly should have little difficulty in doing better.

I don't know yet how these changes will effect British Timken. It will be a great pity if they do interfere. We have perhaps been some time in working out our destiny (the delay has been due to Wolseley influence and control in the past) but the results of the last two or three years have been the reward for our spade work and promise of better things to come. British Timken Limited at this stage MUST NOT be interfered with, and if you believe this view at this time you would do us all (i.e., officials of the British [fol. 5698] Timken Limited, including Sharpe) and the future of B. T. Company a very good turn by writing to our London Directors supporting this view.

If there is no serious obstacle in the way, B. T., if it cannot become entirely separated from Vickers organiza-

tion, could at least be a subsidiary company of Vickers and not Wolseley Motors.

Hardly necessary to point out the commercial advantage of this disassociation.

Approximately 33⅓% of our business is with Wolseley Motors, but of course as a subsidiary of Vickers we should hope to retain their business.

We have already passed our record of sales in bearings, which was in 1920 for 256,000. We are expecting to reach the 280,000 mark for 1923.

With regard to Mr. McCormack's views of the motor trade situation, it is certainly depressing, at the moment, but the B. T. have in spite of this done well this year, and hope to do better next. We are not discouraged, we feel the call for our bearings is going to be greater every year. True, it will be small compared with U. S. A. standards, but I feel we are meeting the situation over here in the only way it could be met at the moment.

For several reasons we must manufacture over here, one of which is that your present general standard is not good enough for constructors over here. I can fully appreciate the circumstances which dictate your present manufacturing policy. They perhaps mean sacrificing of ideals, but we would be glad to see something like it over here, for a short time anyway.

With regard to Bock, I am trying to get some facts together, but this is not so easy, I should imagine, as on your side. We have not so far had any serious competition for this concern and of late have heard less than formerly.

Our keenest competitor is found in Skefko who are making taper roller bearings, samples of which we sent you.

We feel that this concern are supplying bearings at below cost in order to create a market or opening. Perhaps I ought to say that it is felt that they are supplying below cost. Personally I have a suspicion that our price is high because of overheads imposed but am not in a position to scrutinize the charges they carry.

Quite agree that it is time for us to make another call at Canton. The question which will naturally be asked is how can we expect to benefit by new methods at Canton which may involve expensive plant and methods which are only justified by cheaper production costs when the quantities are very large and such as we cannot at the moment hope to attain?

[fol. 5699] That is the question which will be asked, and if you are writing suggesting the visit, might be useful to have this point of view in mind—your view is, it ought and must be done. The benefit to be gained cannot be obtained through existing channels.

Whether the powers appreciate it or not (I think they do, i.e., Mr. Sharpe and London Directors), British Timken's success would have been almost impossible without our 1920 call on you.

With best regards,

Yours truly, (Signed) G. H. Rodway.

[fol. 5700] Wolseley Motors Limited

September 10th, 1923.

Heman Ely Esq., Messrs. The Timken Roller Bearing Company, Canton, Ohio.

Dear Sir:

We wish to refer you to our letter of the 6th June last, written to you by Mr. McCormack. As that gentleman has now resigned his position as Managing Director of this Company, and the business at the present time is under the control of our Director, Mr. B. Caillard, and the undersigned, and as we are anxious to fix up new Contracts as soon as possible, we shall be obliged if you will be good enough to let us have a definite reply to our commur cation in regard to the amount of Royalty to be paid to you in respect of Timken Bearings.

We are afraid that it will be quite impossible for us to pay you 10% Royalty in view of the present very severe competition which we have to contend with, combined with the fact that all the Patents have now expired.

Awaiting your early reply on this subject,

We remain,

Yours faithfully, Wolseley Motors Limited. A. Jacob, Secretary.

[fol. 5701] September 20, 1923.

Mr. G. H. Rodway, Robin Hood, Penn's Lane, Erdington, Birmingham, England.

My Dear Rodway:

I was very interested in reading yours of the 2d, and of course surprised to learn that Mr. McCormack has resigned from British Timken and Wolseley Motors, and am just now in receipt of letter, dated September 10th, from A. Jacob, formally advising us of this fact.

In reply to Mr. McCormack's letter of June 6th asking for a reduction in royalty, I stated that if we felt assured that a decreased royalty would sufficiently increase the volume of this business, we would be glad to give it consideration, and suggested that Mr. McCormack advise us as to the amount he expected the business could be increased by a reduction in royalty.

Mr. Jacob in his letter asks for a reply to Mr. McCormack's letter, which of course is now in their hands. I am enclosing carbon copy of my letter to Mr. Jacob.

Yesterday I had quite a little visit with Sir William Letts of the Crossley Company, in the office of Mr. John Willys of The Willys-Overland Company. Sir William seemed rather surprised to learn of Mr. McCormack's resignation, but intimated as a matter of fact it was not to his mind entirely unexpected. Sir William spoke well of the British Timken Company but I couldn't judge whether this was inspired by simply a desire to be courteous or not.

Sir William Letts evidently feels that all British manufacturers can make no headway except by mighty hard work, and this is a time when they must all get busy and dig as hard as possible.

I hope that the British Timken Company will have appointed a Managing Director who can sense the importance of the business, and with whom we can have contact. It is always more satisfactory to deal with one man than with a committee. I would of course appreciate any private suggestions you may have to make on these matters from time to time.

With kind regards,

ry truly yours, ——, Vice Pres. & Treas.

HE.BES

[fol. 5702] September 20, 1923.

Mr. A. Jacob, Secretary, c/o Wolseley Motors Limited, Adderley Park, Birmingham, England.

DEAR SIR:

Referring to yours of September 10th, just received, we replied to Mr. McCormack's last letter on August 27th, and you of course now are in receipt of that letter.

We are surprised to learn that Mr. McCormack has resigned, and will be glad to be promptly advised as to who will succeed him. We don't know from your Mr. Jacob's letter whether your Mr. Jacob and Mr. Caillard are permanently managing the British Timken business, or only until Mr. McCormack's successor will be appointed.

In connection with the operation of the British Timken Company, we would like to ask as to whether these operations have been profitable or not, and how the operations compare with profit or loss of other similar companies. We learn that many of your prominent manufacturers are still operating at a loss.

It has been something over three years since we have had a visit from anyone from the staff of the British Timken Company, and we think that it would be profitable to you to have one or more of your men call upon us, that they might be in personal touch with progress we have made in manufacturing processes.

Awaiting your further reply with interest, we are,

Very truly yours, The Timken Roller Bearing Co.,
————, Vice Pres. & Treas.

HE.BES

[fol. 5703] COPY

Robin Hood, Penns Lane,
Erdington, Birmingham,

November 13, 1923.

DEAR MR. ELY,

Have refrained from replying immediately to your letter of September 20th, in order to collect information arising out of recent changes and particularly in regard to suggested visit to Canton.

Although it is nearly 6 weeks since receipt of your letter of September 20th, the subject has not been broached with either myself or Loader; i.e., visit to Canton.

I met Player of Bethel Player at Passenger Car Show; perhaps copy of report will interest you.

Am disappointed in the way this matter has been received by Sharpe, which appears to be for the following reasons: Sharpe tells me he has been just informed by Jacobs that directors have decided to *buy back the plant from British Timken* and make the bearings under the Wolseley auspices, selling them at a nominal figure to British Timken, who I suppose will become simply a selling organization.

I cannot, however, always depend on Sharpe's views, as having a somewhat superficial knowledge of the business, is likely to be lead astray. He has however appeared during the last few days very depressed. At the same time that he gave me the above news he tells me that the arrangement will not make any difference to British Timken officials and their duties. What exactly is the drift of the new arrangement will only become apparent in the course of time. It may be one of economy (!) for the *Wolseley Motors* or of accountancy. As matters develop I will notify you.

Personally I am sick of the Wolseley. One feels that the British Timken has been all along nothing more or less than a very great convenience to Wolseley Motors. Profits that British Timken have actually made and that would have appeared as substantial had we been an entirely separate concern, have been, one feels, appropriated to cover Wolseley's blunders and lack of proper business acumen and consequent lack of proper expansion of the British Timken.

By constant endeavor, in spite of dragging effect of Wolseley yoke, this year has been a record one—very small as compared with your own work, but indicative of the correctness of our view that, given a freedom of expression, there is a great future for taper roller bearings over here. But we *must hurry*. Competitiors are entering the field untrammeled by our restrictions.

[fol: 5704] Business done, i.e., orders invoiced for year, is:

Bearings 296,329—Value £212,727
Increase 148,320—Value £53,586 of last year.

I cannot get our people to advertise more to the general public, who are of course either actual or potential motor owners. We seem blind to a very powerful weapon which may be used greatly in our favor, and some day we shall regret the delay. I believe that such an advertising policy would operate more favorably for our benefit than same methods in U. S. A. to Canton. This is assumption of course.

I perhaps ought to mention that Wolseley's business with British Timken amounted to approximately 20% of our turnover. While this is a big item, would be a very much less serious account with freedom for proper expansion. As a matter of fact, with our slowly growing overseas business under present conditions it will become a small percentage each year.

November 15, 1923.

Since writing the above, have heard that directors are very sore about having to pay large sums in income tax for British Timken profits; hence the new arrangement referred to in the beginning of this letter. It is assumed that in future British Timken will show better profit.

Had intended to write more but shall have to close to catch next post, but will write again shortly.

Yours sincerely, (Signed) G. H. Rodway.

Attached reports will contain matter of interest and save me referring to them in letter, etc.

[fol. 5705] December 31, 1923.

Mr. A. Jacob, Director, British Timken Limited, Ward End, Birmingham, England.

DEAR SIR:

We are just in receipt of yours of the 14th, and have decided to have our Mr. M. T. Lothrop call upon you at an early date. Mr. Lothrop is our Works Manager and is in the closest touch with all of our manufacturing processes, and particularly with our new developments.

We have suggested to you that you send someone from your Works to see us, but you have not apparently seen fit to consider this, and we want Mr. Lothrop to call upon you that he may take up in detail your more fully taking

advantage of our experience, as we feel that you can very much reduce your costs.

Mr. Lothrop's work with us here is very important and we can ill afford to spare him. We trust therefore that you will arrange to see that his time with you is not wasted, and that he has access to your Shop executives, and also with yourself and Mr. Bernard Caillard, Mr. Sharpe, and any other executives who are interested in the British Timken Company.

We presume Mr. Lothrop will be sailing on the 12th of January, but we are not positive of this and will cable you as soon as we know definitely when he will arrive so that you can set up proper appointments for him. On Mr. Lothrop's arrival he will get in touch with you, and we are sure that you will appreciate that Mr. Lothrop's time is very valuable to us and we want him to be able to make as efficient use of the little time he has in England, as possible.

Mr. Lothrop may advise you in regard to some points brought up in yours of the 14th, or we may await his report before covering this matter in detail.

We assume that Mr. Jacob and Mr. Caillard, as well as Mr. Sharpe, will be at Birmingham, and Mr. Lothrop will get in touch with you there. Should any of you be located in London, please advise us by cable, so that Mr. Lothrop can meet you there, as Mr. Lothrop immediately on his arrival will go to London.

[fol. 5706] We know that you will extend Mr. Lothrop every possible courtesy and see that he has proper letters to Societe de Mecanique de Gennevilliers in Paris, and any other letters that may be helpful to him. I am sure that you can supply him with letters from Vickers which will allow him to make some special study of English steel mill practice, as this is a point Mr. Lothrop wishes to check up while he is in England.

Very truly yours, The Timken Roller Bearing Co.,
——— ———, Vice Pres. & Treas.

HE.BES

[fol. 5707] (Copy MTL)

British Timken, Limited

Manufacturers of Timken Roller Bearings

Directors, Sir Vincent H. P. Caillard, Commander Sir A. Trevor Dawson, BT.R.N., Vincent C. Vickers, Lt. Col. The Hon. Stuart P. Bouverie, D.S.O., A. J. McCormack, C.B.E., B. L. P. Caillard, C. W. Grazebrook.

Telephone East 960. Telegrams "Britimken, Birmingham." Codes Western Union A. B. C. 5th edition. Bentley's & Lieber's 5 letter.

Ward End, Birmingham

Please address all communications to the Company.

Your reference
Our reference WWS/DC

1st January, 1924.

(Timken Roller Bearing Co.
Received, Canton, Ohio
Jan. 14, 1924
A.M.Ans.H.E.1/15 P.M.
7-8-9-10-11-12-1-2-3-4-5-6

The Timken Roller Bearing Co., Canton, Ohio,

For the attention of Mr. Klinedinst

DEAR SIRS:

With reference to our letters of Oct. 6th, and Nov. 15th. last, we are disappointed that we have not received either a cablegram or a letter from you in reply.

As we pointed out to you, the matter was urgent, and we have quite recently received an enquiry from the Ford Company of Manchester for 50,000 bearings. As, naturally, we are very anxious to secure this order we are taking it for granted that you will help us and have quoted prices on the basis of a royalty of only 2½% for yourselves. The prices quoted are—

No. 09075	Assembled Cones	.....	1/5d, each
09076	"	"	1/5d, "
14120	"	"	2/5-3/4d. "

and even at these figures we shall make no profit out of the transaction, whereas, if we secure the order you will at any rate make 2½% on the value of same.

As mentioned in our letter of Nov. 15th., the Ford Company are particularly anxious to use bearings made in this country and previously they have been supplied by the Skefko Company, and as every bearing supplied by the Skefko Company means a loss of an order for Timken bearings we think you will agree that it is important we should [fol. 5708] receive every assistance to enable us to compete with these people.

In Mr. Ely's letter to Mr. McCormack dated August 27th. last, which was replied to fully by Mr. Jacob on the 14th. December, Mr. Ely asks us to state the extra amount of business we should be able to secure with a reduction of 5% and a reduction of 2½%. Mr. Jacob in his reply pointed out that this was rather too difficult a question to answer, but it is cases like the one we are now corresponding about which will show you that unless we obtain your assistance business will certainly go past us.

Trusting that if you have not already done so you will give the matter your immediate attention.

We remain,

Yours faithfully, For British Timken Limited, W. W. Sharpe, General Manager.

(Timken Roller Bearing Co.,)
(Received)
(Canton, Ohio)
(Jan. 14, 1924)
(A.M. Ans. ——P.M. 8)
(7-8-9-10-11-12-1-2-3-4-5-6-)

DX 236

[fol. 5709] British Timken, Limited

WEH/LC 2nd January, 1924.

Messrs The Timken Roller Bearing Co., Canton, Ohio, U.S.A.

For the attention of Mr. Ely.

Dear Sirs,

We now have some particulars to put before you concerning the Ford car business in England as referred to

in your communication to us of the 28th November. This matter has been held up for some time as negotiations have been reopened with the Ford Motor Co. of Manchester with a view to seeing whether this business cannot be diverted to us. While appreciating the assistance you have already offered by furnishing a complete set of Ford front wheel bearings at a price of $2.12 per set, this figure is hopelessly out of it on this side. We will give you an example to show you exactly what we mean—

Ass. Cones Nos. 09075 & 6

Your price	29¢
Converted into sterling =	1s 4d
Duty into England 33.1/3% =	5½d
	1s 9½d
Transport cost say 10% =	2½d
	2s 0d

You will see from this compilation that we should have [fol. 5710] to sell the assembled cone just a fraction over 2/- to cover dead cost whereas we are prepared to manufacture this same cone and supply the Ford Motor Co. at 1/5d. We do not say that there is going to be a great deal in it for us except that it will keep our shops occupied and help to pay overhead charges, but we give you the figures to show that importation from America is no help to us as far as the Manchester business is concerned. The figures we quote of the small assembled cone are applicable also to the cups and the larger bearing.

As far as the Italian business is concerned for the Ford car, our Mr. Rodway was in that country a week or so back and we have just submitted a revised price for this job. At the moment of writing sufficient time has not elapsed for it to get through to the proper party but if there is any further assistance you can give us in connection with this job we shall take advantage of your kind offer.

Bearing No. 247 which you refer to in your letter is a size which we designed ourselves and has identical dimensions to No. 237/233, the only difference being that it incorporates an additional roller. It is perhaps one of our

most popular bearings and we must have supplied many thousands during the last few years.

Yours faithfully, For British Timken Limited,
W. W. Sharpe, General Manager.

[fol. 5711] British Timken Limited

WWS/DC 21st June, 1924.

The Timken Roller Bearing Company, Canton, Ohio.

For the attention of Mr. Heman Ely

DEAR SIRS:

The Triumph Cycle Company

We are trying very hard to persuade the above firm—who are one of the largest manufacturers of motor bicycles in this country—to adopt Timken bearings. They have tried a set of our bearings and also a set of Skefko bearings. Both have proved satisfactory, and it is now only a question of price as to who will secure the order.

We have submitted a quotation of 2/6½d. per bearing, based on a low figure for overhead charges—which we cannot expect to reach for many months to come—a very small percentage for selling charges, etc., 2½% royalty, and no profit. We are hoping that you will agree, if we secure this order—which will be for 20,000 bearings to commence with—to be content with the 2½% included in our quotation, and we should also like to have your confirmation that in cases where we have this keen competition with the Skefko Company you will agree to be satisfied with this lower royalty. We will, of course, advise you in each case when we have secured orders on this basis.

At the present time we are supplying a few motor-cycle manufacturers, but if we could persuade the Triumph Company to adopt Timken bearings it would be of the greatest assistance to us in securing business from other manufacturers. As you know, there is a very large trade done in [fol. 5712] motor-cycles in this country, and practically all of them are fitted with simple and cheap cup and cone ball bearings. As these motor-cycles are generally over-loaded and bearing troubles are, therefore, very frequent, the public are now beginning to realise that a machine which constantly breaks down through bearing trouble is not very cheap, and we receive numerous enquiries for conversions.

These enquiries we make use of by taking the matter up with the manufacturers with a view to persuading them to make a change. We enclose herewith copy of a typical letter received from the owner of a motor bicycle.

We feel sure you will accede to our request regarding royalty, as without your co-operation we cannot secure the business, and your letter of May 20th. advising us that you are also feeling competition from the Skefko Company in America leads us to think that you will sympathize with us.

Yours faithfully, For British Timken Limited, W. W. Sharpe, General Manager.

[fol. 5713] British Timken Limited

WWS/DC 10th. July, 1924.

The Timken Roller Bearing Company, Canton, Ohio, U.S.A.

For the attention of Mr. Heman Ely

DEAR SIRS:

We are in receipt of your letter of the 27th. ulto. in regard to Skefko competition.

Since writing our letter of the 16th. June we have seen representatives of the Skefko Company, and have learnt from them that the quotation to Ford of Canada was submitted from this country, but we were unable to ascertain the price quoted.

There is no doubt that the Skefko Company have now become very dangerous competitors, and in the case of the Standard Company, as we told you some time ago, they were able to secure orders from this firm by quoting lower prices than we did. In respect of this particular order, as the Standard Company insist upon British-made bearings, and as we are the only two manufacturers who can supply, it simply means that they are playing us up one against the other with a view to keeping the price down. We have, therefore, agreed to quote for their requirements—which are likely to amount to about fifty thousand bearings—at a figure which is a few pence per set below the Skefko Company's price, and as we understand from the Standard Company that they prefer our make of bearing to the Skefko we have every reason to hope that we shall secure the order; but even if we do so and have to pay you a

royalty of 5% on this particular order there will be no [fol. 5714] profit left to us, as we have based our quotation on charges which we can never expect to reach and a royalty of only 2½%, the price we have quoted being 17/3d. per set of 4 bearings, the set consisting of 2 each Nos. 247/243 and 319/313.

In this connection we are waiting to hear from you regarding the price we have quoted to the Triumph Company. The figure we have now quoted to the Triumph is 2/6½d., but we believe that the Skefko Company's quotation is only 2/3d. per bearing, the number of which is 1156X/1126X. We believe that next year the majority of the leading motorcycle manufacturers in this country will be fitting roller bearings, and that the Skefko Company will be our biggest competitor. As you know, the bearing we supply to the Ford Company does not come up to the same standard as that we supply to other manufacturers, and we are experimenting still further with a view to cheapening the manufacture of Ford bearings and bearings for motorcycles.

We will, as you request, let you know every two months what orders we have in hand for the Ford Company. When they placed bulk orders with us we agreed to maintain their list prices and not to offer their dealers or our own dealers better terms than they themselves were able to offer. On that account we have received practically no replacement business as they have supplied all the replacements themselves. We have now told the Ford Company that in view of the fact that we have large stocks of bearings suitable for Ford cars available for sale, the arrangement then made must be cancelled, and we are offering our dealers increased discounts to enable us to secure orders. We have received an acknowledgment of our letter from the Ford Company.

Yours faithfully, For British Timken Limited, W. W. Sharpe, General Manager.

[fol. 5715] July 11, 1924.

British Timken Limited, Ward End, Birmingham, England.

Attention: Mr. W. W. Sharpe, General Manager

Dear Sir:

We have carefully considered yours of the 21st of June, requesting that we allow you to pay only 2½% royalty on business you secure in competition with the Skefko Company, and having particular reference to a pending order from the Triumph Cycle Company.

We have just agreed upon a modification of the royalty with very considerable loss of revenue to us, and it is problematical whether there will be any increase in business and which will be sufficient to offset the loss from the reduction we have given you.

We prefer to see the terms of royalty as finally agreed upon between us to remain as per our revised Agreement, and then after the operation under this revised Agreement for a half year or a year, take another look at the situation. You have not under the revised royalty arrangement operated hardly at all, as yet, and we are sure with the superiority of your goods over Skefko that you can meet their competition.

We trust that you will not in the future make quotations on the assumption of our making a reduction in royalty, as you place us thereby in an embarrassing position and we wish to co-operate with you at all times as fully as possible, but we feel that now the benefits you are receiving under our Agreement are coming to you under very favorable terms.

Please continue to give us at all times specific and detailed information of your sales and your competition.

Very truly yours, The Timken Roller Bearing Co.,
—— ——, Vice Pres. & Treas.

[fol. 5716] (Pending to September 2nd, 1924)

Aug. 13, 1924.

British Timken, Ltd., Ward End, Birmingham, England.

Attention Mr. W. W. Sharpe, Gen. Mgr.

DEAR SIR:

Referring to your favors of July 10th and 26th believe that you are planning to have your Mr. Loader call upon us at an early date. We are confident that when Mr. Loader gets in personal touch with our latest processes of manufacture that you by taking advantage of these to a limited degree can materially reduce your costs. This is a matter which you can appreciate cannot well be handled by correspondence. The advances we have made in the past few months in methods which result in a better product and at a reduced cost are quite startling.

We know that you are not now profiting to as great an extent as you might were you in close touch with our entire operation and in this connection we are now making changes in the design of our bearing, which we think can best be taken up and covered in person with your Mr. Rodway. We hope that you can arrange for him to accompany Mr. Loader. These changes in design have been determined upon after a long period of experiments and tests, which have resulted in our producing a bearing with much reduced friction, longer life, quieter and with increased carrying capacity. The main dimensions of the bearings, of course, remain the same, that is, inside diameter, outside diameter, width, etc. and the new product will be directly interchangeable with the old.

We are confident that if you will inaugurate these changes you can much more easily meet the Skefko competition and establish and maintain as pre-eminent a position in England and on the Continent as we hold here and perhaps more so. We hope you will not overlook the importance of having your Mr. Loader and Mr. Rodway call upon us as early as possible, as we know it will result in increased business and added profits to you.

Very truly yours, Timken Roller Bearing Company,
—— ——, Vice Pres. & Treas.

[fol. 5717] British Timken Limited

17th October, 1924.

Messrs. The Timken Roller Bearing Co., Canton, Ohio, U. S. A.

For attention of Mr. H. Ely

Dear Sirs:

As you know, our financial year ended on the 30th September last and you will therefore be expecting to hear from us regarding our future prospects, etc.

During the past year we manufactured and sold over 350,000 bearings as against under 300,000 in the previous year, but the nett value of this year's output, namely £174,000 is lower than it was for the previous year, this being chiefly due to the fact that we have had to cut down our prices to a great extent to compete with the Skefko Co., and the Ball Bearing Manufacturers.

During the past year we have supplied only 17,000 bearings to the Wolseley Company whereas during the previous year they took over 42,000 bearings from us. Roughly our output has been distributed as follows:

50% Service business (Home, Foreign and Colonial)
45% to Manufacturers of Motor Vehicles and Industrial Machinery.
5% to the Wolseley Company.

Until a few months ago there was a combine in this Country of Ball Bearing Manufacturers, the most important Companies interested being:

The Skefko Co.
Ransome Marles Bearing Co.
The Hoffmann Bearing Co.

Unfortunately for us the Skefko Co. have broken away from this combine and, being in a position to quote for [fol. 5718] tapered roller bearings as well as ball bearings, have grouped the lot together and quote for the complete car bearing equipment. We have lost orders from both the Rover Co. and the Standard Co. on this account. We are, however, hoping that we shall get back their business, and we have in addition got quite a number of new customers and are hopeful that this next year's business will show a great improvement on that of last year.

We are gradually making headway in the Industrial Bearing business, which, as you know, we only started pushing seriously about a year ago, and this is certain to considerably improve during the next year.

As regards bearings for motorcycles, our chief competitors, the Skefko Co. have, after we have had great trouble in interesting motorcycle manufacturers in the Timken Bearing and securing business, annexed the manufacturers in the market, and we are asked to reduce our prices or lose the order. As an instance, we quoted 2/6d for bearing No. 00060X/00152. We could not afford to lose the order and therefore had to accept this price.

There is not yet much improvement in commercial vehicle business although a few of the best known Manufacturers such as Lehland, Halley & Commer cars, are beginning to place orders with us. Last year our business in bearings for commercial vehicles was very disappointing due to the fact that very few commercial vehicles were sold. There is no doubt that the Morris car is doing very well and they have been the cause of the Ford Company's output dropping very considerably. We believe that their 1-ton Van is not a great success and the Ford Co. hold their own in this direction. For over 6 months we have received no orders from the Ford Co. although we are continually calling upon them and have been promised that after the Olympia Show, which opened on the 17th inst., we shall be asked to quote for their future requirements. From information we receive from time to time there is no doubt that our bearings have stood up remarkably well and that the Skefko bearing has given quite a lot of trouble.

Business on the Continent and in our Colonies has been [fol. 5719] reasonably good especially Australia. There should be a great improvement in India and Africa during this next year. France is a disappointment to us because, as you know, they pay very little in Royalties of which you receive the greater portion and their replacement business is not nearly as good as it should be. They attribute this to Skefko competition a factory having been erected in France where they manufacture tapered roller bearings, and also to the fact that the name "Timken" is not so well known as in this Country. We are at present negotiating regarding a renewal of the Agreement which expires at the end of December as, although we know that they are not

doing as well as they ought to, it would be difficult to find another Firm to do any better.

We have recently lost an order for the Swift Co. which has gone to the Bock Company although we were willing to quote even lower than they have quoted, but we were told that the order could not be placed owing to failures they had had some years ago with Timken bearings, whereas Bock bearings had been tried and given every satisfaction. We believe there is something behind this, as, although the Swift Co. have had failures in the past, at the present time they admit that our bearings are giving satisfaction. We are told that it is possible the Bock Co. may not be able to supply their requirements in which case we should be given the order. On this account we should like to hear from you as to the position of the Bock Co. in America as they only manufacture very small quantities in this Country.

We enclose a detailed report of what we have done during the past year and trust that this will be of interest.

Yours faithfully, For British Timken Ltd., W. W. Sharpe, General Manager.

Copy Report.
DX 236

[fol. 5720] British Timken, Limited

WEH/LC 16th October, 1924.

British Timken Limited Business

A survey of our activities in Birmingham for the year ending September 30th last and prospects for the new financial year just commenced. To make it as concise as possible, it is sub-divided under several headings.

1. Motor Car Industry. This industry is the one upon which our business as bearing makers principally depends and unfortunately in England it is still in a more or less parlous condition; comparatively few motor car makers are producing profitably, and in consequence are cramped in their efforts to develop, which in turn reflects upon our own activities. In spite of this, and the fact that competition is keen, the figures for last year are encouraging and we are able to report progress all along the line. We can put

amongst Timken bearing users, manufacturers who have hitherto used nothing but ball races, e. g. Arrol-Johnston, Sunbeam Motor Co., Calcott, Humber (new models) etc. Perhaps the outstanding achievement in this regard is Crossley Motors Ltd., who have just given us a contract for their front wheel bearings, they having left us after the trouble they experienced in 1920 when our roller stock was at fault. At the forthcoming Motor Show we hope to be able to report a larger percentage of British cars on Timken bearings than was the case last year, when it was a little over 50%.

2. Commercial Vehicle Industry. In this field, which is essentially one where Timken excels, we are making slow but sure progress. Old war-time stock is still on the market and purchasers to-day can buy at low prices complete Packard, Peerless or Pierce-Arrow lorries, which have been renovated and will give reasonably good service. While this stock is still about manufacturers are suffering from a dearth of orders. The Leyland concern are using Timkens on all the wheels of their models, the Crossley Government Subsidy Lorry is also similarly equipped. The wellknown Albion Lorry people are also trying out several sets, while we still do good business with Steam Lorry Manufacturers.

3. Competition. As competition is now so extraordinarily keen, both from ball bearing and tapered roller bearing makers, it was decided some time back to strengthen our outside staff and to intensify our propaganda work. The British Bock Bearing Co. is very active and by ascertaining the sizes we have recommended or are being fitted, they try hard to influence customers in their favour.

The competitor which has caused us the greatest uneasiness is the Skefko Co. with their large organization. As you know already they have come into the tapered bearing field and through their methods of doing business are [fol. 5721] a force to be reckoned with. They have launched an intensive advertising campaign and have admitted to us that they are cutting prices right and left in order to gain a footing in what has previously been our field. They are able by virtue of their being ball bearing specialists to quote manufacturers a lump sum for the whole of their bearing equipment, which may include both ball races and tapered roller bearings, and clients inform us that their propositions when put forward in this manner are too at-

tractive to pass over. Whether their roller bearing will stand the test of time is a matter that we shall be able to speak of more authoritatively next year; at present they have secured two or three of our customers who have always used Timken by the methods referred to, but happily where we have lost one customer we have gained two new ones, and we have confidence in the final issue.

When it was announced that the Import Duty on motor car parts was to be lifted a firm known as Messrs Guiterman & Sons of London commenced to advertise the Gilliam bearing and were about to make an onslaught on the British market. At the time of writing we have no evidence that they have done any business worth speaking of and do not think they have imported any quantity.

There are also the ball bearing manufacturers who are perturbed at the progress we are making and it was only recently that the ring of ball bearing makers, which includes Messrs. Hoffman, Skefko, Ransome & Marles, and one or two more, was broken up, the result being that they are now engaged upon a price cutting expedition. In many jobs we have quoted below actual cost prices and even then we are far and away above what the ball bearing people have quoted in their fight against each other.

4. Output and Production. Our sales for the 12 months ending September 30th are a little over 350,000 bearings which, although insignificant against your own, is a record for Great Britain. This is actually 20% greater than last year and our aim for the forthcoming 12 months is to touch half million, there being every prospect of our accomplishing it. This time of the year is what is looked upon as the dead season in the motor car world but the orders we are booking are remarkable good, and when the busy season comes along towards Christmas and the New Year we expect to have our plant occupied to its fullest extent.

On several occasions Mr. Ely has offered to send over to Birmingham supplies of Canton made bearings to help us with our British business. While appreciating the spirit which prompts this, there is an unmistakable demand for the British made bearing and by reason of the political situation in this country the majority of motor car makers will only have an article that is made at home, although we know quite well that the American product would give them equally good service. The question of price enters into the

matter also and although you have offered us Ford bearings at low prices we have already showed you that we are producing and selling these at a price which is about equal to your own. Further, we have closely studied for many years the peculiarities of the English motor car designer and engineer and claim that we know exactly what he wants and how to deal with him in regard to the limits of inaccuracy, overall width, finish of the bearing, etc., etc.

The standard of our product has never been higher and in fact we attribute much of our progress to the excellent [fol. 5722] behaviour of the bearings. Replacement under guarantee was barely .1% and considering that the British manufacturer who has been educated up to extremely fine ball bearing limits demands something similar in the Timken bearing, we feel that this record is not a bad one.

5. Ford Business. Our business with the Ford organization, which started in January last, has unfortunately been a partial failure. The plain fact of the matter is that the Ford car is not now selling so well on the English market and since June last the plant in Manchester has been virtually closed, no bearings being needed at all either from us or the Skefko who, as you remember, secured a certain portion of their business. Being under no obligation to the Ford Co. we are supplying replacements freely all over the country and evidence is not wanting that the genuine Timken bearing is demanded by users, imitations being in disfavour. This fact cannot be overlooked should the Ford people put something on the British market which will sell.

6. Home Service. Our home service organization is second to none; in every important centre throughout the country an adequate stock of bearings is installed so that no-one need be held up for many hours in want of a replacement. Constant advertising in the local press, the liberal distribution of useful literature, and efficient service, have shown excellent results and it is now only necessary for our representative to keep the machinery up to concert pitch.

7. Motor Cycle Business. The motor cycle and sidecar is a most popular form of locomotion in this country and through the constant breaking up of cheap cup and cone ball races, we have endeavoured to interest manufacturers in a better proposition—the Timken bearing. Here again we

are up against price, as the methods of making ball races for this job is extraordinarily cheap and no tapered bearing maker could ever hope to come down so low. Nevertheless, we have repeatedly visited every motor cycle maker in the country, have made application drawings and have advertised freely. At the time of writing three or four of the wellknown makers are about to use them and we expect to see the result of this propaganda work after the Motor Cycle Show which is to be held in November. This is a case where the motor cycle makers are simply waiting for public demand, which we are doing everything to foster.

8. Industrial Business. In this line it was decided some months ago to appoint a special representative whose duty it has been to visit every engineering concern in the country. The results in terms of bearings sold is not large at the moment but there is no question that within the next 12 months it will be considerable. Our bearing is now being used in machinery and industrial apparatus of every conceivable class and its behaviour throughout has been remarkable. This business really resolves itself under two headings, one being "The high class engineering job where the bearing must be of super quality", and the other "Industrial work such as Conveyors, Mine Tubs, etc. where a bearing of lower grade is quite good enough." At an early date we will prepare you a list showing the various applications that have been made as they should be of interest to your Engineering Staff.

[fol. 5723] 9. *France.* Under this heading we believe you are familiar with the position as the agreement is just about to be renewed; we are sorry to say that the progress made there is nothing like what has been accomplished in England. New arrangements are contemplated which we feel sure will increase the turnover on the French market considerably.

10. *Germany and Italy.* In these two countries there has been a distinct step forward. A large number of German makers are considering the Timken bearing and samples are already under trial in rail motors and heavy colliery tubs. We have already referred to this in one of our earlier communications but would like to add here that we have every hope of doing large business during the next 12 months despite the restrictions that are placed upon imports into Germany. Competition is keen, the German

ball race is very good and at the same time cheap. The Skefko-Norma organization is also making a tapered roller bearing. An import duty has to be paid but in spite of this we still think that the genuine Timken bearing will be demanded.

As far as Italy is concerned, we have had a set back there as our representative went into liquidation, saddling us with a heavy bad debt. The firm has been reconstituted and an order has been booked for the well known Isotta Fraschini, which is Italy's super car. There again competition is keen, the largest motor car maker, Messrs Fiat, being interested in a ball bearing concern. Our representative is working very hard on our behalf and we are confident that his efforts will be duly rewarded.

11. *Other Overseas Territory.* We are able to report here a much increased turnover in the business transacted. We have clients that are regularly purchasing supplies from Norway and Sweden, Finland, Denmark, Belgium, Spain, Portugal, Roumania, Czecho-Slovakia, South Africa, India, Australasia, etc., and are just on the point of opening up negotiations for supplies to Russia. Wherever automobiles are operating we follow immediately with an authorized representative and a suitable stock wherever possible, the Timken bearing now being advertised in almost every language and is known the world over. Our shipments overseas have been 1500 bearings per week and our aim for the forthcoming 12 months is to double this.

The above is but a brief resume of our activities in Birmingham but we hope it will convey something of what we are doing. Difficulties there are at every turn but our object is to surmount them and to show infinitely better results than have been recorded in the past.

[fol. 5724] Copy

October 20, 1924.

British Timken Limited, Ward End, Birmingham, England.

Attention: Mr. A. Jacob, Director.

Dear Sir:

We are just in receipt of your favor of the 10th, advising us of change in your plant organization, and advising that you are dispensing with Mr. Rodway's services.

We would appreciate your advising us, if you will be so good, as to the causes which actuated you in making this move. Have Mr. Rodway's services been unsatisfactory in any respect, and if so, we would appreciate being advised as to the details.

Some little time ago we wrote you asking if we could not expect an early visit from some of your organization. We feel that a visit at this time is very important and will prove of very considerable value to you, inasmuch as we are making changes in some details of design of our bearing which will be a very decided improvement. These details can be much more thoroughly and easily discussed in person than by correspondence, and we hope on this account you will dispatch someone for a visit to our works at a very early date.

In addition to this important matter, there is also the advantage that you can gain from an inspection of our processes that have been developed during the past four years. We have had more advance in this period than in our whole previous history, to the end of making a better bearing, and making it cheaper.

If you are to successfully meet competition and show a profit you should have intimate contact with all these matters, and we hope we will have early advice from you that some one or more of your staff who can properly digest these matters will be with us in the very near future.

Very truly yours, The Timken Roller Bearing Co.,
——— ———, Vice Pres. & Treas.

Herman Ely. 10

[fol. 5725] October 23, 1924.

British Timken Limited, Ward End, Birmingham, England.

Attention: Mr. W. W. SHARPE, General Manager.

Dear Sir:

We wrote you some time ago regarding the advisability of some of your staff calling upon us here at Canton, and you were considering sending Mr. Loader and Mr. Rodway, but the last word we had from you was that the matter was being discussed and you would let us know your decision shortly.

We now have advice that Mr. Rodway is not longer with you, and he cannot therefore of course call upon us in your interests.

In writing Mr. Jacob a day or two ago we again stressed the importance of your getting in touch in detail with our developments here, both as to methods and processes of manufacture, as well as details of changes in design which we are making in our bearing, which greatly improve its efficiency, life and durability.

We believe that both your Engineering and Production Departments should be represented, and we assure you that we will expedite their time so that they can make every minute count. It should not be necessary for your representatives on a trip of this sort to require more than a week's time at our Works here, and we cannot impress upon you too strongly how urgent we feel it is that they make this trip at this time.

In connection with the use of Timken Bearings, we have received advices from Germany as to the activities of the S. K. F. Company in the manufacture of taper roller bearings. At the present time the taper roller bearings are manufactured on an extensive scale only in the Swedish Plant, for the reason that it is more convenient to supply British, French and Belgian markets from there; but they are interesting the German motor car industry and will no doubt start the manufacture of these bearings in Germany in a short time.

[fol. 5726] We feel that this competition is a menace to you, and you can successfully meet it if you are in touch with our new designs and latest developments.

You can also still further meet it with a sub-licensee contract in Germany, and we wonder what has become of your sub-licenses negotiations for Germany and Italy. We know that the German matter has been under negotiation for the past five or six years, but apparently without any conclusions in the matter, and we would like to have your early advices as to where this matter stands.

We hope that we will have your advices very shortly that representatives of your Production and Engineering Department are on their way to us for a visit.

Very truly yours, The Timken Roller Bearing Co.,
——— ———, Vice Pres. & Treas.

Heman Ely. B

[fol. 5727] British Timken Limited

Heman Ely. BES
Secretary

5th November 1924.

Messrs. The Timken Roller Bearing Company, Canton, Ohio.

Dear Sirs,

We have to acknowledge the receipt of your letter of the 20th October, for which we are obliged.

With reference to the question of a visit from one of our representatives, this matter has received our careful attention and we are making arrangements for our *Mr. Loader* to leave for your Works in January next.

We shall hope to advise you definitely the name of the boat by which he will travel and the date of his expected arrival on your side.

We wish that Mr. Loader's stay should not be prolonged as his services are really urgently required at this end, and we shall be glad, therefore, if you will do everything you can to enable Mr. Loader to do his business expeditiously and render his visit as profitable as possible.

Replying to your enquiry as to the causes which actuated us in disposing of Mr. Rodway's services—we have done this purely on the ground of economy and not because Mr. Rodway's services have been unsatisfactory.

Following Mr. Lothrop's conversation with the writer we reviewed our Staff and found that the organisation was sufficient to cope satisfactorily with the business—without Mr. Rodway—and on the ground of economy we decided upon this course.

Yours faithfully, British Timken Limited. A. Jacob, Secretary.

[fol. 5728] November 17, 1924

British Timken Limited. Ward End, Birmingham, England.

Attention: Mr. A. Jacob, Secretary.

Dear Sir:

We are pleased to note by yours of November 5th that Mr. Loader will call upon us early in January. We are

sure that much good will result from Mr. Loader's visit here, and you may be assured that we will expedite his time so that he can use it to the utmost advantage.

In connection with Mr. Loader's visit, we hope you will also send with Mr. Loader one of your Engineers, because as we have previously advised you, we are now just about making changes in detail covering the design of the Timken bearing, and this is as much or more an engineering matter than a production matter.

We hope therefore that we will have your further advice that not only Mr. Loader will call upon us, but one of your Engineers as well.

Very truly yours, The Timken Roller Bearing Co.,
——— ———, Vice Pres. & Treas.

Heman Ely. B.

[fol. 5729] British Timken Limited

Heman Ely. B.
Secretary

3rd December 1924

Messrs. The Timken Roller Bearing Co., Canton, Ohio.

Dear Sirs,

We duly received your two letters of the 7th and 17th November with regard to the visit of our Mr. Loader to you.

We have given very careful consideration to your suggestion but greatly regret to state that at the present time we are quite unable to spare anyone-else to accompany Mr. Loader to the United States, but hope that you will be able to give him sufficient information to render his visit profitable in all respects in the production of Timken Roller Bearings.

Yours faithfully, British Timken Limited, A. Jacob,
Director.

[fol. 5730] British Timken Limited

29th October, 1925.

M. T. Lothrop, Esq., C/o Messrs The Timken Roller Bearing Co., Canton, Ohio, U.S.A.

Dear Mr. Lothrop,

It is usual about this time of the year to send over a report of our activities here in Birmingham, but as Mr. Ely is not with you I am not quite sure to whom it should be addressed. I thought it better to send this to you personally as you have firsthand knowledge of our organization and will I am sure be interested in what we have to report at the same time putting it forward to the right quarter.

I hope you are keeping fit and with kindest regards,

Yours faithfully, W. W. Sharpe

British Timken

Yes Best Compliments

Yard Engd.
Birmingham

2[illegible]th October 1925.

As our financial year ends on September 30th. it is customary at this period to review our business for the past 12 months and inaugurate plans for the new working year. Our remarks for the sake of clearness are made under several headings.

1. Output and production. As predicted in our report last year the sales for the 12 months ending September 30th were just a few short of 500,000 bearings, representing an increase of 40%. The prospects for the forthcoming 12 months were never brighter, our order books are full at the moment (an unusual thing in the Autumn Season), and our shops are just about able to fulfil customers' requirements. Towards May and June last we began to fall behind with our orders and to cope with the rising demand an extra shift of men was engaged to run the machines for 16 hours daily this being in operation as we write. Even now we are not satisfied that is satisfactory service is being given to the increasing number of Timken users, and from Monday next, November 2nd, three shifts of men will be engaged to work the 24 hours daily in 8- hour stretches. Our output per week will then total 2[illegible],000 bearings of all sizes and Mr. Lothrop who is familiar with the layout of our plant will agree that this is an achievement of which we might justifiably be proud. From this you will gather that we start the new year year at full blast in there being every indication that orders will increase rather decrease. It is our expectation that close upon a million bearings will be made and sold during the 1925/1926 Season.

2. Our Product. The standard of our product is still very high and there is no doubt that the rapid progress made during the last year is attributable to this, as the English manufacturer demands the best on every occasion. Replacements under guarantee have been a negligible quantity, less than .06% of the output, practically all of these being from material faults difficult to detect. Our output is mainly of the "V" type bearing and being so busy in getting output it is no easy matter to change over to the "J" type, although this is constantly in our minds and has actually been accomplished on several sizes.

3. Automobile Industry. The motor car industry in Great Britain has had on the whole a successful season in 1925 and the prospects for 1926 are quite as rosy. The 11 H.P. car suitable for the small Man's pocket is now well established and preparations are now in hand to turn out large numbers Many new Names are now included in the list of Timken users, as you will have seen from the schedule sent you recently, and as we are now supplying thousands of bearings to front axle and brake specialists the Timken bearing is much more widely distributed. You may remember on last year's report that that at the Motor Show Timken bearings were on [illegible]% of the exhibits whereas this year it had increased to just a little over 60% As for the Commercial lorry side, this business is just beginning to come into its own after 5 very lean years. As a war legacy we were saddled with thousands of old American Timkens, Perlegs and Timken bearings, and these are pretty well all gone today, and the market is opened for the English maker. There is a general move here Timken-wards away from fleeting business which English manufacturer has clung to so tenaciously, and we are ready to cope with this in next year's programme.

There is also the Motor Cycle business which we entered some 12 months ago; it is now beginning to show excellent results in bearing

quantities, although naturally it is very thin in[illegible], such firms as Douglass, New Imperial, Matchless, Velocette, Brough, Ariel, B.S.A. are all on Timken and we expect to do it to at 4,000 weekly for such customers.

4. Continental Business. In the continent of Europe we have made rapid strides and are selling thousands of bearings to all the manufacturing countries such as Belgium, Germany and Italy. Such firms as Minerva of Belgium, Opel of Germany, and Fiat of Italy, are all using our bearings and the latest recruit is the famous Alpine Steyr of Austria, to mention a few of the most important. The Fiat of Italy is our pet achievement, having already had orders for 6,000 sets for the famous model 509, which you may have heard about in the States; the application for this job is pinion and differential. Some 800 sets are on order for another model, and we are just discussing lorry applications which will involve many thousands of bearings, and the stage is all set for us to pull this off.

At the same time business with Continental Europeis no easy matter as financial considerations enter into it which make it exceedingly difficult to achieve rapid progress. You have only to look at the exchange rates to see, that with fluctuating money and all countries trying to economise in purchasing abroad, what we mean. Our business with the Linke-Hoffmann-Lauchhammer A.G. organization has been a little disappointing, they being embroiled in some financial reorganisation Having spent a great deal of labour and money in getting this German business going, we are not likely for some time at least to see any return, but yourill see how wary one has to be.

Nevertheless since our last report we have succeeded to a certain extent in popularising the genuine Timken bearing on the Continent, and believe that in time our efforts will be rewarded As for the remainder of our territory, thebusiness we get is necessarily all replacement, and this is catered for by a large organisation of Service Dealers in every centre. The business here is slowly but surely growing with the increasing number of cars on the road.

5. Competition. The Skefko Co. who will remember entered the tapered bearing field, are still engaged in it but they have not made a great deal of headway during the last 12 months. Their range of sizes is extremely limited and there seems no desire on their part to increase it; in fact everything seems to point to their having awakened to the fact that to steal a large slice of our business is more difficult than it looks, and having secured all Ford orders this year we have more or less cut they say the foundation of their business int this line. They are still doing the Standard Company's front wheel bearings, although in this case we have secured a contract for their pivot bearings, and they have one or two motor cycle jobs that we know of, all exceptionally thi lines. We feel that the aggressive policy adopted by us is slowly and surely [illegible].

As to the Buck Company, they [illegible] manufacture of a few sizes in Glasglow but they trouble us very little. They follow our applications round very closely and try hard to keep us out on price, but from information gathered they are having somewhat lean time of it.

On the Continent the Skefko Norma organisation and Fitchel & Sachs, both of Germany, have come out with tapered bearings, but judging from the motor concerns now using our bearings they have not got very far. In Sweden the

Skefko Company there are making tapered bearings and are apparently only doing the Ford sizes; while our representative in Stockholm reports great activity on their part in this line, he is still able to sell large quantities of our Ford bearings, so that there is not much to fear.

6. France. We are frankly very disappointed with what the Societe Mecanique de Tennevilliers are doing for the Timken business in France. While in England and other Continental countries we are making great strides forward, there is little or no progress in France. Many reasons are put forward for this state of affairs but at the bottom of it all is the formidable ball bearing interests; we are making and selling more in a week in England than the S.K.F. sell in 6 months, and the position there is one of our most serious problems. Exactly what will have to be done we cannot say at the moment but we are giving much thought to it.

7. Industrial Business. The engineering trade in this country is in a very parlous condition and consequently we have not done a large business here, although in terms of bearings sold it is distinctly better than the previous year. A month or so back we secured large orders from a concern making Robin's Conveyors over here and expect to do larger business still what bearings ~~must~~ have been used in this class of work have given remarkably good results throughout, and it only needs a resuscitation in the engineering trade generall to bring us in plenty of work. Our business last year can be sub-divided as follows:-

British Motor Manufacturers	65%
British Home Service	1%
Industrial Business	4%
Motor Cycle Business	5%
Overseas Business	25%

We think this covers most of the ground but if there are any other points which interest you and will write us, we will be very pleased to report further.

Messrs Timken Porter Lathrop Buckwalter Foss Duntzig Riblet
July 27, 28, 29, 1936

REPORT BRITISH TIMKEN LIMITED
BIRMINGHAM-ENGLAND

British Timken was visited during the writer's visit to England on July 27, 28 and 29. Following is a list of their important personnel, together with their respective positions those marked with an asterisk are the ones interviewed during this visit.

Mr. W. Dallow*	Director Wolsley Motors
Mr. Ellis*	Industrial Department
Mr. L. Chew*	Production Metallurgist
Mr. Hill*	Service Department
Mr. Mobley*	Sales Department
Mr. Wood*	Auto Sales Engineering Department
Mr. Leader*	Production
Mr. Hill	Auto Representative
Mr. H. Boden	Industrial Representative
Mr. Glassey	Motor Cycle Representative
Mr. A. Jacob	Director British Timken

Mr. Jacob, who is the managing director in charge of British Timken, unfortunately was away on his vacation at the time of the writer's visit and the works is practically operated by Messrs. Wood, Mobley, Ellis and Hill. They seemed very pleased to have us visit them and obtained all the information that I was able to give them. It was unfortunate that the time was so limited as we were merely able to scratch the surface. They seemed exceedingly sorry that I could not stay for a month and visit all of their present customers and prospective customers but of course this was out of the question.

The writer took over and delivered to them all of our latest data in connection with the new standards of bearings, automotive application, variety of industrial applications, steel mill, and also the present outside of the railroad end of our business. This made a very complete volume which was left with them to digest at their convenience.

In regard to bearing manufacture they are only making the Ford Bearings in the F type at present but they have now decided to make all new bearings in the J type and at any time that they replace any of their bearing equipment they will change over from the F to the J type. I was very much surprised to find that they were not completely sold on the J type bearing and a discussion which lasted several hours was entered into by all of the department heads. This discussion naturally became of a very technical nature. It seems that they have obtained samples of the J type bearing and furnished them to their customers. One particular steep angle bearing furnished to one of the highest class German companies failed on account of the wear on the large end of the roll. The writer pointed out that the cause of this failure was due to the steep angle on the rib and too much undercut, but the technical discussion which ensued opened up this subject very thoroughly and the writer's belief is that they were finally convinced that the J type bearing is a considerable improvement over the F type.

Mr. Wood was anxious to learn how we figured our capacities and pointed out that while we claimed so much for the J type bearing we still retained our old capacity ratings. It was explained that our ratings were very conservative but that we were now recommending bearings for automotive and industrial applications which were even [illegible] than these, however, with the old F type bearing we were absolutely opposed to recommending any bearing over 100 % of its capacity.

The use of moly steel also came in for considerable discussion and the writer was surprised to learn that they are still using chrome steel and not moly. The advantages of the moly steel were fully discussed and pointed out to them, but their principal difficulty seems to be in obtaining moly steel from Vickers. The writer had also thought that we could furnish them with moly steel cheaper than they could purchase it in England in spite of the freight charges, and this idea was very favorably considered by them at present. However, it was learned on returning through Mr. Lathrop, that Mr. Jacobs insists on obtaining steel through Vickers.

They are exceedingly interested in direct oil-hardening steel and are actually making rolls for production of this material and they have also made a few cups and cones and are seriously considering direct oil-hardening steel for their future production. This material is known as open-hearth steel; that is, oil hardened carom steel, Firth's Brand, CHX composition.

Carbon	1.0%
Manganese	.3%
Phosphorus	.015%
Sulphur	.025%
Chromium	1.50%
Silicon	.25%

Their Metallurgist, Mr. Chew, would like to receive our expert opinion on this material, especially as the writer talked so strongly in favor of the case-hardened moly steel.

They are not yet using the multi-perforated cups due principally to the cost of dies in which they are exceedingly limited in obtaining any new equipment. Mr. Lander, who has charge of Production, toured the writer through the plant but I was not very much impressed on account of the antique equipment which they necessarily have to use for the production of bearings. The only two machines of particular interest were the centerless Cincinnati grinder for grinding the outside diameter of cups which is done at the first operation. Also, an old-fashioned centerless grinder which apparently chamfers the flat on each end instead of using a center, the rolls being centered by means of the slight radius on either end. One of the principal production units going through the Works at present was the universal joint they had developed which will be mentioned later in this report.

The British-Timken feel that they are making bearings to far closer tolerances and accuracy than we are in the States and they were very glad to hear of our closer limit bearings that we are now introducing, not only for the automobile industry but for the machine tool builders.

Mr. Lander is anxious to obtain full particulars of the type of machine we are using for grinding the undercut of the P type bearing and our Production Department should see that this is mailed to him.

Our latest practice on bearing recommendations was fully discussed with their Engineer Mr. Wood, who was very interested in our recommendations, especially for front wheels where we are going over 100% of the bearing capacity. Several of his later recommendations were analyzed and our findings on the axle testing machine with reference to steep angle bearings were thoroughly discussed with him. He seemed to be very much surprised to hear of this as he was inclined to favor the steep angle bearings for pinion applications.

The writer feels that a system should be worked out whereby Mr. Wood can be kept up to date on our latest recommendations, possibly by means of sending him typical layouts of all automotive applications as they are adopted for production. In this way he will be kept right up to date rather than having to find out from experience information which we will be able to give him first hand. They are particularly interested in rear axle bevel drive applications at present and we should give them all assistance possible in their production.

Wood was exceedingly interested in the T type bearing, especially for steering knuckle applications and all of the latest developments in the automotive field were fully discussed with him. Due to the limited time it was necessary to discuss these matters in the evening and then it was only possible to merely touch the high spots.

Hypoid gearing was rather new to them and we not made any progress in England to date.

The British Timken Company have developed a line of Timken-equipped universal joints and already have several accounts such as the Thornycroft Truck and the Alvis car using this joint as standard equipment. This joint consists of a spider which British Timken are making carrying four roll assemblies, operating on the integral cone ends of the spider. The thread-adjusted cup fits into the yoke and is locked by a bolt and a clamp to lock the thread. The whole joint in the case of the Alvis car is completely enclosed in an oil-tight case but the Thornycroft is an open construction, each bearing being separately enclosed and lubricated. Assembly drawings of the three sizes of joints which were now in production were brought back for our investigation and study. Photostat of the typical application is attached hereto.

While this joint would be very expensive for American adoption it seems to be very favorably received in England and from all reports gives a very good account of itself, especially due to its adjustable features.

Mr. Wood was exceedingly interested in the transmission bearing application studies we have made and copy of the transmission bearing abstract was left with him for further thought.

Mr Wood was rather inclined to be ultra-conservative in his bearing recommendations and did not like to load a bearing more than 100% under any conditions no matter how favorable. This 100% included both the radial and thrust loads added together so that he always figured the absolute thrust load on a bearing which he added to the radial load to obtain the recommended bearing. It would therefore be advisable to send him some typical up-to-date work sheets showing both sides of the sheet, together with the application studies of all of the up-to-date automotive layouts.

He was surprised and a little skeptical about the Salmkin type of construction with the adjustable cups for pinion application but we assured him that by the use of molybdenum steel this was a very satisfactory construction.

The British-Timken Company have a very large motorcycle equipment business and the Ford size bearing is practically universal for these. Timken Bearings are also quite practical in the steering heads of motor-cycles and the P type bearing was of particular interest for this application.

Considerable time and discussion were had with their Mr. Hill, who is Service Manager, on various difficulties he has experienced in service but it is the writer's opinion that Mr. Hill is inclined to give the user too much credit for perfect workmanship as in several instances of failures that were discussed with him it seemed to be out of the question that the user could possibly make even the very slightest of errors in machining or fitting practice.

They have experienced trouble from time to time with washers on the V type bearing and it was pointed out that this would be eliminated by the adoption of the P type although Mr. Hill himself was very much opposed to the P type bearing on account of the possibility of wear on the large end of the roll. The writer feels that after discussion with Mr. Hill that he was more favorably inclined toward the P type bearing.

Mr. Hobley, in charge of Automotive Sales, seems to be of a more progressive type than the average Englishman and there is no doubt but what the sales problems are entirely different from conditions here in the United States. In the first place they have a tremendous handicap in price, the average Timken Bearing price being 10% higher than the ball bearing. Ball bearings have been favored by the British engineers and have been universally used so that the 10% price handicap to start off with is quite serious. The writer had drawn up a list of all automobile, commercial vehicle and motor-cycle accounts in Europe and went completely through these accounts with them to find out what the production was, where Timken Bearings were used, and, if not used, their reasons for this state of affairs. Some of the outstanding features of these accounts are as follows:

MORRIS-OXFORD
MORRIS-CROWLY - are the largest production cars in England and do not contain

British-Timken -6-

a large Timken business. The reason for this is that they are associated with Metropolitan Vickers Electrical Manufacturers just the same as the Vickers, Viters and Fro Departments [illegible].

AUSTIN, who is another big producer making about 1½ cars per week, did not use any Timken Bearings due to the fact that they are Metro-Vickers, one of the Austin directors being opposed to the Vickers Company.

ROLLS ROYCE do not use any Timken Bearings on account of their engineering practices. By the way, Rolls-Royce was visited and is covered in a separate report.

Last year the best British-Timken customer was the Fiat Company in Italy and they have now lost their entire business on account of the Fiat Company manufacturing their own bearings. This bearing is an exact duplicate of the V type British-Timken bearing. In spite of the loss of the Fiat business British-Timken are enjoying even more business than they had last year and feel that they are making considerable progress in the taper roller bearing business. Their production will run well over half a million bearings. This is considered remarkable in view of the present coal strike which is still on and is hampering a large number of engineering companies.

The industrial business is running about 5% of their total volume and is rather quiet at present. Mr. Ellis has complete charge of the industrial department in addition to being their tool designer and shop equipment man. He was quite interested in the miscellaneous studies we showed him and was full of questions on various types of applications.

On questioning Mr. Hobley as to their biggest sales resistance he was of the opinion that the engineering fraternities in Europe favored the ball bearing, and it was the writer's opinion that this could be overcome far better with the F type than the V type and I went on to quote them examples, such as the Oberland situation, as to what the F type bearing had done for ourselves. They are very anxious to get several copies of our new Engineering Journal and this matter should be taken care of by our Advertising Department. This will be especially useful for their Industrial Department and our future program on the Engineering Journal was explained to them fully.

The writer also gave them information regarding our new centerless grinder machines but they lack interest in this as the management are opposed to obtaining any new equipment on account of lack of funds. The same remarks apply to the Heald Simmatics we are now using for internal grinding.

The writer had considerable conversation with Mr. Ellis regarding the bearings which were slightly off spec and they were at a loss to understand how a discrepancy of this kind could possibly come about and it was learned that they have taken steps to correct all bearings and make them theoretically correct. Mr. Ellis was quite interested in our railroad developments and was glad to get the various studies which we delivered to them.

At the time of the visit the writer was unaware of the Bock purchase, and was very agreeably surprised to hear of this on returning to the States. Bock competition was discussed with the British Timken and they advised that they were glad of this competition as it assisted them materially in selling Timken Bearings. In spite of the British and Continental production, the European, and especially the Britisher, will not put all his eggs in one basket and must have at least two sources of supply. This is attributed to the fact that the labor situation is so doubtful and strikes, especially in the Engineering industry, are very common. They therefore consider the Bock Company as making just sufficient bearings to be termed another source of supply and the writer doubts if they will feel particularly glad regarding the Bock purchase from their own business standpoint.

The one outstanding feature of the writer's visit to England is the attitude of the British public toward the United States. The feeling when the writer left England 15 years ago was very friendly and brotherly but the British public are now feeling very bitter toward the United States on account of the war loan. They feel that it would be better for every one

British Finbas -2-

concerned if the United States debt were cancelled and they do not hesitate to enter into a discussion on this subject as it seems to be the one spirit of co-operation among Britishers. The general British attitude is fairly well completely covered in the letter of Premier Blommenvoss to President Coolidge a few days ago.

F WOOLEY

[fol. 5733] Copy

DEFENDANT'S EXHIBIT No. 237

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

In Equity No. 5761

DETACHABLE BIT COMPANY, Plaintiff,

vs.

TIMKEN ROLLER BEARING COMPANY, Defendant

Bill of Complaint

The plaintiff, Detachable Bit Company, for its bill of complaint alleges:

1. That the plaintiff, Detachable Bit Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware and having a place of business at 50 East 42nd Street, New York, New York.

2. That defendant, Timken Roller Bearing Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio and has a regular and established place of business at Canton, Ohio, within the Northern District of Ohio, Eastern Division.

3. That this is a suit in equity for infringement of Letters Patent of the United States; for an accounting to plaintiff for damages suffered by plaintiff and its predecessors in interest and for the profits realized by defendant, by reason of defendant's repeated violations of its express and implied obligations to plaintiff and its predecessors in interest; for an injunction restraining defendant from contin- [fol. 5734] uing and repeating the acts herein complained of, and for further equitable relief as more fully appears in the appended prayer for relief; that plaintiff is without adequate legal remedy for the wrongs herein complained of; that the matter in dispute herein, exclusive of interest and costs, exceeds the sum or value of $3,000.

4. That on and prior to December 23rd, 1936, The Detachable Bit Corporation of America was a corporation organized and existing under the laws of the State of Dela-

ware having a place of business at Bridgeville, Pennsylvania.

5. That on or about December 23rd, 1936, the plaintiff purchased from said corporation all of its property and assets, and by proper instruments in writing plaintiff became and now is the successor in interest to the said Detachable Bit Corporation of America as to all rights of action at law and in equity of which said Detachable Bit Corporation of America was then possessed. Profert of said instruments in writing is hereby made.

6. That heretofore and prior to the 18th day of April, 1922, one Fred W. Thurston, then a resident of San Francisco, California, was the original, first and sole inventor of certain new and useful improvements in mining and rock drills having detachable bits, for which he was entitled to Letters Patent of the United States; that on said [fol. 5735] 18th day of April, 1922, said Fred W. Thurston made application in due form of law to the Commissioner of Patents for such Letters Patent; that thereupon such proceedings were had that on the 18th day of December, 1923, Letters Patent No. 1,477,855 were granted to the said Fred W. Thurston in conformity with the requirements of the statutes in such cases made and provided; that thereafter, to wit, on the 5th day of May, 1925, in conformity with and pursuant to the statutes of the United States, said Letters Patent No. 1,477,855 were reissued to said Fred W. Thurston as Reissue No. 16,061 for the balance of the term of said original patent. Profert of said Reissue Letters Patent or a duly authenticated copy thereof is hereby made.

7. That heretofore and prior to the 23rd day of April, 1925, one Fred W. Thurston, then a resident of New York City, New York, was the original, first and sole inventor of certain new and useful improvements in mining and rock drills having detachable bits, for which he was entitled to Letters Patent of the United States; that on said 23rd day of April, 1925, said Fred W. Thurston made application in due form of law to the Commissioner of Patents for such Letters Patent; that thereupon such proceedings were had that on the 13th day of September, 1927, Letters Patent No. 1,642,183 were granted to the said Fred W. Thurston in conformity with the requirements of the statutes in such cases made and provided; that thereafter, to wit, on the

7th day of January, 1930, in conformity with and pursuant to the statutes of the United States, said Letters Patent No. 1,642,183 were reissued to said Fred W. Thurston as Reissue No. 17,557 for the balance of the term of said [fol. 5736] original Letters Patent. Profert of said Reissue Letters Patent or a duly authenticated copy thereof is hereby made.

8. That in the making of such patented improvements and in the commercial development of the same the said Fred W. Thurston devoted much time and effort and spent large sums of money, with the result that the problem of utilizing removable or renewable cutters or bits in the drilling of rock, ore, and the like, was successfully solved, and the cost of such drilling, theretofore universally accomplished by means of one-piece integral drill rods which require frequent re-sharpening, was materially reduced.

9. That on or about the 29th of September, 1926, The Detachable Bit Corporation of America was organized under the laws of the State of Delaware for the purpose of acquiring the business of said Fred W. Thurston in such detachable bit drills, and to generally continue and carry on the development and exploitation of detachable bit drills originated by the said Fred W. Thurston; that pursuant to the above an exclusive license to manufacture, use and sell detachable bit drills embodying the inventions described and claimed in the above designated Letters Patent and Reissue Letters Patent, was on or about October 7, 1926 granted by the said Fred W. Thurston to the said Detachable Bit Corporation of America, and thereafter and until the assignment to plaintiff on December 23, 1936 of its entire business and assets as above alleged, The Detachable Bit Corporation of America carried on the business in de- [fol. 5737] tachable bit drills originated by the said Fred W. Thurston, and spent large sums of money in the development and exploitation of said detachable bit drills, as hereinafter set forth.

That thereafter, to wit, on May 22, 1929, said Fred W. Thurston transferred and assigned to The Detachable Bit Corporation of America by proper instrument in writing duly recorded in the United States Patent Office, Liber L139, Page 49, the entire right, title and interest in and to said Letters Patent and said Reissue Letters Patent, subject to certain reversionary and residuary interests of the

said Fred W. Thurston; thereafter, to wit, on June 14, 1935, by proper instruments in writing duly recorded in the United States Patent Office, Liber V163, Page 68, the said Fred W. Thurston assigned and transferred to The Detachable Bit Corporation of America the reversionary and residuary rights in said Letters Patent. Profert of said instruments in writing is hereby made.

10. That on or about the 23rd day of December, 1936, by proper instrument in writing, The Detachable Bit Corporation of America assigned to plaintiff the entire right, title and interest in and to said Reissue Letters Patent Nos. 16,061 and 17,557, together with all rights of recovery for past infringement thereof, and plaintiff now is the sole owner of said Reissue Letters Patent and all rights thereunder. Profert of said instrument in writing is hereby made.

11. That prior to the 9th day of July, 1929, said Detachable Bit Corporation of America had expended and was expending large sums of money in improving and perfecting detachable drills embodying the principles disclosed in [fol. 5738] the above mentioned patents, and in devising, inventing and perfecting processes for the manufacture of the same; that as a consequence of such expenditures, improved detachable bit drills and improved processes and methods for the manufacture of the same had been developed by said corporation, its officers and employees, and said corporation had accumulated valuable engineering and sales data pertaining to said drills and detachable bits, and such processes and methods, engineering and sales data were maintained in secrecy by plaintiff and comprised trade secrets of said corporation, that such trade secrets were of great value to said corporation, and that said corporation had built up a large and profitable business in the manufacture and sale of said improved detachable bit drills, such business being due to substantial measure to the improvements and trade secrets developed, invented and devised by said corporation, its officers and employees as aforesaid.

12. That on and prior to July 9, 1929, defendant was engaged in the business of manufacturing and selling bearings and other products made of steel, and in the manufacture of steel for use in the fabrication of such products, and defendant was not at that time and had not been engaged in the manufacture or sale of detachable bit drills.

13. That prior to July 9, 1929, defendant represented to the aforesaid Detachable Bit Corporation of America that defendant was a large producer of steels of the types required by said corporation for fabricating drills and detachable bits; that defendant, by reason of its experience and activity in its own business, was peculiarly equipped [fol. 5739] and competent to advise and assist said Detachable Bit Corporation of America with respect to manufacturing, metallurgical, merchandising, administrative and other problems incident to the enlargement of the manufacturing, distributing and selling business of said corporation; and defendant proposed that said Detachable Bit Corporation of America and defendant might profitably engage in a joint venture in which the knowledge and experience of said Detachable Bit Corporation of America concerning the manufacture of detachable bit drills as aforesaid and the metallurgical and merchandising knowledge and experience of defendant would be combined and that by such combined efforts the business of said Detachable Bit Corporation of America could be expanded to nation-wide proportions to the great benefit of Detachable Bit Corporation of America.

And defendant further proposed that the joint venture should be carried out in the following manner, to wit:

Defendant would advance to Detachable Bit Corporation of America a sum of money to be expended in experimental and devolpment work, including experimentation with various different steels to be obtained from defendant, and market research, that Detachable Bit Corporation of America would disclose to defendant all particulars of its manufacturing operations and give defendant all information that it had acquired during its years of development and exploitation of its said drills and detachable bits, and would cooperate with defendant in developing at the expense of Detachable Bit Corporation of America new kinds of steel for its drills and bits, and new and improved processes of manufacturing said drills [fol. 5740] and bits, and that plaintiff would conduct at its own expense market investigations in different parts of the country to which plaintiff had not then extended its business and that if the results of such investigation and development work satisfied defendant that the business of the Detachable Bit Corporation of America in drills

and bits could, with additional capital, be expanded into a large nation-wide business on a quantity production basis and furnish an outlet for a large quantity of defendant's steel, defendant would continue the joint venture by purchasing plaintiff's stock in sufficient amount to provide the necessary additional working capital for such expansion.

14. That on or about July 9, 1929, as a consequence of negotiations and of the aforesaid representations made by defendant, said Detachable Bit Corporation of America and defendant entered into said joint venture, and, pursuant thereto, defendant undertook to purchase for Ninety-Three Thousand Dollars ($93,000.) certain seven per cent one year convertible notes or debentures of said Detachable Bit Corporation of America in the principal amount of One Hundred Thousand Dollars ($100,000.), secured by the property and assets of said Detachable Bit Corporation of America, and said Detachable Bit Corporation of America undertook to purchase from defendant at current prices its entire requirements of steel, and undertook to give to defendant full information concerning its detachable bit rock drill business and granted to defendant an option for one year to enter into a further agreement to continue the said joint venture for a period of years, said agreement obligating said Detachable Bit Corporation of America to pay a stated part of its net profits to defendant and [fol. 5741] providing for the purchase by defendant of certain shares of stock of said Detachable Bit Corporation of America, all as by said option agreement will more fully and at large appear.

15. That thereafter and during the period between about July 9, 1929 and about March 1, 1930, defendant purchased notes of said Detachable Bit Corporation of America in the principal amount of One Hundred Thousand Dollars ($100,000.) for the sum aforesaid, and said Detachable Bit Corporation of America purchased steel from defendant for the manufacture of detachable bit drills, tried out new markets for the sale of detachable bit drills, and furnished to defendant full and detailed reports covering its experimental, manufacturing and sales business, fully disclosed to defendant, through defendant's employees and representatives, all of the trade secrets and improvements in detachable bit drills and processes for making the same

that had been theretofore developed by said Detachable Bit Corporation of America, its officers, agents and employees, and generally performed all of the duties and obligations on its part to be performed pursuant to said joint venture, all at the instigation and with the approval and cooperation of defendant, and that during such period, said Detachable Bit Corporation of America expended large sums of money, totaling more than One Hundred Thousand Dollars ($100,000.) in experimental work with steel purchased from defendant and in trying out new markets for detachable bit drills as aforesaid.

16. That the disclosures to defendant of experimental, manufacturing and sales information by said Detachable Bit Corporation of America as aforesaid were made in confidence and for the sole and exclusive purpose of assisting [fol. 5742] defendant in determining the advisability of exercising its option to purchase a portion of the capital stock of said Detachable Bit Corporation of America and continue said joint venture, and by accepting such disclosures from said Detachable Bit Corporation of America and participating in such joint venture as aforesaid, defendant obligated itself not to use such disclosures for its separate benefit and not to compete with said Detachable Bit Corporation of America in the manufacture and sale of detachable bit drills; and defendant further agreed with Detachable Bit Corporation of America that in the event defendant did not purchase the stock of Detachable Bit Corporation of America to carry on the said joint venture, that all benefits of said research and development work and market investigations in the field of detachable bits would inure to the sole benefit of Detachable Bit Corporation of America and that defendant would not manufacture and sell detachable bit drills or detachable bits for such drills in competition with said Detachable Bit Corporation of America, its successors and assigns, during the life of the above mentioned Letters Patent or any of them.

17. That thereafter, and on or about March 1, 1930, and prior to the due date of the aforesaid notes, defendant, without good or sufficient cause, demanded that Detachable Bit Corporation of America repurchase from defendant forthwith said notes in the principal amount of One Hundred Thousand Dollars ($100,000.), and defendant threat-

ened to force said Detachable Bit Corporation of America into receivership in the event said notes were not so repurchased, and because of such demand and threat, the president and principal stockholder of said Detachable Bit Corporation of America purchased said notes from defendant prior to the date of maturity of said notes.

[fol. 5743] 18. That defendant did not exercise its option to purchase capital stock of the Detachable Bit Corporation of America, and, relying upon defendant's obligation and agreement to respect its patent rights and not to compete with it in the manufacture and sale of drills and detachable bits, the Detachable Bit Corporation of America continued its own efforts to develop the market for drills and detachable bits, and notwithstanding its limited capital and the industrial depression which occurred during the years 1930-1932, the Detachable Bit Corporation of America succeeded in progressively increasing its sales in the business of detachable bits, and but for the acts of defendant herein complained of, said business would have continued as a profitable and growing business.

19. That thereafter, to wit, during the six years immediately preceding the filing of this complaint, in violation of its obligations and agreement aforesaid, and with deliberate intent to deprive The Detachable Bit Corporation of America of its business and of the profits and advantages accruing to Detachable Bit Corporation of America therefrom, and in infringement of the above designated reissue patents, defendant, in direct competition with said Detachable Bit Corporation of America, manufactured and sold, and is now manufacturing and selling drills and detachable bits of the type manufactured by said Detachable Bit Corporation of America, such bits being designed to fit the drill rods manufactured and sold by the Detachable Bit Corporation of America, and defendant has employed in such business the confidential information obtained from said Detachable Bit Corporation of America in the course of said joint venture as aforesaid, and defendant particu-

[fol. 5744] larly sought out and approached the customers of the Detachable Bit Corporation of America and sold detachable bit drills to such customers and others at prices below the prices of said Detachable Bit Corporation of America for like drills, and that as a direct consequence

and result of said wrongful acts of defendant, the business of said Detachable Bit Corporation of America decreased, and said Detachable Bit Corporation of America was forced to discontinue its business and to dispose of its assets to plaintiff as hereinabove set forth; that defendant continued and still continues such wrongful acts and that by reason thereof plaintiff and its predecessor, said Detachable Bit Corporation of America, have suffered damage in the amount of Three Million Dollars ($3,000,000.) and have suffered other great and irreparable injury, which damage and injury will continue unless defendant is enjoined by this Court.

20. That defendant induced and caused its employees, Tracy V. Buckwalter and John B. Baker who, as such, had ready access to all of plaintiff's confidential records and information, to make application for United States Letters Patent for improvements in detachable bit drills, and defendant obtained Letters Patent No. 1,876,565, dated September 13, 1932, No. 1,953,095, dated April 3, 1934, and Nos. 2,052,011 and 2,052,019 dated August 25, 1936, on said improvements disclosed in said applications, as assignee of its said employees, that the inventions and improvements disclosed and claimed in said Letters Patent embody, are based on and developed from the information obtained by defendant from said Detachable Bit Corpora-
[fol. 5745] tion of America in confidence and through confidential relations as aforesaid, and that plaintiff is entitled to the benefits of the protection afforded by said Letters Patents.

21. That detachable bit drills have been manufactured and sold continuously by the defendant since about September 1, 1932, and are now being so manufactured and sold, and such detachable bit drills constitute infringements of the above designated Reissue Letters Patent Nos. 16,061 and 17,557, and of the above designated patents Nos. 1,876,565, 1,953,095, 2,052,011 and 2,052,019 issued to defendant as assignee of John B. Baker, which said patents should have been, pursuant to the obligations and agreements of defendant, assigned to Detachable Bit Corporation of America.

22. That the manufacture and sale of such detachable bit drills in infringement of plaintiff's patent rights has resulted in great damage to plaintiff and its predecessor in

business, Detachable Bit Corporation of America, and has resulted in substantial profits to defendant.

23. That plaintiff and its predecessor in business and all parties manufacturing and selling detachable rock bits under said Reissue Letters Patent Nos. 16,061 and 17,557, have given notice to the public of such patent rights by marking the same, or the containers in which they were sold, in full compliance with the requirements of the statutes in such cases made and provided.

24. Plaintiff's predecessor in business, Detachable Bit Corporation of America, gave due notice in writing to defendant of its infringement of said Reissue Letters Patent Nos. 16,061 and 17,557 on or about the 12th day of April, 1933, but defendant refused to desist from such infringe-[fol. 5746] ment and is now continuing the same and threatens to continue such infringement unless restrained by injunction of this Court.

Wherefore, plaintiff prays:

I. For an injunction.

1. Restraining the defendant herein, its officers agents and employees, from manufacturing and selling detachable bit drills embodying the inventions described and claimed in the above designated Letters Patent, to wit, Reissue Nos. 16,061 and 17,557, and Nos. 1,876,595, 1,953,095, 2,052,011 and 2,052,019 or any of them.

2. Restraining the defendant herein, its officers, agents and employees, for the full term of the above designated Letters Patent and Reissue Letters Patent, from manufacturing and selling for its own benefit and profit detachable bit drills of the type or character now being manufactured by defendant or of any character or of any type of construction to compete with the detachable bit drills manufactured by plaintiff's predecessor in business, Detachable Bit Corporation of America.

3. Commanding defendant to assign to the plaintiff the entire right, title and interest in and to the above designated Letters Patent Nos. 1,873,565, 1,953,095, 2,052,011 and 2,052,-019 together with all rights of recovery for past infringement thereof.

II. For a temporary injunction pending the outcome of this suit of like tenor and effect.

III. For a decree that defendant pay to plaintiff all profits realized from the manufacture and sale of detach-[fol. 5747] able bit drills during the six years immediately preceding the filing of this suit and from the manufacture and sale of detachable bit drills subsequent to the filing of such action.

IV. For a decree that defendant pay to plaintiff all damages suffered by plaintiff and its predecessor in business The Detachable Bit Corporation of America by reason of the acts of defendant herein complained of, including the competition with plaintiff and its said predecessor in business in the manufacture and sale of detachable bit drills.

V. For a decree that the defendant pay to plaintiff all profits realized by defendant from the manufacture and sale of detachable bit drills in infringement of the above designated Letters Patent, to wit, Reissue Letters Patent Nos. 16,061 and 17,557, and Letters Patent Nos. 1,876,565, 1,953,095 and 2,052,011 and 2,052,019 as well as an amount equal to three times the damages suffered by plaintiff and its predecessor in business, The Detachable Bit Corporation of America, because of such infringement.

VI. For an accounting to determine the amounts of damages and profits awarded to plaintiff.

VII. For costs and such further relief as to this Court may be deemed just and proper.

Detachable Bit Company; By (Signed) Chas. A. Corcoran, President.

Attest: (Signed) G. Strunck, Secretary; Hull, Brock & West, Solicitors for Plaintiff; (Signed) W. B. Morton, Of Counsel.

[fol. 5748] State of New York,
County of New York, ss:

Charles A. Corcoran, being duly sworn, deposes and says that he is the President of Detachable Bit Company, the plaintiff in the foregoing bill of complaint; that he had read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the mat-

ters therein stated to be on information and belief, and that as to those matters he believes them to be true.

Chas. A. Corcoran (signed.)

Subscribed and sworn to before me this 9th day of August, 1938. Ada I. Asheld (signed), Notary Public. Ada I. Asheld, Notary Public, Queens County. Queens Co. Clerk's No. 2409. Queens Co. Register's No. 6292. Cert. filed in New York Co. New York Co. Clerk's No. 195. New York Co. Reg. No. 9A146. Commission expires March 30, 1939. (Seal.)

[fol. 5749] UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

In Equity No. 5761

DETACHABLE BIT COMPANY, Plaintiff

versus

TIMKEN ROLLER BEARING COMPANY, Defendant

Amended Answer

Now comes defendant, The Timken Roller Bearing Company, impleaded in this cause as "Timken Roller Bearing Company," and for its amended answer to plaintiff's pleadings denominated "bill of complaint" and "bill of particulars" says:

First Defense

1. Defendant admits the allegations in the first paragraph in plaintiff's bill of complaint.

2. Defendant admits the allegations in the second paragraph in plaintiff's bill of complaint.

3. For its answer to the allegations in the third paragraph in plaintiff's bill of complaint defendant admits that this suit, in form, is an action in equity for alleged infringement of letters patent of the United States, for an accounting to the plaintiff for alleged damages arising from said alleged infringement and for alleged violations of certain express and implied obligations which plaintiff claims to hold against defendant. Defendant denies, however, the

[fol. 5750] existence of any of such claims and rights in favor of plaintiff and that plaintiff is entit' d to any legal or equitable relief whatsoever and to any sum in damages.

4. Answering the allegations in the fourth paragraph in plaintiff's bill of complaint defendant says it is without knowledge or information sufficient to form a belief as to the truth of said allegations.

5. Answering the allegations in the fifth paragraph in plaintiff's bill of complaint defendant admits that under date of December 23, 1936, a certain instrument of assignment was executed purporting to transfer to plaintiff certain alleged patents and reissue patents but defendant denies that such transfer contained the terms and had the legal effect asserted in said paragraph in plaintiff's bill of complaint.

6. Answering the allegations in the sixth paragraph in plaintiff's bill of complaint defendant admits that one Fred W. Thurston made application for letters patent to the commissioner of patents on or about April 18, 1922, and that letters patent No. 1,477,855 were issued to said Fred W. Thurston on or about December 18, 1923. Defendant further admits that said Fred W. Thurston applied for a reissue of said letters patent and that a reissue thereof, bearing No. 16,061, was granted to said Fred W. Thurston on or about May 15, 1925. Each and every other allegation in said paragraph defendant denies and defendant denies that said letters patent No. 1,477,855 and said reissue letters patent No. 16,061 were or are valid.

7. Answering the allegations in the seventh paragraph in plaintiff's bill of complaint defendant admits that said Fred W. Thurston on or about April 23, 1925, applied for letters patent to the commissioner of patents and that pursuant to said application, on or about September 13, 1927, certain letters patent bearing No. 1,642,183 were granted to said Fred W. Thurston; that subsequently said Fred W. [fol. 5751] Thurston applied for a reissue of said letters patent No. 1,642,183 and on or about January 7, 1930, a reissue of said letters patent, bearing No. 17,557, was granted to said Fred W. Thurston. Each and every other allegation in said paragraph in plaintiff's bill of complaint defendant denies and defendant denies that said letters patent No. 1,642,183 or the reissue thereof, No. 17,557, were or are valid.

8. Answering the allegations in the eighth paragraph in plaintiff's bill of complaint, defendant denies each and every allegation therein.

9. Answering the allegations in the ninth paragraph in plaintiff's bill of complaint defendant admits that a certain corporation, named The Detachable Bit Corporation of America, was organized under the laws of the State of Delaware on or about September 29, 1926. Defendant further admits that on or about May 22, 1929, said Fred W. Thurston, purported to transfer and assign to said The Detachable Bit Corporation of America said letters patent and reissue letters patent subject to certain reversionary and residuary interests of said Fred W. Thurston, which said instrument was recorded as alleged; that subsequently, to-wit, on June 14, 1935, said Fred W. Thurston purported to assign certain rights in said letters patent and reissue letters patent to said The Detachable Bit Corporation of America, which said instrument was recorded as alleged. Defendant denies that said assignment had the legal effect claimed in said ninth paragraph in plaintiff's bill of complaint and denies each and every other allegation in said ninth paragraph in plaintiff's bill of complaint.

10. Answering the allegations in the tenth paragraph in plaintiff's bill of complaint defendant admits that on or about December 23, 1936, said The Detachable Bit Corporation of America purported to assign to plaintiff certain [fol. 5752] alleged rights and interests in and to said reissue letters patent, numbers 16,061 and 17,557, but defendant denies that said purported assignment had the legal effect asserted in the tenth paragraph in plaintiff's bill of complaint and each and every other allegation in the tenth paragraph in plaintiff's bill of complaint defendant denies.

11. Answering the allegations in the eleventh paragraph in plaintiff's bill of complaint defendant denies each and every allegation therein.

12. Defendant admits the allegations in the twelfth paragraph in plaintiff's bill of complaint.

13. Answering the allegations in the thirteenth paragraph in plaintiff's bill of complaint defendant says that prior to the execution of a certain written contract bearing date of July 9, 1929, between defendant and The Detachable Bit Corporation of America, there were certain negotiations between the representatives of defendant and said The

Detachable Bit Corporation of America, all of which negotiations defendant avers were merged into a written contract between said parties bearing said date. Further answering the allegations in the thirteenth paragraph in plaintiff's bill of complaint defendant denies each and every allegation therein.

14. Answering the allegations in the fourteenth paragraph in plaintiff's bill of complaint defendant admits it purchased debentures of The Detachable Bit Corporation of America in the face amount of $100,00 for the sum of $93,000 but avers that said purchase was pursuant to a written contract bearing date of July 9, 1929. Defendant further admits that in said written contract The Detachable Bit Corporation of America undertook to purchase from defendant its requirements of steel. Each and every other allegation in said fourteenth paragraph in plaintiff's bill of complaint defendant denies and defendant denies that [fol. 5753] there was any joint venture between defendant and said The Detachable Bit Corporation of America arising out of said written contract dated July 9, 1929, or otherwise.

15. Answering the allegations in the fifteenth paragraph in plaintiff's bill of complaint defendant admits that it purchased certain notes of The Detachable Bit Corporation of America in the face amount of $100,000 but avers that said purchase was pursuant to said written contract dated July 9, 1929, and that from time to time said The Detachable Bit Corporation of America purchased steel from defendant between the dates of July 9, 1929, and March 1, 1930. Each and every other allegation in said fifteenth paragraph in plaintiff's bill of complaint defendant denies.

16. Answering the allegations in the sixteenth paragraph in plaintiff's bill of complaint defendant denies each and every allegation therein.

17. Answering the allegations in the seventeenth paragraph in plaintiff's bill of complaint defendant admits that shortly prior to March 1, 1930, it requested payment of the notes purchased by defendant of The Detachable Bit Corporation of America. Each and every other allegation in said seventeenth paragraph in plaintiff's bill of complaint defendant denies. Further answering the allegations in said seventeenth paragraph in plaintiff's bill

of complaint defendant avers that various extensions of time for the repurchase of said notes by The Detachable Bit Corporation of America from defendant were agreed upon by and between defendant and said The Detachable Bit Corporation of America and that said notes were repurchased by said The Detachable Bit Corporation of America from defendant on or about May 27, 1930.

18. Answering the allegations in the eighteenth paragraph in plaintiff's bill of complaint, defendant admits that it did not exercise its option to purchase capital stock [fol. 5754] of said The Detachable Bit Corporation of America. Each and every other allegation in said eighteenth paragraph in plaintiff's bill of complaint defendant denies.

19. Answering the allegations in the nineteenth paragraph in plaintiff's bill of complaint defendant denies each and every allegation therein.

20. Answering the allegations in the twentieth paragraph in plaintiff's bill of complaint defendant admits that letters patent of the United States No. 1,876,565 were granted to it September 13, 1932, on the application and assignment of Tracy V. Buckwalter and that letters patent No. 1,953,095 dated April 3, 1934, and No. 2,052,011 and No. 2,052,019 both dated August 25, 1936, were granted to it upon applications and assignments of John B. Baker and defendant states that all of said patents are now owned by defendant and the equitable and legal titles thereto remain in defendant. Defendant denies that said Thurston or plaintiff or plaintiff's predecessor ever contributed anything whatsoever to initiating, conceiving, developing, improving, completing or perfecting any of the inventions set forth in said Buckwalter and Baker patents or to the expenses thereof, and defendant states that the applications for said patents were filed and prosecuted and assigned to defendant in good faith and at its expense and are now the sole and exclusive property of defendant. Defendant denies all other allegations in respect of said Buckwalter and Baker patents and inventions not hereinbefore specifically admitted.

21. Answering the allegations in paragraph 21 in plaintiff's bill of complaint defendant admits that it commenced the manufacture of a detachable rock bit prior to September 1, 1932. Each and every other allegation in said para-

graph 21 in plaintiff's bill of complaint defendant denies. [fol. 5755] 22. Answering the allegations in paragraph 22 in plaintiff's bill of complaint defendant denies each and every allegation therein and avers that plaintiff has at no time, to the knowledge of defendant, engaged in the manufacture or sale of detachable rock bit drills of any kind.

23. Answering the allegations in paragraph 23 in plaintiff's bill of complaint defendant says that it is without knowledge or information sufficient to form a belief concerning the allegations in said paragraph 23.

24. Answering the allegations in paragraph 24 in plaintiff's bill of complaint defendant says that on April 12, 1933, The Detachable Bit Corporation of America notified defendant that defendant was infringing reissue patent No. 16,061 and other patents identified only as similar thereto; that upon receipt of said notice defendant wrote a letter to said The Detachable Bit Corporation of America wherein defendant asked it to identify such other similar patents, denied that its product was covered by reissue patent No. 16,061 or No. 17,557, gave said The Detachable Bit Corporation of America a booklet descriptive of defendant's product and offered samples thereof and suggested that, on inspection of such product, said The Detachable Bit Corporation of America would agree that there was no infringement of said reissue patents Nos. 16,061 and 17,557; that said The Detachable Bit Corporation of America gave no reply to said letter. Defendant further admits that since receiving said letter, as aforesaid, it has manufactured a rock bit which defendant avers in no wise infringes upon any letters patent or reissue letters patent claimed to be owned by plaintiff herein. Each and every other allegation in paragraph 24 in plaintiff's bill of complaint defendant denies.

25. Answering the allegations in the paragraph numbered 2 in plaintiff's bill of particulars defendant denies each and every allegation therein.

[fol. 5756] 26. Answering the allegations in the paragraph numbered 3 in plaintiff's bill of particulars defendant says that from time to time during the years 1929, 1930 and a part of 1931 representatives of The Detachable Bit Corporation of America discussed various problems relating to the manufacture of detachable rock drills with

representatives of defendant for the purpose of acquiring such information as the defendant had on various subjects associated therewith, especially on the matter of the kind of steels to be used by said The Detachable Bit Corporation of America in the manufacture of said detachable rock drills. Except as heretofore qualifiedly admitted, defendant denies each and every other allegation in said paragraph numbered 3 in plaintiff's bill of particulars.

27. Answering the allegations in the paragraph numbered 4 in plaintiff's bill of particulars defendant denies each and every allegation therein and avers that persons who used the detachable rock bit manufactured by defendant after its manufacturing operations had commenced, in preference to any detachable rock bit drill manufactured by either Detachable Bit Corporation of America or its licensee, did so by reason of the superiority of the product manufactured by defendant.

28. Answering the allegations in the paragraph numbered 5 in plaintiff's bill of particulars defendant denies each and every allegation therein.

29. The paragraphs numbered 6 and 7 in plaintiff's bill of particulars require no specific answer at this time.

30. Answering the allegations in the paragraph numbered 8 in plaintiff's bill of particulars defendant denies each and every allegation therein.

31. Answering the allegations in the paragraphs numbered 9 (a) and 9 (b) in plaintiff's bill of particulars, defendant denies each and every allegation in said paragraphs.

[fol. 5757] 32. Further answering defendant says that plaintiff is not the owner of any rights or claims, legal or equitable, against defendant arising out of any alleged breach of express or implied contracts between defendant and The Detachable Bit Corporation of America or any alleged breach of confidence between defendant and The Detachable Bit Corporation of America or any rights, legal or equitable, for infringement of letters patent or reissue letters patent issued to said Fred W. Thurston and that plaintiff fails to state a claim against defendant upon which relief can be granted.

33. Further answering defendant says that shortly prior to January 1, 1929, The Detachable Bit Corporation

of America, through one of its representatives, inquired of defendant whether defendant was in a position to supply a certain kind of steel which said The Detachable Bit Corporation of America wished to have; that after said inquiry was made, as aforesaid, there were several discussions between representatives of The Detachable Bit Corporation of America and defendant's representatives concerning the kinds of steel which said The Detachable Bit Corporation of America could successfully use in the manufacture of the kind of detachable rock bits and couplings with which said The Detachable Bit Corporation of America was experimenting at that time. Defendant says that it recommended a kind of steel for use in the manufacture of bits and during the month of April 1929 shipped steel to said The Detachable Bit Corporation of America of that kind and quality. Defendant says that the service which it was rendering to The Detachable Bit Corporation of America at that and at all subsequent times in recommending kinds of steel to be used is the kind of service which is ordinarily rendered by steel manufacturers to customers.

34. Defendant says that it was not until sometime during the month of May 1929 that there was any discussion [fol. 5758] between the representatives of The Detachable Bit Corporation of America and this defendant concerning the making of any kind of contract between said The Detachable Bit Corporation of America and defendant. Defendant says that late in May and early in June 1929 defendant was approached by The Detachable Bit Corporation of America and requested to furnish certain moneys to said The Detachable Bit Corporation of America, it being represented by said The Detachable Bit Corporation of America that at that time said corporation was out of funds to carry on its operations; that pursuant to negotiations had between said The Detachable Bit Corporation of America and defendant a certain written contract, dated July 9, 1929, was executed by said The Detachable Bit Corporation of America and by defendant.

35. Defendant says that said contract, dated July 9, 1929, as aforesaid, among other things, contained the following terms and provisions: Said The Detachable Bit Corporation of America agreed to purchase from defendant at current market prices its requirements of such

steels as defendant was equipped to produce; defendant agreed to purchase from The Detachable Bit Corporation of America $100,000 principal amount of 7% one year convertible notes or debentures at 93% of par, this amount being one half of an issue of $200,000 principal amount of such notes to be issued by said The Detachable Bit Corporation of America bearing date July 1, 1929, and maturing July 1, 1930. Said notes contained an option of conversion into stock of said The Detachable Bit Corporation of America at $20 per share within nine months after their issue.

36. Attached to said written contract dated July 9, 1929, as aforesaid, was a further written document designated "Schedule A." by the terms of said written contract of July 9, 1929, defendant was given the option until [fol. 5759] 3:00 p. m. on June 30, 1930, to execute a further written contract in the form of said Schedule A provided that notice of defendant's intention to so execute said new contract, in the form of Schedule A, was given to said The Detachable Bit Corporation of America not later than March 31, 1930. Defendant says that said Schedule A, as attached to said contract of July 9, 1929, among others, contained the following terms and provisions: Said The Detachable Bit Corporation of America was to agree to buy its requirements of such steels as defendant was or later became equipped to make from defendant at a price determined as follows: production cost to defendant plus 10% plus $5 per ton of 2,000 pounds; that an interchange of information between defendant and said The Detachable Bit Corporation of America was to take place concerning manufacturing, metallurgical, merchandising, administrative and other problems of said The Detachable Bit Corporation of America; said The Detachable Bit Corporation of America was to agree to pay to defendant an amount equivalent to 16% of the annual net profits of said The Detachable Bit Corporation of America; defendant was to agree, upon the execution of said Schedule A, to purchase from said The Detachable Bit Corporation of America 20,000 shares of stock of said The Detachable Bit Corporation of America. By its terms said Schedule A, if executed as a contract, was to be in force for a period of nine years with certain options to defendant for renewal thereof.

37. Defendant says that it did not execute any contract in the form of said Schedule A and on the contrary within

the period specified in said contract of July 9, 1929, to-wit, prior to March 31, 1930, notified said The Detachable Bit Corporation of America that it did not intend to exercise said option to execute a contract in the form of said Schedule A and at that time requested the repurchase by said The Detachable Bit Corporation of America of the debentures purchased by defendant pursuant to said written contract of July 9, 1929.

[fol. 5760] 38. Defendant says that on numerous occasions while said written contract of July 9, 1929, was in effect The Detachable Bit Corporation of America requested information from defendant concerning the kinds of steel to be used in the manufacture of detachable rock bits and couplings therefor and information concerning certain manufacturing difficulties which said The Detachable Bit Corporation was having in the production of said rock bit drills. Defendant further says that at the request of said The Detachable Bit Corporation of America it undertook to test the rock bit drills which said The Detachable Bit Corporation of America was attempting to manufacture; that all of such testing as well as all other assistance rendered by defendant to said The Detachable Bit Corporation of America was at the sole expense of defendant excepting only that said The Detachable Bit Corporation of America furnished defendant certain rock bit drills for testing purposes.

39. Defendant says that at no time was anything in the nature of a trade secret revealed to defendant by said The Detachable Bit Corporation of America and that the information which defendant gave to said The Detachable Bit Corporation of America was based upon the knowledge, information and skill which defendant had developed over a long period of years in the manufacture of steel and steel products; that the assistance and information which was given by defendant to said The Detachable Bit Corporation of America from the date of said contract, to-wit, July 9, 1929, to the date upon which defendant notified said The Detachable Bit Corporation of America that it did not intend to execute said contract in the form of said Schedule A, on or about March 30, 1930, was the kind of assistance which manufacturers of steel usually give customers.

40. Defendant further says that during the remaining part of 1930 as long as said The Detachable Bit Corporation

[fol. 5761] of America actively engaged in an attempt to manufacture detachable rock bit drills and during part of 1931 defendant continued to supply steel to said The Detachable Bit Corporation of America and defendant continued to give to said The Detachable Bit Corporation of America the same kind of assistance and information as it had given during the year 1929 and up to March 30, 1930.

41. Defendant says that at no time did it have any control over the corporate affairs of The Detachable Bit Corporation of America and that at no time was there any joint venture or limited partnership of any kind whatsoever between defendant and The Detachable Bit Corporation of America. Defendant further says that there was no confidential relationship between defendant and said The Detachable Bit Corporation of America at any time.

Second Defense

42. For its second defense defendant says that immediately after notice was given to said The Detachable Bit Corporation of America of defendant's intention to refrain from exercising the option to execute a contract in the form of said Schedule A and on or about February 11, 1930, a written agreement was entered into by and between defendant and said The Detachable Bit Corporation of America which provided, among other things, for the repurchase by said The Detachable Bit Corporation of America of the notes in the face amount of $100,000 held by defendant and which said contract contained the further provision, to-wit:

> "In consideration of the purchase and sale of said notes, it is agreed that all Contracts and Agreements, including those dated July 9, 1929, existing between The Timken Roller Bearing Company and The Detachable Bit Corporation of America and/or J. B. Shearer, are cancelled and terminated and each party thereto is released from all further obligations thereunder. But it is understood that $3,843.00 now due on open account by your Company (The Detachable Bit Corporation of America) to us (The Timken Roller Bearing Company), and any other obligations incurred [fol. 5762] in the ordinary course of business, are not released but will be paid in ordinary course. When the notes are taken up, mutual releases shall be executed and delivered if necessary."

that subsequently, on March 6, 1930, the time for the repurchase of said notes by said The Detachable Bit Corporation of America was extended to April 8, 1930. Defendant says that on or about May 27, 1930, payment was made to defendant by said The Detachable Bit Corporation of America of the sum of $96,000 plus $2,819.40, accumulated interest, for the repurchase of said notes and said mutual release thereupon became operative. Defendant says that by reason of the foregoing release plaintiff is barred in law and in equity from the prosecution of all alleged claims set forth in plaintiff's bill of complaint and bill of particulars excepting only the claims for alleged patent infringement.

Third Defense

43. For its third defense defendant says that it commenced the manufacture of a detachable bit, developed solely and entirely by defendant's engineers, prior to September 1932; that said The Detachable Bit Corporation of America knew that defendant had commenced the manufacture of said detachable rock bit shortly thereafter.

44. Defendant says that on or about April 12, 1933, it received a letter from said The Detachable Bit corporation of America alleging in substance that defendant was infringing upon reissue patent No. 16,061 and other patents not specifically named. Defendant says that to this communication a reply was addressed to The Detachable Bit Corporation of America stating that defendant was not infringing upon said reissue patent or upon any other patent of which defendant had any knowledge and of which said The Detachable Bit Corporation of America claimed [fol. 5763] to be the owner and defendant requested said The Detachable Bit Corporation of America to advise defendant of any other patents upon which it claimed that defendant was infringing. Defendant says that it received no answer to its said communication.

45. Defendant says that during the year 1933 from time to time there were some oral discussions between representatives of said The Detachable Bit Corporation of America and defendant and other bit manufacturers, at which times said representatives of the Detachable Bit Corporation of America and the licensee of said The Detachable Bit Corporation of America were notified that

defendant had been advised by patent counsel that the detachable rock bit which defendant was manufacturing and selling did not in any way infringe any patent of which said The Detachable Bit Corporation of America claimed to be the owner. Defendant further says that it obtained the opinions of various patent counsel, all of whom advised defendant that the rock bit which defendant contemplated manufacturing did not in any wise infringe the patents of which said The Detachable Bit Corporation of America claimed to be the owner and referred to in the complaint as the Thurston patents.

46. Defendant says that since 1932 it has proceeded with the development and exploitation of said detachable rock bit; that it has expended large sums of money in experimental work, in procuring and equipping a factory for the manufacture of said rock bits of defendant's design, in fostering the sales of said rock bits all over the United States; that defendant rented a plant in the city of Mt. Vernon, Ohio, commencing on or about October 1, 1935, at which defendant employs approximately 185 people; that the operations in said Mt. Vernon plant have gone on continuously since 1935; that as a result of all the foregoing defendant has expended in excess of $500,000.

47. Defendant further says that at no time prior to the [fol. 5764] commencement of this action on August 10, 1938, has any demand been made upon this defendant by said The Detachable Bit Corporation of America or by plaintiff herein charging this defendant with the breach of any express or implied contract, oral or written, dated July 9, 1929, or with the breach of any confidential relationship or the appropriation of patentable ideas by any of its employes; that the only notice given to defendant was the notice given, as aforesaid, on April 12, 1933, of the alleged infringement of patents of which said The Detachable Bit Corporation of America claimed to be the owner. Defendant says that until the filing of this lawsuit on or about August 10, 1938, neither said The Detachable Bit Corporation of America nor the plaintiff attempted by any legal action to prevent the defendant from proceeding with the expenditures of money and with the sale of detachable rock bits.

48. Defendant says that plaintiff, Detachable Bit Company, has a great many of the same officers and stockholders

as were officers and stockholders in The Detachable Bit Corporation of America; that by reason of the laches of said The Detachable Bit Corporation of America and of plaintiff, Detachable Bit Company, plaintiff is barred from prosecuting this action in both law and equity.

Fourth Defense

49. For its fourth defense defendant says that if an oral joint venture agreement had been entered into containing the obligations set forth in paragraphs 13, 14, 15 and 16 of plaintiff's bill of complaint and in the paragraphs numbered 8, 9 (a) and 9 (b) of plaintiff's bill of particulars, all of which defendant expressly denies, defendant avers that such an oral agreement would have been void, unenforceable in law or in equity and in violation of the [fol. 5765] following provisions of the statute of frauds of the State of Ohio:

> "Sec. 8621. What agreements to be in writing. No action shall be brought whereby to charge the defendant, upon a special promise, to answer for the debt, default or miscarriage, of another person; nor to charge an executor or administrator upon a special promise to answer damages out of his own estate; nor to charge a person upon an agreement made upon consideration of marriage, or upon a contract or sale of lands, tenements, or hereditaments, or interest in, or concerning them, nor upon an agreement that is not to be performed within one year from the making thereof; unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized."

also the following section of the statute of frauds of the State of New York, to-wit: Section 31, Book 40, McKinney's Consolidated Laws of New York:

> "Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking:
>
> "1. By its terms is not to be performed within one year from the making thereof or the performance of

which is not to be completed before the end of a lifetime;"

50. Defendant says that the alleged oral contracts set forth in plaintiff's bill of complaint and plaintiff's bill of particulars, the existence of which defendant denies, by their terms were not to be performed or completed within one year from date thereof.

51. For answer to so much of said bill of complaint and bill of particulars as charge defendant with infringement of said Thurston reissue patents No. 16,061 and No. 17,557 defendant pleads the following defenses and denies each and every allegation in the bill of complaint and bill of particulars relating to said reissue patents not elsewhere admitted or denied.

[fol. 5766] Fifth Defense

52. Defendant denies that it is infringing or ever has infringed reissue letters patent No. 16,061 or reissue letters patent No. 17,557 or any right of plaintiff therein; and defendant denies that it ever made or sold any detachable bits that fitted or were designed to fit drill rods manufactured and sold by The Detachable Bit Corporation of America.

Sixth Defense

53. The alleged invention set forth in said reissue patent No. 16,061 was not new at the date of alleged invention thereof by said Thurston but previously thereto, and more than two years prior to the date of the filing of said Thurston's original application for patent therefor, said alleged invention and all material and substantial parts thereof had been disclosed in each of the following letters patent of the United States and other countries, namely:

United States letters patent No. 245,433 dated August 9, 1881, to Henry H. Beach and Bernard W. Arnold, of Litchfield, Illinois

United States letters patent No. 250,385 dated December 6, 1881, to Daniel Cook, of San Francisco, California, as assignee of Henry F. Parsons, of San Francisco, California

United States letters patent No. 295,347 dated March 18, 1884, to Duncan Cameron, of Randolph, New York

United States letters patent No. 347,397 dated Au-

gust 17, 1886, to James Throckmorton and Joseph G. Throckmorton, of Harvey's Pennsylvania

United States letters patent No. 455,963 dated July 14, 1891, to Rufus A. Farrar, of New York, New York, and Edward Tingue, of New York, New York, assignee of one-half interest

United States letters patent No. 542,542 dated July 9, 1895, to Thomas Symonds, of Leominster, Massachusetts

United States letters patent No. 580,351 dated April 6, 1897, to P. Sanford Ross, of Jersey City, New Jersey, assignee of one-half interest and Arthur H. Folger, [fol. 5767] Administrator of Thomas Symonds, of Leominster, Massachusetts, deceased

United States letters patent No. 580,352 dated April 6, 1897, to Arthur H. Folger, Administrator of Thomas Symonds, of Leominster, Massachusetts

United States letters patent No. 635,415 dated October 24, 1899, to Henry Aylmer, of Richmond, Canada, and James Henry Plummer, of Toronto, Canada, assignee of one-half interest

United States letters patent No. 692,755 dated February 4, 1902, to Aylmer Drill Manufacturing Company, of Montreal, Canada, as assignee of Henry Aylmer, of Sherbrooke, Canada

United States letters patent No. 803,911 dated November 7, 1905, to John George Leyner, of Denver, Colorado

United States letters patent No. 893,596 dated July 21, 1908, to Robert Hutchison Anderson, of Germiston, Transvaal

United States letters patent No. 897,336 dated September 1, 1908, to Robert Hutchison Anderson, of Germiston, Transvaal

United States letters patent No. 971,901 dated October 4, 1910, to Arthur Knapp, of Houma, Louisiana

United States letters patent No. 1,054,181, dated February 25, 1913, to Carl Davenport, of Sheffield, England, and Richard Nicholson, of Sheffield, England, assignee of one-half interest

United States letters patent No. 1,062,342 dated May 20, 1913, to N. Harper Steward, of Philadelphia, Pennsylvania, as assignee of John MacConnell, of Philadelphia, Pennsylvania

United States letters patent No. 1,106,966 dated August 11, 1914, to N. Harper Steward, of Philadelphia, Pennsylvania, as assignee of Carl Pauli, of Roselle Park, New Jersey

United States letters patent No. 1,135,546 dated April 13, 1915, to Frank Ondra, of Johannesburg, Transvaal, South Africa, and Max Pollak, of Johannesburg, Transvaal, South Africa, assignee of one-half interest

United States letters patent No. 1,136,545 dated April 20, 1915, to Frank C. MacDonald, of Butte, Montana, Administrator of the estate of Joseph D. MacDonald, of Butte, Montana

United States letters patent No. 1,136,987 dated April 27, 1915, to William Henry Wakfer, of South Norwood, England, and Samuel Peck, of Wallington, England, assignee of one-half interest

United States letters patent No. 1,211,080 dated January 2, 1917, to Ingersoll-Rand Company, of Jersey City, New Jersey, a corporation of New Jersey, as assignee of Russell S. Carter, of Hewlett, New York. [fol. 5768] United States letters patent No. 1,225,629 dated May 8, 1917, to Sewell S. Hensley, of Mexia, Texas

United States letters patent No. 1,296,078 dated March 4, 1919, to Arthur L. Hawkesworth, of Butte, Montana

United States letters patent No. 1,324,304 dated December 9, 1919, to Robert E. Carmichael, of Damon, Texas, and George Hamman, of Houston, Texas, assignee of one-half interest

United States letters patent No. 1,328,325 dated January 20, 1920, to Arthur L. Hawkesworth, of Butte, Montana

United States letters patent No. 1,342,814 dated June 8, 1920, to Sidney H. Huston, of Houston, Texas

United States letters patent No. 1,355,793 dated October 12, 1920, to Fred W. Thurston, of San Francisco, California, as assignee of Henri Bernay, of San Francisco, California

United States letters patent No. 1,359,955 dated November 23, 1920, to Fred W. Thurston, of San Francisco, California, as assignee of Henri Bernay, of San Francisco, California

United States letters patent No. 1,370,440 dated March 1, 1921, to Arthur L. Hawkesworth, of Butte, Montana

United States letters patent No. 1,375,997 dated April 26, 1921, to Fred W. Thurston, of San Francisco, California, as assignee of Henri Bernay, of San Francisco, California

British letters patent No. 3,515 of February 17, 1908, to Edward Lloyd Wynyard Bellhouse, of Greno House, Grenoside, City of Sheffield, England

British letters patent No. 5,496 of March 5, 1904, to George Barnsley, of Cornish Works, Sheffield, England

British letters patent No. 11,913 of October 21, 1847, to William Gostwyck Gard, in the County of Cornwall, England

British letters patent No. 25,158 of December 4, 1905, to Robert Hutchison Anderson, of Germiston, Transvaal, South Africa

British letters patent No. 17,515 of July 23, 1910, to Richard Nicholson of 16 Newbould Lane, Sheffield, England, and Carl Davenport of Sheffield, England

54. The alleged invention set forth in said reissue patent No. 17,557 was not new at the date of alleged invention thereof by said Thurston but previously thereto, and more than two years prior to the date of filing of said Thurston's original application for patent therefor, said alleged invention and all material and substantial parts thereof had been disclosed in each of the following letters patent of the United States and other countries, namely:

[fol. 5769] United States letters patent No. 285,493 dated September 25, 1883, to The Union Hardware Company, of Torrington, Connecticut, as assignee of James E. Langdon, of Torrington, Connecticut.

United States letter patent No. 291,819 dated January 8, 1884, to The Union Hardware Company, of Torrington, Connecticut, as assignee of George B. Turrell, of South Orange, New Jersey.

United States letters patent No. 319,144 dated June 2, 1885, to The Eagle Tube Company, of New York, New York, as assignee of Nathan Stephens, of Brooklyn, New York, and Matthew L. Ritchie, of New York, New York.

United States letters patent No. 797,415 dated August 15, 1905, to Frank Eder, of Thayer, Missouri.

United States letters patent No. 806,510, dated December 5, 1905, to William J. Tibbitt, of Philadelphia, Pennsylvania.

United States letters patent No. 1,049,624 dated January 7, 1913, to Gebrueder Siemens & Co., Lichtenberg, near Berlin, Germany, a German Copartnership, as assignee of Eduard Viertel, of Treptow, near Berlin, Germany, and Hermann Viertel, of Lichtenberg, near Berlin, Germany.

United States letters patent No. 1,054,181 dated February 25, 1913, to Carl Davenport, of Sheffield, England, and Richard Nicholson, of Sheffield, England, as assignee of one-half interest.

United States letters patent No. 1,212,141 dated January 9, 1917, to Walter E. Kimber, of Harlesden, London, England.

United States letters patent No. 1,394,791 dated October 25, 1921, to Benjamin F. Runyan, of Houston, Texas, and James P. Markham Jr., of Houston, Texas, as assignee of fifty-one percent interest.

United States letters patent No. 1,510,134 dated September 30, 1924, to Republic Carbon Company, Inc., of Niagara Falls, New York, a corporation of Delaware, as assignee of Bartley E. Broadwell, of Niagara Falls, New York.

United States letters patent No. 1,671,579 dated May 29, 1928, to Edgar E. Greve, of Bellevue, Pennsylvania.

British letters patent No. 17,515 of July 23, 1910, to Richard Nicholson, of 16, Newbould Lane, Sheffield, England, and Carl Davenport, of Sheffield, England.

Union of South Africa (Transvaal) patent 136/13 dated March 13, 1913, to James Bell, of Johannesburg, Transvaal, South Africa.

55. The alleged inventions set forth in said Thurston reissue patent No. 16,061 were not new at the date of alleged invention thereof by Thurston but previously there- [fol. 5770] to had been disclosed and described in the following printed publications, namely:

Printed book of Eustace M. Weston entitled "Rock Drills, Design, Construction and Use," published by McGraw-Hill Book Company in 1910, at New York, New York, particularly pages 151, 168-173 and 177 thereof.

"The Testing and Application of Hammer Drills," by Benjamin F. Tillson—"Engineering and Mining Journal," Volume 103, No. 14, April 7, 1917, pages 582-592.

"Breakage and Heat Treatment of Rock-drill Steel," by Benjamin F. Tillson—"Transactions of the American Institute of Mining and Metallurgical Engineers," Volume 66 (1921), pages 758-778.

"Promoting Efficiency in Drilling Ore and Rock," by B. F. Tillson—"Engineering and Mining Journal," Volume 113, No. 3, pages 104-107 inclusive, January 21, 1922.

"Handbook of Rock Excavation, Methods and Costs," by Halbert Powers Gillette, published by Clark Book Company, Inc., New York, 1916, pages 45 and 46; ch. 3, especially pages 54-56; ch. 4, pages 141-145; pages 381-383.

"Analysis of Some Drill-Steel Tests," by Francis B. Foley—"Transactions of the American Institute of Mining and Metallurgical Engineers," Volume 66 (1921), pages 789-795.

"Machinery's Encyclopedia," published in 1917 by "The Industrial Press" in New York, Volume 1, pages 75 and 76, and Volume 6, pages 417 and 418, also page 265.

"Iron and Steel," by Oberg and Jones, published in 1918 by "The Industrial Press" in New York, pages 270, 282, 286, 287, 296 and 297.

"The Metallography and Heat-Treatment of Iron and Steel," by Sauveur, published in 1916 by Sauveur and Bolyston of Cambridge, Massachusetts, pages 338 and 351.

"Drillwork Methods and Costs," by R. R. Sanderson, published in 1911 by the Cyclone Drill Company of Orrville, Ohio, page 105.

"The Horseless Age," January 10, 1906, page 61.

"The Automobile," June 28, 1906, pages 987, 988.

"The Engineering and Mining Journal" of February 27, 1909, page 468, published by The McGraw-Hill Publishing Co., Inc., of New York, New York.

"American Vanadium Facts" of December 1911, second page (unnumbered), article entitled "Vanadium Steel for Rock Drills," and back cover, published by American Vanadium Company.

[fol. 5771] "American Vanadium Facts" of October 1912, page 178, published by American Vanadium Company

"American Vanadium Facts" of June 1913, page 27, published by American Vanadium Company

"American Vanadium Facts" of December 1913, pages

4 to 7 and pages 9 and 10, published by American Vanadium Company

"American Vanadium Facts" of August 1914, page 11, published by American Vanadium Company

"The Engineering and Mining Journal" for April 22, 1916, pages 729 and 730, article entitled "The Kellow Rock Drill"

Sullivan Machinery Co. Catalogue No. 46, published in 1901, "Bullock Diamond Prospecting Core Drill," page 47

Sullivan Machinery Co. Catalogue No. 49, published in 1901 "Sullivan Diamond Drills," page 87

"The Coal Age," for May 26, 1921, page 944, published by The McGraw-Hill Publishing Co., Inc., of New York, New York

"Transactions of the American Institute of Mining Engineers," published in 1913, Volume 47, pages 147 to 151, articles entitled "Rock-Drilling Economics," by W. L. Saunders

"Mining and Scientific Press" for April 29, 1911, page 594

"Mining and Scientific Press" for December 10, 1921, page 806

56. The alleged inventions set forth in said Thurston reissue patent No. 17,557 were not new at the date of alleged invention thereof by Thurston but previously thereto had been disclosed and described in the following printed publications, namely:

Schwamb & Merrill—"Elements of Mechanism," page 10, 1905, published by John Wiley & Sons, New York

"Machinery's Encyclopedia," published by "The Industrial Press" in New York, 1917, Volume VI, pages 268, 269, 270, 271 and 275

"Knight's American Mechanical Dictionary," (1876), page 2061, figure 4704

"Appleton's Cyclopedia of Applied Mechanics," published by D. Appleton & Company, New York, New York (1899) Volume 2, page 718

Report No. 1474 of the American Society of Mechanical Engineers, published 1915, pages 25, 26, 27, 28 and 29

[fol. 5772] 57. (a) The alleged invention set forth in said reissue patent No. 16,061 was not new at the date of alleged invention thereof by said Thurston but previously thereto

and more than two years prior to the filing of the original application of said Thurston for letters patent therefor said alleged invention had been in public use by the following persons and each of them, namely: Aurthur L. Hawkesworth, John S. Myhre, Mark James, John A. O'Neill and Hawkesworth Detachable Drill Company, and others, all of Butte, Montana, and Samuel T. Blair, of Anaconda, Montana, such use having been made in mines of the Anaconda Copper Mining Company in and around Butte and Anaconda, Montana, and being well known to the above named persons, to Maurice W. Hawkesworth and E. R. Borcherdt of Butte, Montana, and to officers and employees of said corporations; (b) Also by Howard R. Drullard, now of San Francisco, California, at the Elm Orlu Mining Company, Butte, Montana; (c) Also by H. J. Rahilly, of Butte, Montana, in mines of the Anaconda Copper Mining Company in the vicinity of Butte, Montana; (d) Also by customers of Sullivan Machinery Company, of Chicago, Illinois, and Michigan City, Indiana, whose names and addresses are not now known to defendant but which it asks leave to insert herein when discovered; (e) Also by each of the persons named in paragraph 53 hereof as patentees and inventors at the places of their respective residences as herein set forth.

58. The alleged invention set forth in said reissue patent No. 17,557 was not new at the date of alleged invention thereof and more than two years prior to the filing of the original application of said Thurston for letters patent therefor, said alleged invention had been in public use by Charles A. Dobbel, now of Palo Alto, California, and by E. F. Terry, formerly of Denver, Colorado, now of Phillipsburg, New Jersey, such use having been made at the [fol. 5773] Eureka, Utah, mine of Chief Consolidated Mining Company, and elsewhere, which use was known to Howard R. Drullard, now of San Francisco, California, formerly of Salt Lake City, Utah, to Frank M. Matheson, of Salt Lake City, Utah, to Peter H. Scheib, now of Long Beach, California, formerly of Denver, Colorado, and to officers and employees of the former Denver Rock Drill Manufacturing Company, of Denver, Colorado, now Gardner-Denver Company.

59. The alleged invention set forth in said reissue patent No. 16,061 had been on sale in the United States more than

two years prior to the filing of the original application for patent therefor at Butte, Montana, by The Hawkesworth Detachable Drill Company and by The Sullivan Machinery Company at Chicago, Illinois.

60. The alleged invention set forth in said reissue patent No. 16,061 was not a patentable invention at the date of alleged invention thereof by said Thurston but merely involved the exercise of ordinary judgment in selecting from old and well known materials such as were considered suitable for making the parts of an old mechanical device.

61. The alleged invention set forth in said reissue patent No. 17,557 was not a patentable invention at the date of alleged invention thereof by said Thurston but involved merely the exercise of ordinary judgment in selecting an old and well known screwthread, to-wit: a screwthread with a continuously curved and undulatory contour, and substituting same for a different old and well known thread in an old and well known detachable drill.

62. The alleged invention set forth in said reissue patent No. 16,061 was not a patentable invention at the date of alleged invention thereof by said Thurston but merely involved the exercise of ordinary judgment in selecting from old and well known coupling means such as were considered suitable for coupling together the parts of an old detachable bit drill.

[fol. 5774] 63. Said reissue patent No. 16,061 does not comply with the statutory requirement that

> "Before any inventor or discoverer shall receive a patent for his invention or discovery he * * * shall file in the Patent Office a written description of the same, and of the manner and process of making, constructing, compounding and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound and use the same;"

in the following particulars:

> "It fails to give the composition of the steels used in the several parts;
> It fails to disclose how to form each part or what is meant by the word "form";
> It fails to disclose how to temper each part;

The terms "vanadium steel," "chrome-nickel steel" and "chrome-vanadium steel," designated as the preferred materials for the drill rod, intermediate member and bit, respectively, are each terms covering wide ranges of steels differing in composition and physical properties and in the heat treatment required to produce certain physical properties and none of such terms is specific enough to identify a material suitable for making a drill bit part, and there is no designation whatever of any specific heat treatment of any of said steels.

64. Said reissue patent No. 16,061 does not comply with the statutory requirement that it shall particularly point out and distinctly claim the alleged improvement or invention, but, on the contrary, the claims of said patent are vague, indefinite and functional in this, that its claims purport to define the alleged invention only by designating properties of its parts, which properties are stated in vague and uncertain terms.

65. Defendant further states that the subject matter of claims 13 and 14 of said reissue patent No. 16,061 was not covered by original patent No. 1,477,855 and not omitted from the original patent No. 1,477,855 by inadvertence, accident or mistake but, on the contrary, was omitted deliberately and with the intention of limiting the original [fol. 5775] patent to the claims contained therein, wherefore said claims 13 and 14 are invalid and plaintiff is bound and estopped, by the proceedings in the Patent Office on the application for said original patent No. 1,477,855, against maintaining said claims 13 and 14 of said reissue patent No. 16,061.

66. Defendant further states that said original patent No. 1,477,855 and said reissue patent No. 16,061 are for a different invention from the matter described and claimed in the original application for said original patent No. 1,477,855 and contain new matter that involves a departure from the invention set forth and claimed in the original application in the following particulars, to-wit: The two paragraphs descriptive of the properties of the several parts, beginning in line 59 on page 3 of the specifications of said reissue patent and ending in line 96 on page 3 (page 3, line 39, to page 3, line 76, of said original patent) were not in the original application for said patent No.

1,477,855, but represent matter added during the prosecution of said application.

67. Defendant further states that said reissue patent No. 16,061 is for a different invention from the matter described and claimed in said original patent No. 1,477,855 and contains new matter that involves a departure from the invention set forth and claimed in the original patent in the following particulars, to-wit:

The drill rod was originally designated in patent No. 1,477,855 (Specification page 3, line 4) as having "*shock and* fatigue" resisting properties; whereas it is designated in the reissue patent as having only "fatigue" resisting properties (page 3, line 20):

The member 12 was designated in the Specification of said original patent as "the intermediate member" (page 1, lines 97 and 101; page 3, line 24) whereas it is designated in said reissue patent as "the intermediate *or coupling* member" (page 1, line 101; page 2, line 3; page 3, line 42);

The statement "I use the word 'intermediate' in describing the part 12, not necessarily in the sense of 'interposed' but in the broader sense that it is the intermediary connecting element in the drill construction" (reissue Specification page 5, lines 38-43) is [fol. 5776] new matter not in the original patent specification;

Said member 12 was designated in the specification of said original patent as having a "shock absorbing and cushioning function during a drilling operation" (page 3, lines 27-29); whereas it is designated in said reissue patent as having "a shock-absorbing and in certain constructions of the invention, a more pronounced cushioning function during a drilling operation" (page 3, lines 45-48);

Figure 2a of the drawing of said reissue patent is a new figure not present in the original patent and the descriptive matter relating thereto, Specification, page 1, lines 77-82, and page 3, lines 103-109, is new matter added in the reissue patent and not present in the original patent;

In the original specification (page 3, lines 11-17) it was stated: "The drill rod, as shown in Figs. 1 and 2, *is* made from ordinary commercial stock which is de-

signed for tool purpose; such stock in the formation of this portion of the drill *being upset* and threaded at the end designed to support the bit"; whereas the corresponding portion of the reissue specification (page 3, lines 29-35) states: "The drill rod, as shown in Figs. 1 and 2 *may be* made from ordinary commercial stock designed for tool purposes; such stock in the formation of this portion of the drill being threaded at the end designed to support the bit *and in some cases upset and shouldered.*"

The designation of the toughness of the intermediate member, as such that "it may have shock absorbing properties greater than wrought iron" (reissue Specification page 3, lines 128-129) was not in the specification of said original patent;

The designation of the bit as avoiding brittleness "such as might be encountered in the ordinarily tempered tool-steel" (reissue Specification page 3, lines 11, 12) and the statement that "the bit may have wear-resisting properties greater than tool steel" (reissue Specification page 3, lines 12-14) are new matter not present in the specification of said original patent;

The designation of the drill rod as having "anti-fatigue properties greater than those of mild steel" (reissue Specification page 3, lines 25-27) is new matter not present in the original specification;

The original specification (page 4, lines 85, 86) had the statement "The use of fillets also contribute to this result," but this statement was omitted from the specification of said reissue patent; the word "may" in line 50 of page 2, referring to the fillets, was not in the original specification; and the words "and sustain shock during the same" (in lines 49-50 of page 4 of the original patent) are omitted from the reissue patent (page 4, line 76);

[fol. 5777] The portion of the specification of said patent beginning on page 4 in line 110 and ending on page 5 in line 7 of the reissue specification is new matter not present in the original specification;

In the original specification (page 3, lines 6-9) the material of the drill rod 11 was thus described; "This drill rod is preferably made of a vanadium steel which *is not* adapted to take a cutting edge but which has

long-wearing qualities . . . . . "; whereas in the reissue specification (page 3, lines 22-27) it is thus described: "This drill rod is preferably made of a vanadium steel which *may not be* adapted to take a cutting edge but which has *long-enduring* qualities *and anti-fatigue properties greater than those of mild steel* . . . . "

68. Defendant further states that the subject matter of claim 10 of said reissue patent No. 17,557 was not covered by original patent No. 1,642,183 and not omitted from the original patent No. 1,642,183 by inadvertence, accident or mistake but, on the contrary, was omitted deliberately and with the intention of limiting the original patent to the claims contained therein, wherefore said claim 10 is invalid and plaintiff is bound and estopped, by the proceedings in the Patent Office on the application for said original patent No. 1,642,183 against maintaining said claim 10 of said reissue patent No. 17,557.

69. Defendant further states that said reissue patent No. 17,557 is for a different invention from the matter described and claimed in said original patent No. 1,642,183 and contains new matter that involves a departure from the invention set forth and claimed in the original patent in this, that the drawings, specification and claims of said original patent were intentionally and purposely limited to a construction comprising three separate parts, namely, a drill rod, a bit and a separate intermediate or coupling member, whereas said claim 10 purports to cover a drill having "two or more sections"; and the statement beginning in line 27 on page 5 of said reissue specification, "The screw threads of undulatory contour may be applied in any of the forms of rotary impact mining drill set forth in my Letters Patent [fol. 5778] No. 1,477,855 granted Dec. 18, 1923, and in reissued Letters Patent thereof No. 16,061, granted May 5, 1925," is new matter not found in the specification of said original patent No. 1,642,183.

Seventh Defense

70. For its seventh defense to the averments and allegations of plaintiff's bill of complaint and plaintiff's bill of particulars relating to said reissue patents, defendant realleges, reavers and reaffirms the allegations and averments

of its Third Defense heretofore set forth in paragraphs numbers 43 to 48, inclusive, the same as though fully repeated in this seventh defense and says that by reason of the averments and allegations in said paragraphs of said Third Defense, which constitute laches on the part of plaintiff and said The Detachable Bit Corporation of America and which show a change of position on the part of defendant to its great detriment in reliance upon the aforesaid delay of plaintiff and said The Detachable Bit Corporation of America, plaintiff is barred in law and in equity from prosecuting any claim based upon said reissue patents or either of them.

Eighth Defense

71. For its eighth defense this defendant says that if an oral or written joint venture agreement had been entered into containing the obligations set forth in paragraphs 13, 14, 15 and 16 of plaintiff's bill of complaint and in paragraphs numbered 8, 9 (a) and 9 (b) of plaintiff's bill of particulars, all of which defendant expressly denies, defendant avers that any action at law or in equity on such a written or oral agreement is barred by the statute of limitations.

[fol. 5779] Wherefore, having fully answered, defendant asks that plaintiff's bill of complaint and bill of particulars be dismissed at plaintiff's costs.

Luther Day, 1759 Union Commerce Building, Cleveland, Ohio; H. C. Pontius, 1110 First National Building, Canton, Ohio; John G. Ketterer, 1110 First National Building, Canton, Ohio; Joseph J. Gravely, 705 Olive Street, St. Louis, Missouri.

[fol. 5780] IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

In Equity No. 5761

DETACHABLE BIT COMPANY, Plaintiff,

vs.

TIMKEN ROLLER BEARING COMPANY, Defendant

Memorandum Opinion

WILKIN, J.

This case is based upon two separate causes of action, referred to by counsel as the Equity Action and the Patent Action. There is no reason for a lengthy or discursive opinion. The issues have been thoroughly analyzed and the law clearly presented in thorough briefs. In disposing of the case the court need do no more than indicate its findings and rulings.

Equity Action

This cause of action was based upon the allegations of a fiduciary relationship referred to as a joint venture. It was claimed that something like a partnership had existed between the defendant and the plaintiff's predecessor in title and that because of that relationship and disclosures made during the existence of that relationship the defendant should be restrained from entering into competition with the plaintiff and should account to the plaintiff for any profits derived from such competition.

The court finds that the dealings of the parties did not create such a joint venture as imposes equitable or fiduciary responsibilities. There was wanting in the relationship of the parties that common interest, that sharing of liabilities and profits, burdens and benefits which make a partnership or joint venture. There was no relationship of trust and confidence such as exists between a guardian and ward or a trustee and the beneficiary of his trust. The parties met on an equal footing and dealt at arms length. There [fol. 5781] was no agreement to assume the relation of partners. There was no agreement to share profits and losses. There was no agreement for joint control of property. The parties in their dealings acted as separate corporations.

The evidence presents no more than the usual cooperation between a manufacturer and his customer for the development and expansion of the business of the customer. It is true that the parties would receive benefit from such expansion; but the benefit of each would be separate and distinct from the benefit of the other. The interest of the defendant was in increased sales of the raw material or specially treated steel. The interest of the Detachable Bit Corporation was in the sale of its fabricated drills and bits.

It is true that some closer coordination between the parties was contemplated. An option was reserved by the defendant for some interest in Detachable Corporation. The right was reserved to convert notes into stock. But the evidence that a joint interest was contemplated for the future is evidence that it was not accepted immediately. The contracts and practices of the parties exclude all belief in such identity of interest as would create a joint venture. *In re Taub*, 4 F. (2d) 993; *Bloom* v. *Leech*, 120 Oh. St. 239; *Hutchinson* v. *Birdsong*, 207 N. Y. Supp. 273.

The law which imposes upon those occupying a position of trust and confidence the duty to observe the utmost good faith is well settled, and this court would not willingly undermine its salutary influence. The cases cited by the plaintiff, however, were cases where joint ventures were clearly discernible, and this case may be distinguished from them by its want of that identity of interest necessary to bring it within the surveillance of equitable jurisdiction. If this case were held to be one of joint venture, manufacturers generally would have to forego cooperation with customers and dealers in sales development for fear of being held accountable as partners in a joint venture.

[fol. 5782] So far as disclosures are concerned, the evidence reveals that most of them were from the defendant to the Detachable Corporation. The defendant company had had a broader experience in metallurgy and manufacture. The detachable bit business was still in its experimental stage. The evidence reveals that the defendant made suggestions regarding uses of steel, steel treatment, and manufacturing processes.

The defendant finally determined to terminate such cooperation and it asked for payment of the notes which it held against the Detachable Corporation. Whether or not

that was a kind thing to do in the circumstances, or whether or not, in view of its effect on good will generally, it was a wise thing to do, are inquiries beyond the purview of this court's jurisdiction. It seems to the court that the defendant was within the exercise of its legal rights. And evidently Detachable Corporation thought so at the time, because it did not then complain of such termination, but, on the contrary, arranged to pay such notes before maturity and continued to deal with defendant.

No doubt the defendant obtained some knowledge from its association with the Detachable Corporation which would prove of value to it in developing a drill business of its own. But the evidence inclines one to the belief that such knowledge related to mistakes which should be avoided rather than to valuable practices revealed or disclosed in confidence.

Patent Action

Coming now to a consideration of the patent action, the court is constrained to find the patents of the plaintiff invalid because of indefiniteness, impracticability, and anticipation. The claims relied upon in Reissue patent 16061 fail to make a disclosure sufficiently definite to satisfy the requirements of Title 35 Section 33 U. S. C. A. The claims used indeterminate adjectives which describe a function instead of a structural device. They refer to a bit "formed and tempered to have wear-resisting properties", and a [fol. 5783] drill rod "formed and tempered to have anti-fatigue properties" and an intermediate member "tempered to have shock-absorbing properties". The evidence discloses that the efforts of both parties during their contractual relationship were directed to the discovery of the means of realizing the properties described in the patent. Their combined efforts failed to develop a commercially useful bit.

The Detachable Bit Corporation was organized *to develop* manufacturing processes by which the bit assemblies which Thurston had made by hand could be manufactured on a quantity basis and at a price to compete with the conventional drill steel. It was not successful in its effort. The language of the patent shows and the history of the company proves that the patent was indefinite and impracticable. Even the assembly of parts which the patent preferred and which the Detachable Corporation attempted to develop had

to be abandoned. Detachable's licensee, Flannery, with the patents and the experience of the Detachable Corporation before it failed in its efforts for practical development. So far as the evidence discloses, the manufacturers of detachable bits now employ the two-piece assembly.

That the idea of a detachable bit was old at the time plaintiff's patent was obtained, can not be disputed. The evidence revealed that detachable bits were in use as early as 1855. The plaintiff, indeed, does not claim that its invention covers detachable bits. Its claim is that the discovery in the Thurston patent was—

> ". . . first, that the stresses resulting from the terrific pounding to which a percussively driven rock bit is subjected in service, were concentrated at the joint between the bit and the rod when the bit and rod were made of separable parts, and, second, that a joint in the form of a threaded sleeve when made of steel of such composition and heat-treatment as to give it shock-absorbing properties as its dominant characteristic, would withstand these shocks and stresses."

[fol. 5784] The evidence discloses that drills consisting of two pieces, bit and rod, had been used prior to the plaintiff's patent. Different heat-treatment for bit and rod was also known and used. The plaintiff's construction was anticipated by the Diamond Drill "E" rod and other structures (Throckmorton No. 347,397, Hawkesworth No. 1,296,078, and Bell South African patent No. 136/13) and the Denver Rock Drill Manufacturing Company in 1924 listed for sale "Detachable Bits".

The plaintiff relies also upon claims 8, 9, and 10 of Reissue patent 17557:

> "A sectional mining drill having a coupling and its sections coupling formed with and united by screw threads of smooth, continuously curved and undulatory form". (As stated in claim 8).

The court finds, however, that such claims were anticipated by prior patents, prior publications, and prior public use. The general shape of such a thread is familiar in such articles as lamp sockets, glass jars, and other articles having a screw socket. The continuously curved thread was previously used in connections subjected to great stress

but requiring detachability, (Tibbitt No. 806,510; Davenport No. 1,054,181; Nicholson British patent of 1910, No. 17,515), and was described in the South African patent to Bell dated March 13, 1913 for a drill with a detachable bit. As to publications, see "Machinery's Encyclopedia", published by The Industrial Press in New York, 1917, Volume VI, pages 268, 269, 270, 271 and 275; and "Knight's American Mechanical Dictionary" (1876), page 2061. In view of the evidence in this case, the court is constrained to overrule the presumption of validity which attends the grant of a patent.

As to the issue of infringement, the court is of opinion that the defendant's products would infringe the claims of Reissue patent 17557 if it were valid. But having held such Reissue patent invalid because of anticipation, there can be no infringement.

[fol. 5785] In view of the foregoing determinations, it is not necessary for the court to pass upon the issue of laches. But the court has already commented upon the apparent acceptance by the Detachable Corporation of the conduct of the defendant when it called for payment of notes not yet due. The assignee of course can have no stronger claim than had the Detachable Corporation. The facts upon which plaintiff's cause of action is based were well known to the Detachable Corporation. It knew of the competition of defendant in 1932. In 1933 a notice was sent claiming infringement. But no complaint was made of any wrongful conduct on the part of the defendant aside from patent infringement. Not until this action was commenced in 1938 was any legal action taken to enforce such claims. In the meantime the defendant had been proceeding with its manufacture of drills with detachable bits, and some of its officers had died. No satisfactory reason or excuse was offered for the failure of Detachable Corporation to enforce its claim at an earlier date.

Complaint dismissed at plaintiff's costs.

—— ——, Judge.

July 31, 1941.

[fol. 5786] Copy

In the District Court of the United States for the Northern District of Ohio, Eastern Division

In Equity No. 5761

Detachable Bit Company, Plaintiff,

vs.

Timken Roller Bearing Company, Defendant

Findings of Fact and Conclusions of Law

Findings of Fact

(1) Plaintiff, Detachable Bit Company, is a Delaware Corporation, with its principal office in New York. Defendant, Timken Roller Bearing Company, is an Ohio corporation with is principal Office at Canton, Ohio.

(2) In 1936 plaintiff acquired by purchase the entire assets of the Detachable Bit Corporation of America, a corporation of Delaware, organized in 1926, and dissolved after the sale of its assets to the plaintiff. Such assets include the patents in suit, together with all legal rights thereunder, and all other causes of action belonging to the assignor.

(3) The complaint presents two causes of action, designated by counsel the Equity Action and the Patent Action. The equity action is based on certain business relations between the Detachable Corporation and the defendant beginning in 1929. The patent action charges infringement of two patents, Reissue No. 16061 and Reissue No. 17557.

Findings of Fact As to Equity Action

(1) In 1928 Detachable Corporation was undertaken to develop a detachable rock-drill bit and to perfect manufacturing processes and types of steel to be used. Defendant was engaged in the manufacture of steel. Dealings between the two companies commenced with the purchase of a sample order of steel by Detachable Corporation prior to June, 1929. Defendant became interested in the development of Detachable's device as a possible outlet for its [fol. 5787] steel, and Detachable wished to benefit by the

knowledge and experience of defendant's expert metallurgists.

(2) The defendant and Detachable Corporation entered into a written contract on July 9, 1929, by which defendant agreed to sell to Detachable Corporation, and it agreed to buy from defendant, its steel requirements, and defendant agreed to buy from Detachable Corporation $100,000 principal amount of 7% one-year convertible notes which, at the option of the holder, could be converted into stock of Detachable Corporation at any time within nine months after their issue.

(3) During the period from July 1, 1929 to about February 1, 1930, defendant and Detachable cooperated in attempts to improve Detachable's product and its methods of production. The defendant's engineers made suggestions regarding uses of steels, steel treatment, and manufacturing processes, and tests made near Canton.

(4) Cooperation between the parties ceased in February, 1930. Defendant notified Detachable that it would not exercise the option provided in the contract of July 9, 1929, and demanded and received payment of the unmatured notes.

(5) Detachable Corporation continued to manufacture its device until March, 1931, when it turned over the manufacture and sale to the Flannery Bolt Company of Pennsylvania as its exclusive licensee. Detachable had not enjoyed financial success, and operations by the Flannery Company likewise failed. The latter ceased operations under the license in March, 1936.

(6) The defendant commenced the manufacture and sale of a detachable bit during the year 1932 in competition with Detachable's licensee, and is now conducting a substantial business in the manufacture and sale of such devices.

(7) There was, in the relationship of the defendant and Detachable Corporation, no sharing of liabilities, profits, burdens and benefits; there was no relationship of trust and confidence such as exists between a guardian and ward or a trustee and the beneficiary of his trust; the parties met on an equal footing and dealt at arms length; there was no agreement to assume the relation of partners, share [fol. 5788] profits and losses, nor for joint control of property; the parties in their dealings acted as separate corporations, and there was no more than the usual cooperation between a manufacturer and his customer for the

development and expansion of the business of the customer, the interest of the defendant being in increased sales of its raw material or specially treated steel, and that of Detachable Corporation being in the sale of its fabricated drills and bits.

(8) Most disclosures were from the defendant to the Detachable Corporation. The defendant obtained some knowledge from its association with the Detachable Corporation which would prove of value to it in developing a drill business of its own, but such knowledge related to mistakes which should be avoided rather than to valuable practices revealed or disclosed in confidence.

Conclusions of Law As to Equity Action

(1) The dealings of the parties did not create such a joint venture as imposed equitable or fiduciary responsibilities, and therefore in the things and acts complained of by plaintiff there was no breach of legal duty by the defendant.

(2) The complaint should be dismissed insofar as it relates to the equity or breach of confidence phase of the case.

Findings of Fact As to Patent Action

(1) The claims relied on in Reissue No. 16061 use indeterminate adjectives which describe a function instead of a structural device. They refer to a bit "formed and tempered to have wear-resisting properties" and a drill rod "formed and tempered to have anti-fatigue properties" and and an intermediate member "formed and tempered to have shock-absorbing properties".

(2) The idea of a detachable bit was old at the time plaintiff's patent was obtained. They were in use as early as 1855. Drills consisting of two pieces, bit and rod, had been used prior to the plaintiff's patent. Different heat treat- [fol. 5789] ment for bit and rod was also known and used. The plaintiff's construction was anticipated by the Diamond Drill "E" rod and other structures (Throckmorton No. 247,397, Hawkesworth No. 1,296,078, and Bell South African patent No. 136/13); and the Denver Rock Drill Manufacturing Company in 1924 listed for sale "Detachable Bits".

(3) Claims 8, 9, and 10 of Reissue patent No. 17557 were anticipated by Tibbitt No. 806,510, Davenport No. 1,054,181,

Nicholson British patent of 1910, No. 17515, and South African patent to Bell dated March 13, 1913. As to publications, "Machinery's Encyclopedia", published by The Industrial Press in New York, 1917, Volume VI, pages 268, 269, 270, 271 and 275; and "Knight's American Mechanical Dictionary" (1876), page 2061, described the continuously curved thread claimed in Thurston Reissue patent No. 17557.

Conclusions of Law As to Patent Action

(1) The claims relied on in Reissue patent 16061 fail to make a disclosure sufficiently definite to satisfy the requirements of Section 33 Title 35, U. S. C. A.

(2) The claims relied on in Reissue patent No. 16061 are invalid, in addition, by reason of anticipation.

(3) The claims relied on in Reissue patent No. 17557 are invalid by reason of anticipation.

(4) The complaint should be dismissed insofar as it relates to the patent action.

(Sgd.) R. N. Wilkin, Judge.

[fol. 5790] UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

In Equity No. 5761

DETACHABLE BIT COMPANY, Plaintiff,

vs.

TIMKEN ROLLER BEARING COMPANY, Defendant

Final Judgment

Entered September 25, 1941

This cause came on to be heard upon the pleadings, and the evidence and briefs of counsel, and was duly submitted to the Court; upon consideration whereof, the Court finds upon the issues in this cause in favor of the defendant. It is, therefore,

Ordered, adjudged and decreed that the bill of complaint be and it is hereby dismissed, and judgment is rendered for the defendant; it is further ordered that the defendant

recover from the plaintiff its costs herein to be taxed by the Clerk; to all of which the plaintiff excepts.

Wilkin, Judge.

Approved: W. B. Morton, Attorney for Plaintiff; ——, Attorneys for Defendant.

[fol. 5791]

DEFENDANT'S EXHIBIT No. 238

Average Number of Employees and Production of Bearings by the Timken Roller Bearing Company 1922–1947

For the Year Ending	Average Number Of Employees	Millions Of Bearings Produced
Dec. 31, 1922	3,199	17.179
Dec. 31, 1923	4,264	25.219
Dec. 31, 1924	3,172	19.998
Dec. 31, 1925	3,119	24.567
Dec. 31, 1926	2,953	24.994
Dec. 31, 1927	2,996	23.601
Dec. 31, 1928	3,942	42.400
Dec. 31, 1929	5,562	48.862
Dec. 31, 1930	3,464	27.116
Dec. 31, 1931	2,754	19.429
Dec. 31, 1932	2,231	10.612
Dec. 31, 1933	3,754	18.312
Dec. 31, 1934	4,666	20.991
Dec. 31, 1935	5,747	29.294
Dec. 31, 1936	6,266	30.619
Dec. 31, 1937	6,910	36.279
Dec. 31, 1938	4,412	11.520
Dec. 31, 1939	5,734	26.035
Dec. 31, 1940	6,950	32.589
Dec. 31, 1941	10,150	45.484
Dec. 31, 1942	15,237	40.964
Dec. 31, 1943	17,496	46.449
Dec. 31, 1944	17,190	49.397
Dec. 31, 1945	16,024	39.168
Dec. 31, 1946	16,456	44.810
Dec. 31, 1947	est. 16,827	51.504

[fol. 5792] DEFENDANT'S EXHIBIT No. 239

Dated: —— —, 1948

The Timken Roller Bearing Company (1)

M. B. U. Dewar, Esquire (2)

and

Timken Holdings Limited (3)

Copy

Agreement

cancelling previous Agreements and Bye-Laws of Timken Holdings Ltd. and for transfer by Mr. Dewar to the Canton Company of his shares in Timken Holdings Ltd.

Stibbard Gibson & Co., 71, St. Mary Axe, London, E. C. 3.

[fol. 5793] This Agreement is made the — day of ——, One thousand nine hundred and forty eight between The Timken Roller Bearing Company of Canton Ohio in the United States of America (for short "the Canton Company") of the first part Michael Bruce Urquhart Dewar of Milton Farm Milton Ernest near Bedford in the County of Bedford (for short "Mr. Dewar") of the second part and Timken Holdings Limited a Company incorporated in England (for short "the Holdings Company") of the third part supplemental to the following Agreements videlicet:

Date	Parties
1935 September 7	The Canton Company (1) and Mr. Dewar (2)
1943 June 5	The Canton Company (1) Mr. Dewar (2) and The Holdings Company (3)
1943 June 5	The Canton Company (1) and Mr. Dewar (2)

and supplemental also to the Articles of Association of the Holdings Company and the Bye-laws as to voting and the Bye-laws as to Directors now in force under Articles 65 and 76 of the said Articles of Association and supplemental also to the Registered Participating Rights created

and issued by the Holdings Company under the said Articles of Association and now outstanding.

Preamble

A. The Share capital and Registered Participating Rights of the Holdings Company now outstanding consist of the following shares of One shilling each fully paid and Participating Rights belonging to the respective proprietors following videlicet:

[fol. 5794]

Proprietors	"A" shares	Distinctive numbers inclusive	"B" shares	Distinctive numbers inclusive	Participating rights	Distinctive numbers inclusive
The Canton Company	573	3 to 575	738	1251 to 1988	261	3 to 117 1251 to 1396
Mr. Dewar or Assignees	675	576 to 1250	511	1989 to 2339 2341 to 2500		
Andrew Jameson Matthews Duncan (Nominee of the Canton Company)	1	1			1	1
Frederick John Pascoe (Nominee of Mr. Dewar)			1	2340		
Cecil William Bateson (Nominee of the Canton Company)	1	2			1	2
	1250		1250		263	

B. The following participating rights formerly belonging to Mr. Dewar or his nominees have been redeemed.

Mr. Dewar	235	576 to 710 1989 to 2058 2341 to 2370
Frederick John Pascoe (Nominee)	1	2340
William Dallow (Nominee)	1	2339
	237	237

C. The holdings Company is the registered proprietor of the following shares of One Pound each fully paid in British Timken Limited (for short "British Timken")

Shares held by the Holdings Company as Trustee for the Canton Company	86,104
Shares held by the Holdings Company as required for redemption of participating rights belonging to the Canton Company	18,936
	105,040

[fol. 5795]

Shares held by the Holdings Company as Trustee for Mr. Dewar or his assigns	94,960
	200,000

Now this Agreement witnesseth as follows namely:

1. The Parties hereto declare that in the events which have happened the said Agreements are no longer operative except certain provisions contained therein and consequent thereon the said agreements are hereby entirely cancelled and at an end but the provisions contained in another agreement to be forthwith made between the Canton Company and Mr. Dewar shall take the place of the said excepted provisions so far as it is desired to keep them in force.

2. The parties to this agreement declare that in the events which have happened the whole of the said Two hundred thousand shares in British Timken which are held by the Holdings Company are now divisible into two categories videlicet:

(a) One hundred and five thousand and forty shares which belong in fact directly or indirectly to the Canton Company Eighty six thousand one hundred and four of such shares being held by the Holdings Company as nominee or Trustee for the Canton Company and Eighteen thousand nine hundred and thirty six of such shares being held by the Holdings Company in absolute ownership but subject to the right vested in the Canton Company as the holder of the Participating Rights in the Holdings Company belonging to it to have such shares added to the shares in British Timken held by the Holdings Company as the nominee of The [fol. 5796] Canton Company and

(b) Ninety four thousand nine hundred and sixty shares which belong in fact to Mr. Dewar or his assigns being held by the Holdings Company as nominee or Trustee for Mr. Dewar or his assigns.

3. The Holdings Company The Canton Company and Mr. Dewar as the holders by themselves or their nominees of all the share capital of The Holdings Company hereby declare that the said Bye-Laws of the Holdings Company are rescinded and at an end for all purposes.

4. Mr. Dewar agrees to sell and the Canton Company agrees to purchase at the price of Fifty nine pounds seven shillings One thousand one hundred and eighty seven shares of One shilling each being all the shares in the Holdings Company belonging to Mr. Dewar and registered in the name of Mr. Dewar or his nominees and consequent thereon the Holdings Company will become a wholly owned subsidiary Company of the Canton Company and the said shares sold by Mr. Dewar to the Canton Company shall be transferred by Mr. Dewar to the Canton Company or as it shall direct as and when required by the Canton Company.

In witness whereof this agreement has been executed by the Canton Company Mr. Dewar and the Holdings Company.

Wm. E. Umstattd, President.

Signed and sealed by or on behalf of The Timken Roller Bearing Company in the presence of:

H. E. Markley, Canton, Ohio, Assistant Secretary.

[fol. 5797] Signed sealed and delivered by the above named Michael Bruce Urquhart Dewar in the presence of:

—— ——.

Sealed with the Seal of Timken Holdings Limited pursuant to a resolution of the Board of Directors in the presence of the undersigned Director and Secretary of the Company.

—— ——, Director. —— —— Secretary.

———

[fol. 5798] DEFENDANT'S EXHIBIT No. 240

Dated: 22nd March, 1948.

The Timken Roller Bearing Company and M. B. U. Dewar, Esq.

Agreement with Respect to British Timken Limited

[fol. 5799] This agreement made the twenty-second day of March, One thousand nine hundred and forty-eight betweer The Timken Roller Bearing Company of Canton, Ohio in the United States of America (for short "The

Canton Company") of the one part and Michael Bruce Urquhart Dewar of Little Horwood Manor Bletchley, in the County of Buckingham Esquire (for short "Mr. Dewar") of the other part.

Witnesseth:—that the parties hereto declare and agree as follows viz:—

1. (a) Upon the death of Mr. Dewar or if he shall become incapacitated by ill health or otherwise for a consecutive period of six months from discharging his duties as a Director of British Timken Limited (for short "British Timken") The Canton Company shall have an option to purchase all or any of the 94960 ordinary Shares in British Timken now belonging to Mr. Dewar or his assigns being the Ordinary Shares numbered 5 to 204, 52701 to 100000, 113127 to 125000, 390505 to 393504, 333911 to 359536, 359537 to 360000, 393505 to 400000 all inclusive (hereinafter referred to as "the Dewar Shares")

(b) In the event of Mr. Dewar or his assigns or his or their legal representatives (hereinafter referred to as "the Dewar Shareholders") desiring to sell all or any of the Dewar Shares the Canton Company shall have an option to purchase all or any of such Shares which option shall be independent of the option in favor of the Canton Company provided for in paragraph (a) hereof

(c) In the event of the Canton Company or its successor or its or their assigns (hereinafter referred to as "the Canton Shareholders") desiring to sell all or any of the Ordinary Shares in British Timken now belonging to the [fol. 5800] Canton Company and numbered 1 to 4, 205 to 52700, 100001 to 113126, 275001 to 300000, 330001 to 333910, 380001 to 390504 all inclusive (hereinafter referred to as "the Canton Shares") Mr. Dewar shall have an option to purchase all or any of such Shares

(d) In the event of any of the Dewar Shareholders desiring to sell all or any of the Dewar Shares or in the event of any of the Canton Shareholders desiring to sell all or any of the Canton Shares the Shareholder so desiring to sell (hereinafter called "the seller") if the seller is a Dewar Shareholder shall give notice to the Canton Company and the seller if the seller is a Canton Shareholder shall give notice to Mr. Dewar of the seller's desire to sell and the number of shares which the seller desires to sell and the seller will not sell or transfer any of such shares during

a period of three months from the date on which such notice is given and at any time during that period of three months the Canton Company or Mr. Dewar as the case may be may exercise the purchase option hereinbefore conferred by notice in writing served upon the seller.

(e) The said option arising upon the death or incapacity of Mr. Dewar shall be exercisable by the Canton Company at any time during a period of six months from and after such death or from and after the expiration of the said six months incapacity period as the case may be and shall be exerciseable by notice in writing served upon the Dewar Shareholders within the period of six months during which it is exerciseable.

(f) The price to be paid for any Shares purchased under any of the said options shall be such price as the parties selling and purchasing shall agree or failing agreement at the average price of similar shares of British Timken on [fol. 5801] the London Stock Exchange over a period of thirty days immediately preceding the date on which the option under which the Shares are purchased became exerciseable.

(g) Any sale of Shares which are purchased under any of the said options shall be completed by the delivery of the certificates for the shares purchased, together with duly executed transfers thereof against payment of the purchase price within one month after the option is exercised.

2. Notwithstanding anything hereinbefore contained Mr. Dewar or any of the other Dewar Shareholders shall be at liberty to sell all or any of the Dewar Shares and the Canton Company or any of the other Canton Shareholders shall be at liberty to sell all or any of the Canton Shares to a transferee on purchase or otherwise who has been previously approved in the former case by the Canton Company and in the latter case by Mr. Dewar or his legal representatives provided that the Transferee delivers in the former case to the Canton Company and in the latter case to Mr. Dewar or his legal representatives an undertaking addressed in the former case to the Canton Company and in the latter case to Mr. Dewar or his legal representatives declaring that the shares transferred and the transferee shall be subject to the conditions to which such shares and the Transferor in respect of the same were subject previous to the transfer and binding the transferee to perform and observe the said conditions accordingly.

3. If at any time the profits of British Timken available for the payment of dividend before deduction of any taxes on profits upon an average of three consecutive years as shewn by the audited annual accounts of British Timken are reduced below Fifty thousand pounds for one year Mr. [fol. 5802] Dewar or his legal representatives and a representative of the Canton Company shall meet and consult together as to the manner in which the voting rights in respect of the Dewar Shares and the Canton Shares shall be exercised and upon any question arising at such meeting the decision, of the holders of a majority of the Dewar shares and the Canton Shares shall prevail and any holder of such shares not present at such meeting may authorize in writing any person present at such meeting to join in such decision on his behalf.

In witness whereof this Agreement has been executed by or on behalf of the parties the day and year first above written.

Signed and Sealed by or on behalf of the Timken Roller Bearing Company in the presence of ——, Canton, Ohio, Secretary-Treasurer, ——, President.

Signed, Sealed and Delivered by the above named Michael Bruce Urquhart Dewar in the presence of —— ——, 2 —— Lane, EC. ——. (Seal.)

[fol. 5803] DEFENDANT'S EXHIBIT 242

Wolseley Motors Limited

March 10th, 1924.

Heman Ely, Esq., Vice President & Treasurer, Messrs. The Timken Roller Bearing Coy. Ltd., Canton, Ohio.

DEAR SIR:

We think it as well, as Mr. Lothrop is sailing for the States on the 12th instant, to write to you, setting out a Resumé of the points we have discussed with him during his visit here.

We would like, in the first instance, to thank you for having sent him over, and he has certainly done all that

lay in his power to make his visit a useful one to us. We have found him at all times most courteous and considerate in discussing the various matters which arose between us.

We, on our part, have done all that is possible to make his visit a success. Immediately on his arrival on the 23rd January he got in touch with us from London, and we arranged for him to come to Birmingham at once, as Mr. Caillard and the undersigned, as well as the Offices and Works, are all situated here. Mr. Lothrop was immediately put in touch with the various executive officers, and spent about a week with us. He left here on the 2nd February for London, accompanied by Mr. Rodway, en route for Paris. Mr. Rodway introduced him there to the S.M.G., and went over the Works with him on the 4th and 5th February, after which, we understand, Mr. Lothrop went for a tour on the Continent, and Mr. Rodway returned here. About ten days ago we had a telephone message from Mr. Lothrop in London to say that he had returned, but that he did not wish to come to Birmingham again unless it was absolutely necessary.

We made arrangements for one of our Representatives to meet him in Sheffield, a few days after his arrival in London, at the Works of Messrs. Vickers Limited, so that he could see anything there in which he was interested.

Finally the undersigned saw Mr. Lothrop in London on Saturday, the 8th instant, and impressed upon him the importance of laying before you immediately on his return the various points discussed with him, and the necessity of a prompt decision being come to.

We are sure you will understand that, in view of the fact that Mr. McCormack wrote to you as long ago as the 6th June 1923 with regard to the question of high Royalty, and the effect it was bound to have on our business, we are naturally expecting a definite reply from you at a very [fol. 5804] early date. We wrote again to you very fully on the 14th December 1923, pressing for an early decision. Your reply to this letter was to send over Mr. M. T. Lothrop, and your letter of the 31st December 1923 referred to his visit here. We gathered from the third paragraph of that letter that Mr. Lothrop's visit required to be of the shortest possible duration, as you could not afford to spare him for long, but subsequent events hardly seem to have borne out this view.

Further, with regard to the fifth paragraph of your letter, it transpired that Mr. Lothrop was not apparently vested with any powers to discuss the business aspect of the situation, about which we have been pressing you for some decision.

We will now deal with the various points in detail:

1. Patents

We understood from Mr. Lothrop that you concurred that all the Patents relating to the design of the Bearings have now expired. On the other hand, he informed us that you considered that your British Patent No. 184771 (which is still unexpired) is of real value. This particular Patent, is, however, a Patent relating to a method of manufacture, and, our Patent Agents are definitely of opinion that this Patent is invalid on account of anticipation. Since Mr. Lothrop's return from France, we understand that he proposes to arrange for some Patent Agents, acting on your behalf, to get in touch with our Patent Agents, Messrs. H. N. & W. S. Skerrett, but so far the latter have not heard anything from them.

We are sure you will realise that it is of the utmost importance that a decision should be come to with regard to this matter with the greatest possible speed. We cannot help feeling that it is a very great pity that if this was your view, you did not instruct your Patent Agents to get in touch with us on the subject, when you received our communication of the 14th December last, as a great deal of time would thereby have been saved.

In any case, even if this Patent should transpire to be valid, seeing that it relates to a process of manufacture only, and not to the design of the Bearing, it would be exceedingly difficult to detect any infringements, and our position will thereby be correspondingly weakened.

2. Ford Business

We have recently made a determined attempt to secure this business, and we are pleased to say that we have obtained orders from the Ford Company for 58,000 Bearings, of a value of approximately £7,848. We have received orders also from various Ford Service Dealers and from our own Service Dealers for Timken Bearings for replacements in Ford Cars to the extent of approximately another

10,500 Bearings since the 1st January last. In order to obtain this business, we were compelled to put in an exceedingly cut quotation; the price we are obtaining from the Ford Company being calculated on the basis of the actual cost of Wages and Materials, plus a percentage for Works Charges (whish is substantially less than the actual percentage at which we are running). To this we have added [fol. 5805] 2½% for your Royalty, as we got the impression from Mr. Lothrop that you would be prepared to consider a 2½% Royalty on this business. We are sure you will realise the unhappy position in which we are placed, and we *must* have an immediate decision on this point.

We would like to draw your attention to the fact that on the 7th September last, we had a letter from you, signed by Mr. Klynedenst, referring to a letter we had addressed to you on the 18th June last, in which he stated that you would do your utmost to assist us to get the Ford business. We wrote subsequently on October 6th, November 15th and on the 1st January last, definitely requesting you to agree to a Royalty of 2½% on this business, but to *none* of these communications have we had any reply whatever. A favorable opportunity occurred, however, to secure business, and we did so, with a definite provision of 2½% only for Royalty. We have, therefore, placed ourselves entirely in your hands in so doing; but we are sure you will understand that this is not a position which can continue. We are the strongest believers in business being conducted on business-like lines, and these are not business-like lines. We desire to make it perfectly clear that we have made no provision in the price for gross profit, selling, or establishment charges, other than pure Works Charges.

3. Royalties Generally

We set out the position, so far as this matter is concerned, very clearly on page 2 of our letter of the 14th December last. Naturally the position is affected by the validity or otherwise of any Patents which remain; but the value of these Patents is now definitely limited—as we have already pointed out to you—and the measure of protection which we have is considerably less. Added to this, as competition becomes keener, the payment of a big Royalty becomes more and more detrimental to securing business.

4. Prices of Your Supplies to Us

We were very interested in the figures Mr. Lothrop showed us of your Works Costs of the various types of Bearings you make as compared with the prices you charge to us, which apparently leave a very substantial profit. We gathered that your point is that you are adhering to the arrangement, that you shall charge us with a price 10% only in excess of your most favorable price to other parties, and that you are doing this—notwithstanding that your other Purchasers buy from you on a very much larger scale than we do. We would like to point out, however, that in all ordinary businesses in this country, it is imperative to supply Export Purchasers on a much more favorable basis of price, notwithstanding that their business is much less in volume than domestic purchasers of our goods, and that this is a well understood basis of trade. Having regard to your position we should not have thought that you would have found it necessary to tax us with an additional 10%. We are, however, entirely in your hands in this matter, but we refer to it in passing. It is not a point of anything like the same importance to us as the main question of Royalty.

[fol. 5806] 5. Visit of Our Representative

You suggested in your letter of the 20th September last that we should send over a Representative to get into touch with the progress that you have made in manufacturing processes. We have been giving careful consideration to this matter, and should be glad to send over Mr. Loder, our Works Manager, at a later date. On the occasion, however, of Mr. Rodway's and Mr. Loder's visit in 1920, they were in America for some four or five months, and during the bulk of this time they were not given access to your Works, and their time was badly wasted in consequence. As we cannot afford to spare Mr. Loder for any considerable time, we naturally do not wish to send him until we know that the way is clear for him to obtain immediate access to your Works, and to have all the information, to which we are entitled under our Agreement, placed at his disposal.

6. Organisation

We believe that Mr. Lothrop will be able to assure you that our Organisation, although naturally on a smaller

scale than your own, having regard to the limitation of the market, is a thoroughly live and active one, and that the various Officers are exclusively engaged in doing nothing else than manufacturing, and forwarding the interests of Timken Bearings.

Since writing to you, we have added another Sales Representative to our Staff, Mr. H. Boden, who has been appointed expressly for the purpose of obtaining business in lines other than Motor Car Work. He has already got in touch with a number of good Firms, and we hope that business will result from our efforts in this direction before long.

It may be that Mr. Lothrop will comment to you on a point which he referred to whilst here, that is to say, his view that we had a Staff which was too large in comparison with the number of productive workers which we employed. We explained the position to him on two grounds:

(1) That in England the number of Bearings supplied to any one Manufacturer is very substantially less than would be the case in your country. The Staff work, therefore, entailed in considering applications of Bearings, as compared to the ultimate number of Bearings ordered, must necessarily be substantially greater. We might spend—and often do have to do so—a considerable time in considering the application of Bearings to the Axles of the particular type of car, and ultimately secure business, which, however, may amount to an order for a few hundred Bearings, or at the best probably to about 5/10,000.

In your country we have no doubt that, when the application of Bearings has been agreed, you may obtain an order for hundreds of thousands of Bearings for that particular application. It is perfectly clear, therefore, that the number of Staff workers, as compared with the productive workers, must be substantially lower.

[fol. 5807] (2) We explained also that we have been compelled, on account of depression in trade, to maintain an organisation larger than we really require, but which we could not disperse, as we expected—and, as events have proved, justifiably so—that business would tend to increase. The result is that we hope in a short time to be turning out about 10,000 Bearings a week with the same Staff as that which we have employed

for 5,000 Bearings a week. The conditions which rule in this country are so entirely different from those which obtain in yours, that it is hardly possible to apply the same principles in both countries.

7. General Position

We think the foregoing remarks will have given you as up-to-date a view of the state of affairs as it is possible to give, and no doubt they will be amplified by Mr. Lothrop on his arrival.

We have endeavoured to convey through him to you what we believe to be the value of our relationship with you, and that our mutual benefit will be best secured by our working in the closest unison. Certainly we cannot see that any good purpose can possibly be served by our endeavouring to work independently. We feel sure, however, you will realise that the position has changed considerably having regard to:

(a) Patent position.
(b) The keen competition which exists.

Having regard to these factors, we are definitely of the opinion that an adjustment of the percentage payable in respect of Royalty is imperative and we really must ask you to be so good as to give a *definite and prompt reply* to this most urgent matter.

Yours faithfully, Wolseley Motors Limited. A. Jacob, Director.

[fol. 5808] DEFENDANT'S EXHIBIT 243

March 25, 1924.

British Timken Limited, Ward End, Birmingham, England.

Attention: A. Jacob, Esq., Director

DEAR SIRS:

We are in receipt of letter of March 10th from the Wolseley Motors Limited, and have also the report from our Mr. M. T. Lothrop.

We wish to take this opportunity of thanking you for

the courtesies extended Mr. Lothrop, as we certainly appreciate your co-operation with him in his work.

In connection with the various points which you raise, and on which Mr. Lothrop has reported, it seems that we need the advice of our solicitor, and we are therefore instructing Mr. A. J. M. Duncan to immediately get in touch with you on these various matters. Mr. Duncan has our views on this matter, in detail, and can treat with you directly and to better advantage than we can by long-range correspondence from this side.

We are sure that you will wish to meet all matters now open in an open way, and it is our sincere desire that any changes we may make in our present arrangements will be for our mutual benefit and the further use of Timken Bearings. We will appreciate it if you will expedite any conferences with Mr. Duncan, to the end that we may get in full agreement on all matters now open.

Very truly yours, The Timken Roller Bearing Co.,
—— ——, Vice Pres. & Treas.

Heman Ely.B.

[fol. 5809] DEFENDANT'S EXHIBIT 244

Western Union Telegram

May 16, 1924.

HB 261 Cable, London 82 15/557P

Timken Roller Bearing Company, Canton, Ohio.

Can arrange following one royalty British and Continental licenses general rate five special rate two half upon bearings supplied to any manufacturer who purchases at least fifty thousand in the year for cars made by him two agreement to continue five years if demands trade reasonably satisfied with option licensees to renew for five years same terms three name to be restored on any termination of agreement four new agreement to date from first October last.

Stibbard.

[fol. 5810] DEFENDANT'S EXHIBIT 245

Western Union Telegram

May 16, 1924.

Stibbard—London

Proposal exceeds our instructions to you and we believe is more than they expect to get.

Item one, We wish to limit two and one half percent to Ford only because minimum quantities of fifty thousand might include several other customers and mean large proportion of their total business.

Item two, Instead of renewal option for second five year term if either party desires to discontinue after first five years that party should give notice six months before expiration.

Item three, Name should also be registered now in England and Continent so as to give us full protection and clear title.

Item four, New contract should date from first quantity Ford orders.

Please take firm stand on foregoing and advise by cable.

Timken.

[fol. 5811] DEFENDANT'S EXHIBIT 246

HB 246 Cable, London 62 538P 8

Timken Roller Bearing Company, Canton, Ohio.

British Company agrees your terms except considers new agreement necessitated by expiry patents should therefore start first October not date first Ford deliveries namely twelfth February has asked us communicate directors views as above and their expectation reciprocal concessions on this point Stop What do you propose about agreement with French Company sent you eighth February.

Stibbard.

[fol. 5812] Copy

DEFENDANT'S EXHIBIT 247

Stibbard, Gibson & Co.

—— Street

London E.C. 3

19th June, 1924.

DEAR SIRS:

British Timken Ltd.

We have heard from the Solicitors of this Company advising that the Company is agreeable to the new agreement commencing as from the 1st January.

Yours faithfully, (S.) Stibbard, Gibson & Co.

The Timken Roller Bearing Company.

(Here follow 2 Photolithographs, folios 5813, 5814 and 1 paster, folio 5815)

DEFENDANT'S EXHIBIT 248

CURRENT EXPORT BULLETIN

DEPARTMENT OF COMMERCE
Office of International Trade
Washington 25, D. C.

Case No. 2 42.14 Civil
DEFENDANT'S EXHIBIT
No. 248

Current Export Bulletins are issued by the Export Supply Branch, Office of International Trade, Department of Commerce, for the guidance of all concerned with export regulations and interpretations. The Bulletins supplement the Comprehensive Export Schedule, the latest issue of which is No. 24, dated September 10, 1947. Copies of the Comprehensive Export Schedule may be obtained from the Superintendent of Documents, Government Printing Office, Washington 25, D. C., at 25 cents per copy.

Number 431 December 31, 1947

SUBJECT: EXPORT LICENSING POLICY

A. It has always been the desire of those responsible for the administration of export control to employ a procedure for the distribution of licenses which would maintain the greatest degree of competitive private trade.

Throughout the war years and the early postwar period, many factors combined to dictate a policy of reserving the bulk of export quotas for the firms which had established America's foreign trade during a base period of severe competition and no controls. These concerns were generally those best able to supply a given market; they had earned their position in the market by an investment of effort, resources, and "Yankee ingenuity" which investment could not properly be subjected to a hostile licensing procedure; if they had converted to war production, they were entitled to a period of reconversion in which foreign markets would not be arbitrarily assigned to others.

However, the historical method of selecting exporters has become increasingly anachronistic. It depends upon base periods which are becoming more and more remote. Prewar bases are now almost a decade removed from today's trade conditions. Further, the reconversion argument has, after 2 years, lost most of its force. Freezing a pattern of shipment which was once fiercely competitive can no longer assure competitive conditions in foreign trade.

The Office of International Trade, therefore, seeks a modification of its licensing policy which will supplant the anachronism of so-called "traditional" licensing with a more competitive selection of the exporters who supply foreign markets with the limited quantity of scarce material which can be authorized for export.

No single solution of this problem seems possible, but one basic principle may provide guidance: that distribution of licenses is most nearly competitive which permits shipments most closely approximating those which would take place in the absence of any U. S. Government restrictions on export. The application of this principle, as contracted with the historical method, would not discriminate against small businessmen and merchant exporters, who would be able to share in export trade to the full extent of their ability to meet more truly competitive conditions.

If this principle be accepted, two main types of licensee selection suggest themselves: First, the approval of those export shipments which the Office of International Trade and the importing government find make the least demand upon the latter's limited supply of dollar exchange; second, the approval of those license applications which are accompanied by evidence of the lowest price contracts for comparable material under comparable conditions of supply. Licensed exportations from the United States have recently come into severe criticism because of the very wide disparity sometimes existing between prevailing domestic prices and those charged foreign purchasers. Discussions with members of the United States trade community, the Congress, and foreign governments has emphasized the necessity of checking this added drain on limited dollar exchange balances.

Beginning with the first quarter of 1948, the Office of International Trade, in an effort to reduce both the dollar burden abroad, and the inflationary impact at home, of United States exports, establishes the following licensing policy:

B. *Licensing Policy*

1. *Private Trade Channels:*

a. Where the American exporter is the presently established channel through which shipments of a given commodity to a given country are effected, whether the purchaser abroad is a private importer or an agency of an importing government, licenses will continue to be issued to the private American exporter, but on the following conditions:

(1) Where the customary channel of importation is through a private importer, licenses naming private importers as consignees will be given preference and licenses for shipment to foreign government distributive agencies will be considered only under the most exceptional circumstances.

(2) Where the importing government desires the Office of International Trade to approve export license applications naming an agency of the importing government as consignee, requests for this privilege will be considered by the Office of International Trade, provided such requests do not constitute an unwarranted departure from current established trade practices.

b. If under either of the conditions described above, the importing government desires to recommend the approval of certain of the applications submitted by American exporters, the Office of International Trade will issue its licenses after review of the recommendations received from the embassy of the importing country. For the purpose of this review, the importing government will submit to the Office of International Trade through its embassy in Washington complete specifications of the commodities being purchased, together with the prices to be paid to the exporters. The Office of International Trade will review all export license applications submitted. With respect to those quotas on which the recommendations of the importing government are appropriate, and where the Office of International Trade concurs in those recommendations, such cases will be approved; all other cases will be rejected or returned without action to the applicant.

The requirements set forth herein have been approved by the Bureau of the Budget and assigned number BB 41-R1046 in accordance with Regulation A pursuant to the Federal Reports Act of 1942.

c Where the embassy of the importing country is not in a position to assist in the identification of those export contracts which will provide the desired shipments with minimum impact on dollar exchange balances, applications will then be approved so as to minimize the consumption of dollar exchange in the acquisition of goods of comparable type, grade and condition of supply.

d Exporters are required to submit with each license application evidence of the accepted firm order covering the proposed shipment. This evidence must include the specifications for the commodity and the total price which the exporter will receive for it. Where the normal trade practice in a commodity precludes the establishment of a firm export price at time of acceptance of the foreign order, applications will be considered in the absence of an answer to question 9 (d) of Form IT 419, provided the manner in which price will be determined is shown (e. g., price on United States commodity exchange plus specified mark-up)

e Where commodities are licensed for export on a basis of the specific end use to which the material will be applied abroad, applications will be considered for approval only if they satisfy the applicable end-use requirements. Quotas oversubscribed by applications covering valid end-uses will be distributed among applicants in accordance with the foregoing.

2. *Foreign Government Purchasing Missions:*

a. Where the importing country maintains a purchasing mission in the United States for the procurement of any commodity, the country may request a continuation of governmental procurement with respect to such commodity. Where these requests are approved, the Office of International Trade will validate export licenses submitted in accordance with part B 1 above for those firms with which the foreign purchasing mission makes contracts. It is not intended to extend by this procedure the use of the foreign purchasing mission as a procurement device; the necessity for such procurement will be subject to continuous review in line with the announced policy of the United States to maximize the restoration of private trade

b. The purchasing mission will, moreover, before it buys the commodity, establish to the satisfaction of the Office of International Trade the competitive nature of its procurement. This will take the form generally of a public request for sealed bids from American suppliers, giving complete specifications for the commodity to be purchased. The mission will furnish the Office of International Trade with a copy of the specifications, a list of the suppliers submitting bids, the bids submitted by each, and a statement of the amounts purchased from each firm. Upon receipt of this information, the Office of International Trade will validate licenses for the bidders successful in making contracts with the purchasing mission. Subsequently, the Office of International Trade will examine the bids in detail and any necessary modifications will be brought to the attention of the purchasing mission for consideration in future contract negotiations.

c While it is the wish of the Office of International Trade to minimize the issuance of export licenses to applicants other than private U. S. exporters, it is recognized that during a transition period, the length of which may vary with the commodity or destination in question, it may be necessary to authorize the exportation of some quotas in the name of the foreign purchasing mission itself. Where this is the case, the above-described procedures will be modified accordingly, but the same evidence of competitive practices will be required.

3. *U. S Government Procurement:*

Certain allocations will continue to be programmed for purchase in their entirety by agencies of the U. S. Government. Where this procedure must be continued, licenses where required will be issued to the U. S. purchasing agency making the export shipment. The Office of International Trade reiterates, however, its continued desire to minimize the extent of Governmental procurement for export whether such procurement is performed by U. S. or foreign government agencies. Exports of such governmentally-procured material will be authorized only where it is evident that alternative techniques are inappropriate.

C. Transition Period

The new export licensing policy announced in this bulletin will become effective January 2, 1948. Because of the physical task involved in implementing this policy it cannot be made immediately applicable to all commodities presently controlled for export. The commodities listed in Part D will be subject to the revised policy in the first calendar quarter of 1948. Many of these commodities have already been licensed to specified areas in this manner. Licensing of commodities not listed in Part D will follow present procedures until further anouncement.

All export license applications for the commodities listed below which have not been validated against fourth quarter quotas will be returned, if necessary, to the applicants for resubmission, along with the required information on price and the required evidence of an accepted firm order. In order to obtain consideration against first quarter quotas, all applications for the listed commodities, including resubmissions, should be filed on or before January 23, 1948.

D. Commodities Subject to New Licensing Policy

All commodities with the Processing Code FOOD
All commodities with the Processing Code AGSU
All commodities with the Processing Code CHEM (except streptomycin, Schedule B No. 813575)
All commodities with the Processing Code STEE
All commodities with the Processing Code TEXT
All commodities with the Processing Code TNPL
All commodities with the Processing Code TINL
All commodities with the Processing Code MSMN
All commodities with the Processing Code TRAN
All commodities with the Processing Code CONT

	Schedule B number
Cadmium metals	664915
Cadmium alloys	664917
Wood, unmanufactured	401200–403400
Railroad ties	415600
Oak flooring	413100
Other hardwood flooring	413200
Plywood	42[illegible]
Port Orford cedar veneers	421603
Doors	422600
Trim and moulding	422800
Sash and blinds	423200
Wood prefabricated houses	423950
Panels and sections	423990
Other millwork	423990
Port Orford cedar battery separators	429900
Coal and coke	500100–500400
Petroleum coke	504800
Mineral wax: ceresin, orange and white; and hardening	590205
Steel prefabricated houses	604600
Cast iron soil pipe	606805
Cast iron soil pipe fittings	606898
Aluminum houses	630[illegible]

FRANCIS MCINTYRE
Director, Export Supply Branch

[fol. 5815]

DEFENDANT'S EXHIBIT No. 249

Investment of American Timken and Dewar—French Timken

	Ordinary Shares				Preferred Shares					Loans				Combined Total	
	Timken, et al.	Accumulated Total	Dewar, et al.	Accumulated Total	Timken, et al.	Accumulated Total	Dewar, et al.	Accumulated Total	Timken, et	Timken, et al.	Accumulated Total	Dewar, et al.	Accumulated Total	Year	Accumulated
1928	$23,216.50	23,216.50	–0–	–0– A										23,216.50	23,216.50
1929	63,240.32														
Adjustment to par value—22,010 sh.	1,583.18	88,040.00	31,960.00	31,960.00–A										96,783.50	120,000.00
1930	–0–	88,040.00–C	–0–	31,960.00–C										–0–	120,000.00
1931	78,900.00–D	166,940.00	–0–	31,960.00										78,900.00	198,900.00
1932	78,400.00–E	245,340.00	–0–	31,960.00					576,783.67	576,783.67	576,783.67			655,183.67	854,083.67
1933	–0–	245,340.00	–0–	31,960.00					5.13	5.13–I	576,788.80			5.13	854,088.80
1934	–0–	245,340.00	–0–	31,960.00–G	117,600.00	117,600.00	–0–	–0–	117,600.00	117,600.00–J	459,188.80			–0–	854,088.80
1935 Note B	106,690.00–J	138,650.00–F	106,690.00	138,650.00	58,800.00–J	58,800.00–F	58,800.00	58,800.00	229,594.40	229,594.40–J	229,594.40–F	229,594.40	229,594.40	–0–	854,088.80
1936	–0–	138,650.00	–0–	138,650.00	–0–	58,800.00	–0–	58,800.00	–0–	–0–	229,594.40	–0–	229,594.40	–0–	854,088.80
1937	–0–	138,650.00	–0–	138,650.00	–0–	58,800.00	–0–	58,800.00	12,000.00	12,000.00–J	217,594.40	12,000.00–J	217,594.40		830,088.80
1938	–0–	138,650.00	–0–	138,650.00	–0–	58,800.00	–0–	58,800.00	12,000.00	12,000.00–J	205,594.40	12,000.00–J	205,594.40		806,088.80
1939	–0–	138,650.00	–0–	138,650.00	–0–	58,800.00	–0–	58,800.00	24,000.00	24,000.00–J	181,594.40	24,000.00–J	181,594.40		758,088.80
1940 Note H															

No change in investment subsequent to 1939.

Note A—Estimated; only record available indicates Dewar owned 7990 shares in November 1929.
Note B—Adjustment to reflect agreement of December 29, 1934 which provided, among other things, that interest in Fr would be divided 50% to American Timken, 50% to Dewar. Consideration was the payment of $250,000 by conditional payment note in the face amount of $150,000; German Timken accounts transferred to Dewar—$ =$427,044.40. Reduction in American Timken's investment in French Timken—$395,084.40.
Note C—Transferred to Industrial and Commercial Investments (I. C. I.) for capital stock—American Timken 4,804 Com 3,196 Common.
Note D—Acquired by I. C. I.
Note E—Acquired by I. B. I. (International Bearings Investments, Inc.—wholly owned subsidiary of I. C. I.).
Note F—Transferred to Continental Bearings, Inc. (wholly owned American Timken subsidiary).
Note G—Donated to I. C. I. by Dewar as paid in surplus.
Note H—Continental Bearings, Inc. liquidated and dissolved; assets transferred to The Timken Roller Bearing Company.
Note I—Adjustment of bookkeeping error.
Note J—Indicates red figures.

[fol. 5816] DEFENDANT'S EXHIBIT 250

April 24, 1948.
11:10 A.M.

Andre Augis, 179 Avenue Victor Hugo, Paris XVI, France. To whom were Class B Shares of Francaise Timken originally issued. Was it British Timken. What became of them subsequently. Cable by Monday.

Luther Day, 1759 Union Commerce Bldg., Cleveland 14, Ohio.

[fol. 5817] DEFENDANT'S EXHIBIT 251

Apr. 26 PM 6 48.

NLT Luther Day, Jones Day & Reavis, 1759 Union Commerce Bldg., Cleveland 14, Ohio.

Reference your cable 200 Class B Shares subscribed in 1928 by W E L Seward for account British Timken which sold same February 1930 52.5% to Canton and 47.5% to Dewar Murray.

[fol. 5818] PLAINTIFF'S EXHIBIT No. 1 (Decree)

March 23, 1949.

Mr. A. J. M. Duncan, Stibbard, Gibson & Co., 71 St. Mary Axe, London, E.C.3, England

DEAR MR. DUNCAN:

In our statements to the Securities and Exchange Commission for the year 1948, Timken Holdings Ltd. must be listed as a wholly-owned subsidiary. In order to be sure all our information on this is accurate, would you supply me with the following information:

1. Balance Sheet and operating statement as of close of last fiscal year.
2. List of assets including those held in nominee.
3. Names of Directors and Officers.

I am assuming that in line with my letter of May 24, 1948, it was satisfactory to Michael that we credit his note given in the purchase of French Timken shares with the amount of £59.7.0 to cover the sale of his shares of Timken.

Holdings to the Timken Roller Bearing Company of which it then becomes a wholly-owned subsidiary.

Sincerely yours, W. Robert Timken.

WRT/hbm
cc: R. C. Brower

[fol. 5819] Stibbard, Gibson & Co.

(Thomas Cooper & Co.)

12th April, 1949.

DEAR MR. TIMKEN:

Timken Holdings Ltd.

I have your letter dated 23rd March, and I have now received the information which you require from this Company to enable me to reply to your letter.

1. I enclose the Revenue Account and Balance Sheet at 30th April 1948, the close of the last fiscal year of the Company. A note on this document contains a list of the assets belonging to the Company, that is to say, 18,936 Ordinary Shares £1. each fully paid in British Timken Limited.

2. The names of the Directors are given in the heading of the Directors Report attached to the Revenue Account and Balance Sheet.

3. The name of the Secretary is Miss Jessica E. Stockford.

What you suggest with respect to the sum of £59. 7. 0 payable to Mr. Dewar for his shares in Timken Holdings Ltd. is satisfactory to him.

$250.00 per Ernst & Ernst As of May 1948. (Handwritten Note.)

Can you give me any indication as to the date when the further hearing in the anti-trust proceedings is likely to materialize?

Yours faithfully, (S.) A. J. M. Duncan.

W. Robert Timken, Esqre.

Dr. 119-18—250.00
Dr. 251-4—250.00
Cr 114-14—250.00
Cr 251-7—250.00

[fol. 5820] Timken Holdings Limited
Artillery House, Artillery Row
Westminster, London, S.W. 1

Directors' Report

"The Directors beg to submit Accounts for the year ended 30th April, 1948. During the year, the Company received as dividend on its Investments the sum of £1,562. 4. 5. Income Tax having been deducted at source. The Balance Sheet shows after deduction of expenses a Profit for the year of £1,558. 8. 0. Of this amount the Directors recommended that the Company should pay as Dividend the sum of £1,558. 5. 6. to the holders of the Company's "A" and "B" Shares and Participating Rights bearing the same distinctive numbers at the rate of £5. 18. 6. per share free of Tax, leaving a balance to be carried forward of 2s. 6d."

Directors.

(Here follows 1 Photolithograph side folio 5821).

TIMKEN HOLDINGS LIMITED

REVENUE ACCOUNT for the year ended

To Professional Charges			15	15	0
" Sundry Expenses				10	1
" Balance as per Balance Sheet			1,558	1	3
			£1,574	6	4

By

BALANCE SHEET - 30th APRIL, 19

Capital					
Authorised and Issued					
1250 "A" Shares of 1/- each, fully paid	62	10	0		
1250 "B" Shares of 1/- each, fully paid	62	10	0	125	0 0
Provision for audit fee				5	5 0
Profit and Loss Account					
Balance at 30th April, 1947	1,601	7	0		
Less: Dividend for the year ended 30th April, 1947 of £6.1.9. per share on 263 shares with Rights attached, free of tax	1,601	0	3		
		6	9		
Add: Profit for the year ended 30th April, 1948	1,558	1	3	1,558	8 0
				£1,688	13 0

Ba

REPORT OF THE AUDITORS TO THE MEMBERS OF TI

In accordance with the provisions of Section 134, subsection 1, of the Companies Act 1929, we
We have audited the above Balance Sheet and have obtained all the information and explanations
Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's a
the explanations given to us and as shown by the books of the Company.

4b, Frederick's Place,
Old Jewry,
London, E.C.2.

58821

Case No. 24214 Civil
PLAINTIFF'S EXHIBIT
No. 1 (Decree)

LIMITED

r ended 30th APRIL, 1948

0	By Interest	11	11
1	" Dividend for the year to 31st December, 1946 on 18,936 British Timken Ltd. Shares less tax @ 9/-	1,562	4 5
3	" Taxation recovered	11	10 0.
4		£1,574	6 4

- 30th APRIL, 1948

Balances at Bankers

Current Account	1,568 13 0	
Deposit Account	120 0 0	1,688 13 0

0

NOTE: The Company is the owner of 18,936 Ordinary Shares of £1 each in British Timken Limited acquired from shareholders in consideration of the issue to them of 263 participating rights in this Company.

0

} Directors

0 F. J. Pascoe

0 £1,688 13 0

TO THE MEMBERS OF TIMKEN HOLDINGS LIMITED

mpanies Act 1929, we report to the Members as follows:
tion and explanations we have required. In our opinion such Balance
e of the Company's affairs according to the best of our information and

Signature (Illegible)
Chartered Accountants

[fol. 5822] PLAINTIFF'S EXHIBIT No. 2 (Decree)

This Agreement is made the Twenty-Second day of March One thousand nine hundred and forty-eight between The Timken Roller Bearing Company of Canton, Ohio in the United States of America (for short "the Canton Company") of the first part Michael Bruce Urquhart Dewar of Milton Farm Milton Ernest near Bedford in the County of Bedford (for short "Mr. Dewar") of the second part and Timken Holdings Limited a Company incorporated in England (for short "the Holdings Company") of the third part.

Date	*Parties*
1935 September 7	The Canton Company (1) and Mr. Dewar (2).
1943 June 5	The Canton Company (1) Mr. Dewar (2) and The Holdings Company (3).
1943 June 5	The Canton Company (1) and Mr. Dewar (2).

And Supplemental Also to the Articles of Association of the Holdings Company and the Bye-Laws as to voting and the Bye-Laws as to Directors now in force under Articles 65 and 76 of the said Articles of Association and Supplemental Also to the Registered Participating Rights created and issued by the Holdings Company under the said Articles of Association and now outstanding.

Preamble

A. The Share capital and Registered Participating Rights of the Holdings Company now outstanding consist of the following shares of One shilling each fully paid and Participating Rights belonging to the respective proprietors following videlicet:

[fol. 5823]

Proprietors	"A" shares	Distinctive numbers inclusive	"B" shares	Distinctive numbers inclusive	Participating Rights	Distinctive numbers inclusive
The Canton Company	573	3 to 576	738	1251 to 1988	261	3 to 117 1251 to 1396
Mr. Dewar or Assignees	675	576 to 1250	511	1989 to 2339 2341 to 2500		
Andrew Jameson Matthews Duncan (Nominee of the Canton Company)	1	1			1	1
Frederick John Pascoe (Nominee of Mr. Dewar)			1	2340		
Cecil William Bateson (Nominee of the Canton Company)	1	2			1	2
	1250		1250		263	

B. The following participating rights formerly belonging to Mr. Dewar or his nominees have been redeemed.

Mr. Dewar	235	576 to 710 1989 to 2058 2341 to 2370
Frederick John Pascoe (Nominee)	1	2340
William Dallow (Nominee)	1	2339
	237	237

Shares held by the Holdings Company as Trustee for the Canton Company	86,104
Shares held by the Holdings Company and required for redemption of participating rights belonging to the Canton Company	18,936
	105,040

C. The Holdings Company is the registered proprietor of the following shares of One Pound each fully paid in British Timken Limited (for short "British Timken")

[fol. 5824]

Shares held by the Holdings Company as Trustees for Mr. Dewar or his assigns	94,960
	200,000

Now This Agreement Witnesseth as follows namely:

1. The Parties hereto declare that in the events which have happened the said Agreements are no longer operative except certain provisions contained therein and consequent thereon the said agreements are hereby entirely cancelled

and at an end but the provisions contained in another agreement to be forthwith made between the Canton Company and Mr. Dewar shall take the place of the said excepted provisions so far as it is desired to keep them in force

2. The parties to this agreement declare that in the events which have happened the whole of the said Two hundred thousand shares in British Timken which are held by the Holdings Company are now divisible into two categories videlicet:

(a) One hundred and five thousand and forty shares which belong in fact directly or indirectly to the Canton Company Eighty six thousand one hundred and four of such shares being held by the Holdings Company as nominee or Trustee for the Canton Company and Eighteen thousand nine hundred and thirty-six of such shares being held by the Holdings Company in absolute ownership but subject to the right vested in the Canton Company as the holder of the Participating Rights in the Holdings Company belonging to it to have such shares added to the shares in British Timken held [fol. 5825] by the Holdings Company as the nominee of The Canton Company and

(b) Ninety four thousand nine hundred and sixty shares which belong in fact to Mr. Dewar or his assigns being held by the Holdings Company as nominee or Trustee for Mr. Dewar or his assigns

3. The Holdings Company and the Canton Company and Mr. Dewar as the holders by themselves or their nominees of all the share capital of The Holdings Company Hereby Declare that the said Bye-Laws of the Holdings Company are rescinded and at an end for all purposes.

4. Mr. Dewar agrees to sell and the Canton Company agrees to purchase at the price of Fifty nine pounds seven shillings One thousand one hundred and eighty seven shares of One shilling each being all the shares in the Holdings Company belonging to Mr. Dewar and registered in the name of Mr. Dewar or his nominees and consequent thereon the Holdings Company will become a wholly owned subsidiary Company of the Canton Company and the said shares sold by Mr. Dewar to the Canton Company shall be transferred by Mr. Dewar to the Canton Company or as it shall direct as and when required by the Canton Company

In Witness whereof this agreement has been executed by the Canton Company Mr. Dewar and the Holdings Company

(S.) Wm. E. Umstattd, President.

Signed and Seal by or on behalf of The Timken Roller Bearing Company in the presence of: (S.) H. E. Markley, Canton, Ohio, Assistant Secretary.

[fol. 5826] (S.) M. B. U. Dewar.

Signed, Sealed and Delivered by the above named Michael Bruce Urquhart Dewar in the presence of: (S.) A. Millward, (Company Secretary.) Oak Ledge Duston (illegible).

Sealed with the Seal of Timken Holdings Limited pursuant to a resolution of the Board of Directors in the presence of the undersigned Director and Secretary of the Company (S.) F. J. Pascoe, Director, (S.) Jessica E. Shockford, Secretary.

[fol. 5827] Dated: 22nd March, 1948

The Timken Roller Bearing Company (1), M. B. U. Dewar, Esquire (2), and Timken Holdings Limited (3)

Agreement Cancelling Previous Agreements and Bye-Laws of Timken Holdings Ltd. and for Transfer by Mr. Dewar to the Canton Company of His Shares in Timken Holdings Ltd.

[fol. 5828] PLAINTIFF'S EXHIBIT 3 (Decree)

This agreement made the twenty-second day of March One thousand nine hundred and forty eight between The Timken Roller Bearing Company of Canton Ohio in the United States of America (for short "The Canton Company") of the one part and Michael Bruce Urquhart Dewar of Little Horwood Manor Bletchley, in the County of Buckingham Esquire (for short "Mr. Dewar") of the other part.

Witnesseth: —that the parties hereto declare and agree as follows viz:

1. (a) Upon the death of Mr. Dewar or if he shall become incapacitated by ill health or otherwise for a con-

secutive period of six months from discharging his duties as a Director of British Timken Limited (for short "British Timken") The Canton Company shall have an option to purchase all or any of the 94960 ordinary Shares in British Timken now belonging to Mr. Dewar or his assigns being the Ordinary Shares numbered 5 to 204, 52701 to 100000, 113127 to 125000, 390505 to 393504, 333911 to 359536, 359537 to 360000, 393505 to 400000 all inclusive (hereinafter referred to as "the Dewar shares")

(b) In the event of Mr. Dewar or his assigns or his or their legal representatives (hereinafter referred to as "the Dewar Shareholders") desiring to sell all or any of the Dewar Shares the Canton Company shall have an option to purchase all or any of such Shares which option shall be independent of the option in favor of the Canton Company provided for in Paragraph (a) hereof

(c) In the event of the Canton Company or its successor or its or their assigns (hereinafter referred to as "the Canton Shareholders") desiring to sell all or any of the Ordinary Shares in British Timken now belonging to the Canton [fol. 5829] company and numbered 1 to 4, 205 to 52700, 100001 to 113126, 275001 to 300000, 330001 to 333910, 380001 to 390504 all inclusive (hereinafter referred to as "the Canton Shares") Mr. Dewar shall have an option to purchase all or any of such Shares

(d) In the event of any of the Dewar Shareholders desiring to sell all or any of the Dewar Shares or in the event of any of the Canton Shareholders desiring to sell all or any of the Canton Shares the Shareholder so desiring to sell (hereinafter called the "the seller") if the seller is a Dewar Shareholder shall give notice to the Canton Company and the seller if the seller is a Canton Shareholder shall give notice to Mr. Dewar of the seller's desire to sell and the number of shares which the seller desires to sell and the seller will not sell or transfer any of such shares during a period of three months from the date on which such notice is given and at any time during that period of three months the Canton Company or Mr. Dewar as the case may be may exercise the purchase option hereinbefore conferred by notice in writing served upon the seller.

(e) The said option arising upon the death or incapacity of Mr. Dewar shall be exerciseable by the Canton Company at any time during a period of six months from and after

such death or from and after the expiration of the said six months incapacity period as the case may be and shall be exerciseable by notice in writing served upon the Dewar Shareholders within the period of six months during which it is exerciseable.

(f) The price to be paid for any Shares purchased under any of the said options shall be such price as the parties selling and purchasing shall agree or failing agreement at the average price of similar shares of British Timken on [fol. 5830] the London Stock Exchange over a period of thirty days immediately preceding the date on which the option under which the Shares are purchased became exerciseable.

(g) Any sale of Shares which are purchased under any of the said options shall be completed by the delivery of the certificates for the shares purchased, together with duly executed transfers thereof against payment of the purchase price within one month after the option is exercised.

2. Notwithstanding anything hereinbefore contained Mr. Dewar or any of the other Dewar Shareholders shall be at liberty to sell all or any of the Dewar Shares and the Canton Company or any of the other Canton Shareholders shall be at liberty to sell all or any of the Canton Shares to a transferee on purchase or otherwise who has been previously approved in the former case by the Canton Company and in the latter case by Mr. Dewar or his legal representatives provided that the Transferee delivers in the former case to the Canton Company and in the latter case to Mr. Dewar or his legal representatives an undertaking addressed in the former case to the Canton Company and in the latter case to Mr. Dewar or his legal representatives declaring that the shares transferred and the transferee shall be subject to the conditions to which such shares and the Transferor in respect of the same were a subject previous to the transfer and binding the transferee to perform and observe the said conditions accordingly.

3. If at any time the profits of British Timken available for the payment of dividend before deduction of any taxes on profits upon an average of three consecutive years as shown by the audited annual accounts of British Timken are reduced below Fifty thousand pounds for one year Mr. [fol. 5831] Dewar or his legal representatives and a representative of the Canton Company shall meet and consult

together as to the manner in which the voting rights in respect of the Dewar Shares and the Canton Shares shall be exercised and upon any question arising at such meeting the decision of the holders of a majority of the Dewar Shares and the Canton Shares shall prevail and any holder of such shares not present at such meeting may authorize in writing any person present at such meeting to join in such decision on his behalf.

In Witness whereof this Agreement has been executed by or on behalf of the parties the day and year first above written.

(S.) Wm. E. Umstattd, President.

Signed and Sealed by or on behalf of the Timken Roller Bearing Company in the presence of:—

(S.) R. C. Brower, Canton Ohio, Secretary-Treasurer.

(S.) M. B. U. Dewar. L.8.

Signed, Sealed and Delivered by the above named Michael Bruce Urquhart Dewar in the presence of:—

(Signature and address illegible.)

[fol. 5832] Dated: 22nd March, 1948

The Timken Roller Bearing Company and M. B. U. Dewar, Esq.

Agreement with respect to British Timken Limited

[fol. 5833] PLAINTIFF'S EXHIBIT No. 4 (Decree)

An Agreement made the seventh day of September One thousand nine hundred and thirty five between The Timken Roller Bearing Company of Canton Ohio United States of America (hereinafter called "the American Company") of the one part and Michael Brue Urquhart Dewar of Number 10, Mayfair Place London, W. (hereinafter called "Mr. Dewar") of the other part with respect to a Company incorporated in England on the Thirty first day of August One thousand nine hundred and thirty five and named Timken Holdings Limited hereinafter called "the Holdings Company".

Now It is hereby agreed as follows:

1. Each of them the American Company and Mr. Dewar hereby declares by way of honourable understanding and

not as a legally binding agreement that if the other of them or any of his nominees or any Company controlled by him shall give a transfer notice under Article Number 28 of the Articles of Association of the Holdings Company in respect of all or any of the shares in the Holdings Company owned by the other party or his nominees or any Company controlled by him with or without participating rights connected therewith and the shares comprised in such transfer notice or any of them with the connected rights (if any) are not purchased by the other members of the Holdings Company to whom the same are offered pursuant to the said Article then

(a) The declaring party will not unreasonably stand in the way of the other party or his nominees or the controlled [fol. 5834] Company aforesaid selling such unpurchased shares or any of them with the connected rights (if any) to any person (not being a person to whom the declaring party shall object on reasonable grounds) at any price not being less than that at which such shares and rights (if any) shall have been offered to the Members pursuant to the said transfer notice and

(b) In the event of the other party or his nominees or the controlled Company aforesaid effecting a sale the declaring party will do all acts and things in his power in order to procure the registration of the transfer of the said shares and rights (if any) to the purchaser thereof and in particular will exercise the voting rights conferred by any shares in the Holdings Company held or controlled by the declaring party in such manner and give all such consents and sanctions as may be reasonably required and procure any Directors of the Holdings Company controlled by the declaring party to pass all resolutions necessary for procuring the registration of such transfers.

2. (a) Upon the death of Mr. Dewar or in the event of his being incapacitated by ill-health or otherwise for a consecutive period of six months from discharging his duties as a Director of a Company incorporated in England and named British Timken Limited the American Company shall have an option (exerciseable within six months after the death of Mr. Dewar or after the expiration of the said period of six months as the case may be) of purchasing [fol. 5835] all the shares in the Holdings Company together

with the connected participating rights (if any) belonging to Mr. Dewar or his nominees or any Company controlled by him at the date of his death or the expiration of the said period of six months (as the case may be) at their fair value to be determined failing agreement by an award of two London Chartered Accountants as Arbitrators one to be appointed by each party or an Umpire to be appointed by the said Arbitrators such reference to arbitration to be deemed for all purposes a reference to arbitration under the English Arbitration Act 1889 or any statutory modification or re-enactment thereof for the time being in force.

(b) The said option shall be exerciseable by notice in writing served upon Mr. Dewar or in the case of his death his legal personal representatives within the said period of six months and if it is exercised the sale of the shares and rights if any shall be completed by delivery of duly executed transfers of and the certificates for the shares and rights if any against payment of the purchase price within seven days after the price has been agreed or determined by arbitration as aforesaid.

3. (a) The provisions of Clause 2 of this Agreement shall apply also to Forty seven thousand five hundred shares in British Timken Limited at present registered in the name of the Holdings Company and held by that Company as to Forty one thousand shares as nominee (that is, bare Trustee) for Societe Americano Europeenne de Participations and as to Six thousand five hundred shares as nominee for Mr. Dewar.

(b) The Provisions of Clause 2 of this Agreement (with the substitutions of three months for six months) shall apply also to the said Forty seven thousand five hundred shares in the event of the said Societe or Mr. Dewar de- [fol. 5836] siring to sell or transfer all or any of the said Forty seven thousand five hundred shares and in such event the said Societe or Mr. Dewar as the case may be will give notice in writing of such desire to the American Company and will not sell or transfer such shares or any of them until three months from the date of such notice has expired but will be at liberty to sell or transfer such shares or any of them not purchased by the American Company under the option contained in the said Clause 2 at any time during a period of six months after the expiration of the said period of three months.

4. For the purposes of this Agreement all shares in the Holdings Company registered in the name of Societe Americano Europeenne de Participations and the connected participating rights shall be deemed to be shares and rights belonging to Mr. Dewar and under his control.

5. This Agreement shall be construed and have effect as an agreement made in England and in accordance with the Laws of England.

In Witness whereof this Agreement has been executed by or on behalf of the parties hereto the day and year first above written,

The Timken Roller Bearing Company; By (S.) Wm. E. Umstattd, President.

Signed and Sealed by or on behalf of The Timken Roller Bearing Company in the presence of

(S.) Bessie E. Stokey, Canton, Ohio, U. S. A., Stenographer.

(S.) M. B. U. Dewar.

Signed Sealed and Delivered by the above named Michael Bruce Urquhart Dewar in the presence of

Mary H. Wilson, 10, Mayfair Place, Shorthand typist.

[fol. 5837] Dated 5th September, 1935

Timken Roller Bearing Company and M. B. U. Dewar, Esqre.

Agreement as to Shares and Interests in Timken Holdings Limited

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[fol. 5838] Filed October 3, 1949.

PLAINTIFF'S EXHIBIT No. 5 (Decree)

This Agreement the fifth day of June One thousand nine hundred and forty three between the Timken Roller Bearing Comp ny a Company incorporated in the United States of America of Canton Ohio U.S.A. (hereinafter referred to as "the American Company") (1) and Michael Bruce Urquhart Dewar of Stagenhoe Park Hitchin in the County of Hartford (hereinafter referred to as "Mr. Dewar") (2)

Supplemental to an Agreement made the Seventh day of September One thousand nine hundred and thirty five between the parties hereto which Agreement is hereinafter referred to as "the Canton Dewar Agreement"

Whereas (a) Timken Holdings Limited a Company incorporated in England (hereinafter referred to as "the Holdings Company") has a share capital of One hundred and twenty five pounds divided into One thousand two hundred and fifty "A" shares of One shilling each and One thousand two hundred and fifty "B" shares of One shilling each all of which have been issued and are fully paid

(b) At the date of this Agreement Mr. Dewar is the registered proprietor of Six hundred and seventy five "A" shares and Five hundred and ten "B" shares in the Holdings Company and nominees of Mr. Dewar namely Frederick John Pascoe and William Dallow are the registered proprietors each of one "B" share in the Holdings Company

(c) The Holdings Company has issued Five hundred Participating Rights under Article 5 of its Articles of Asso- [fol. 5839] ciation (hereinafter referred to as "the Holdings Articles") and Mr. Dewar is the registered proprietor of Two hundred and thirty five Participating Rights and each of his said nominees is the registered proprietor of one Participating Right

(d) At the date of this Agreement the Holdings Company is the registered proprietor of Two hundred thousand shares of One pound each fully paid in British Timken Limited a Company incorporated in England (hereinafter referred to as "the British Company") which shares are held by the Holdings Company as to Thirty six thousand shares in absolute ownership (hereinafter referred to as "owned British shares") and as to One hundred and sixty four thousand shares as nominee (that is bare Trustee) on behalf of the American Company of Mr. Dewar and such last mentioned shares are hereinafter referred to as "nominee British shares"

(e) At the date of this Agreement Five hundred Participating Rights only have been issued by the Holdings Company although the Holdings Company has received Thirty six thousand owned British shares and a number of nominee British shares

(f) Under paragraph D of Article 5 of the Holdings

Articles the number of Participating Rights which should or might have been created in Seven hundred and twenty in respect of the Thirty six thousand owned British shares only

(g) It was anticipated that if the American Company exercised the option to purchase shares in the Holdings Company together with connected Participating Rights if any belonging to Mr. Dewar or his nominees or any Company controlled by him granted to the American Company [fol. 5840] by Clause 2 of the Canton Dewar Agreement the American Company would have become the purchaser in fact or in effect of the whole of the owned British shares and nominee British shares belonging to Mr. Dewar or his nominees or any Company controlled by him and there have been and may be changes in the holdings of shares in the Holdings Company Participating Rights and owned British shares and nominee British shares and it is desired to give effect to the intention of the Canton Dewar Agreement

Now it is hereby agreed as follows:

1. The subject matter of the options granted to the American Company by Clause 2a and Clause 3 of the Canton Dewar Agreement shall be all the shares in the Holdings Company and all the Participating Rights issued by the Holdings Company and all the owned British shares belonging to the Holdings Company and all the nominee British shares held by the Holdings Company which belong to or are held on behalf of Mr. Dewar or his nominees or any Company controlled by him at the date when the option becomes exerciseable

2. Clauses 3 and 4 of the Canton Dewar Agreement are hereby cancelled as no longer applicable

3. In the event of Mr. Dewar desiring to sell or transfer all or any of the shares and Participating Rights forming the subjects matters of the Canton Dewar Agreement as hereinbefore referred to he or his legal representatives shall give notice in writing to the American Company of his or their desire to sell or transfer any of such shares or Participating Rights and he or his legal representatives will not sell or transfer any of such shares or Participating Rights until three months from the date on which such notice is given but will be at liberty to sell or trans- [fol. 5841] fer such shares or Rights or any of them not purchased by the American Company under the said

option at any time during a period of six months after the expiration of such period of three months

In witness whereof this Agreement has been executed the day and year first above written

The Timken Roller Bearing Company, /s/ Wm. E. Umstattd, President; /s/ R. C. Brower, Secretary. /s/ M. B. U. Dewar.

Signed sealed and delivered by the above named Michael Bruce Urquhart Dewar in the presence of /s/ F. J. Pascoe, 65 Chester Rd. Astor, Birmingham.

[fol. 5842] Dated: 5th June, 1943

The Timken Roller Bearing Company and Michael Bruce Urquhart Dewar, Esquire

Agreement supplemental to Agreement dated 7th September, 1935

[fol. 5843] Filed October 3, 1949.

PLAINTIFF'S EXHIBIT No. 6 (Decree)

This agreement is made the Fifth day of June One thousand nine hundred and forty three Between The Timken Roller Bearing Company a Company Incorporated in the United States of America of Canton Ohio, U. S. A. (hereinafter referred to as "The American Company") (1) Michael Bruce Urquhart Dewar of Stagenhoe Park Hitchin in the County of Hertford (hereinafter referred to as "Mr. Dewar") (2) and Timken Holdings Limited a Company incorporated in England (hereinafter referred to as "the Holdings Company") (3)

Supplemental to

(a) The Articles of Association of the Holdings Company hereinafter referred to as "the Holdings Articles" and in particular Article No. 4 with respect to the Share Capital of the Holdings Company and Article No. 5 with respect to registered Participating Rights to be created

under such Article which Rights as subsequently created are hereinafter referred to as "participating Rights"

(b) The By-Laws as to voting and Directors adopted by the subscribers of the Memorandum of Association of the Holdings Company hereinafter respectively referred to as "the Holdings By-Laws as to voting" and "the Holdings By-Laws as to Directors" which By-Laws were adopted in pursuance of Articles 65 and 76 respectively

Whereas

(a) The Share Capital of the Holdings Company was originally and still is One hundred and twenty five pounds divided into One thousand two hundred and fifty "A" shares of One shilling each and One thousand two hundred [fol. 5844] and fifty "B" Shares of One shilling each all of which have been issued and are fully paid and at the date of this Agreement belong to the American Company and Mr. Dewar or the nominees and are hereinafter referred to as "Holdings Shares" and the Holdings Shares are now registered as follows:

Registered Proprietor	Number of A shares	Distinctive numbers inclusive	Number of B shares	Distinctive numbers inclusive
The American Company	573	3 to 575	738	1251 to 1988
Nominees of The American Company				
Andrew Jameson Matthews Duncan	1	1		
Cecil William Bateson	1	2		
Mr. Dewar	675	576 to 1250	510	1989 to 2338 2341 to 2500
Nominees of Mr. Dewar				
Frederick John Pascoe			1	2340
William Dallow			1	2339
	1,250		1,250	

(b) The Holding Company has issued Participating Rights all of which are now outstanding and at the date of this Agreement belong to the American Company and Mr. Dewar or their nominees and are registered as follows:

Registered proprietor	Number of participating rights	Distinctive numbers inclusive
The American Company	261	3 to 117 1251 to 1396
Nominees of the American Company		
Andrew Jameson Matthews Duncan	1	1
Cecil William Bateson	1	2
Mr. Dewar	235	576 to 710 1989 to 2058 2341 to 2370
Forward	498	
[fol. 5845]		
Nominees of Mr. Dewar		
Frederick John Pascoe	1	2340
William Dallow	1	2339
	500	

(c) At the date of this Agreement the Holdings Company is the registered proprietor of Two hundred thousand shares of One pound each fully paid in British Timken Limited a Company incorporated in England hereinafter referred to as "the British Company" which shares are held by the Holdings Company as to Thirty six thousand shares in absolute ownership hereinafter referred to as "owned British Shares" and as to One hundred and sixty four thousand shares as nominee (that is bare Trustee) on behalf of the American Company or Mr. Dewar and such last mentioned shares are hereinafter referred to as "Nominee British Shares" Twenty five thousand of the owned British Shares were originally acquired by the Holdings Company and the remaining Eleven thousand of the owned British Shares were allotted by the British Company to the Holdings Company as bonus in respect of the said twenty five thousand owned British Shares

(d) At the date of this Agreement Five hundred Participating Rights only have been issued by the Holdings Company although the Holdings Company has received Thirty six thousand owned British Shares and a number of Nominee British Shares whereas under paragraph D of Article 5 of the Holdings Articles the number of Participating

Rights which should or might have been created and issued is Seven hundred and twenty in respect of the Thirty six thousand owned British Shares only and it is desired to provide that no more than the said Five hundred Partici-
[fol. 5846] pating Rights shall be issued without the consent of The American Company and Mr. Dewar and that on redemption of a Participating Right the holder shall be entitled to have Seventy two British Shares transferred to him instead of a share of surplus assets

(e) At the date of this Agreement the One hundred and sixty four thousand Nominee British shares are held by the Holdings Company as to Eighty six thousand one hundred and four Shares as nominee on behalf of the American Company and as to Seventy seven thousand eight hundred and ninety six shares as nominee on behalf of Mr. Dewar

(f) The parties hereto have agreed to alterations being made in the conditions of the Participating Rights and in the By-Laws as to Voting and the By-Laws as to Directors and otherwise in their mutual rights and obligations as hereinafter appearing

Now it is hereby declared and agreed by and between the parties hereto as follows:

1 The Holdings Company shall forthwith convene an Extraordinary General Meeting for the purpose of passing a Special Resolution to effect an alteration in the Holdings Articles in the terms of the Resolution contained in the Schedule hereto and the American Company and Mr. Dewar shall attend the Meeting in person or by proxy and vote in favour of the Resolution

2. The American Company and Mr. Dewar who hold respectively a majority of the A Shares for the time being issued and a majority of the B Shares for the time being issued hereby consent to the By-Laws as to voting and the By-Laws as to Directors being altered in manner following:
[fol. 5847] (a) Bylaws No. 2 of the Bylaws as to voting is hereby cancelled

(b) The commencing words in Bylaw No. 3 of the Bylaws as to voting down to and including the words "Participating Rights" are hereby cancelled

(c) Bylaws No. 4 and No. 5 of the Bylaws as to voting are hereby cancelled and the following Bylaws are substituted for such cancelled Bylaws respectively:

"4. On a poll taken at any General Meeting of the Company with respect to an ordinary resolution the members of the Company shall have votes in accordance with the following rules.

(i) During the first control period every member of the Company holding A shares shall have four votes for every A share held by him and every member of the Company holding B shares shall have one vote for every B share held by him

(ii) After the termination of the first control period every member of the Company holding B shares shall have four votes for every B share held by him and every member of the Company holding A shares shall have one vote for every A share held by him

5. On a poll taken at any General Meeting of the Company with respect to an extraordinary or special resolution every member of the Company shall have one vote for every share whether an A share or a B share held by him"

(d) Bylaws No. 6 of the Bylaws as to Directors is hereby cancelled and the following Bylaw is substituted for such cancelled bylaw:

"6. Michael Bruce Urquhart Dewar shall not be liable to [fol. 5848] removal from office as an A shareholders' Director of the Company so long as he or a Nominee of his or any Company controlled by him or a Nominee of such Company continue to hold in the aggregate not less than 40,000 shares in British Timken Limited a Company incorporated in England on the 4th day of June 1920."

3. The Holdings Company shall forthwith convene an Extraordinary General Meeting for the purpose of passing an Ordinary Resolution varying the Bylaws as to voting and the Bylaws as to Directors in the manner hereinbefore provided and the American Company and Mr. Dewar shall attend the meeting in person or by proxy and vote in favour of the Resolution

In witness whereof this Agreement has been executed the day and year first above written

The Schedule above referred to

Resolution

That the Articles of Association of the Company be and they are hereby altered in manner following:

1. Article 5 is hereby cancelled and in lieu thereof the following Article shall be substituted for such cancelled Article:

"5. (A) At the date of the adoption of this Article as one of the Articles of Association of the Company the Company holds shares in British Timken Limited a Company incorporated in England (hereinafter referred to as "the British Company") to the number of 200,000 of which 36,000 are held by the Company in absolute ownership (hereinafter referred to as "owned British Shares") and 164,000 are [fol. 5849] held by the Company as nominee (that is bare trustee) for the beneficial owners (hereinafter referred to as "Nominee British Shares")

"(B) The business of the Company will include the holding of the shares in the British Company the management and control of such shares the exercise of voting and other rights in respect of such shares and the receipt and disposal of monies and other benefits receivable in respect of such shares"

"(C) The Company will carry on no business other than the business hereinbefore mentioned without the sanction of a special resolution of the Company in general meeting"

"(D) At the date of the adoption of this Article the Company has created and issued 500 Registered Participating Rights under paragraph C of Article 5 of the original Articles of Association of the Company and these Participating Rights are still outstanding and no further Participating Rights shall be created or issued"

"(E) Every Participating Right now issued and the share in the Company bearing the same distinctive number shall be held together in the same ownership and shall not be transferred or otherwise allowed to fall into separate ownerships"

"(F) A holder of Participating Rights shall be entitled at any time to give notice to the Company requiring it to redeem all or any of the Participating Rights belonging to such holder and thereupon the Company shall redeem the Participating Rights referred to in the notice by transferring to such holder 72 owned British Shares in respect

of each Participating Right redeemed and the Company shall retain owned British Shares to a number sufficient to [fol. 5850] provide for such redemption and shall not incur any debts or liabilities which may prevent the Company from fully completing such redemption

"(G) The owned British Shares which shall become transferable under the last preceding paragraph shall not actually be transferred to the holder of the Participating Rights which are redeemed but shall be retained by the Company and shall become and be nominee British Shares held by the Company as nominee on behalf of the holder of the redeemed Participating Rights"

"(H) i. The whole of the dividends and other benefits derived from the nominee British Shares shall belong to the Beneficial Owners on behalf of whom the shares are held and shall be accounted for to them accordingly"

"ii. The whole of the dividends and other benefits derived from the owned British Shares shall belong to the members of the Company holding Participating Rights pro rata according to the numbers of the Participating Rights held by such members respectively"

"(I) The beneficial owner or owners of 60,000 shares in the British Company being either owned British Shares or Nominee British Shares or partly one and partly the other of such classes of shares shall be entitled to the rights following and for this purpose a holder of Participating Rights shall be deemed to be the beneficial owner of 72 owned British Shares"

"(i) The Beneficial Owner or Owners aforesaid shall [fol. 5851] be entitled at any time or times to nominate one person to act as a Director of the British Company and to cancel such nomination"

"(ii) The Beneficial Owner or Owners aforesaid shall be entitled once in each calendar year at their own expense to employ a Chartered Accountant who shall be at liberty to examine the books of account and records of the British Company and to take notes and extracts therefrom"

"(K) The Company will exercise or cause to be exercised any Shareholder's or Director's voting rights belonging to it or under its control and at the like expense will execute and do such other deeds acts and things within its power as may be necessary in order (a) to procure the appointment of such nominee as such Director (b) to maintain him

in office until such nomination is cancelled (c) when a nomination is cancelled to terminate the appointment of such nominee as such Director (d) to procure for such Chartered Accountant the facilities required to enable him to make such examination and take such notes and extracts and the Company will maintain the appointment of a Director whose nomination is not cancelled and will be obliged to procure the facilities aforesaid only so long as the beneficial owner or owners aforesaid continue to be beneficial owner or owners of 60,000 shares in the British Company and a beneficial owner aforesaid shall not be entitled to nominate or join in nominating a Director of the British Company so long as there is a Director of the British Company nominated by him or whom he has joined in nominating and any person nominated under this Article [fol. 5852] to act as a Director of the British Company shall himself acquire the shares in the British Company required to qualify him as such Director"

For the Timken Roller Bearing Company by telegraphic authority.

/S/ A. J. M. Duncan

Signed by Andrew Jameson Matthews Duncan for the Timken Roller Bearing Company in the presence of /S/ F. J. Pascoe, 65 Cheston Road, Astor Birmingham, Engineer.

/S/ M. B. U. Dewar.

Signed, sealed, and delivered by the said Michael Bruce Urquhart Dewar in the present- of /S/ F. J. Pascoe, 65 Cheston Road Astor Birmingham Engineer.

The common seal of Timken Holdings Limited was hereunto affixed in the presence of (S) M. B. U. Dewar, Director; F. J. Pascoe, Director; Jessica E. Shockford, Secretary.

The Timken Roller Bearing Company, /s/ Wm. E. Umstattd, President, /s/ R. C. Brower, Secretary.

[fol. 5853] PLAINTIFF'S EXHIBIT NO. 7 (DECREE)

THE COMPANIES ACT, 1929

COMPANY LIMITED BY SHARES

MEMORANDUM AND ARTICLES OF ASSOCIATION OF TIMKEN HOLDINGS LIMITED

Incorporated the 31st day of August, 1935

STIBBARD, GIBSON & CO.,
21, Leadenhall Street, London, E.C.3

[fol. 5854] TIMKEN HOLDINGS LIMITED

Special Resolution Passed 16th June, 1943

At an Extraordinary General Meeting of the above-named Company duly convened and held at 65, Cheston Road, Aston, in the City of Birmingham, on Wednesday, the 16th day of June, 1943, the following Resolution was duly passed as a Special Resolution:

RESOLUTION

That the Articles of Association of the Company be and they are hereby altered in manner following:

1. Article 5 is hereby cancelled and in lieu thereof the following Article shall be substituted for such cancelled Article:—

"5. (A) At the date of the adoption of this Article as one of the Articles of Association of the Company the Company holds shares in British Timken Limited a Company incorporated in England (hereinafter referred to as 'the British Company') to the number of 200,000 of which 36,000 are held by the Company in absolute ownership (hereinafter referred to as 'owned British Shares') and 164,000 are held by the Company as nominees (that is 'bare trustee') for the beneficial owners (hereinafter referred to as 'Nominee British Shares').

(B) The business of the Company will include the holding of the shares in the British Company the management and control of such shares, the exercise

of voting and other rights in respect of such shares and the receipt and disposal of moneys and other benefits receivable in respect of such shares.

(C) The Company will carry on no business other than the business hereinbefore mentioned without the sanction of a Special Resolution of the Company in General Meeting.

(D) At the date of the adoption of this Article the Company has created and issued 500 Registered Participating Rights under paragraph C of Article 5 of the original Articles of Association of the Company and [fol. 5855] these Participating Rights are still outstanding and no further Participating Rights shall be created or issued.

(E) Every Participating Right now issued and the share in the Company bearing the same distinctive number shall be held together in the same ownership and shall not be transferred or otherwise allowed to fall into separate ownerships.

(F) A holder of Participating Rights shall be entitled at any time to give notice to the Company requiring it to redeem all or any of the Participating Rights belonging to such holder and thereupon the Company shall redeem the Participating Rights referred to in the notice by transferring to such holder 72 owned British Shares in respect of each Participating Right redeemed and the Company shall retain owned British Shares to a number sufficient to provide for such redemption and shall not incur any debts or liabilities which may prevent the Company from fully completing such redemption.

(G) The owned British Shares which shall become transferable under the last preceding paragraph shall not actually be transferred to the holder of the Participating Rights which are redeemed but shall be retained by the Company and shall become and be Nominee British Shares held by the Company as nominee on behalf of the holder of the redeemed Participating Rights.

(H) (i) The whole of the dividends and other benefits derived from the Nominee British Shares shall belong to the Beneficial Owners on behalf of whom the shares are held and shall be accounted for to them accordingly.

(ii) The whole of the dividends and other benefits derived from the owned British Shares shall belong to the members of the Company holding Participating Rights pro rata according to the numbers of the Participating Rights held by such members respectively.

(I) The Beneficial Owner or Owners of 60,000 shares in the British Company being either owned British Shares or Nominee British Shares or partly one and partly the other of such classes of shares shall be entitled to the rights following and for this purpose a holder of Participating Rights shall be deemed to be beneficial owner of 72 owned British Shares.

(i) The Beneficial Owner or Owners aforesaid shall be entitled at any time or times to nominate one person to act as a Director of the British Company and to cancel such nomination.

(ii) The Beneficial Owner or Owners aforesaid shall be entitled once in each calendar year at their [fol. 5856] own expense to employ a Chartered Accountant who shall be at liberty to examine the books of account and records of the British Company and to take notes and extracts therefrom.

(K) The Company will exercise or cause to be exercised any shareholder's or Director's voting rights belonging to it or under its control and at the like expense will execute and do such other deeds, acts and things within its power as may be necessary in order (a) to procure the appointment of such nominee as such Director (b) to maintain him in office until such nomination is cancelled (c) when a nomination is cancelled to terminate the appointment of such nominee as such Director (d) to procure for such Chartered Accountant the facilities required to enable him to make such examination and take such notes and extracts and the Company will maintain the appointment of a Director whose nomination is not cancelled and will be obliged to procure the facilities aforesaid only so long as the Beneficial Owner or Owners aforesaid continue to be Beneficial Owner or Owners of 60,000 shares in the British Company and a Beneficial Owner aforesaid shall not be entitled to nominate or join in nominating a Director of the British Company so long as there is a Director of the British Company

nominated by him or whom he has joined in nominating and any person nominated under this Article to act as a Director of the British Company shall himself acquire the shares in the British Company required to qualify him as such Director."

M. B. U. Dewar, Director, Chairman of Meeting.

[fol. 5857] THE COMPANIES ACT, 1929

COMPANY LIMITED BY SHARES

MEMORANDUM AND ARTICLES OF ASSOCIATION OF TIMKEN HOLDINGS LIMITED

Incorporated the 31st day of August, 1935

STIBBARD, GIBSON & CO.
21, Leadenhall Street, London, E.C.3

[fol. 5858] CERTIFICATE OF INCORPORATION

No. 304640

THE COMPANIES ACT, 1929

Company Limited by Shares

MEMORANDUM OF ASSOCIATION OF TIMKEN HOLDINGS LIMITED

1. The name of the Company is "Timken Holdings Limited."

2. The registered office of the Company will be situated in England.

3. The objects for which the Company is established are:

(A) To carry on business as an Investment and Trust Company and engage in all kinds of financial and other transactions and in particular but without prejudice to the generality of the foregoing objects, to enter into and carry into effect with or without modification an Agreement in the terms of a draft expressed to be made between Michael Bruce Urquhart Dewar of the one part and this Company of the other part and identified by the signature of Andrew Jameson

Matthews Duncan a Solicitor of the Supreme Court being an agreement for the acquisition of certain shares in British Timken Limited and to hold, manage or control such shares or any of them and exercise [fol. 5859] voting and other rights and receive and dispose of monies and other benefits receivable in respect of such shares or any of them.

(B) To manufacture, build, repair and deal in all parts of and accessories to motor cars and vehicles of every description, cycles, engines, chassis and bodies, and aircraft, including electric motors and other electric appliances, and all kinds of machinery, tools, appliances and materials for use in relation to the manufacture, running, storage and repair of motor cars, vehicles, cycles, engines, chassis, bodies and aircraft respectively, or the parts or accessories thereof respectively, and to apply for and take out letters patent in connection therewith.

(C) To supply and deal in petrol and other volatile oils and spirits, and all kinds of lubricating oils and other lubricants and all kinds of fuel for developing locomotive power.

(D) To manufacture, supply and deal in all kinds of personal and other equipment for the use of drivers, tourists and the public generally, for use in connection with motor cars, aircraft, including (without prejudice to the generality of this clause) wearing apparel and maps and guide books.

(E) To carry on business as mechanical and electrical engineers, and to buy, sell, manufacture, repair and deal in machinery, metals, implements and hardware of all kinds.

(F) To acquire by grant, purchase, licence, or exchange, and to use, work and sell or otherwise turn to account any patent or patent rights, brevets d'invention, or other rights which may be deemed to be in the interests of the Company.

(G) To purchase, take on lease, or otherwise acquire and undertake, all or any part of the business, property and liabilities of any person or company carrying on any business which the Company is authorised to carry on, or possessed of property suitable for the purposes of the Company, and to acquire, hold and deal in the

shares or securities of any such company or of any other company whatsoever.

(H) To remunerate any person or company for services rendered or to be rendered, in placing or assisting to place, or guaranteeing the placing of any of the shares of the Company's capital, or any debentures or other securities of the Company, or in or [fol. 5860] about the formation or promotion of the Company, or the conduct of its business, or of any other company promoted or financed by this Company.

(I) To purchase, take on lease, or in exchange, hire or otherwise acquire, any real or personal property and any rights or privileges which the Company may think necessary or convenient for the purposes of its business, and to construct, maintain and alter any buildings or works necessary or convenient for the purposes of the Company.

(J) To borrow or raise money on mortgage, debentures or debenture stock, or in such other manner as the Company shall think fit, and to charge all or any of the Company's property or assets, present or future, including its uncalled capital, and to lend money on such terms as to repayment or otherwise as may be necessary or convenient for the purposes of the Company.

(K) To subscribe for, take, purchase, or otherwise acquire and hold, shares or other interests in, or securities of, any other company having objects altogether or in part similar to those of this Company, or carrying on any business capable of being conducted so as directly or indirectly to benefit this Company, or to promote such company.

(L) To pay all expenses of and in connection with the incorporation or promotion of this or any other company which this Company is hereinbefore authorised to promote, and the obtaining the subscription of any shares or securities thereof, and procuring or obtaining settlements and quotations upon the London or Foreign, Colonial or Provincial Stock Exchanges of any such shares or securities.

(M) To draw, make, accept, indorse, discount, execute, and issue promissory notes, bills of exchange, bills of lading, warrants, debentures or other securities of the Company.

(N) To sell or dispose of the undertaking of the Company or any part thereof in such manner and for such consideration as the Company may think fit, and in particular for shares (either fully or partly paid up), debentures or securities of any other company, and to improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company. [fol. 5861] (O) To distribute among the Members of the Company in kind any property of the Company, and in particular any shares, debentures, or securities of other companies belonging to this Company, or of which this Company may have the power of disposing.

(P) To act as Executors, Administrators, Trustees and Nominees and undertake and execute any Trusts and Duties of Representation and carry on Executorship, Administration, Trustee or Nominee business of any kind and either gratuitously or otherwise.

(Q) To do all or any of the above things in any part of the world and either as principals, agents, contractors, trustees or nominees or otherwise, and either alone or with others, and either through agents, contractors, trustees or nominees or otherwise.

(R) To do all such other things as are incidental or the Company may think conducive to the attainment of the above objects or any of them.

4. The liability of the Members is limited.

5. The share capital of the Company is £125, divided into 1,250 "A" shares of 1/- each and 1,250 "B" shares of 1/- each.

The shares constituting the original share capital of the Company shall confer upon the holders thereof respectively the rights and privileges expressed to be attached thereto by or pursuant to the Articles of Association of the Company filed with this Memorandum of Association.

Subject as aforesaid any new shares which from time to time may be created, may from time to time be issued with such preferred, deferred or other special rights, or such restrictions, whether in respect of dividend, voting, return of capital or otherwise, as the Company may from time to

time by Special Resolution determine and the rights or privileges for the time being attached to any class of shares in the original or any increased capital may be modified or abrogated with such consent or sanction as is provided by the Articles of Association of the Company for the time being.

We, the several persons whose names, addresses, and descriptions are subscribed are desirous of being formed into a Company in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite to our respective names.

[fol. 5862] Names, Addresses and Descriptions of Subscribers	Number of Shares taken by each Subscriber
A. J. M. Duncan, 21, Leadenhall Street, London, E. C. 3. Solicitor.	One A Share
J. I. Pickering, 21, Leadenhall Street, London, E. C. 3. Solicitor.	One A Share

Dated the 22nd day of August, 1935.

Witness to the above Signatures—

T. F. Keating, 21, Leadenhall Street, E. C. 3. Articled Clerk.

[fol. 5863] THE COMPANIES ACT, 1929

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

TIMKEN HOLDINGS LIMITED

PRELIMINARY

1. The regulations in Table "A" in the first schedule to the Companies Act, 1929, shall not apply to the Company.

2. In these presents, if not inconsistent with the subject or context, the words standing in the first column of the table next hereinafter contained shall bear the meanings

set opposite to them respectively in the second column thereof.

Words	Meanings
The Statutes.	The Companies Act, 1929, and every other Act for the time being in force concerning joint stock companies and affecting the Company.
The Act.	The Companies Act, 1929.
These Presents.	The Articles of Association, as originally framed, or as from time to time altered by special resolution.
The Office.	The Registered Office of the Company.
[fol. 5864] The Seal.	The Common Seal of the Company.
The United Kingdom.	Great Britain and Northern Ireland.
Year.	Year from the 1st January to the 31st December inclusive.
In Writing.	Written, or expressed by any substitute for writing, or partly one and partly the other.
Writing under hand.	In the case of a corporation a writing signed on behalf of the Corporation by its secretary or some other person duly authorised to sign on behalf of the Corporation.

And the expression "Secretary" shall include a temporary or assistant Secretary and any person appointed by the Directors to perform any of the duties of the Secretary.

Save as aforesaid any words or expressions defined in the Statutes shall, if not inconsistent with the subject or context, bear the same meaning in these presents.

Private Company

3. The Company is a Private Company and accordingly:

(A) The right to transfer shares in the Company shall be restricted in manner hereinafter appearing.

(B) The number of members of the Company (not including persons who are in the employment of the Company, and persons who, having been formerly in the employment of the Company, were, while in that employment, and have continued after the determination of that employment to be members of the Company) shall be limited to fifty; provided that where two or more persons hold one or more shares in the Company jointly they shall for the purposes of this paragraph be treated as a single member.

(C) No invitation shall be given to the public to subscribe for any shares or debentures of the Company.

4. (A) The original share capital of the Company is £125 divided into 1,250 "A" Shares to be numbered 1 to 1,250 both inclusive and 1,250 "B" Shares to be numbered 1,251 to 2,500 both inclusive all of 1/- each.

(B) The "A" Shares and the "B" Shares confer upon the holders thereof respectively the special rights or privileges as regards voting, appointing Directors and otherwise conferred by or pursuant to these presents, but except as otherwise provided by or pursuant to these presents the "A" Shares and the "B" Shares rank pari passu as a single class of Ordinary Shares and the expression "Ordinary Shares" as hereinafter used means and includes both the "A" Shares and the "B" Shares.

5. (A) Under the Agreement mentioned in Clause 3 (A) of the Company's Memorandum of Association the Company is to agree to purchase or acquire as nominees, i.e., bare trustees on behalf of the transferors 125,000 shares of £1 each fully paid in a Company incorporated in England and named British Timken Limited and the business of the Company will include the holding of the shares so purchased or acquired, the management and control of such shares, the exercise of voting and other rights in respect of such shares, and the receipt and disposal of monies and other benefits receivable in respect of such shares.

(B) The Company will carry on no business other than the business hereinbefore mentioned without the sanction of a Special Resolution of the Company in General Meeting.

(C) The Company from time to time as required will create registered Participating Rights (hereinafter referred to as "the Participating Rights") to a number not exceeding in all 2,500 and the Participating Rights will bear consecutive distinctive numbers from 1 to 2,500 both inclusive and a Participating Right shall be issued only to the member holding the share bearing the same distinctive number and every member to whom a Participating Right is issued will receive a certificate as to the Participating Rights to which he is entitled.

(D) Every member of the Company from whom the Company receives by purchase or otherwise in absolute ownership 50 of the said shares in British Timken Limited will receive from the Company one Participating Right

provided that he holds the share in the Company bearing the same distinctive number and that Participating Right and the share bearing the same distinctive number shall be held together in the same ownership and shall not be transferred or otherwise allowed to fall into separate ownerships.

[fol. 5866] (E) If and when a holder of Participating Rights has become entitled under the Articles in the Section of these presents headed "Transfer of Shares" to transfer any shares with the connected Participating Rights to any person on a bona fide sale then at any time during the period of one month during which he is so entitled such holder shall be entitled to give notice to the Company requiring the Company to redeem all or any of such connected Participating Rights and thereupon the Company shall redeem the Participating Rights referred to in the notice by transferring to the holder at the expense of the holder (and as nearly as possible in kind) a share of the surplus of the assets of the Company over and above the amount of assets required to make provision for the paid up share capital of the Company and the debts and liabilities of the Company if any in the proportion which the redeemed Participating Rights bear to the whole of the Participating Rights for the time being outstanding and except as hereinbefore provided the Participating Rights shall be irredeemable.

Provided Always that the right to give notice to the Company requiring the Company to redeem Participating Rights shall not come into operation unless the prescribed price for the Shares with the connected Participating Rights which the holder has become entitled to transfer shall be such sum as the Auditors of the Company shall by certificate made at the request of the Directors certify to be in their opinion the fair value of the Shares with the connected Participating Rights.

(F) If and when 5% of the Participating Rights which have been granted in connection with the "A" Shares in the Company or 5% of the Participating Rights which have been granted in connection with the "B" Shares in the Company have been redeemed all the Shares in the Capital of the Company shall cease to be "A" Shares or "B" Shares and shall become Ordinary Shares of one class and

all special rights or privileges for the time being attached to either class of shares shall be abrogated.

(G) If and so long as a share in the Company is issued but a Participating Right bearing the same distinctive number as that share has not been issued, the holder of that share shall not be entitled to any share or interest in the profits of the Company nor any right to any share or interest in the surplus of the assets of the Company over and above the amount required to make provision for the paid up share capital of the Company nor any voting or other rights conferred by the share and if and when a Participating Right is redeemed all right to any share or interest in the profits of the Company and all right to any share or interest in the surplus of the assets of the Company over and above the amount required to make provision for the paid up share capital of the Company and all voting and other rights conferred by the share bearing the same distinctive number as the redeemed Participating Right shall be abrogated and at an end.

(H) The holder or holders for the time being of at lease 30% of the Participating Rights for the time being outstanding shall be entitled (i) at any time or times to nominate one person to act as a Director of British Timken Limited and to cancel such nomination and (ii) once in [fol. 5867] each year at their own expense to employ a Chartered Accountant who shall have the privilege of examining the books of account and records of British Timken Limited and taking notes and extracts therefrom and the Company will exercise or cause to be exercised any Shareholder's or Director's voting rights vested in it or under its control and will execute and do such other acts and things within its power as may be necessary in order to procure the appointment of such nominee as a Director of British Timken Limited and maintain him in that office and procure for the said Chartered Accountant the privilege aforesaid so long in the case of a nominee Director as his nomination has not been cancelled and so long in the case of either (i) or (ii) as the holder or holders aforesaid or some of them continue to hold at least 30% of the Participating Rights for the time being outstanding but so long as a Director of British Timken Limited holds office pursuant to a nomination by a holder of Participating Rights under this provision no further nomination can be made

under this provision by that holder or in respect of the Participating Rights in respect of which such Director was nominated and any person nominated to act as a Director of British Timken Limited shall himself acquire the shares necessary to qualify him as such Director.

6. No part of the funds of the Company shall be employed in the purchase of or in loans upon the security of the Company's shares.

Modification of Rights

7. The special rights attached to the "A" shares and the "B" shares respectively may, with the consent in writing under hand of the holders of a majority of the said shares of each class for the time being issued (but not otherwise), be modified or abrogated, and may be so modified or abrogated either whilst the Company is a going concern or during or in contemplation of a winding up. The special rights attached to any other class of shares in the Company's capital at any time issued with special rights may be modified or abrogated either with the consent in writing under hand of the holders of a three-fourths of the shares of the class for the time being issued or with the sanction of an extraordinary resolution passed at a separate general meeting of such holders, but not otherwise. To every separate general meeting of any class of shareholders (whether held pursuant to this article or to any other provision of these presents) all the provisions of these presents relating to general meetings or to the proceedings thereat shall, mutatis mutandis, apply, except that the necessary quorum shall be two persons at least holding or representing by proxy one-tenth of nominal amount of the shares of the class for the time being issued (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those members who are present shall be a quorum), and that the holders of shares of the class shall, on a poll, have one vote in respect of every share of the class held by them respectively.

[fol. 5868] Shares

8. Except as otherwise authorised by writing under hand of the holders of a majority of the "A" shares for the time

being issued and of the holders of a majority of the "B" shares for the time being issued, no further shares shall be issued unless the further shares so issued shall consist of equal numbers of "A" shares and "B" shares and unless the further "A" shares so issued are issued to the holders of the "A" shares for the time being issued in proportion to the numbers of the "A" shares for the time being held by them respectively and unless the further "B" shares so issued are issued to the holders of the "B" shares for the time being issued in proportion to the numbers of the "B" shares for the time being held by them respectively.

9. Subject to the provisions of the last preceding Article and to any other express provision of these presents the shares shall be at the disposal of the Directors, and they may allot, grant options over, or otherwise dispose of them to such persons, at such times, and on such terms as they think proper. The Directors shall, as regards any allotment of shares, comply with the provisions of the Act, if and so far as such provisions may be applicable thereto.

10. The Company (or the Directors on behalf of the Company) may exercise the powers of paying commissions conferred by the Act. Provided that the rate per cent, or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the Act, and shall not exceed 10 per cent. of the price at which the shares are issued. The Company (or the Directors on behalf of the Company may also on any issue of shares pay such brokerage as may be lawful.

11. If any shares of the Company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings, or the provision of any plant which cannot be made profitable for a lengthened period, the Company (or the Directors on behalf of the Company) may, subject to the conditions and restrictions mentioned in the Act, pay interest on so much of such share capital as is for the time being paid up, and may charge the same to capital as part of the cost of construction of the works, buildings or plant.

12. No person shall be recognized by the Company as holding any share upon any trust, and the Company shall not be bound by or recognize any equitable, contingent, future or partial interest in any share, or any interest in any fractional part of a share, or (except only as by these

presents otherwise provided) any other right in respect of any share, except an absolute right to the entirety thereof in the registered holder.

[fol. 5869] 13. Every person whose name is entered as a member in the register of members shall be entitled without payment to one certificate for all his shares, or upon payment of such sum, not exceeding ls., for every certificate after the first as the Directors shall from time to time determine, to several certificates, each for one or more of his shares. Every certificate shall be issued under the seal, and shall bear the signatures of one or more Directors and the Secretary, and shall specify the shares to which it relates, and the amount paid up thereon. Provided that in the case of a share held jointly by several persons, the Company shall not be bound to issue more than one certificate therefor, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

14. If a share certificate be defaced, lost or destroyed, it may be renewed on payment of such fee (if any), not exceeding ls., and on such terms (if any) as to evidence and indemnity as the Directors think fit.

Lien

15. The Company shall have a lien on every share (not being a fully paid share) for all monies, whether presently payable or not, called or payable at a fixed time in respect of such share; and the Company shall also have a first and paramount lien and charge on all shares standing registered in the name of a single member for all the debts and liabilities of such member or his estate to the Company, and that whether the same shall have been incurred before or after notice to the Company of any equitable or other interest in any person other than such member and whether the period for the payment or discharge of the same shall have actually arrived or not, and notwithstanding that the same are joint debts or liabilities of such member or his estate and any other person, whether a member of the Company or not. The Company's lien (if any) on a share shall extend to all dividends payable thereon.

16. The Company may sell, in such manner as the Directors think fit, any shares on which the Company has a lien, but no sale shall be made unless some sum in respect

of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of the sum presently payable, and giving notice of intention to sell in default, shall have been given to the holder for the time being of the share or the person entitled by reason of his death or bankruptcy to the share.

17. For giving effect to any such sale the Directors may authorise some person to transfer the share sold to the Purchaser thereof.

18. The proceeds of sale shall be applied in or towards payment or satisfaction of the debt or liability in respect whereof the lien exists, so far as the same is presently payable, and any residue shall (subject to a like lien for debts or liabilities not presently payable as existed upon the [fol. 5870] shares prior to the sale) be paid to the person entitled to the shares at the time of the sale. Upon the execution of the transfer by the person authorised by the Directors to transfer the share and by the Purchaser and the delivery to the Company of the executed transfer duly stamped the purchaser shall be registered as the holder of the shares and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares

19. The Directors may from time to time make calls upon the members in respect of any monies unpaid on their shares, and each member shall (subject to receiving at least one month's notice specifying the time or times and place of payment) pay to the Company at the time or times and place so specified the amount called on his shares.

20. A call shall be deemed to have been made at the time when the resolution of the Directors authorising the call was passed.

21. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

22. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate, not exceeding 10 per cent.

per annum, as the Directors determine, but the Directors shall be at liberty to waive payment of such interest wholly or in part.

23. Any sum which by the terms of issue of a share becomes payable upon allotment or at any fixed date, whether on account of the amount of the share or by way of premium, shall for all the purposes of these presents be deemed to be a call duly made and payable on the date on which, by the terms of issue, the same becomes payable, and in case of non-payment all the relevant provisions of these presents as to payment of interest and expenses, forfeiture or otherwise, shall apply as if such sum had become payable by virtue of a call duly made and notified.

24. The Directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid, and in the times of payment.

[fol. 5871] 25. The Directors may, if they think fit, receive from any shareholder willing to advance the same, all or any part of the monies uncalled and unpaid upon any shares held by him, and upon all or any of the money so advanced, may (until the same would but for such advance become presently payable), pay interest at such rate not exceeding (unless the Company in general meeting shall otherwise direct) 10 per cent. per annum, as may be agreed upon between the Directors and the shareholder paying such sum in advance.

Transfer of Shares

26. For the purposes of the Articles in this Section of these presents headed "Transfer of Shares" so long as any participating rights are not redeemed and are outstanding all references to shares in the case of a share bearing the same distinctive number as that borne by any outstanding participating right shall mean and include the share together with its connected participating right.

27. Subject to the other provisions of these presents with respect to the transfer of participating rights and shares, any share may at any time be transferred to a person who is already a member or (with the consent in writing under hand of the holders of a majority of the shares for the time being issued other than those held by the transferor) to a person who is not already a member.

28. Except in the case of a transfer of shares expressly authorised by the last preceding article, the right to trans-

fer shares in the Company shall be subject to the following restrictions, in addition to the other provisions of these presents with respect to the transfer of participating rights and shares, namely:

(A) Before transferring or requiring the Company to register a transfer of any shares the person, whether a member of the Company or not, proposing to transfer the same (hereinafter called "a retiring member") shall give a notice in writing (hereinafter called "a transfer notice") to the Company, that he desires to transfer the same. The transfer notice shall state the price per share which the retiring member is willing to accept for the shares comprised therein and shall constitute the Company his agent for the sale of the shares therein mentioned or any of such shares at that price (hereinafter called "the prescribed price") to any member of the Company. A transfer notice once given shall not be revocable except with the consent of the Company during the next 90 days following the day on which the notice is given. Shares of different classes shall not be included in the same transfer notice, [fol. 5872] and a transfer notice which includes shares of different classes may be treated as invalid.

(B) If the Company within a period of 90 days after receiving a transfer notice shall find members (hereinafter called "purchasers") willing to purchase the shares therein mentioned, or any of such shares, and shall give notice in writing thereof to the retiring member, he shall be bound, upon payment of the prescribed price, to transfer the shares mentioned in the transfer notice, or those for which the Company has found purchasers, to the respective purchasers thereof.

(C) Every notice given by the Company under paragraph (B) stating that it has found a purchaser for any shares shall state the name and address of the purchaser and the number of shares agreed to be purchased by him, and the purchase shall be completed at a place and time to be appointed by the Company, not being more than 28 days after the date on which the notice is given.

(D) If in any case a retiring member, after having become bound to transfer any shares to a purchaser,

shall make default in transferring the shares, the Company shall have power to appoint some person to execute a transfer of the shares to the purchaser and upon execution of the transfer by the purchaser and the delivery to the Company of the executed transfer duly stamped the Company may receive the purchase money, and shall thereupon cause the name of the purchaser to be entered in the register as the holder of the shares, and shall hold the purchase money in trust for the retired member. The receipt of the Company for the purchase money shall be a good discharge to the purchaser, and he shall not be bound to see to the application thereof, and after the name of the purchaser has been entered in the register in purported exercise of the aforesaid powers, the validity of the proceedings shall not be questioned by any person.

(E) If the Company shall not within a period of 90 days after receiving a transfer notice find members willing to purchase all the shares mentioned in the transfer notice, and give notice in writing thereof to the retiring member, or if the Company shall within the period aforesaid give to the retiring member notice in writing that the Company has no prospect of finding purchasers for such shares, or any of them, the re- [fol. 5873] tiring member shall at any time within one month after receiving such notice or the expiration of the said period of 90 days (as the case may be) be at liberty (subject only to the power of the Directors to decline to register a transfer hereinafter contained) to transfer the shares, or those for which the Company has not found purchasers, to any person on a bona fide sale of such shares at any price not being less than the prescribed price, but so that before passing any such transfer the Directors may require to be satisfied in such manner as they may reasonably require that the shares included in the transfer notice are being transferred in pursuance of a bona fide sale for the consideration stated in the transfer without any deduction, rebate allowance or benefit whatsoever to the purchaser.

(F) All shares included in a transfer notice shall be offered by the Company in the first instance for sale at the prescribed price to all members holding Ordin-

ary Shares (other than the member giving the transfer notice) on the terms and so that in case of competition the shares so offered shall be sold to the members accepting the offer in proportion (as nearly as may be and without increasing the number sold to any member beyond the number applied for by him) to their existing holdings of Ordinary Shares. All offers of shares under this paragraph shall be made by writing sent through the post in prepaid registered letters addressed to the members at their respective registered addresses as appearing in the register and every such offer shall limit a period of 60 days from the posting of the letters containing the same within which the offer must be accepted or in default will be treated as declined.

29. The legal personal representatives of any deceased member shall be bound at any time after the expiration of six months from the date of his death, if and when called upon in writing by the Directors so to do, either to apply to be themselves registered as holders of or to give a transfer notice in respect of all the shares registered in the name of the deceased member at the date of his death, or such of the same as still remain so registered, and should such legal personal representatives fail either to apply to be so registered or to give such transfer notice within a period of 14 days after being so called upon, they shall be deemed to have given such transfer notice at the expiration of the said period of 14 days and the provisions of these presents shall have effect accordingly.

30. If any member shall be adjudged bankrupt, his trustee in bankruptcy shall be bound forthwith to give to the Company a transfer notice in respect of all the shares registered in the name of the bankrupt member, and in default [fol. 5874] of such transfer notice being given within one month of the bankruptcy, the trustee in bankruptcy shall be deemed to have given such notice at the expiration of the said period of one month and the provisions of these presents shall have effect accordingly.

31. The "prescribed price" for any shares of any class included in a transfer notice given or deemed to be given under either of the two last preceding articles shall be such sum as the auditors of the Company shall by certificate made at the request of the Directors certify to be, in their

opinion, the fair value of a share of that class in the Company.

32. All transfers of shares shall be effected by transfer in writing in the usual common form.

33. The instrument of transfer of a share shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members in respect thereof.

34. The Directors may, in their discretion, and without assigning any reason therefor, decline to register any transfer of shares not being a transfer expressly authorised by these presents.

35. The Directors may also decline to recognize any instrument of transfer, unless

(A) Such fee, not exceeding 2s. 6d., as the Directors may from time to time require is paid to the Company in respect thereof; and

(B) The instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer.

36. The register of transfers may be closed at such times and for such period as the Directors may from time to time determine, provided always that it shall not be closed for more than thirty days in any year.

37. There shall be paid to the Company in respect of the registration of any probate, letters of administration, certificate of marriage or death, power of attorney or other document relating to or affecting the title to any shares such fee, not exceeding 2s. 6d., as the Directors may from time to time require or prescribe.

[fol. 5875] Transmission of Shares

38. In case of the death of a shareholder the survivors or survivor where the deceased was a joint holder, and the executors or administrators of the deceased where he was a sole holder, shall be the only persons recognised by the Company as having any title to his shares, but nothing herein contained shall release the estate of a deceased joint

holder from any liability in respect of any share jointly held by him.

39. The executors or administrators of a deceased sole holder of shares shall be entitled upon such evidence as to their title being produced as may from time to time be required by the Directors and upon their claiming such registration by notice in writing to the Company, to be registered themselves as holders of the shares of the deceased member. They shall also be entitled, unless and until they shall have been so registered themselves and subject to the restrictions on transfer of shares hereinbefore contained, to sell and transfer the shares of the deceased member.

40. The Trustee in bankruptcy of a member becoming bankrupt shall not be entitled to be registered himself as holder of the shares of the bankrupt member but shall be entitled, subject to the restrictions on transfers of shares hereinbefore contained, to sell and transfer the same.

41. A person becoming entitled to a share in consequence of the death or bankruptcy of a member shall be entitled to receive and may give a discharge for all dividends and other money payable in respect of the share, but he shall not be entitled to receive notices of or to attend or vote at meetings of the Company of save as aforesaid to any of the rights or privileges of a member unless and until he shall have become a member in respect of the share.

Forfeiture of Shares

42. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the Directors may at any time thereafter, during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest and expenses which may have accrued.

43. The notice shall name a further day on or before which and the place where the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time and at the place appointed the shares on which the call was made will be liable to be forfeited.

[fol. 5876] 44. If the requirements of any such notice as aforesaid are not complied with any share in respect of

which such notice has been given may at any time thereafter before payment of all calls and interest and expenses due in respect thereof has been made be forfeited by a resolution of the Directors to that effect.

45. A forfeited share may be sold, re-allotted or otherwise disposed of, either to the person who was before forfeiture the holder thereof or entitled thereto, or to any other person, upon such terms and in such manner as the Directors shall think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.

46. A shareholder whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall notwithstanding the forfeiture remain liable to pay to the Company all monies which at the date of forfeiture were presently payable by him to the Company in respect of the shares, with interest thereon at seven per cent. per annum from the date of forfeiture until payment.

47. A statutory declaration in writing that the declarant is a Director of the Company and that a share has been duly forfeited on a date stated in the declaration shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The Company may receive the consideration (if any) given for the share on any sale or disposal thereof and the Directors may authorise some person to transfer the share to the person to whom the share is sold or disposed of and upon the execution of the transfer by the transferee and the delivery to the Company of the executed transfer duly stamped the transferee shall thereupon be registered as the holder of the share and shall not be bound to see to the application of the purchase money (if any), nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

Increase of Capital

48. The Company in general meeting from time to time with the sanction in writing under hand of the holders of a majority of the "A" shares for the time being issued, and the holders of a majority of the "B" shares for the time being issued (but not otherwise), may increase its capital by such sum to be divided into shares of such classes

and amounts as the resolution of the General Meeting shall prescribe.

49. The new shares shall be subject to the same provisions with reference to payment of calls, lien, transfer, transmission, forfeiture and otherwise, as the shares in the present capital.

[fol. 5877] Alterations of Capital

50. The Company in general meeting with the sanction in writing under hand of the holders of a majority of the "A" shares for the time being issued and of the holders of a majority of the "B" shares for the time being issued (but not otherwise) may by ordinary resolution—

(A) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares.

(B) Cancel any shares which, at the date of the passing of the resolution, have not been taken, or agreed to be taken, by any person, and diminish the amount of its capital by the amount of the shares so cancelled.

(C) Sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum of Association (subject, nevertheless, to the provisions of the Act), and so that the resolution whereby any share is sub-divided may with the sanction aforesaid determine that, as between the holders of the shares resulting from such sub-division, one or more of the shares shall have any such preferred or other special rights, or shall have such deferred rights, or shall be subject to such restrictions as compared with the others as the Company has power to attach to unissued or new shares.

And may by special resolution—

(D) Reduce its capital in any manner authorised by law.

General Meetings

51. A General Meeting shall be held in every year, at such time (not more than fifteen months after the holding of the last preceding general meeting) and place as may be determined by the Directors. The general meetings referred to

in this article shall be called ordinary meetings. All other general meetings shall be called extraordinary meetings.

52. The Directors may call an extraordinary meeting whenever they think fit, and extraordinary meetings may also be convened on such requisition; or in default may be convened by such requisitionists, as prescribed by the Act.

Notice of General Meetings

53. Subject to the provisions of the Act relating to special resolutions, seven days' notice at the lease (inclusive of the day on which the notice is served or deemed to be [fol. 5878] served and of the day for which the notice is given) specifying the place, the day, and the hour of meeting, and in case of special business, the general nature of such business, shall be given in manner hereinafter mentioned to such members as are, under the provisions herein contained, entitled to receive notices from the Company. With the consent in writing under hand of all the members entitled to receive notices from the Company, a meeting may be convened by a shorter notice and in such manner as such members may think fit.

54. The accidental omission to give notice of the meeting to, or the non-receipt of such notice by, any member, shall not invalidate the proceedings at any general meeting.

Proceedings at General Meetings

55. All business shall be deemed special that is transacted at an extraordinary meeting, and also all business that is transacted at an ordinary meeting, with the exception of sanctioning dividends, the consideration of the accounts and balance sheet and the ordinary reports of the Directors and Auditors, the election of Auditors and other officers in the place of those retiring, and the fixing of the remuneration of the Auditors.

56. No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. Two members present in person shall be a quorum for all purposes.

57. If within 15 minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at such ad-

journed meeting a quorum is not present within fifteen minutes from the time appointed for holding the meeting, the meeting shall be dissolved.

58. The chairman (if any) of the Board of Directors shall preside as chairman at every general meeting of the Company. If there be no such chairman, or if at any meeting he be not present within fifteen minutes after the time appointed for holding the meeting, or be unwilling to act as chairman, the members present shall choose some Director, or if no Director be present, or if all the Directors present decline to take the chair, they shall choose some member present to be chairman.

59. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as afore- [fol. 5879] said, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

60. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by some member present in person or by proxy and entitled to vote. Unless a poll is so demanded, a declaration by the chairman that a resolution has been carried, or carried unanimously, or by a particular majority, or lost or not carried by a particular majority, and an entry to that effect in the minute book shall be conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against such resolution.

61. If a poll is duly demanded, it shall be taken in such manner as the chairman may direct, and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

62. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at

which the show of hands takes place or at which the poll is demanded shall not be entitled to a second or casting vote.

63. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time and place as the chairman directs.

64. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

Votes of Members

65. The Subscribers of the Memorandum of Association of the Company by writing under hand may adopt by-laws prescribing the rights of attending and voting at General Meetings of the Company to be conferred by or attached to the different classes of shares in the Company's share capital, and the Company in General Meeting with the consent in writing under hand of the holders of a majority of the "A" shares for the time being issued, and the holders of a majority of the "B" shares for the time being issued, may by ordinary resolution adopt new by-laws for the foregoing purposes and from time to time rescind or vary any such by-laws. Any by-laws so adopted and for the time being in force shall be as effective and binding upon the Company and all its members as though the provisions thereof were incorporated in these presents. Subject to the provisions of any by-laws of the Company adopted pursuant to this article and for the time being in force and the provisions of [fol. 5880] these presents with respect to participating rights, on a show of hands every member who (being an individual) is present in person or (being a corporation) is present by a proxy not being himself a member, shall have one vote, and on a poll every member who is present in person or by proxy shall have one vote for every share of which he is the holder.

66. In the case of joint holders of a share the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

67. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in

lunacy, may vote, whether on a show of hands or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by such Court, and such committee, curator bonis, or other person may on a poll vote by proxy.

68. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the Company have been paid.

69. On a poll votes may be given either personally or by proxy.

70. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing, or if the appointer is a corporation either under the common seal or under the hand of an officer or attorney so authorized.

71. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy or he is appointed to act at that meeting as proxy for a corporation.

72. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of such power or authority, shall be deposited at the office not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of 12 months from the date named in it as the date of its execution.

73. An instrument of proxy may be in the following form, or in any other form which the Directors shall approve.

[fol. 5881] Timken Holdings Limited

I, —— ——, of —— ——, being a member of the above named Company hereby appoint —— ——, of —— ——, or failing him —— ——, of —— ——, as my proxy to vote for me, and on my behalf, at the ordinary (or extraordinary or adjourned as the case may be) general meeting of the Company to be held on the —— day of ——, 19—, and at any adjournment thereof.

As Witness my hand this —— day of ——, 19—.

74. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or revocation of the proxy, or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the Company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Directors

75. The first Directors shall be appointed by an instrument in writing under the hands of the subscribers of the Memorandum of Association of the Company, and such subscribers may appoint any one or more of their number to be first Directors.

76. The Subscribers of the Memorandum of Association of the Company by writing under hand may adopt by-laws prescribing the maximum and minimum number of directors, and prescribing and regulating the appointment, removal and remuneration of the directors, and if thought fit their retirement by rotation or otherwise, and the Company in General Meeting with the sanction in writing under hand of the holders of a majority of the "A" shares for the time being issued and of the holders of a majority of the "B" shares for the time being issued, may by ordinary resolution adopt new by-laws for the foregoing purposes, and from time to time rescind or vary any such by-laws. Any by-laws so adopted and for the time being in force shall be as effective and binding upon the Company and all its members as though the provisions thereof were incorporated in these presents, and so long as any such by-laws are in force directors shall only be appointed and removed from office and be subject (if at all) to retirement by rotation or otherwise as thereby provided.

77. It shall not be necessary for a Director to hold any share qualification.

78. If and whenever there are no by-laws in force adopted pursuant to the last preceding article, the number of the directors shall not be less than three and the Company in [fol. 5882] General Meeting may by ordinary resolution appoint directors and fix their remuneration and by extraordinary resolution may remove any director from office.

79. The office of a Director shall be vacated in any of the following events, namely:—

(A) If (subject as regards a Managing Director to the provisions of any contract between him and the Company) he resign his office by writing under his hand left at the office.

(B) If he become bankrupt or compound with his creditors.

(C) If he be found lunatic or become of unsound mind.

(D) If he be incapacitated by ill-health from performing his duties for a continuous period of six months, and the Directors resolve that his office be vacated.

(E) If he be convicted of an indictable offence.

80. A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with his office of Director, and no Director or intending Director shall be disqualified by his office from contracting with the Company, either with regard to his tenure of any such other office or place of profit, or as vendor, purchaser or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realized by any such contract or arrangement by reason of such Director holding that office, or of the fiduciary relation thereby established, but the nature of his interest shall be disclosed by him at the meeting of the Directors at which the contract or arrangement is first taken into consideration, if his interest then exists, or in any other case at the first meeting of the Directors after the acquisition of his interest as provided by the Act. Provided, nevertheless, that a Director shall not vote in respect of any contract or arrangement in which he is so interested, and if he shall do so his vote shall not be counted, but this prohibition shall not apply to any arrangement for giving any Director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the Company, nor to any contract by a Director to subscribe for or underwrite

shares or debentures of the Company, and it may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by extraordinary resolution of the Company.

[fol. 5883] Powers of Directors

81. The business of the Company shall be managed by the Directors, who may pay all expenses incurred in getting up and registering the Company and may exercise all such powers of the Company as are not by the statutes or by these presents required to be exercised by the Company in general meeting, subject nevertheless to any regulations of these presents, to the provisions of the statutes, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by extraordinary resolution of the Company, but no regulation so made by the Company shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made. The general powers given by this article shall not be limited or restricted by any special authority or power given to the Directors by any other article.

82. The Directors may establish any local boards or agencies for managing any of the affairs of the Company, either in the United Kingdom or elsewhere, and may appoint any persons to be members of such local boards, or any managers or agents, and may fix their remuneration, and may delegate to any local board, manager or agent any of the powers, authorities and discretions vested in the Directors, with power to sub-delegate, and may authorise the members of any local board, or any of them, to fill any vacancies therein, and to act notwithstanding vacancies, and any such appointment or delegation may be made upon such terms and subject to such conditions as the Directors may think fit, and the Directors may remove any person so appointed, and may annul or vary any such delegation, but no person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.

83. The Directors may from time to time and at any time by power of attorney under the seal appoint any company, firm or person or any fluctuating body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attornies of the Company for such purposes and with such powers, authorities and discretions (not exceed-

ing those vested in or exercisable by the Directors under these presents) and for such period and subject to such conditions as they may think fit, and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions vested in him.

84. The Company may exercise the powers conferred by the Act with regard to having an official seal for use abroad and for keeping Dominion registers and such powers shall be vested in the Directors.

[fol. 5884] 85. The Directors may exercise all the powers of the Company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital, and to issue bonds, debentures, debenture stock, and other securities. Provided that no bonds, debentures, debenture stock or other securities in the nature of loan capital shall be issued without the sanction in writing under hand of the holders of a majority of the "A" shares for the time being issued and of the holders of a majority of the "B" shares for the time being issued, but so that nothing herein contained shall be held to resfrict the power of the Directors to obtain (without such sanction) temporary loans from the Company's bankers and others in the ordinary course of business or to create mortgages or charges upon the Company's undertaking or property and to issue debentures or other securities for securing the same.

86. All cheques, promissory notes, drafts, bills of exchange, and other negotiable or transferable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the Directors shall from time to time by resolution determine.

Managing Director

87. The Directors may from time to time appoint one or more of their body to the office of Managing Director for such period and on such terms as they think fit. Provided that a Managing Director shall ipso facto vacate office as such if he cease from any cause to be a Director, or (subject to the terms of any contract between him and the Company) if the Directors resolve that his term of office as Managing Director be determined.

88. A Managing Director shall receive such remuneration (whether by way of salary, commission, or participation in profits, or partly in one way and partly in another) as the Directors may determine, but so that such remuneration shall not exceed such rate or amount as from time to time shall be sanctioned by writing under hand of the holders of a majority of the "A" shares for the time being issued and of the holders of a majority of the "B" shares for the time being issued.

89. The Directors may entrust to and confer upon a Managing Director any of the powers exercisable by them as Directors upon such terms and conditions and with such restrictions as they think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

Proceedings of Directors

90. The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings [fol. 5885] as they think fit. A director may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors. It shall not be necessary to give notice of a meeting of Directors to any Director for the time being absent from the United Kingdom.

91. Questions arising at any meeting shall be determined by a majority of votes and in case of an equality of votes the Chairman shall have a casting vote.

92. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed at any other number shall be two.

93. The continuing Directors or a sole continuing Director may act notwithstanding any vacancies in the Board.

94. The Directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman be elected, or if at any meeting the chairman be not present within five minutes after the time appointed for holding the same the Directors present may choose one of their number to be chairman of the meeting.

95. A resolution in writing, signed by all the Directors for the time being in the United Kingdom, shall be as effective as a resolution passed at a meeting of the Directors duly convened and held.

96. A meeting of the Directors for the time being, at

which a quorum is present, shall be competent to exercise all powers and discretions for the time being exercisable by the Directors.

97. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the Directors.

98. The meetings and proceedings of any such committee consisting of two or more members shall be governed by the provisions of these presents regulating the meetings and proceedings of the Directors, so far as the same are applicable and are not superseded by any regulations made by the Directors under the last preceding article.

99. All acts done by any meeting of Directors, or of a committee of Directors, or by any person acting as a Director, shall, notwithstanding it be afterwards discovered that there was some defect in the appointment of any such [fol. 5886] Director, or person acting as aforesaid, or that they or any of them were disqualified, or had vacated office, be as valid as if every such person had been duly appointed, and was qualified and had continued to be a Director.

Minutes

100. The Directors shall cause minutes to be made in books provided for the purpose—

(A) Of all appointments of officers made by the Directors.

(B) Of the names of the Directors present at each meeting of Directors and of any committee of Directors.

(C) Of all resolutions and proceedings at all meetings of the Company and of the Directors and of committees of Directors.

The Seal

101. The seal of the Company shall not be affixed to any instrument except by the authority of a resolution of the Board and shall be so affixed in the presence of at least one Director and the Secretary, both of whom shall sign every instrument to which the seal is so affixed in their presence.

Alternate Directors

102. Any Director may at any time appoint any person approved by the Board (such approval not to be unreasonably withheld) to be an alternate Director of the Company, and may at any time remove any alternate Director so appointed by him from office. An alternate Director so appointed shall not be entitled to receive any remuneration from the Company.

103. An alternate Director shall (subject to his giving to the Company an address within the United Kingdom at which notices may be served upon him) be entitled to receive notices of all meetings of the Board, and to attend and vote as a Director at any such meeting at which the Director appointing him is not personally present, and generally to perform all the functions of his appointer as a Director in the absence of such appointer.

104. An alternate Director shall ipso facto cease to be an alternate Director if his appointer ceases for any reason to be a Director.

105. All appointments and removals of alternate Directors shall be effected by writing under the hand of the Director making or revoking such appointment left at the office.

[fol. 5887]

Dividends and Reserves

106. Subject to the provisions of these presents with respect to participating rights, the profits of the Company available for dividend and resolved to be distributed shall be applied in the payment of dividends to the holders of the "A" and the "B" shares pari passu as a single class of shares. The Company in general meeting may declare dividends accordingly.

107. No dividend shall be payable except out of the profits of the Company, or in excess of the amount recommended by the Directors.

108. All dividends shall be declared and paid according to the amounts paid on the shares in respect whereof the dividend is paid, but no amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share. All dividends shall be apportioned and paid pro rata according to the amounts paid on the shares during any portion or portions of the period in respect of which the dividend is paid,

but if any share is issued on terms providing that it shall rank for dividend as from a particular date, such share shall rank for dividend accordingly.

109. The Directors may from time to time pay to the members such interim dividends as appear to the Directors to be justified by the profits of the Company.

110. The Directors may from time to time set aside out of the profits of the Company (including therein premiums obtained on the issue of shares) and carry to reserve or reserves such sums as they think proper, which shall, at the discretion of the Directors, be applicable for meeting contingencies, or for repairing or maintaining the works, plant and machinery of the Company, or for equalizing dividends, or for the payment of special dividends or bonuses, or for any other purpose to which the profits of the Company may properly be applied, and pending such application may, at the like discretion, either be employed in the business of the Company, or be invested in such investments (other than shares of the Company) as the Directors may from time to time think fit.

111. The Directors may deduct from any dividend payable to any member all sums of money (if any) presently payable by him to the Company on account of calls or otherwise.

112. No dividend shall bear interest as against the Company.

113. Any dividend may be paid by cheque sent through the post to the registered address of the member or person [fol. 5888] entitled thereto, and in case of joint holders to any one of such joint holders. Every such cheque shall be made payable to the order of the person to whom it is sent.

114. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other monies payable on or in respect of the share.

Capitalisation of Profits

115. The Company in general meeting may, upon the recommendation of the Directors, and with the consent in writing under hand of the holders of a majority of the "A" shares for the time being issued and of the holders of a majority of the "B" shares for the time being issued, resolve that any undivided profits of the Company (including profits carried and standing to any reserve or reserves

or other special account), be capitalised, and accordingly that the Directors be authorised and directed to appropriate the profits resolved to be capitalised to the members in proportion to the amounts paid up on the issued Ordinary shares held by them respectively, and to apply such profits on their behalf, either in or towards paying up the amounts, if any, for the time being unpaid on the shares held by such members respectively, or in paying up in full unissued shares or debentures of the Company of a nominal amount equal to such profits, such shares or debentures to be allotted and distributed, credited as fully paid up, to and amongst such members in the proportion aforesaid, or partly in one way and partly in the other.

116. Whenever such a resolution as aforesaid shall have been passed, the Directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the Directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members holding Ordinary Shares into an agreement with the Company providing for the allotment to them respectively, credited as fully paid up, of any shares of debentures to which they may be entitled upon such capitalisation, or (as the case may require) for the payment up by the Company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

Accounts

117. The Directors shall cause true accounts to be kept:

[fol. 5889] (A) Of the sums of money received and expended by the Company and the matters in respect of which such receipt and expenditure takes place; and

(B) Of the assets and liabilities of the Company.

(C) Of all sales and purchases of goods by the Company.

118. The books of account shall be kept at the office, or at such other place as the Directors think fit, and shall always be open to the inspection of the Directors. No member (other than a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by statute or authorised by the Directors or by the Company in general meeting.

119. Once at least in every year, except the year in which the Company is incorporated, the Directors shall lay before the Company a proper profit and loss account and a balance-sheet containing a general summary of the capital, the assets, and the liabilities of the Company arranged under suitable heads, both made up to a date not more than six months before the meeting, and such profit and loss account shall be made up for the period, in the case of the first account, since the incorporation of the Company and in any other case since the preceding account.

120. Every such balance-sheet as aforesaid shall be signed on behalf of the Board by two of the Directors, and shall be accompanied by a report of the Directors as to the state of the Company's affairs and the amount which they recommend to be paid by way of dividend to the members, and the amount (if any) which they have carried or propose to carry to reserve. It shall also have attached to it the Auditors' report, and any other documents prescribed by the Statutes.

121. A copy of the profit and loss account, balance-sheet, and Directors' and Auditors' reports and other documents aforesaid (if any) shall, seven days previously to the meeting, be delivered or sent by post to the registered address of every member.

Audit

122. The Company shall at every ordinary meeting appoint an Auditor or Auditors to hold office until the next ensuing ordinary meeting, and the provisions of the Act with respect to Auditors shall apply and be observed.

123. A Director or officer of the Company or a body corporate shall not be capable of being appointed Auditor of the Company.

124. The Directors may fill any casual vacancy in the office of Auditor, but while any such vacancy continues the surviving or continuing Auditor or Auditors (if any) may act.

[fol. 5890] 125. The remuneration of the Auditors shall be fixed by the Company in general meeting, except that the remuneration of any Auditors appointed before the first annual general meeting or to fill any casual vacancy may be fixed by the Directors, and the remuneration of an Auditor appointed by the Board of Trade may be fixed by the Board of Trade.

126. A person other than a retiring Auditor shall not be capable of being appointed an Auditor at an ordinary meeting unless notice of an intention to nominate that person to the office of Auditor has been given by a member to the Company not less than 14 days before the meeting, and the Company shall send a copy of any such notice to the retiring Auditor and shall give notice thereof to the members not less than 7 days before the meeting, provided that if after a notice of the intention to nominate an Auditor has been so given an ordinary meeting is called for a date 14 days or less after that notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof and the notice to be given by the Company may, instead of being given within the time required by this provision, be given at the same time as the notice of the meeting.

127. The Auditors' report to the shareholders made pursuant to the statutory provisions as to audit for the time being in force shall be read before the Company in general meeting and shall be open to inspection as prescribed by the Act by any shareholder, who shall be entitled to be furnished with a copy of the balance sheet and Auditors' report at such charge not exceeding sixpence for every hundred words as the Directors determine.

Notices

128. Any notice or document may be served by the Company on any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered address as appearing in the register of members. In the case of joint holders of a share all notices shall be given to that one of the joint holders whose name stands first in the register of members, and notice so given shall be sufficient notice to all the joint holders.

129. Any member described in the register of members by an address not within the United Kingdom who shall from time to time give to the Company an address within the United Kingdom at which notices may be served upon him shall be entitled to have notices served upon him at such address.

130. Any notice or other document, if served by post, shall be deemed to have been served at the time when the letter containing the same is posted, and in proving such service it shall be sufficient to prove that the letter containing the notice or document was properly addressed, stamped and posted.

[fol. 5891] 131. Any notice or document delivered or sent by post to or left at the registered address of any member in pursuance of these presents shall, notwithstanding that such member be then dead or bankrupt, and whether or not the Company have notice of his death or bankruptcy, be deemed to have been duly served in respect of any share registered in the name of such member as sole or joint holder, unless his name shall at the time of the service of the notice or document have been removed from the register as the holder of the share, and such service shall for all purposes be deemed a sufficient service of such notice or document on all persons interested (whether jointly with or as claiming through or under him) in the share.

Winding Up

132. If the Company shall be wound up the Liquidator may with the sanction of an extraordinary resolution divide amongst the members in specie the whole or any part of the assets of the Company, and may with the like sanction vest the whole or any part of such assets in trustees upon such trusts for the benefit of the members as the Liquidator with the like sanction shall think fit.

Indemnity

133. The Directors, Managing Directors, Auditors, Secretary and other officers for the time being of the Company and the Trustees (if any) for the time being acting in relation to any of the affairs of the Company, and their respective executors or administrators, shall be indemnified and secured harmless out of the assets of the Company from and against all actions, costs, charges, losses, dam-

ages and expenses which they or any of them, their or any of their executors or administrators, shall or may incur or sustain by reason of any act done, concurred in, or omitted in or about the execution of their duty or supposed duty in their respective offices or trusts, and none of them shall be answerable for the acts, receipts, neglects or defaults of any other of them, or for joining in any receipt for the sake of conformity, or for any bankers or other persons with whom any moneys or effects of the Company shall be lodged or deposited for safe custody, or for the insufficiency or deficiency of any security upon which any moneys of the Company shall be placed out or invested, or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts, or in relation thereto. But the provisions of this article shall only have effect in so far as they are not avoided by the provisions of the Act.

[fol. 5892] Names, Addresses and Descriptions of Subscribers

A. J. M. Duncan, 21, Leadenhall Street, London, E.C.3., Solicitor.

J. I. Pickering, 21, Leadenhall Street, London, E.C.3., Solicitor.

Dated the 22nd day of August, 1935.

Witness to all the above Signatures—

T. F. Keating, 21, Leadenhall Street, E.C.3., Articled Clerk.

[fol. 5893] Timken Holdings Limited

By-laws

Stibbard, Gibson & Co., 21, Leadenhall Street, London, E.C.3.

[fol. 5894] As to Voting and Directors, Adopted by the Subscribers of the Memorandum of Association of the Company.

By-laws as to Voting.

1. For the purposes of these by-laws the expression "the first control period" means the period from the date of the adoption of these by-laws until the date in or after

the year 1936 of the holding of an ordinary meeting of British Timken Ltd., a Joint Stock Company incorporated in England on the 4th day of June, 1920, at which, for the first time either (i) accounts of British Timken Ltd. are submitted which show that during the financial year or period covered by such accounts the net profits earned by British Timken Ltd. for such year or period (before charging income tax or any other tax on profits) have been at a rate which is less than £15,000 per annum plus £15 per annum in respect of every sum of £100 paid up (whether by way of capital or premium) on any shares issued after the date of the adoption of these by-laws otherwise than by way of capitalisation of profits (hereinafter referred to as "the minimum rate of profits"); or (ii) no dividend is declared on any shares of British Timken Ltd., or the dividend or dividends declared on the shares of British Timken Ltd. (including as dividends declared or part thereof any interim dividends already paid in respect of that year or period) are at a rate which does not require for the payment thereof (in the gross and subject to deduction of tax) a sum equal to five-sixths of the minimum rate of profits for such year or period.

Provided always that the meaning of the expression "the first control period" for the purposes of these by-laws may be altered from time to time by writing under hand of the holders for the time being of a majority of the "A" shares for the time being issued and a majority of the "B" shares for the time being issued and for the purposes of these by-laws the expression "the first control period" shall from time to time mean the period as last defined by or pursuant to these by-laws.

2. No member other than a member holding "A" shares or "B" shares in respect of which the corresponding participating rights have not been redeemed shall be entitled to attend or vote at any meeting of the Company.

[fol. 5895] 3. Subject to the provisions of the Articles of Association of the Company and these by-laws with respect to participating rights, on a show of hands every member present in person and entitled to vote shall have one vote. For the purposes of this by-law a corporation represented at the meeting by a proxy or other duly authorised representative not being himself a member entitled to vote shall be deemed to be present thereat in person.

4. Subject to the provisions of the Articles of Association of the Company and these by-laws with respect to participating rights, on a poll taken on an ordinary resolution

(i) During the first control period each "A" share shall confer on the holder thereof four votes and each "B" share one vote only.

(ii) After the termination of the first control period, each "B" share shall confer on the holder thereof four votes and each "A" share one vote only.

5. Subject to the provisions of the Articles of Association of the Company and these by-laws with respect to participating rights, on a poll taken on an extraordinary or special resolution each "A" share and each "B" share shall confer on the holder thereof one vote.

By-laws as to Directors

1. For the purposes of these by-laws the expression "the first control period" shall have the same meaning as in the by-laws as to Voting as from time to time adopted by the Company pursuant to Article No. 65.

2. The number of the Directors shall not be less than three nor more than five in number.

3. The Directors shall be appointed either by the holders of the "A" shares or by the holders of the "B" shares and the holders of shares of each of such classes shall be entitled to appoint and be represented by two Directors and during the first control period the holders of the "A" shares and after the termination of such period the holders of the "B" shares shall be entitled to appoint and be represented by a third Director. The Company in general meeting shall have no power to appoint or remove Directors.

4. For the purpose of giving effect to the foregoing by-laws and subject to the foregoing limitations upon the number of Directors to be appointed by the holders of shares of each class the "A" shareholders or the "B" shareholders may at any time and from time to time appoint any person to be an "A" shareholders' Director or a "B" shareholders' Director (as the case may be) and (subject to the following by-law No. 6) remove from office any "A" shareholders' Director or any "B" shareholders' Director

(as the case may be) and if thought fit appoint another [fol. 5896] Director in his place.

5. Of the first Directors Michael Bruce Urquhart Dewar, William Dallow and Frederick John Pascoe shall be deemed to be "A" shareholders' Directors and Andrew Jameson Matthews Duncan shall be deemed to be a "B" shareholders' Director for all the purposes of these by-laws.

6. The said Michael Bruce Urquhart Dewar shall not be liable to removal from office as an "A" shareholders' Director so long as he or any Company controlled by him continues to hold not less than 20 per cent. of the share capital of the Company for the time being issued in respect of which the corresponding participating rights have not been redeemed.

7. All appointments and removals of Directors by the holders of a class of shares under these by-laws shall be effected by writing under the hand of holders of a majority of the issued shares of that class left at or sent to the Registered Office of the Company and shall take effect as and when such writing is received at such office.

8. Every Director appointed under these by-laws shall hold office until he is removed under the foregoing by-laws by the class of shareholders whom he represents or dies or vacates office under Article No. 79 of the Articles of Association of the Company. Provided that if at the termination of the first control period the "A" shareholders have their full representation upon the Board, they shall forthwith remove one of the "A" shareholders' Directors from office or procure one of them to resign office and in default of their so doing within seven days after the termination of the first control period the "B" shareholders may at any time thereafter by writing under hand of the holders of a majority of the "B" shares for the time being issued remove from office one of the "A" shareholders' Directors to be selected by them and if so thought fit appoint another person to be a "B" shareholders' Director in his place.

9. The remuneration of the Directors shall be at such rate or of such amount as the Company in general meeting may from time to time by ordinary resolution with the sanction in writing under hand of the holders of a majority of the issued "A" shares and a majority of the issued "B" shares determine. Such remuneration shall in default of

any direction to the contrary given by the resolution voting the same or of any agreement to the contrary between the Directors be divided between the Directors equally. A Director holding office for part only of a year shall be entitled to a proportionate part of a full year's remuneration. The Directors shall also be entitled to be repaid by the Company all such reasonable travelling (including hotel and incidental) expenses as they may incur in attending meetings of the Board, or of Committees of the Board, or general meetings, or which they may otherwise incur in or about the business of the Company.

10. Any Director who by request performs special services, or goes or resides abroad for any purposes of the Company, may be paid such extra remuneration by way of [fol. 5897] salary, percentage of profits or otherwise as the Board may determine.

11. The holder of any share in the Company bearing the same distinctive number as that borne by a participating right which has been redeemed shall not be regarded as a holder of that share for the purposes by these by-laws as to Directors, and such share shall not be regarded as an issued share.

A. J. M. Duncan, J. I. Pickering, Subscribers of the Memorandum of Association.

[fol. 5898] PLAINTIFF'S EXHIBIT 8 (DECREE)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

Civil Action No. 24,214

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE TIMKEN ROLLER BEARING COMPANY, Defendant

APPLICATION BY PLAINTIFF FOR AN ORDER ADMITTING IN EVIDENCE EXHIBITS IN CONNECTION WITH THE HEARING ON FORM OF FINAL JUDGMENT

Now comes the plaintiff in the above-entitled cause and moves this honorable Court to admit into evidence, and in-

corporate as part of the record in the above-entitled cause, plaintiff's Exhibit 8 (Decree), consisting of the following:

Section 28 of The Trade Marks Act, 1938 (1 & 2 Geo. 6, ch. 22);

31 *Halsbury's Statutes of England* 776, footnote to the said Section 28 of The Trade Marks Act, 1938;

Sections 107 through 113 of The Trade Marks Rules, 1938, Statutory Rules and Orders, 1938, No. 661;

Irene G. R. Moses, *Trade Marks Practice at the Patent Office*, London, 1946, pp. 80-84, 274;

and to permit the substitution of the attached true copies thereof for the originals from which such Exhibit was copied.

(S.) Bertram C. Dedman, Stanley D. Rose, Attorneys for the plaintiff.

Copy received November 28th, 1949.

(S.) Luther Day, Attorney for defendant.

[fol. 5899] Section 28 of The Trade Marks Act, 1938, (1 & 2 Geo. 6, ch. 22)

Registered users

28. (1) Subject to the provisions of this section, a person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a defensive trade mark) and either with or without conditions or restrictions.

The use of a trade mark by a registered user thereof in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject, is in this Act referred to as the "permitted use" thereof.

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall be deemed not to be use by a person other than the proprietor, for the purposes of section twenty-six of this Act and for any other purpose for which such use is material under this Act or at common law.

(3) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and, if the proprietor refuses or neglects to do so within two months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant.

[fol. 5900] A proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(4) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user must apply in writing to the Registrar in the prescribed manner and must furnish him with a statutory declaration made by the proprietor, or by some person authorized to act on his behalf and approved by the Registrar,—

(a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made;

(b) stating the goods in respect of which registration is proposed;

(c) stating any conditions or restrictions proposed with respect to the characteristics of the goods, to the mode or place of permitted use, or to any other matter; and

(d) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof;

and with such further documents, information or evidence as may be required under the rules or by the Registrar.

(5) When the requirements of the last foregoing subsection have been complied with, if the Registrar, after considering the information furnished to him under that sub-

section, is satisfied that in all the circumstances the use of the trade mark in relation to the proposed goods or any [fol. 5901] of them by the proposed registered user subject to any conditions or restrictions which the Registrar thinks proper would not be contrary to the public interest, the Registrar may register the proposed registered user as a registered user in respect of the goods as to which he is so satisfied subject as aforesaid.

(6) The registrar shall refuse an application under the foregoing provisions of this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(7) The Registrar shall, if so required by an applicant, take steps for securing that information given for the purposes of an application under the foregoing provisions of this section (other than matter entered in the register) is not disclosed to rivals in trade.

(8) Without prejudice to the provisions of section thirty-two of this Act, the registration of a person as a registered user—

(a) may be varied by the Registrar as regards the goods in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark to which the registration relates;

(b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark; or

(c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, that is to say,—

(i) that the registered user has used the trade mark otherwise than by way of the permitted use, or [fol. 5902] in such a way as to cause, or to be likely to cause, deception or confusion;

(ii) that the proprietor or the registered user misrepresented, or failed to disclose some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration;

(iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested.

(9) Provision shall be made by the rules for the notification of the registration of a person as a registered user to any other registered user of the trade mark, and for the notification of an application under the last foregoing subsection to the registered proprietor and each registered user (not being the applicant) of the trade mark, and for giving to the Applicant on such an application, and to all persons to whom such an application is notified and who intervene in the proceedings in accordance with the rules, an opportunity of being heard.

(10) The Registrar may at any time cancel the registration of a person as a registered user of a trade mark in respect of any goods in respect of which the trade mark is no longer registered.

(11) Any decision of the Registrar under the foregoing provisions of this section shall be subject to appeal to the Court.

(12) Nothing in this section shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

* * * * * * *

[fol. 5903] 31 *Halsbury's Statutes of England*, p. 776:

(Footnote to Section 28 of The Trade Marks Act, 1938, 1 & 2 Geo. 6, ch. 22)

This section re-enacts s. 8 of the 1937 Act (1930 Statutes 958), except sub-s. (12) thereof. That section altered the old law under which the use of a trade mark by persons other than the proprietor would have invalidated the trade mark. The present section, while it does not legalize the general licensing of trade marks, enables the proprietor to sanction the use of a registered mark by others, when it is consistent with the public interest that he should be permitted to do so.

[fol. 5904] Sections 107 through 113 of The Trade Marks Rules, 1938, Statutory Rules and Orders, 1938, No. 661

Registered Users

Application for entry of Registered User

107. An application to the Registrar for the registration under Section 28 of a person as a registered user of a registered trade mark shall be made by that person and the registered proprietor on Form TM—No. 50.

Entry and notification

108. The entry of a registered user in the register shall state the date on which it was made. In addition to the trade or business address of the registered user it may include an address for service, if an application by him on Form TM—No. 33 therefor has been approved. A notification in writing of the registration of a registered user shall be sent to the registered proprietor of the trade mark, to the registered user, and to every other registered user whose name is entered in relation to the same registration of a trade mark, and shall be inserted in the Journal.

Registered proprietor's application to vary entry

109. An application by the registered proprietor of a trade mark for the variation of the registration of a registered user of that trade mark under paragraph (a) of Section 28 (8) shall be made on Form TM—No. 51, and shall be accompanied by a statement of the grounds on which it is made and, where the registered user in question consents, by the written consent of that registered user.

Application by registered proprietor or user to cancel entry

110. An application by the registered proprietor or any registered user of a trade mark for the cancellation of the registration of a registered user of that trade mark under paragraph (b) of Section 28 (8) shall be made on Form [fol. 5905] TM—No. 52, and shall be accompanied by a statement of the grounds on which it is made.

Application under Section 28 (8) par. (c) to cancel entry.

111. An application by any person for the cancellation of the registration of a registered user under paragraph (c)

of Section 28 (8) shall be made on Form TM—53, and shall be accompanied by a statement of the grounds on which it is made.

Notification and hearing

112. The Registrar shall notify in writing applications under the last three foregoing Rules to the registered proprietor and each registered user (not being the applicant) under the registration of the trade mark. Any person so notified who intends to intervene in the proceedings shall within one month of the receipt of such notification give notice to the Registrar on Form TM—No. 54 to that effect and shall send therewith a statement of the grounds of his intervention. The Registrar shall thereupon send copies of such notice and statement to the other parties, so that the intervention may be known to the applicant, the registered proprietor, the registered user whose registration is in suit, and any other registered user who intervenes. Any such party may, within such time or times as the Registrar may appoint, leave evidence in support of his case, and the Registrar after giving the parties an opportunity of being heard may accept or refuse the application or accept it subject to any conditions, amendments, modifications or limitations he may think right to impose.

Registered user's application under Section 34 (2)

113. Applications under Section 34 (2) shall be made on Form TM—No. 18, or TM—No. 20, or TM—No. 21, or TM—No. 33 as may be appropriate, by a registered user of a trade mark, or by such person as may satisfy the Registrar that he is entitled to act in the name of a registered user; and the Registrar may require such evidence by [fol. 5906] statutory declaration or otherwise as he may think fit as to the circumstances in which the application is made.

Cancellation by Registrar

In case of the registration of a registered user for a period, in accordance with paragraph (d) of Section 29 (4), the Registrar shall cancel the entry of the registered user at the end of the period. Where some or all of the goods are struck out from those in respect of which a trade mark is registered, the Registrar shall at the same time strike them out from those specifications of registered users of

the trade mark in which they are comprised. The Registrar shall notify every cancellation or striking out under this paragraph to the registered users whose permitted use is affected thereby and the registered proprietor of the trade mark.

[fol. 5907] Irene G. R. Moses,

Trade Marks Practice at the Patent Office,

London, 1946, pp. 80-84:

III. Registered Users

Definition

The practice of the registration of a person, other than the proprietor of a trade mark, as a registered user was introduced by section 28 of the Trade Marks Act, 1938.[19]

Section 28 (1) provides: "Subject to the provisions of this section, a person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a defensive trade mark) and either with or without conditions or restrictions."

The use of a trade mark by a registered user in accordance with section 28 is called the "permitted use." The registered user is not a licensee of a trade mark and the proprietor must retain control over the "permitted use" in a manner approved by the Registrar. (See paragraphs below as to the requirements relating to control, and as to the procedure for registration of a registered user.)

Procedure for Registration

Application for registration as a registered user must be made in writing to the Registrar by both the registered pro- [fol. 5908] prietor and the proposed registered user on Form TM—No. 50 (section 28 (4), rule 107). The regis-

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[19] Before the Act of 1938, any use of a trade mark by a person other than the registered proprietor, or his successor in business, was held to make the mark deceptive and to jeopardize the registration, *Bowden Wire Ltd.* v. *Bowden Brake Co. Ltd.* (No. 1) (1913) 30 R. P. C. 45, 580; (1914) 31 R. P. C. 385.

tered proprietor (or someone authorised by him and approved by the Registrar) must make a statutory declaration giving particulars of the following matters (section 28 (4)): (*a*) The relationship, existing or proposed, between the proprietor and the proposed registered user, including the degree of control (proposed to be exercised) by the proprietor over the permitted use, and whether the proposed registered user is to be the sole registered user or whether there are to be any other restrictions on the application by other persons as registered users; (*b*) the goods in respect of which registration is proposed; (*c*) any conditions or restrictions proposed with respect to the characteristics of the goods, to the mode or place of the permitted use, or to any other matter, and (*d*) whether the permitted use is to be for a period or without any limit of time, and if it is for a period only, the duration of that period.

Information given to the Registrar for the purpose of section 28 will, at the request of the applicant, be withheld from trade rivals, this does not apply to any particulars which appear on the register (section 28 (7)).

Conditions of Registration: Relationship Between Proprietor and the Registered User

The actual form of relationship between the proprietor and a registered user is not specified, the essential requirement being that the proprietor should retain proper control over the "permitted use." It is the practice of the Registrar to call for a written agreement [20] dealing with the proposed permitted use. Although an oral agreement is not [fol. 5909] necessarily precluded from recognition and acceptance, it would be necessary to produce satisfactory proof that such an agreement existed and what were the terms, parties, consideration and date thereof. In the absence of such proof, it is unlikely that the Registrar would consider that the degree of control which would be exercised over the permitted use was sufficient to justify registration.

The simplest form of relationship is a financial one where the proposed registered user is a subsidiary company completely controlled by the registered proprietor as the parent

[20] See Appendix II for a precedent for such an agreement (see p. 274).

company. In such a case, the Registrar would accept simple conditions such as the following: "The trade mark is to be used by the Registered User only so long as the Registered User is completely controlled by the Registered Proprietor." Where the relationship between the parties is based on an agreement between them, and not on their financial relationship, rather more elaborate conditions and restrictions are required. The main provisions of such an agreement are: (1) A right given by the proprietor to the user to use the mark in accordance with the terms of an entry under section 28 (to be effected before the agreement becomes operative), and an undertaking by the user to place the mark only on goods made in accordance either with prescribed specifications or standards of quality laid down or directions given by the proprietor; (2) a right given to the proprietor to inspect the goods and the methods of manufacturing on the premises of the user or to have samples of the goods submitted to him on request, (3) a right given to the proprietor to terminate the agreement at short notice (such as one to three months) if he is not satisfied that any of the other provisions of the agreement is being observed, e. g., if the right of inspection were denied.

[fol. 5910] Registration and Notification Thereof

When all the requirements of sub-section 4 of section 28 have been complied with the Registrar may allow registration of the proposed registered user as a registered user if he considers the proposed use of the mark would not be contrary to the public interest (section 28 (5)). The entry on the register must state the goods in respect of which the permitted use is granted and any conditions or restrictions attached to it, the date on which it is made and the trade or business address of the registered user (sections 1, 28 (5), rule 108).[21]

The registration must be notified in writing to the registered proprietor, the registered user, and any other registered user of the same mark. It must also be published in the *Trade Marks Journal* (rule 108).

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[21] Also an address for service if an application under Form TM—No. 33 has been approved (rule 108).

When Registration Allowed

The Registrar may refuse an application under section 28 if it appears to him that the registration would constitute, or lead to, trafficking in trade marks (section 28 (6)). Registration may also be refused because of any one of the following reasons, if the proposed permitted use would merely amount to a license, if the proprietor does not purport to exercise proper control over the permitted use, if the particulars given under sub-section 4 of section 28 are insufficient (see p. 80) or if the Registrar considers that in the particular circumstances registration would be contrary to the public interest.

It may generally be said that a registration under section 28 is justified if the proposed permitted use would consti- [fol. 5911] tute an infringement of the trade mark if it were not protected by registration under section 28. A use which is stated by section 4 (3) not to be an infringement would not justify registration under section 28. In some cases registration under section 28 may be allowed where the proposed registered user obtains goods in bulk from the registered proprietor and repacks them in accordance with directions given by the registered proprietor. If any doubt exists whether or not the manner in which the proposed registered user deals with the goods amounts to infringement the Registrar would probably approve registration under section 28.

Rights and Limitations

Subject to his compliance with the conditions of his registration and the terms of his agreement with the proprietor, a registered user is entitled to use the trade mark upon all or any of the goods for which he is so registered. Use of the mark by the registered user will be considered use by the registered proprietor for the purpose of section 26,[22] or for any purpose under the Trade Marks Act, 1938, or under the Common Law, for which use by the proprietor is material (section 28 (2)).

No powers of assignment or transmission are conferred by the Act on a registered user in respect of a trade mark

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[22] Section 26 deals with removal or variation of a trade mark for non-use.

for which he has been registered as a registered user (section 28 (12)). If a trade mark is infringed a registered user can (subject to any agreement between him and the proprietor) call upon the proprietor to take proceedings to protect the mark. If the proprietor refuses or refrains from taking proceedings within two months of [fol. 5912] his being notified by the registered user, the latter can take proceedings in his own name and make the proprietor a defendant [23] (section 28 (3)).

Cancellation or Variation

Variation of the registration of a registered user of a trade mark may be obtained by the registered proprietor of the mark, either as regards the goods for which the registered user is registered or the conditions attached to his registration. Application must be made in writing to the Registrar (Form TM—No. 51) and accompanied by a statement of the grounds on which the application is based, and if the registered user consents to the variation his written consent should be included (section 28 (8) (*a*), rule 109).

Application to the Registrar for the cancellation of the registration of any person as a registered user may be made by the registered user himself, or the registered proprietor, or any other registered user, or any other person, on any of the following grounds: (i) that the registered user has used the mark other than as allowed by the permitted use, or so as to cause deception and confusion, or (ii) that some facts material to the application were not disclosed by the proprietor or registered user, or that circumstances have changed since the date of registration, or (iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested (section 28 (8) (*b*), (*c*)).

Application for cancellation is made in writing on Form TM—No. 52 if made by the registered user whose registration is in suit or the proprietor or any other registered user of the same mark (rule 110), and on Form TM—No. 53 if made by any other person (rule 111). In both cases

[23] A proprietor so added will not be liable in costs unless he enters an appearance and takes part in the proceedings (section 28 (3)).

the application must be accompanied by a statement of grounds (rules 110 and 111).

[fol. 5913] The Registrar may at any time cancel the registration of a person as a registered user in respect of any goods when there is no longer any subsisting registration of the trade mark for those goods (section 28 (10, rule 113). The registration of a person as a registered user for a specified period under section 28 (4) (d) will be cancelled by the Registrar at the end of that period (rule 113).[24]

Notification to other Registered owners. Intervention in Cancellation and Variation Proceedings

Notification of the registration of a person as a registered user must be sent to all other registered users of the same trade mark (section 28 (9), rule 108). The Registrar must notify in writing applications under section 28 (8) for the variation or cancellation of the registration of a registered user,[25] the registered proprietor and each registered user of the mark, but not including the applicant (rule 112). The applicant and any person notified who intervenes are entitled to be heard by the Registrar (section 28 (9)).

Notice of intervention must be sent within one month of receiving a notification as above (Form TM—No. 54) and accompanied by a statement of the grounds on which the intervention is based. Copies of the notice and statement are sent to all parties interested (i. e., the applicant, the registered proprietor, the registered user whose registration is in suit and any other registered user who intervenes), who shall all be given an opportunity of leaving evidence in support of their case within the time appointed by the Registrar (rule 112). The Registrar will hear the parties and may accept the application or refuse it absolutely, or accept it subject to conditions (rule 112). The Registrar's decision is subject to appeal to the court (section 28 (11)).

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[24] The Registrar will notify all registered users whose registrations are thereby affected, rule 113.

[25] *Lacteosote, Ltd.* v. *Alberman* (1927) 44 R.P.C. 211; (1927) 2 Ch. 177.

[fol. 5914] Correction of Errors on the Register and Change of Name, etc.

A registered user may apply to the Registrar to correct any error on the register connected with his registration, or to enter any change in his name, address or description (section 34 (2)). Application is made in writing by the registered user or a person able to satisfy the Registrar he can act for him, and evidence by statutory declaration or otherwise may be required (rule 113). Application is made on Forms TM—Nos. 18, 20, 21 or 33, as the case may be (rule 113).

[fol. 5915] Appendix II, Part A—Precedents, p. 274.

1. *Registered User's Agreement: Agreement Between a Proprietor of a Trade Mark and a Proposed Registered User.

An agreement made the — day of —— 19— between A.B. (hereinafter called "the Proprietor") of the one part and C. D. (hereinafter called "the User") of the other part.

Whereas the Proprietor is the registered proprietor of the Trade Mark No. ——, registered in Class —— in respect of ——— (hereinafter referred to as "the goods"), ——— and whereas the User is desirous of manufacturing the goods and using the said Trade Mark in relation thereto and of being registered as a registered user of the Trade Mark under the provisions of Section 28 of the Trade Marks Act, 1938.

Now it is hereby agreed as follows:

(1) The Proprietor hereby authorises the User, during such time as the User shall be registered as a registered user of the Trade Mark, to use the Trade Mark upon or in relation to goods manufactured by the User in accordance with specifications laid down, directions given, and information supplied by the Proprietor from time to time and will join with the User in making application to the Registrar of Trade Marks for the purpose of securing the registration of the User as a registered user of the Trade

* This is the simplest agreement that would be acceptable by the Registrar.

Mark under the provisions of the Trade Marks Act, 1938, and this Agreement shall not come into effect until the User shall have been so registered.

(2) The User undertakes to manufacture the goods in strict accordance with specifications laid down, directions given, and information supplied by the Proprietor from time to time and to use the Trade Mark in relation only to such goods and will permit the Proprietor or his authorised representative at all reasonable times to enter the User's premises for the purpose of inspecting the goods and the methods of manufacturing them and will, if called upon by the Proprietor to do so, submit samples of the goods for the inspection of the Proprietor.

(3) This Agreement shall continue in force from year to year unless determined by either of the parties giving six months' notice in writing to the other party, but in the event of either party committing a breach of any of the provisions of this Agreement it shall be lawful for the other party by giving one month's notice in writing to determine the Agreement and upon such notice being given the User will not thereafter make any use of the Trade Mark.

In Witness whereof

[fol. 5916]

DEFENDANT'S EXHIBIT No. C (Decree)

Export of Anti-Friction Bearings from the United States
(In thousands of dollars)

Year	Total		Ball Bearing Parts except Balls		Roller Bearings Parts except Rollers		Balls and Rollers for Bearings	
	All Countries	United Kingdom	All Countries	United Kingdom	All Countries	United Kingdom	All Countries	United Kingdom
1946	11,164.9	457.5	5,310.5	83.4	5,396.6	365.5	457.8	8.6
1947	26,460.0	2,118.4	13,536.5	699.8	10,171.5	1,372.0	2,752.0	46.6
1948	27,782.7	5,029.3	13,939.8	1,865.5	11,637.5	2,929.5	2,205.4	234.3
6 mos. 1949	14,270.5	1,174.8	6,720.4	334.5	6,642.2	777.6	907.9	62.7[1]

Source: U. S. Department of Commerce, Bureau of the Census. U. S. Exports of Domestic and Foreign Commerce. Report FT No 410, Part II.

[1] January–June 1949 figure for balls and rollers for bearings going to the United Kingdom does not include a small quantity of rollers.

[fol. 5917] DEFENDANT'S EXHIBIT "D" (Decree)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

Civil Action No. 24,214

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE TIMKEN ROLLER BEARING COMPANY, Defendant

APPLICATION BY DEFENDANT FOR AN ORDER ADMITTING IN EVIDENCE AN EXHIBIT IN CONNECTION WITH THE HEARING ON FORM OF FINAL JUDGMENT

Now comes the defendant in the above-entitled case and moves this honorable court to admit in evidence, and incorporate as part of the record in the above-entitled case, as defendant's Exhibit D (Decree) the memorandum of a conference held in London on October 12, 1949, a true copy of which is attached hereto, and to permit the substitution of the attached true copy thereof for the original copy as such Exhibit.

(S.) Luther Day, 1759 Union Commerce Bldg. Cleveland, Ohio; John G. Ketterer, First National Bank Bldg., Canton, Ohio, Attorney for the Defendant.

Copy received November 10th, 1949.

(S.) Robert B. Hummel, Attorney for Plaintiff.

[fol. 5918] Memo of the Conference held in London on October 12th, 1949.

Present: Mr. M. B. U. Dewar, Mr. F. J. Pascoe, Mr. Wm. Dwight Whitney, Mr. H. N. Skerrett, Mr. A. J. M. Duncan.

For British Timken Ltd: Mr. W. E. Umstattd, Mr. J. G. Ketterer, Dr. S. Ladas.

For the Timken Roller Bearing Company: Mr. M. B. U. Dewar, Mr. F. J. Pascoe.

For Societe Anonyme Francaise Timken

From time to time during the past two years various questions of procedure have arisen between the Timken

Roller Bearing Company, British Timken Limited, and Societe Anonyme Francaise Timken in respect of handling applications for the registration of the Trade Mark "Timken" in different countries. It has been suggested that a definite procedure should be decided upon to the end that the distinctive character of the mark be maintained, as required in the 1938 contract between the Companies, and to the further end that each of the three Companies shall have the use of the mark contemplated by the 1938 contract, so long as the same remains effective as to both parties.

After exchange of views the following has been agreed:

(A) With respect to civil law countries which are included in the British Timken Company's territory as defined in the Agreement of 1938 American Timken obtained registrations for the Trade Mark "Timken" generally in the years 1922 and 1924, with the exception of Germany and France. Before and since the dates when these registrations were obtained by the American Company in the countries in question, bearings manufactured by the American Company and marked with the Trade Mark "Timken" were sold for ultimate destination to those countries as parts of assembled equipment, and also for replacement bearings for such equipment. On the other hand, British Timken has sold bearings manufactured by it and bearing the Trade Mark in the same countries.

[fol. 5919] In the past two years, British Timken filed independently applications for registration or obtained registrations in a number of these civil law countries. As a result of this action American Timken has filed opposition to certain of these applications by British Timken, and it is deemed desirable to eliminate expense and preserve the position in these countries as it existed in 1938. The American Timken has been assured by its Trade Mark Counsel Adviser, Dr. Stephen Ladas, that the registrations in its name in the civil law countries in question have properly been obtained by it and are entirely proper and valid, and that the right of use of the Trade Mark by British Timken in such countries is in the nature of a licence to use the Trade Mark which is lawful and proper under the law of such countries.

The British Company will withdraw its applications or cancel the registrations obtained by it in the following countries:

Iceland
Switzerland
Hungary
Belgium
Luxemburg
French Morrocco
Belgian Congo
Lebanon
Yugoslavia
Austria
Spain
Finland
Czechoslovakia
Syria
Roumania

(B) British Timken will cancel the registrations obtained by it in British Guiana, since this country is in South America. The registrations in the name of American Timken in that country will remain in effect.

(C) In the following countries where the Trade Mark has been registered in the name of American Timken, the registrations will be allowed to remain in the name of such Company and British Timken will not file applications in any of such countries. The countries in question are:

Egypt
Fiji Islands
[fol. 5920] Gambia
Hong Kong
Iran
Sierra Leone
Southern Rhodesia
Zanzibar
Cyprus
Seychelles

American equipment containing Timken bearings has doubtless been shipped to these countries for many years past, although it may be difficult to ascertain the precise dates since when such use began. On the other hand, Brit-

ish Timken has sold bearings of its origin to such countries, although again the date of first user may be difficult to ascertain. Under the circumstances, Dr. Ladas recommended that the American Company's registrations, having become incontestable by the lapse of the legal term, be allowed to stand.

It is expected that the law in these countries will be amended in the near future as the British law has been amended in 1938 so as to permit registered user by a party other than the registered proprietor, in which event the British Company will be entered as a registered user.

(D) In the following British countries, both the American Company and the British Company have obtained registrations for the Trade Mark "Timken", although in different classes. It is deemed advisable that the mark, from the point of view of preserving its distinctiveness, should be owned by only one of the Companies. The American Company will cancel its own registrations in such countries with the understanding that the British Company will obtain additional registrations in the classes in which the American Company owned such registrations, or, alternatively, will assign such registrations to the British Company. These countries are Sudan, Gold Coast, South West Africa, Nigeria, Mauritius, Nyassland. This decision was arrived at on the advice of Dr. Ladas, concurred in by Mr. Skerrett, because the registrations in the name of the British Company are prior in date to the registrations of the American Company, and although the two have registered the Trade Mark in different classes, the goods in respect of which the registrations have been obtained are [fol. 5921] related goods and a third party might dispute the ownership of the Trade Mark by either Company. It is, of course, understood that the American Company will continue to use the Trade Mark in such countries under the provisions of the Agreement of 1938, and in due course the American Company will be entered as the registered user in such countries when the law has been amended to permit such procedure.

(E) The British Company shall proceed to register the Trade Mark in Gibraltar under the Ordinance just issued which provides that a Trade Mark may be registered based on a British registration, and since the British Company owns the registrations in Great Britain, it alone can register the Trade Mark in Gibraltar. As the Ordinance also

provides for registered user, the American Company will be entered as registered user in that country.

(F) The British Company will proceed to register the Trade Mark "Timken" in *Pakistan* on the basis of its registrations in India, and the American Company will withdraw its own applications in that country. This was recommended by Dr. Ladas, and concurred in by Mr. Skerrett, because under the Pakistan Act the registered proprietor of a Trade Mark in India may extend its registration to Pakistan, and the British Company as owner of the registration in India may do so without having to prove distinctiveness of the Trade Mark in Pakistan. As Pakistan has provisions for registered user, the American Company will be entered as a registered user in that country.

(G) The British Company will withdraw its applications in *Palestine* and *Trans-Jordan*, or assign registrations obtained by it to American Timken for these two countries, whichever may be deemed the advisable course to follow depending upon the status of the applications and on advice of local Counsel to be obtained by the American Company. When the law of these countries has been amended to provide for registered user, the British Company will be entered as a registered user.

(H) The American Company owns the Trade Mark "Timken" in *Australia* where it was registered by it many [fol. 5922] years ago, and each the American and British Companies has used the Mark there. An amendment of the trade mark law has now been promulgated in Australia in January, 1949 which provides that in a case of licenced use of a trade mark, application for registered user with respect to the licensee should be filed within one year. Steps will be taken immediately to enter British Timken as a registered user in Australia in accordance with this new law. A special agreement, as called for by the regulations under the new law, prescribing the conditions for the use of the Trade Mark will be drawn up and signed by both Companies, after approval by respective Counsel.

(I) The British Company will maintain the registrations obtained by it in the following countries: Great Britain, South Africa, Ireland, New Zealand, Singapore, India, Basutoland, Ceylon, Kenya, Northern Rhodesia, Bechanaland, Jersey, Guernsey, Tanganyika, Malta, Uganda, Swaziland and Germany. Also, it will maintain the application it has filed in British North Borneo. In any of

these countries in which the registered user procedure is available, American Timken will be entered as a registered user, and as the law of any of the other countries is amended in the future to allow a registered user, the American Company will be so entered, while in the meantime American Timken will continue to use the Mark in these countries as provided for in the Agreement in 1938.

(J) Since the British Trade Mark Act of 1938 requires the filing of a special agreement between the registered proprietor of a trade mark and the proposed registered user, prescribing the conditions for the use of the trade mark by the latter, the two Companies will draw up and sign such a special agreement with advice of Counsel. Dr. Ladas will draft such an agreement and obtain approval by Mr. Skerrett.

(K) In all countries in which the Trade Mark is registered in the name of the American Company it is understood that the British Company is licensed to use the Trade Mark under the provisions of the Agreement of 1938, and in such countries where registered user is possible, even though specific reference has not been made heretofore in [fol. 5923] this memorandum, the British Company will be entered as registered user of the Mark.

(L) It is understood that with respect to any country in which the Mark has not been registered or applied for by any of the three Companies heretofore, before any registration is sought, the three Companies will consult as to the Company which is to apply for registration.

(M) In all applications for entry of the American Company of the British Company respectively, as registered user, the right to be granted to the registered user shall be the right defined by the Agreements of 1938.

(N) The French Company will maintain the registration in France.

[fols. 5924-5925] DISTRICT COURT OF THE UNITED STATES
NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

UNITED STATES DISTRICT COURT
Northern District of Ohio, ss:

I, C. B. Watkins, Clerk of the District Court of the United States within and for said District, do hereby certify the foregoing *Transcript of record on appeal, Volumes*

1 to 25 inclusive, containing pages 1 to 5925, inclusive, to be a true copy of the material parts of the record filed in the above-entitled cause in said Court, and that the same is correctly copied from the originals in my official custody and on file in my office.

Witness, my official signature and the seal of said Court at Cleveland, in said District this 6th day of October A.D. 1950. C. B. Watkins, Clerk.

By K. V. Mihon, Chief Deputy Clerk (Seal.)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 352

THE TIMKEN ROLLER BEARING COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

STATEMENT AS TO JURISDICTION

LUTHER DAY,
JOHN G. KETTERER,
Counsel for Appellant.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION

Civil Action No. 24,214

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

THE TIMKEN ROLLER BEARING COMPANY,
Defendant-Appellant

STATEMENT AS TO JURISDICTION

This is a direct appeal to the Supreme Court of the United States from a final judgment of the District Court of the United States for the Northern District of Ohio, Eastern Division, in an action in equity by the United States against the defendant-appellant charging a conspiracy in violation of Sections 1 and 3 of the Sherman Anti-Trust Act (26 Stat. 209, 15 U. S. C. §§ 1 and 3), in which judgment was rendered against the defendant-appellant. In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, defendant-appellant submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal

to review the judgment of the District Court entered in this cause.

Opinion Below

A copy of the opinion of the District Court which it adopted as its findings of fact and conclusions of law is reported in *United States* v. *The Timken Roller Bearing Company,* 83 Fed. Supp. 284, and is attached hereto.

Jurisdiction

The judgment of the District Court herein was entered on February 15, 1950. Motions by the defendant-appellant for a new trial, and to amend and to make new, and additional, findings of fact and conclusions of law which involved reconsideration of certain basic findings of fact and the alteration of the conclusions of the Court, and for judgment for the defendant-appellant, were filed, pursuant to Rules of Civil Procedure 59(b) and 52(b), on February 24, 1950, and were overruled by order of the District Court entered June 14, 1950. A petition for appeal to the Supreme Court of the United States was presented by the defendant-appellant to the District Court and by it allowed on July 28, 1950.

Jurisdiction of the Supreme Court to entertain this appeal is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823; 36 Stat. 1167; 58 Stat. 272; 62 Stat. 989; 15 U. S. C. § 29; 49 U. S. C. § 45).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Standard Oil Co.* v. *United States,* 221 U. S. 1; *United States* v. *Bausch & Lomb Optical Co.,* 321 U. S. 707; *United States* v. *Crescent Amusement Co.,* 323 U. S. 117; *Hartford Empire Co.* v. *United States,* 323 U. S. 386; *United States* v. *Line Material Co.,* 333 U. S. 328; *United States* v. *United States Gypsum Co.,* 333 U. S. 364.

Statute Involved

The Sherman Act of July 2, 1890, 26 Stat. 209, as amended (15 U. S. C. §§ 1, 3 and 4):

"SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * * Every person who shall make any contract or engage in any combination or conspiracy declared * * * to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

"SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

"SEC. 4. The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys for the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and

praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises."

The Issues and the Rulings Below

The defendant-appellant, The Timken Roller Bearing Company, is engaged in the manufacture of tapered roller bearings and owns 30.25 per cent of the capital stock of British Timken, Ltd. (hereinafter called British Timken), a British joint stock company manufacturing ball bearings and straight and tapered roller bearings, and 50 per cent of the capital stock of Societe Anonyme Francaise Timken (hereinafter called French Timken), a French corporation which manufactured tapered roller bearings. The amended complaint, filed against the defendant-appellant alone, alleges that beginning in 1928 and continuously thereafter, these three companies have conspired and combined in restraint of interstate and foreign commerce of the United States by entering into contracts, agreements and understandings, and continuously planning and acting together, to eliminate competition between themselves and with others in the manufacture and sale of anti-friction bearings in all markets of the world. The alleged means have consisted of allocating to each company an exclusive territory into which the other companies shall not sell nor ship anti-friction bearings except in completed articles of manufacture and for replacement of bearings therein; fixing and agreeing upon prices of replacement bearings shipped into each other's territory, and upon prices of bearings sold and shipped to Russia; allocating the use of the trademark "Timken" to each of the companies in its territory, and

requiring that British Timken and French Timken shall use that trademark exclusively and surrender it to the defendant upon termination of such contracts, agreements and understandings; entering into agreements with other manufacturers in certain territories regulating and allocating the sale of bearings; and furnishing aid to each other in restricting and eliminating in their respective territories competition from others.

The defendant-appellant denies engaging in the combination and conspiracy charged.

Some discussion of the facts, disclosed by correspondence and the uncontroverted testimony of the defendant's witnesses, is necessary to an understanding of the questions involved.

The defendant's principal product, the tapered roller bearing, was an invention originally covered by product patents. In 1909, the defendant, then a young and comparatively small company with its principal office and place of business at Canton, Ohio, licensed Electric Ordnance & Accessories Co., Ltd. (hereinafter called E. & O. A.), a wholly-owned subsidiary of Vickers, Ltd., a very large English business enterprise, to manufacture and sell the patented bearings in the United Kingdom and on the Continent, upon payment of royalty of 15 per cent of net sales. Under the two agreements between the defendant and E. & O. A. covering the United Kingdom and Europe, respectively, E. & O. A. was licensed to manufacture and sell only "so far as the licensor lawfully can do so", was given an exclusive territory and restricted thereto, was prohibited from manufacturing or selling anti-friction bearings other than those made under the patents, was required to use the mark "Timken" exclusively in the sale thereof and to follow the instructions as to method of manufacture which the defendant was required to provide, and its price was restricted to some extent.

The rights of E. & O. A. under these agreements were transferred in 1920 to Wolseley Motors, another wholly-owned Vickers subsidiary engaged in the manufacture of motorcars. In the same year British Timken was organized as a wholly-owned subsidiary of Wolseley Motors and took over the latter's interest in the 1909 agreements.

Prior to 1920, E. & O. A. had granted a sub-license under the 1909 agreements to Societe Mechanique Genvilliers (hereinafter called S. M. G.) in France.

In 1924, one of the defendant's executives visited British Timken and was told that British Timken felt that the defendant had no right under any condition to the name "Timken", the jealously guarded family name of its founders, in the United Kingdom. This confirmed the defendant's fears, inspired by its trademark counsel in 1920, that British Timken might have acquired rights in the mark and that the defendant might have trouble in obtaining control thereof in the United Kingdom and other portions of the British Empire upon termination of the 1909 agreements. It had already discovered that S. M. G. in France and one Prausnitzer, a sales agent of Vickers in Germany, had registered the trademark "Timken" for themselves in those countries, which added to its difficulties.

The Vickers subsidiaries had obtained one substantial reduction in royalty to meet competition, and British Timken was seeking a further one. Advised by its counsel that, although the principal patents were expiring, the agreements would not terminate until other patents had expired, and that the trademark license was valuable to British Timken, the defendant agreed in 1924 to a further reduction in royalty and a five-year extension of the agreements for the principal purpose of obtaining amendments thereto which would insure its ultimate control of the trademark within the United Kingdom. Accordingly, the 1909 agreements were amended to provide that the name "Tim-

ken" should belong exclusively to the defendant as licensor, and that British Timken, as the licensee, should be "deemed to be using the said name as part of the subject matter of the license", and upon expiration or termination of the agreements should cease to use the name. However, subsequent advice of British trademark counsel in 1926 cast doubt on the effectiveness of this amendment under British law, and both the defendant's American and British trademark counsel suggested that a very practical way to cure the whole situation as to the trademark would be for the defendant to acquire British Timken.

In 1925 or 1926, Vickers fell into considerable financial difficulties, in which its subsidiary, Wolseley Motors, the parent of British Timken, became involved, and advice received by the defendant indicated that British Timken was not progressing in the way it should, due to antiquated machinery, lack of funds, and other reasons.

M. B. U. Dewar, a British businessman who held a high position with Vickers, was put in charge of Wolseley Motors, and consequently, of British Timken. On a trip to this country he visited the defendant, and was advised that in its opinion British Timken's costs could be cut 25 per cent by the introduction of the defendant's manufacturing methods. Early in 1927, shortly after his return to England, he wired the defendant stating that he had an opportunity to acquire British Timken, but was unwilling to do so unless the 1909 agreements were extended for a period of ten years. He also inquired whether the defendant would be interested in loaning him money or investing in British Timken. The defendant seized this opportunity, replying that it would prefer to participate in the purchase of British Timken to the extent of one-half or more, and at the same time advised its American trademark counsel that it was negotiating for the purchase of control of British Timken and wanted his

ideas as to what should be done about the foregoing trademark situation.

During negotiations in England between Dewar and the defendant's representative, a former executive who had left the defendant but acted as its agent, Dewar expressed the desire to have the defendant as his "partner" in the operation of British Timken in order to insure the defendant's interest therein, and this was relayed to the defendant. The negotiations resulted in Heads of Agreement executed May 16, 1927, to be implemented by more formal agreements and other action, by which the defendant and Dewar agreed, in substance, (1) to acquire jointly British Timken, each putting up approximately half of the necessary funds to purchase the stock from Vickers, Ltd.; (2) to a method of control, through reorganization, of British Timken to provide for two classes of stock, of which Class A, owned predominantly by Dewar, should control the election of directors so long as the company made a certain annual profit, control to pass to Class B, owned predominantly by defendant, if it should fail to do so; (3) that the parties should have first refusal on each other's stock in case of sale, and that the defendant should have an option to purchase Dewar's stock upon his death, or incapacity to act as managing director; (4) that Dewar should be managing director while Class A shares controlled; (5) that the defendant and British Timken should enter into an agreement extending for ten years the terms of the existing agreements between them, subject to modifications, and generally upon such terms and conditions as might be mutually agreed upon, including provisions "for protection of the name Timken and securing the exclusive reversion of the name in all countries" to defendant at termination of the agreement; and that arrangements should be made for the formation of continental companies for the manufacture and/or sale of bearings.

This arrangement for control by Dewar's stock of the ordinary affairs of British Timken was made because he was of the opinion that the company should have British control of its ordinary capital in order to be a British controlled company as to customers and the British Government, for products of foreign companies, although locally manufactured, were unpopular in the United Kingdom, and under foreign control his investment would be in jeopardy.

The provision with respect to the organization of continental companies embodied, informally, agreements made by the defendant's representative and Dewar that they would organize jointly a new corporation in France to manufacture and sell bearings there and acquire the trademark "Timken" from S. M. G. because of the unsatisfactory way in which that company had conducted the business, and that they would jointly negotiate with Prausnitzer to take over control of his company, Deutsche Timken Gesellschaft (hereinafter called German Timken), and the German trademark, giving him a stock interest if necessary, both of these enterprises to be owned and operated by Dewar and the defendant on the same basis as British Timken.

All of these things were done. The first business agreement complained of was made between the defendant and British Timken, effective January 1, 1928. It provided, among other things, for the licensing of the trademark "Timken" by British Timken, and for carrying out the terms and provisions of the joint venture as heretofore outlined. Subsequent business agreements were made in 1934 and 1938, which changed in minor respects the original business agreement of 1928, but the essential details of the arrangement between the companies was not changed from that contained in the original agreement. The trademark licensing provisions contained in all of the business agreements were based upon the recognized legal and equitable ownership of the trademark "Timken" by the defendant.

While German Timken was discontinued during the Nazi regime in 1934, British Timken and French Timken have been operated by Dewar in close collaboration with the defendant ever since 1927. Among others too numerous to detail here demonstrating the existence of the joint enterprise, are the facts that the great majority of tapered roller bearings manufactured by the three companies are identical, that the defendant has provided bearing designing service for British Timken and French Timken, has made all of its information as to improved methods, machines, and general "know-how" available to them as a matter of course, and continually has sent its own employees to their plants to install its own methods of production and to assist them in designing and selling bearings, and has trained their employees in its plants.

The three companies have been operated much like departments of one enterprise, each staying within its designated territory ordinarily, the basic idea being that bearings manufactured according to Timken methods and distributed under that name and mark shall be sold by any one of the three companies in the territory of another when necessary to meet competition from other organizations such as the Swedish bearing Trust, S. K. F., and its subsidiaries located in various countries of the world.

While some stock of British Timken was sold to the British public in 1935 because of Dewar's desire to cash in on some of his investment therein, arrangements were made to maintain control of that company upon the same basis as it has always existed between the defendant and Dewar, through the means of a holding company for British Timken stock remaining to the defendant and Dewar. While this company has been dissolved, substantially the same arrangement is in effect today. The defendant owns 30.25 per cent and Dewar 25 per cent of British Timken stock, or combined majority voting control of 55.25 per cent.

Similarly, the defendant and Dewar, who each own 50 per cent of the common stock of French Timken, have an arrangement by which Dewar operates that company and is entitled to control its ordinary affairs so long as it pays a certain profit, the parties having first refusal on each other's shares therein in case of desire to sell, and the defendant having an option on Dewar's stock in event of his death, incapacity or retirement.

While the methods of perpetuating these arrangements with respect to British Timken and French Timken have varied in form as the parties have readjusted their affairs from time to time, they have never deviated from the fundamental arrangements for joint control and operation of British Timken and French Timken. The whole relation of defendant, Dewar and the other two Timken companies is strikingly similar to that involved in *United States* v. *Scophony Corporation*, 333 U. S. 795, which was regarded by the Court as constituting "what practically, if not also technically, was a joint adventure * * *."

The plaintiff relied principally upon documentary evidence as showing that the defendant carried out the territorial allocations and engaged in other activities, all of which would be natural in furtherance of the joint venture, such as preferential prices by the defendant to British Timken and French Timken, reference of inquiries emanating from their territories to them, assistance in "combatting" competition of others, etc. Further, British Timken entered into a quota arrangement with S.K.F.'s subsidiary in the United Kingdom, and French Timken with S.K.F.'s subsidiary in France in order to escape extinction, both of which were known to the defendant, and the latter of which was approved by it. Both of these agreements ended in 1939, when World War II commenced, and have not been renewed.

The defendant's principal contentions in the District Court were that the burden was upon the plaintiff to show, not only that restraints of trade and commerce had occurred, but also that they were unreasonable, under the "rule of reason" first announced in *Standard Oil Co.* v. *United States*, 221 U. S. 1, and that any restraints imposed by the arrangements between the defendant, British Timken and French Timken for allocation of exclusive territories as between themselves and incidental arrangements as to prices on replacement sales of bearings, and the furnishing of aid to each other, were not unreasonable, but, instead, were reasonably ancillary to the formation of a joint venture between the defendant and Dewar to conduct an anti-friction bearing business in foreign countries through the instrumentality of British Timken and French Timken, to the transfer of know-how by the defendant to British Timken, and to the joint use of the trademark "Timken" throughout the world by the three Timken companies.

The District Court did not "find the facts specially and state separately its conclusions of law," Rule 52(a), although requested so to do by the defendant, but, instead, adopted its opinion as its findings of fact and conclusions of law upon motion of the plaintiff to that effect. The Court did not deem it necessary to make findings as to many of the facts appearing from the uncontroverted evidence, some of which have been discussed herein, particularly those as to the relations between the defendant and Dewar.

The final judgment of the District Court enjoins the defendant-appellant from carrying out its agreements with Dewar, British Timken, and French Timken, requires it to divest itself of its stock and other financial interests therein, and imposes exhaustive restrictions upon its relations with those companies and the public.

The Questions Are Substantial

This case involves, among others, two basic and fundamental legal questions of vital importance today to American business and the investment of American capital abroad.

First, the question of whether the joint venture in the general nature of a partnership between the defendant, an American manufacturer, and Dewar, a British subject, to conduct foreign business through the instrumentality of foreign corporations justified the restraints imposed by the territorial allocations insisted upon by Dewar for protection of his investment, is one which, insofar as it relates to the Sherman Act, has been before the Supreme Court only once, so far as we can find, namely, in *United States* v. *Bausch & Lomb Optical Co.*, 321 U. S. 707. In that case a divided court affirmed the decision of the district court which held that an arrangement between a manufacturer and a distributor of lenses by which the former agreed to manufacture exclusively for, and not to sell in competition with, the latter, "though not a partnership in legal form", was "functionally a joint enterprise", and that the restraints imposed were reasonable and not in violation of the Sherman Act, where the evidence disclosed that there remained substantial competition in the industry, *United States* v. *Bausch & Lomb Optical Co.*, 45 Fed. Supp. 387.

While the relationship between defendant and British Timken and French Timken was not that of manufacturer and distributor, they were engaged in a joint enterprise in the nature of a partnership. Although the District Court said that "Defendant did not build plants in Europe or purchase subsidiaries abroad" and "it simply acquired substantial interests in a dominant manufacturer of bearings in England, participated in the formation of and investment in the stock of a potential competitor in France" (Memoran-

dum, Par. 160), the evidence is uncontroverted that the operation of British Timken has been constantly controlled by the defendant and its partner, Dewar, and that French Timken was an entirely new enterprise similarly invested in and controlled by them. The uncontroverted evidence in the instant cause discloses that ball, roller and other antifriction bearings of all types compete with respect to 90 per cent of original installation business, which constitutes 95 per cent of the business done by the industry, the other 5 per cent consisting of replacement sales; that, while the defendant and the other Timken companies naturally manufacture a very large proportion of tapered roller bearings because they have developed and advocated this particular type of roller bearing, they only produce, together, approximately 23.2 per cent of the estimated production of antifriction bearings in the United States, the United Kingdom and France; and that competition, and the number of competitors, in tapered roller bearings alone in this country has increased materially since inauguration of the joint venture in 1927. The evidence discloses further that nationalistic prejudice against foreign goods, nationalistic policies calling for licensing of exports, imports and foreign exchange, and other reasons, have required, as a practical matter, since 1927 and prior thereto, that an American company desiring to sell successfully bearings in foreign countries must establish plants therein owned by local legal entities, accompanied by partial investment of local capital, and operated and managed by local citizens. Therefore, the question, whether affording protection to the investment made by local businessmen for the purpose of securing these legitimate business advantages by agreeing not to compete with the enterprise violates the Sherman Act, is one of great importance, particularly at the present time when the administration is seeking to encourage the employment of

American industrial and scientific techniques abroad under the "Point Four" program.

Second, this cause involves a further question of great importance, namely, the right of an American company to license the use of its trademark abroad on a territorial basis, for in the amended complaint the plaintiff prayed that the defendant be enjoined from "transferring, selling or assigning the trademark 'Timken' to or for the use" of British Timken or French Timken "so as in any manner to exclude the defendant from using the trademark 'Timken' anywhere in the world."

In discussing the matter of licensing the trademark the District Court said (Court's Memorandum, Par. 192) "Whether within the provisions of the Sherman Act commerce may be restrained to the extent that it is reasonably ancillary to protect a trademark has not been decided or discussed by the courts."

The views expressed by the District Court as to the application of the Sherman Act, and otherwise on this point, are contrary not only to other decisions as to controlled licensing of trademarks in the United States, but also we submit to the proper interpretation of the Sherman Act as its enforcement may bear upon the licensing of trademarks on an international basis. Controlled licensing on a territorial basis has been recognized as valid by the lower courts, *Keebler Weyl Baking Co.* v. *J. S. Ivins Sons, Inc.*, 7 Fed. Supp. 211; *Knight* v. *Miller*, 283 Fed. 816; *Coca-cola Co.* v. *Bennett*, 238 Fed. 513, and other cases, and the imposition of territorial and other restraints ancillary to such licensing has been held legal, *Coca-cola Bottling Co.* v. *Coca-cola Co.*, 296 Fed. 796. The domestic statutory law of trademarks is now set forth in the Lanham Act, effective July 5, 1947, 60 Stat. 427, 15 U. S. C. § 1051, *et seq.* Sections 5 and 10 of that Act recognize the controlled licensing of trade-

marks in the United States and are declaratory of its policy on that subject. Sections 44 (i) and 45 of the Lanham Act, which extend the protection of the Act to nationals of foreign countries who are parties to international conventions to which the United States is a party, further evidence this policy. The United States is party to two general international conventions covering trademarks, the International Convention for Protection of Industrial Property, originally adopted in 1883 and revised at various times, the last revision having been made in 1934, and the Inter-American Convention for Trademark and Commercial Protection adopted at Washington in 1929. The first of these conventions contemplates the licensed use of a trademark by affiliated companies as long as the quality and standard of the trademark owner are maintained, while the second provides that the use and exploitation of trademarks may be transferred separately for each country. The effect of the District Court's decision in this case is to deny to the defendant, not only the right to use controlled licensing of its mark outside of the United States, but also the same use of its trademark as is extended by the Lanham Act to nationals of foreign countries who use and license trademarks in the United States.

In the international field the system of licensing trademarks is a very common, and, in fact, often necessary, means of using them. Owners thereof who have a substantial goodwill in foreign countries are often prevented from exporting their goods thereto and competing directly therein because of customs duties, transportation expenses, and nationalistic policies of such foreign countries for localization of industry therein, development of a domestic economy, spread of work, and reduction of demand for foreign exchange. Licensing arrangements make it possible for American business firms to expand their market and maintain and develop goodwill in their trademarks in foreign

countries. Thus, a final pronouncement by this Court as to the impact of the Sherman Act on the licensing of trademarks abroad is of great importance to American business at this time.

All of the ultimate, and many of the subsidiary, findings of fact made by the District Court are clearly erroneous.

The fact that the District Court has ordered divestiture of the defendant's stock holdings and other financial interests, "direct or indirect", in British Timken and French Timken, when, according to the Court's own findings, the defendant has never used its stock interests in those companies to control their operations, and those investments were not illegally acquired in the conduct of the alleged combination found by the Court to have existed, also raises a question of substance as to the Court's jurisdiction to "prevent and restrain" violations of the Sherman Act within the meaning of Section 4 of the Act (15 U. S. C. § 4) *United States* v. *National Lead Co.*, 332 U. S. 319.

It is submitted that for these reasons alone the questions presented by this appeal are substantial and of public importance, but the defendant-appellant also relies on all other points raised in the Assignment of Errors.

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APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

Civil Action No. 24214

UNITED STATES OF AMERICA, *Plaintiff*,

vs.

THE TIMKEN ROLLER BEARING COMPANY, *Defendant*

MEMORANDUM—March 3, 1949

FREED, J.:

1. The instant action was brought by the United States under favor of Section 4 of the Sherman Antitrust Act to prevent and restrain the continuing violations of Sections 1 and 3 of the Act. Permanent injunction with adequate protection to prohibit the violations is sought.

2. The complaint charges, that the defendant and the co-conspirators entered into contracts, agreements and understandings to eliminate competition between themselves and with others, in the manufacture and sale of anti-friction bearings in all the markets of the world, including the United States. It recites that they allocated the respective territories in the world in which each party might manufacture and sell anti-friction bearings and that they prevented one party from selling or shipping anti-friction bearings into the territory allocated to any other party, except in completed articles of manufacture and for replacement bearings in those articles. It further charges that they fixed and agreed upon prices of bearings shipped into the territory allocated to any other party and that they fixed and agreed upon prices of anti-friction bearings sold and shipped to Russia. They allocated the use of the trade mark "Timken" to each of the parties in their respective designated territories and required that the co-conspirators not manufacture and sell bearings, except under the mark

"Timken". The agreements required the co-conspirators to surrender to defendant the rights in the name "Timken" upon the termination of the contracts between them. It is claimed, in certain of the designated territories they entered into agreements with other manufacturers to regulate and allocate the sale of anti-friction bearings and they aided and assisted each other in restricting and eliminating in their respective territories competition from others in the manufacture and sale of anti-friction bearings.

3. It is alleged in the complaint that the combination and conspiracy resulted in unreasonable restraint of imports into and exports from the United States. It is further alleged that the current world shortage of anti-friction bearings and decreased European production caused by the war, has created large potential export markets for anti-friction bearings of American manufacture. Notwithstanding this, the continuation of the conspiracy and combination will restrain and prevent defendant from seeking and acquiring many world markets with the eventual consequence of reducing its production of bearings and employment of labor.

4. The factual and legal questions to be determined in respect of the charges of the complaint are posed by the Government as follows:

5. Within the purview of the Sherman Act is it illegal for the "defendant and two foreign corporations, which between them manufacture and sell a substantial portion of the world's production of anti-friction bearings, to regulate interstate and foreign commerce by private arrangements embodying the following restrictive practices"?

> "(a) Allocation, by agreement, of trade territories throughout the entire world, each agreeing with limited exceptions, not to manufacture and sell in the other's territory;
>
> "(b) Imposition by agreement, of price restrictions upon products sold by any party in the territory of another;
>
> "(c) Agreement to exclusively exchange present and future know-how and inventions, patented or unpatented;

"(d) Use by agreement, of a common trade mark "Timken" in their respective territories, compulsory use of that mark by the foreign conspirators, prohibition against their dealing in products under any other name and requiring that they cease using the name upon termination of the agreement;

"(e) Mutual co-operation and assistance to protect each others' markets and to eliminate the competition of outsiders;

"(f) Participation in foreign cartels which restrict exports by United States producers."

6. The defendant, The Timken Roller Bearing Co., is an Ohio corporation with its principal offices located at Canton, Ohio. It employs upwards of 16500 employees at its various plants located in Ohio and in Colorado, in the United States and St. Thomas, Ontario in Canada. Its foreign sales are handled by two wholly owned corporations: Timken Roller Bearing and Service Limited and The Timken Roller Bearing Co. of South America, Canadian and Ohio corporations respectively. Defendant manufactures tapered roller bearings, alloy steel, seamless tubing and removable rock bits.

7. British Timken Limited, named a co-conspirator, (hereinafter referred to as British Timken) is a British Joint Stock Company which maintains its plant and principal offices at Birmingham, England. It employs approximately 2400 workmen and manufactures tapered roller bearings and axle boxes for railroad cars. Its wholly owned subsidiary, Fischer Bearings Co., Ltd., manufactures straight roller bearings and ball bearings.

8. Societe Anonyme Francaise Timken, also named a co-conspirator (hereinafter referred to as French Timken), is a French corporation with its plant and offices at Asnieres, France. It employs approximately 510 people and manufactures tapered roller bearings.

9. The assertion of the Government that defendant, British Timken and French Timken dominate the tapered roller bearing market of the world and a substantial portion of

the total anti-friction bearing market is challenged by defendant.

10. The evidence discloses that defendant is "many times over" the largest manufacturer of tapered roller bearings in the world. Its gross sales in 1947 were $77,097,756.00.

11. According to the figures compiled by the Anti-Friction Bearing Manufacturers Association, defendant's percentage of the tapered roller bearing industry in the United States was as follows:

Year	
1941	71.0%
1942	77.9%
1943	82.2%
1944	80.3%
(7 months) 1945	78.9%

12. Presently defendant's output of tapered anti-friction bearings constitutes 25% of the total production of anti-friction bearings in the United States.

13. British Timken, during the period from 1927 to date, produced a large volume of all the tapered bearings in England. It manufactured more than 90% in 1927, the percentage decreased to 70%, and later returned to more than 90%. It produces approximately 20% of all the British anti-friction bearings. British Timken's sales including those made by its subsidiary, Fischer Bearings Co., Ltd., totaled $14,700,000 in 1947.

14. French Timken manufactures about 80% of the tapered bearings in France, which constitutes 10% of all the anti-friction bearings. Its sales in 1947 totaled $2,274,723.

15. Command of such volume of business spells out the dominant position of defendant, British Timken and French Timken both in the tapered and anti-friction bearing industry. Oxford Varnish Corporation et al. v. Ault & Wiborg Corporation, 83 Fed. (2d) 764, U. S. v. Columbia Steel Co., 334 U. S. 495, 527.

16. It was aptly stated during the trial that practically every shaft that turns and every vehicle that rolls is dependent on anti-friction bearings. Their crucial importance to our present industrial economy required no demonstration. Modern machinery, such as trucks, automobiles, farm machinery, locomotives, aeroplanes, in fact every product which has rotating parts, relies on anti-friction bearings for continued operation.

17. Friction bearings and anti-friction bearings have distinctive characteristics. Friction bearings slide over the shaft and depend solely on oil or other similar substance to reduce friction. Anti-friction bearings, on the other hand, consist of a circular group of steel rollers or balls revolving between two circular raceways which reduce friction between moving mechanical parts.

18. There are two general types of anti-friction bearings: roller bearings and ball bearings. Tapered roller bearings are a style of roller bearings.

19. While tapered bearings compete with other types of anti-friction bearings and to a much lesser extent with friction bearings, tapered bearings because of their design and applicability for particular use, enjoy freedom from competition, just as for certain definite uses, ball bearings are free from competition.

20. They constitute a distinctive type of anti-friction bearing which fulfills a requirement not supplied or satisfied by others. Whatever competition exists between the different types of anti-friction bearings, is present only up to the point of the adoption, in the design of a specific type of bearing, in the proposed equipment or machinery. Once that particular type of bearing is incorporated, other types cannot be substituted for replacement. The replacement bearings must be of the same size and character.

21. The original installations constitute approximately 95% of the output of roller bearings and the replacement sales the balance of 5%.

22. In our highly mechanized industries, roller bearings serve as vital links in the chain of their assured existence

and sustained progress. Defendant, British Timken and French Timken exercise a potent force in the making and marketing of these products, essential to the maintenance of the economic welfare of the United States and of the entire world.

23. In order to view the conduct of defendant in the proper perspective during the period of time when it is accused of violating the antitrust laws, it is essential to examine its prior activities which the Government claims culminated in the agreements, contracts and understandings to eliminate competition, assailed in this action.

24. On June 16, 1909, the first of a series of written agreements, licensing the production and distribution of tapered roller bearings was concluded between defendant and Electric & Ordnance Accessories Company Limited, (a predecessor of British Timken and a subsidiary of Vickers Ltd., a British trust comprised of many companies and described as manufacturing everything from battleships to baby carriages). Under its provisions defendant granted to E. & O. A. the exclusive license to "make, use, exercise and vend" in the United Kingdom and the Isle of Man roller bearings of all kinds made pursuant to the specifications of British patents which defendant then owned or under patents later to be granted to or acquired by defendant. It contained definite territorial restrictions. Defendant was prohibited from making or selling to others, or from licensing others to do it, or from selling its own manufactured bearings for shipment into the territory of E. & O. A. It was, however, permitted to make and sell or license others to make and sell bearings for vehicles manufactured outside and shipped into the territory of E. & O. A.

25. E. & O. A. was prohibited from selling bearings outside of its territory and from selling bearings in its territory, knowing them to be for shipment outside. E. & O. A. was allowed to sell bearings in its own territory for vehicles manufactured there for export elsewhere. The license was so conditioned that E. & O. A. was prevented from manufacturing or selling any anti-friction bearings, except those made under the licensed patents and except those assembled

in other articles produced or sold by E. & O. A. E. & O. A. was obliged to use the designation "Timken" exclusively on all the bearings made or sold by it. It was incumbent on E. & O. A. to use all the instructions for manufacture given to it by defendant which defendant agreed to supply. Defendant in turn was privileged to utilize any improvements made by E. & O. A. in its manufacturing process. E. & O. A. had the right to determine the sale price for its bearings, provided that the deficiency between its lowest price and the lowest sale price of defendant would not be in excess of the United States tariff chargeable on the bearings from any part of E. & O. A.'s territory.

26. In another agreement executed on the same day defendant granted to E. & O. A. the full and exclusive right to "license and authority to make use exercise and vend" roller bearings of all kinds under certain French and Russian patents and under a German patent application as soon as the patent or other equivalent grant shall have been obtained in the territories covered by the patents. It provided that so long as the agreement is in force, E. & O. A. shall have "full and exclusive right license and authority until all the said Patents shall have been granted or after all or any of the said Patents shall have ceased to exist (but only so far as the Licensor can then lawfully do so) to make use exercise and vend articles embodying the subject matter of such Patents or Patent and Roller Bearings of every kind whatsoever in that part of the said territory where the Patents or Patent shall not have been granted or shall have ceased to exist."

27. Defendant also granted to E. & O. A. an exclusive license to manufacture and sell articles, embodying the subject matter of the British patents referred to in the first agreement and roller bearings of every kind whatsoever (whether covered by patents or not) throughout Europe (except the United Kingdom, France and Russia and except Germany after the patent or grant shall be issued or made there) and throughout the whole of the British Colonies, Protectorates and Dependencies except Canada. It contained the identical restrictions set forth

in the first agreement in respect of sales in the other party's territory. The provisions of the first agreement pertaining to price regulations, to the compulsory use of the mark "Timken" by E. & O. A., to the requirement that E. & O. A. use instructions as to method of manufacture, to the furnishing of data by defendant, to the privilege of defendant to utilize improvements made by E. & O. A. were embodied in the second agreement in identical language.

28. The agreements of June 16, 1909 were modified on April 6, 1920, by two separate instruments between defendant and Wolseley Motors of England (another Vicker's subsidiary). The rights of E. & O. A. were assigned to Wolseley. The territorial divisions remained as they had been designated. The respective areas were redefined as licensor's area (defendant) and licensee's area (Wolseley). Defendant was permitted, however, to sell to manufacturers in defendant's territory who in turn, were allowed to export bearings to Wolseley's territory for use in their products. Wolseley was granted the same privilege in its territory.

29. The price for replacement sets for use in Ford cars in Wolseley's territory was fixed. Defendant and Wolseley placed on record their desire and intention, that bearings made in their respective territories "shall not be sold at prices which shall be unreasonable and unfair to the party in whose territory the Roller Bearings are sold" without accepting any legal obligation for it.

30. The modifying agreements further provided, that if the principal agreement (June 16, 1909) should be rescinded, Wolseley should abandon the use of the name "Timken" as part of its name (if so used) and in all other respects, and secure to defendant the exclusive use of the name "Timken".

31. In 1924 and 1925 after all the basic patents pertaining to the tapered roller bearing had expired, two agreements were executed between defendant and British Timken. They merely modified the prior agreements and continued them for a term of five years to January 1, 1929. In the meantime British Timken succeeded to the rights of Wolse-

ley Motors (its parent company). Royalties payable by British Timken were reduced from fifteen per cent to five per cent. They recited that the name "Timken" should belong exclusively to defendant and that during the continuance of the principal agreements as modified from time to time British Timken should be deemed to be using it as a part of its exclusive license and upon the expiration of the agreements British Timken should change its name and do everything necessary to secure for defendant the exclusive right to the name "Timken".

32. These various agreements constituted the basis of relations between defendant and British Timken, including its predecessors E. & O. A. and Wolseley Motors, subsidiaries of Vickers. Against the backdrop of these prior relations we must view the conduct of defendant to resolve the questions raised by the charges of anti-trust violations beginning in 1928.

33. As to the existence of these license contracts, which contained restrictions of territories, fixing of prices, covenants of defendant and British Timken not to compete with each other there is no dispute. The only comment of defendant in that regard is that, "Vickers in its zeal to protect itself may have exacted too broad a license."

34. The Government points out that in 1927, prior to the time defendant and British Timken associated in their challenged conduct in the bearing industry they were prosperous and growing concerns. This is amply supported by the evidence.

35. Since it was founded, defendant held a commanding position in its field of manufacture. By 1928 it became the Titan of the roller bearing industry. It had purchased the assets of its principal competitors in the United States. Conflicting claims were made, during the trial, as to the exact percentage of the total tapered roller bearing market controlled by defendant. It is of no moment what the precise figures were. Defendant's assertions that it was "many times over the largest manufacturer of tapered roller bearings in the world" and that "Timken Tapered Roller Bear-

ings are standard equipment in a majority of all makes of automobiles, trucks and busses. Railroad cars and locomotives, steel mill roll necks, machine tool spindles, oil field machinery, compressor crankshafts, paper making machines—these are but a few of industry's tough jobs in which Timken Bearings have become dominant" are sufficient indication of the position of defendant in the industry.

36. Although defendant in its advertising characterized itself and its product in this fashion in 1941, its relative position was the same in 1928. British Timken's potent leadership in the industry compared favorably with that of defendant. It showed a substantial growth from the time the principal contracts were made and increased its productive capacity, experience in manufacture and sales output to an extent, that it became a potential formidable competitor in the field of roller bearings. It experienced a relatively greater growth in the business than did defendant. It had but one competitor in Great Britain and sold approximately 90% of all the tapered roller bearings there. So the accused agreements between 1928 and 1938 were made between two manufacturers, who on the basis of the evidence, were properly characterized as the largest manufacturer in the world and the largest manufacturer in Great Britain respectively.

37. Around 1926, Michael B. U. Dewar, an English businessman, became vice chairman of Wolseley Motors. British Timken was then a subsidiary of Wolseley Motors. As a member of a British commission, while on a visit to the United States to make an economic study, he spent some time at defendant's plant. In 1927, shortly after his return to England, he became interested in personally acquiring British Timken. As an officer of Wolseley Motors, he knew of the existing agreements between defendant and British Timken, of their provisions pertaining to territory, royalty and trade mark. He also knew that the contracts were to expire on January 1, 1929.

38. On March 10, 1927, Dewar wrote to defendant's president, advising that he had become chairman of British Timken and raising the question of the continuation of the

existing agreements between British Timken and defendant. In this letter mention was made that he contemplated making an offer to Vickers for the purchase of British Timken and expressed the thought that it would require about £300,000. He commented, "I do not know whether your Company would care to be interested if I were to make such an offer either permanently or on the basis of the money loaned being repaid out of profits."

39. On March 28, Dewar cabled defendant, inquiring whether it would be prepared to extend its agreements with British Timken for ten years, if he were to take it over and stating that he had to make up his mind within the next ten days and should like to do it, but did "not think it wise without a ten year's arrangement with" defendant.

40. Defendant cabled Dewar in reply, that it was willing to consider an additional ten year license and reduction of royalty, that with its cooperation costs could be reduced 25 per cent or more and further saying that it would be more interested in joining with him in purchasing the British company from Vickers.

41. Additional cables and personal negotiations between an executive of defendant and Dewar followed, which eventuated in a written instrument named, "Heads of Agreement" dated May 16, 1927 signed by defendant and Dewar. It was in effect a memorandum of the concurrence of the parties on the basic subject matters of the negotiations to be later "embodied in more formal documents as soon as practicable".

42. Inter alia, it provided that defendant would contribute £52,500 and Dewar £47,500, for the purchase of the stock of British Timken; that upon the issuance of two classes of shares Dewar would hold the majority of the class which controlled the company; that such control would cease in the event a stipulated minimum net profit was not earned and a specified dividend was not paid periodically; that Dewar was to be the managing director while the shares he owned controlled the company.

43. The contract likewise provided that a new agreement would be entered into between defendant and British Timken "extending for ten years the terms of the existing Agreements between them subject to modifications and generally upon such terms and conditions to be mutually agreed" including among others "Any practicable steps to be taken for the protection of the name Timken and securing the exclusive reversion of the name in all countries to the American Company at the termination of the Agreement."

44. The control of British Timken accordingly passed from Vickers to defendant and Dewar. Each owned about 50 per cent of the stock, but Dewar was the managing director and conducted its affairs.

45. Under these recited circumstances and following these preceding events, British Timken, defendant and French Timken made a series of agreements and engaged in a course of conduct which are labeled by the Government, "a broad combination and conspiracy to suppress all competition between the parties * * *".

46. What were these agreements and what did these companies do to warrant the charge leveled against them?

47. On January 1, 1928 a "business agreement" consisting of three written instruments of the same date was made between defendant and British Timken, to be in effect for a period of ten years. Simultaneously all existing contracts between them were cancelled.

48. The agreement of 1928 followed generally the pattern of those which preceded it. The world was divided into respective territories for the manufacture and sale of bearings in this language: "For the purpose of this Agreement the United Kingdom of Great Britain and Northern Ireland and all other countries of Europe and all colonies or dependencies of said United Kingdom and European countries except in or adjacent to North or South America shall be deemed to be the territory of the British Company and the rest of the world shall be deemed to be the territory of the American Company."

49. Exclusive license was granted to British Timken under existing or future patents of defendant for the duration of the agreement. In turn British Timken was to assign absolutely and for all time its existing and future patent rights in defendant's territory.

50. They agreed to inform each other in respect of all inventions and improvements regardless whether they were patented or not patented. Advice as to methods of manufacture was to be furnished by defendant, and British Timken was obliged to follow it.

51. Each party agreed not to sell bearings directly, or to others for shipment into the other party's territory, except as assembled component parts of completed articles manufactured in its own territory and for bearing replacement purposes in such completed articles. In the event such sales in or into the other party's territory were made, they were obliged to advise each other of the details of the sales and pay an amount of ten per cent of the net sales price.

52. They agreed to endeavor to maintain the distinctive character of the trade mark "Timken". British Timken agreed not to manufacture or sell bearings except under the trade mark and only in accordance with the provisions of the agreement, and to eliminate the name "Timken" from its corporate name and to refrain from its use as a trade mark upon the termination of the contract.

53. Prior to 1924, British Timken or its predecessor exclusively licensed a French company, La Societe de Mecanique de Genevilliers," (hereinafter referred to as S. M.G.), to manufacture Timken roller bearings in France and its colonies. S. M. G. registered the trade mark "Timken" in France and her colonies, where it was the only manufacturer of tapered roller bearings until 1928, when its license agreement was terminated.

54. Early that year steps were taken by Dewar, with the consent and cooperation of defendant, to organize Societe Francaise Timken (French Timken) which accordingly came into existence in July of 1928. The ownership of its stock was divided between defendant and British Timken.

Dewar, however, during the entire time under consideration, controlled its operations and supervised its business activities. French Timken purchased from S. N. G. the trade mark rights in the name "Timken" for 12,000 francs.

55. A "business agreement" was entered into between British Timken and French Timken, on the model of the one between defendant and British Timken, allocating to French Timken France and her colonies, dependencies and mandates (except those in North and South America) as its exclusive territory for the manufacture and sale of anti-friction bearings.

56. French Timken rented a plant, purchased machinery from defendant and British Timken and commenced operations by first importing semi-finished products from defendant and British Timken. By 1933 it was engaged in the manufacture of all the component parts of roller bearings.

57. In Germany, one Prausnitzer, the owner of a company called Deutsche Timken Gesselschaft, had registered the trade mark "Timken". Defendant and British Timken organized a new German company with the same name, gave Prausnitzer a 20.25 per cent interest in it and named him manager in order to acquire the trade mark and Prausnitzer's assignment of his company. An agreement similar to the one made with French Timken was consummated between British Timken and Deutsche Timken Gesselschaft, which allocated Germany as the German company's exclusive territory for the distribution of anti-friction bearings. In 1934 the German company's business was discontinued and British Timken again took over the territory.

58. Before the expiration of the 1928 contract, another agreement between defendant and British Timken became effective (on January 1, 1935), for sixteen years, which was substantially the same as the 1928 contract.

59. In it were found, however, the following provisions: "The American Company (Timken) in its territory may accept and execute orders for bearings for ultimate destination in the British Company's (British Timken's) territory for use for bearing replacement purposes in such completed

articles of manufacture but such right shall not authorize sales to or known to be destined for manufacturers in the British Company's territory or sales at prices in conflict with the wishes of the British Company and the American Company from time to time will notify the British Company of the details of the sales authorized under this paragraph and will pay to the British Company an amount equal to five per cent (5%) of the net sale price thereof."

60. Conversely the same provision is made as to prices and payments to defendant for sales of replacement bearings by British Timken in defendant's territory.

61. Russia became the joint territory of defendant and British Timken. Business transacted there was conditioned as follows:

62. "The prices and terms at or upon which offers are made and orders are accepted shall so far as practicable be mutually agreed from time to time but nevertheless either of the parties hereto shall be at liberty to quote and accept orders at low prices and extended times for payment without the consent of the other party after having first submitted the prices and other terms to the other party for its consideration and remarks provided that any such quotation or acceptance shall not involve under cutting some quotation already made by the other party."

63. The agreement of June, 1928 between French and British Timken was modified in a new contract on July 15, 1935. It too, provided that bearing replacement sales might be made by defendant, French Timken and British Timken in and into their respective territories. The prices had to be satisfactory to the company into whose territory bearings were sold. French Timken was obliged to sell no bearings other than under the trade mark "Timken".

64. The present operations of defendant, British and French Timken in the world market of anti-friction bearings are carried on under the provisions of and subject to the restrictions of two contracts both dated November 28, 1938. They are, the "Tripartite Contract" between defendant, British and French Timken and the agreement between de-

fendant, British Timken and Dewar, which is supplemental to the Tripartite Agreement. These are the final understandings which superseded all the numerous others and are to govern the conduct of the parties until the end of 1965.

65. The lengthy recital of the contents of the prior agreements was felt desirable for the purpose of showing the evolution of exclusive licenses under patents, into agreements which are not based on the prerogatives enjoyed by the limited patent monopoly.

66. Defendant and Dewar have to date maintained controlling stock interest in British Timken. In 1935 stock was sold to the general public, which resulted in defendant owning 30.25 per cent and Dewar 25 per cent of the shares. Defendant and British Timken own all the stock of French Timken.

67. Considerable testimony was offered to explain the reasons for the making of the large number of contracts, why they were modified and extended from time to time and various covenants were inserted in them and why the present contracts have such long duration. In the basic questions involved, the reasons advanced are of no significance. The controlling facts are that they were made and that they contained certain provisions which may bring them under the condemnation of the Sherman Act.

68. The 1938 contracts are each entitled "Business Agreements" and contain substantially the same provisions present in the 1935 agreements.

69. To summarize their salient features, the contracts provided for exclusive marketing areas which prevented the parties from selling in each other's territories, fixed prices on all replacement bearings sold in each other's territories, fixed prices on bearings sold in Russia and compelled British Timken and French Timken to manufacture and sell bearings only under the terms of the agreements and under the trade mark "Timken".

70. The evidence is overwhelming and uncontradicted that defendant, British Timken and French Timken reli-

giously adhered to their contractual obligations to make the territorial divisions inviolate. Indeed, in some instances, they refused to disturb the allocated territories even where exceptions were made in the agreements. For example, although the contracts permitted sales of replacement bearings outside of the allocated territory D. P. Hess (assistant to the president of the defendant company), confirmed the arrangements he made with British Timken in a memorandum on February 16, 1932 as follows:

> "*Prices on Service Bearings Into Our Territory*
>
> Arrangements completed to effect that British Timken will not quote on any inquiry coming in and state product should be obtained from us. There are two exceptions to this:
>
> (1) When customer demands British product.
>
> (2) When S. K. F. or F. S. are in competition.
>
> Both the latter are quoting 70 off on the Continent and we are having our trouble.
>
> Hong Kong will be American territory starting at once."

71. Each of the parties refused orders for shipment outside of its territory, referring them to the company in whose territory they were to be used. During the period from July 1, 1945 to February 20, 1947, alone, defendant transmitted 402 inquiries or orders to British Timken and French Timken. In each instance the customer who placed the order was advised that either British or French Timken had the exclusive right to supply the bearings.

72. The steady and persistent effort to assure the exclusive right of each party to manufacture and sell in its own domain is emphatically illustrated in the various letters and memoranda of the officers of the contracting parties and particularly of the officers of defendant. They bear out the Government's contention that the respective trade provinces were to be preserved regardless of the unsatisfied demand for bearings in the various parts of the world. Over the

entire span of years during which the restrictions existed, the parties did not deviate from their course of conduct. Even when the world gradually became engulfed in armed conflict, provisions were made to supply customers by specific arrangements so as to retain the trade division.

73. In 1929, the Ford Motor Company, attempted to purchase a quantity of tractor bearings from defendant for use in its Cork, Ireland plant, which was in British Timken territory. Defendant, instead of filling the order, made the bearings, and shipped them to British Timken for resale to Ford. In that connection Hess wrote:

> "This is causing us, frankly, a great deal of changing in our plan of operations, as it meant putting all of this type of machinery to making these large bearings, on double shift and operating them seven days per week; but we feel that you need this help very badly at the present time, and our joint efforts must be made to keep competition out of this Ford situation.
>
> "You may be interested to know that the Ford Motor Company, Detroit, upon receiving advices that your deliveries were not satisfactory, from their English and Cork representatives, immediately placed an order with us for approximately 5,000 sets of bearings, and of course they would have to pay our prices for them. We felt this would be a very serious handicap to your future sales, as they would constantly hold up the fact to you and possibly to us, that you could not handle their production after we had used our efforts, as you know, successfully to have them turn over this entire production to you.
>
> • • • • • • •
>
> "We are shipping these bearings to Ford, Cork, Ireland, freight prepaid, and are going to bill you your selling prices to Ford. • • •
>
> "As you understand, these prices for the differential bearings in particular, are very materially below the prices that we sell Ford, and these quotations to you must be held in strictest confidence, as we certainly would be asked to explain the difference in prices we

bill to Ford and the prices to you; and our explanation of this would be that we are billing you such prices on account of the close relationship between the two corporations, and that the British Timken Company is standing whatever losses may be incurred."

74. On December 5th, 1939 L. M. Klinedinst (vice president of defendant) wrote to all interested employees of defendant as follows:

> "Since the turmoil in Europe certain situations are arising that make it necessary for each and every one of our key men to thoroughly understand the setup between British Timken Limited, Birmingham, England, and The Timken Roller Bearing Company, Canton, Ohio.
>
> * * * * * * *
>
> "The contract provides that we shall not ship or knowingly permit our customers to ship bearings into their territory for use in the manufacture of any equipment whatsoever. Where customers wish us to make shipments into their territory for manufacturing purposes, we are to advise them of our arrangement with British Timken Limited and you are to immediately advise us of such conversations, negotiations, etc., so that we can in turn contact the British Timken Company.
>
> "Undoubtedly many of our manufacturing customers buy bearings from us for service purposes and occasionally for manufacturing purposes and in turn reship them into British Timken's territory. That, of course, we have no knowledge of and we cannot stop.
>
> * * * * * * *
>
> "There are a number of American manufacturers using Timken bearings who operate plants in British Timken's territory. Some of these plants have used both SKF tapered roller bearings and Timken bearings. Inasmuch as it is becoming more and more difficult to secure anti-friction bearings from the Swedish

companies, these American manufacturers who own these foreign plants will probably call on us to make deliveries of bearings from here. Please note that such deliveries are in direct violation of the British Timken contract, and where such requests are made refer them to us as we may want to effect some arrangement with British Timken to fill such requirements rather than have the American company buy one of the competing makes of tapered roller bearings and have them shipped into British Timken's territory. In such an event, both companies would lose."

75. Again on December 6, 1939 in another communication he wrote:

"It is our interpretation of these arrangements that we are not permitted to sell or ship bearings into or known to be destined to British Timken's territory without paying them a 5% commission, and even under such circumstances our prices must be acceptable to them. We have a mutual understanding with British Timken that on unsolicited inquiries for bearings going into each other's territory that we are at liberty at all times to quote prices representing a 50% discount from American list on standard bearings and pay a 5% commission on the net sale thereof. We insist that all of our men respect our agreement with British Timken and on any usual cases to consult the Home Office for further instructions.

76. On January 29, 1940 in "Inter-Organization Correspondence", W. R. Timken, (vice president of defendant) referring to Klinedinst's letters, reiterated their contents in this manner:

"In view of the confused conditions of international trade and the increased demands of the British and French governments for bearings for war purposes, it is probable that we will receive more and larger inquiries for bearings destined for the territories of our British and French associates. We have also had reports that companies using SKF bearings are hav-

ing difficulties in getting deliveries, and this, too, may be a factor in our receiving inquiries for delivery in the territories of our associates.

"Our agreement provides that we are not to sell bearings into Europe or possessions of European countries, excluding Russia and North and South America, except for service, and in the case of service, only under certain price conditions. Our agreement does *not* permit us to sell original equipment bearings directly or to domestic manufacturers knowing them to be destined for shipment into British or French Timken territories. However, this does not include bearings assembled into completed articles of manufacture or component parts of completed articles of manufacture subsequently shipped into their territory.

"When inquiries are made for bearings which may be shipped into our associates' territories, please report the matter immediately to Canton giving full information as to number, size, quantity, specification, and the exact use of the bearings. In addition, you should use your best efforts to persuade the customer that our British and French associates are both able and eager to supply their foreign requirements and that they manufacture a product comparable in every way to our own.

"When emergency shipment of small orders is demanded, we have the permission of our associates to fill such orders. We do not, however, wish to take advantage of this permission except where it is unavoidable. These cases must be taken up with Canton as outlined above for it is necessary that complete information be given to the associate involved. Should the Canton office see fit to fill any such orders that does not mean we will continue to accept them, and the customer should be urged to place all future orders with British or French Timken as the case may be."

77. A report from R. E. Forsythe, (assistant to the president of defendant) to Klinedinst on December 3, 1940 entitled "Sales Into British Timken's Territory" described

the temporary arrangement precipitated by the war. He said:

"* * * It had not been our practice in the past when we shipped bearings for British Timken directly to their export customers to give them a discount from our standard established prices such as we gave them when the bearings went to Birmingham, but they asked that we now do so due to prevailing circumstances. In other words, when we made shipments to their customers direct, they would advise us the prices at which the material should be charged and then we were to credit British Timken's account with the difference between the amount received from the customer and the price we would ordinarily have charged British Timken had the bearings gone to Birmingham.

"We agreed to do the above on a temporary basis, reserving the right to rescind the price concession at our discretion, and in this connection British Timken was to guarantee the credit of their agents so long as we followed their instructions regarding terms of shipment.

"Since the time that hostilities broke out in earnest in Europe we have continuously received inquiries emanating from British Timken's sales territory requesting catalogs and prices on our bearings. In many cases we were advised that they had formerly been supplied their Timken bearings from Birmingham, but they now desired to establish an American source of supply in case they could no longer secure bearings from England, and in some cases these inquiries came from British Timken distributors and French Timken agents. We have either referred the inquiries to Birmingham, or if it were a specific inquiry covering a definite lot of bearings we quoted our protective discount of 50% off American list. We have received definite orders from their sales territories which upon being referred to British Timken were turned down at their instructions.

* * * * * * *

"Mr. Winspur (of the British Purchasing Commission) advised me more or less confidentially that he had learned that all orders from Bearing Service Company in Australia had to be placed through Birmingham due to contractual relations and stated that he felt it would be necessary for the Australian Government to probably take over these orders and place them through the British Purchasing Commission. In discussing this with Mr. Harrison a few days before he left Canton, he asked if we would cover them in the amount of 5% on such sales inasmuch as they had the defense contract, but we made him absolutely no promises of any kind.

. . . . . .

"We have picked up from several sources in the United States the story that The Bower Roller Bearing Company is making every effort to take advantage of present conditions in order to establish themselves in world markets, and such conditions as described above only serve to give them an entree into these fields. We have also heard that SKF is buying Bower bearings and are either re-packaging them or having their name stamped in the bearings and selling them to their regular cutomers in export markets. Naturally, we feel that present conditions do not add to the prestige of the Timken name and also that Bower who is a dangerous competitor is now being given an opportunity to secure a foothold from which it may be very hard to dislodge them after the war is over."

78. The strict adherence to the territorial restrictions applicable to Australia became a matter of grave concern to British Timken's distributors and eventually to the British Purchasing Commission. There was a serious interference in Australian war production due to British Timken's inability to supply bearings. The threat of sales by competitors to supplant the meager amount of available bearings and the clamor of Australian distributors,

eventuated in the relaxation of the theretofore inflexible provisions of the contracts. For the period of the war emergency, defendant was permitted at first to fill only Australian orders and later orders emanating from any place in British Timken's territory, but only through British Timken's distributors and only at prices designated by it.

79. The voluminous correspondence on this subject matter bears out the critical situation which existed and which required the reluctant alteration of established policy.

80. For example, on September 20, 1940, C. S. Gibson (technical representative of British Timken at Melbourne), in a letter advised Forsythe of the proposed visit of an official of Roller Bearing Service Company of Australia to Canton and further said:

> "• • • It seems impossible to rely on Birmingham to efficiently handle orders, and of course, neither I nor our Distributors are officially allowed to correspond with you direct. Mr. Harrison will, I expect, give you details of lots of other matters which have been held up unduly, but I pointed out to him that possibly you may not be able to help him much, as this territory is controlled by British Timken Ltd.
>
> • • • • • • •
>
> "• • • On the other hand, you will appreciate the rather absurd position existing at the present moment, inasmuch that we are getting practically all our supplies from yc and yet it is almost impossible to get any information from Birmingham. Why not take over Australia and New Zealand for the duration of the war? I hope that you have been asked by Birmingham to quote for the complete equipment of 20 alternatively 35 locomotives and tenders for the New Zealand Railways. This is a case where the customer is extremely anxious to place the order with us, but for some extraordinary reason, we do not seem to be able to produce a price."

81. R. R. Thomas of Bearing Service in writing to Forsythe commented:

"Our cable to Mr. Harrison may have been a little difficult for you to understand but we are engaged at the moment in replying to a cable from Mr. Pascoe and we are very concerned to make sure that Mr. Harrison does not ask you specially to request that our orders to direct to Canton and then for us, in our enclosed letter, to ask Timken to do the opposite. In other words, we do not want you to think for one moment that we would ever let you down in the slightest particular.

* * * * * * *

"I am asking Mr. Harrison to try and meet Mr. Dewar and casually give him a copy as per our enclosure stating to him that he might wish to make some enquires while he is in America."

82. The cable to which he made reference was sent by Pascoe (chief executive director of British Timken and director of French Timken) to Bearing Service reading:

'Canton report confusion caused by receiving requests for deliveries and prices direct from Australia presumably Bearing Service Company Stop This is directly opposite to our instructions Stop How does it occur? Stop Please take immediate steps to rectify.'

83. Subsequently Thomas wrote to Gibson:

"Not only was that opportunity missed but after more than twelve months of war, after large quantities of ball bearings have become available in this country, we still await our first considerable shipment from Canton and we still, in some unfortunate cases convert Timken users back to ball bearings.

* * * * * * *

"In some urgent cases we have been reminded by the Ministry of Munitions that we were retarding the Defense program by not supplying information

promptly and we were asked whether we were prepared to do something about it or whether they would communicate direct with the British Purchasing Commission.

* * * * * * * *

"With all respect, we request Mr. Pascoe to accept this following recommendation which we make in the light of many years experience of this market.

(a) That all our orders be forwarded to British Timken, Ltd.

(b) That in all other matters connected with shipments of goods, we be encouraged to communicate freely with Canton, at the same time sending a copy to Birmingham."

84. On December 4, 1940 Klinedinst wrote Dewar, who was then in the United States:

"We were advised by the British Purchasing Commission that they will very likely take over all of the purchases of anti-friction bearings for Australia. This will present a problem, the solving of which we must ask your help.

"Undoubtedly as these inquiries come to the British Purchasing Commission they will ask all tapered roller bearing manufacturers in this country to quote prices, and following the same assumption further, they will give the business to the lowest bidder. That is one phase of it. On the other hand, should your Australian distributors specify on their orders that they must definitely be supplied Timken bearings, then, we presume, they would come to only Timken for quotations, or would they take it upon themselves to buy from the cheapest source?

"Regardless of how this works out, we have the problem of what prices to quote and how to distinguish between bearings that are to be used essentially for service and those to be used in production. There is another angle that may enter into this—the Purchasing

Commission may go, for instance, to the General Motors Export Corporation for prices on bearings for General Motors equipment and, naturally, there should be uniformity in prices. Surely we feel it is necessary to have two distinct prices if this is possible—one covering bearings for service and the other for production.

"We have in mind a number of American manufacturers who have assembly plants in Australia, and if the British Purchasing Commission takes over that phase of the business those bearing purchases would come through them rather than through the International Harvester Company, or General Motors, or whoever may have plants in Australia.

"We have in mind a situation that developed several months ago. When we quoted the British Purchasing Commission on a large quantity of bearings at the established government buying agency price—#30—our competitor, The Bower Roller Bearing Company quoted on this same inquiry at about a #17 price and The Bower Company got the business.

"We do not want to see The Bower Company or any other American manufacturer of tapered roller bearings find a foothold in Australia or in any other territories covered by you, but we feel this will happen on a straight competitive bidding proposition because it is not possible to definitely control the price at which other tapered roller bearing people will sell their products for foreign consumption.

"The simplest way out of this, as we see it, is for British Timken to instruct all of their foreign service connections to very definitely and positively specify Timken tapered roller bearings. That will give the British Purchasing Commission no leeway. If that can be done, the problem is virtually solved.

* * * * * * * *

"We feel, Mr. Dewar, that the awkward situation now presenting itself might have been avoided had

British Timken permitted us to handle their outside orders direct.

"Mr. Harrison of The Bearing Service Company of Melbourne spent quite some time with us recently and was very bitter in his criticism of our deliveries. We found in many cases we had never received an order from British Timken for the sizes so badly needed.

"The policy followed by your Australian people was to send the order to British Timken, they would fill such parts of it as they could and the balance of it was transferred to us. That meant a very great delay, and that was why we suggested sometime ago that you have such parts ordered and shipped direct from Canton."

85. On December 18, 1940, Gibson addressed a personal note to Forsythe, saying among other things:

"On the 11th December, the following cablegram was received by Bearing Service Co. of Aust. Pty. Ltd. Melbourne from Mr. Harrison. This was sent from Los Angeles on the 10th December:—

'Canton Advise Dewar Agreed Yesterday Their Handling, Australia Direct He Cabled Pascoe This Effect Now Awaiting Confirmation Birmingham'

"As you can imagine this is some of the best news I have had in years. So far I have not received any advice from Birmingham about it. I feel that Birmingham will do their best to avoid this arrangement, although if Mr. Dewar has agreed to it, half the battle is won. I can think of quite a number of reasons as to why Mr. Dewar would agree, and no doubt I will hear this story from you in due course.

. . . . . .

"I do not know if you will be taking over this part of the business, and am of the opinion that it is quite possible that Birmingham will want to retain it. Should you be taking it over, it will of course be necessary for you to compete with prices ex Ford factories in Canada, and you will know what the position is with

them. You may prefer to retain the business in this way but as you can imagine, I am naturally anxious to have it direct."

86. The Australian government representatives called on defendant in February 1941 to build a plant in Australia. Wm. E. Umstattd (president of defendant) reported to his associates in a memorandum:

"Mr. Gutteridge, an engineer who has been sent to this country by the Australian Government to negotiate for the establishment of manufacturing plants in Australia, visited us at 3 P.M. with Mr. Chamberlain who is at present Technical Engineer with the British Minister of Munitions in Washington.

"Gutteridge and Chamberlain called on us to see if we would be interested in establishing a bearing plant in Australia to manufacture all types of anti-friction bearings. They said that the anti-friction bearing business in Australia has amounted to about $1,000,000 per year for the past several years, but within the past twelve months this figure has increased approximately 100%. Mr. Gutteridge said that the Australian Government was insisting that a plant be built in Australia and that adequate tariff protection would be given to such an industry.

"I explained to Gutteridge and Chamberlain that Australia was controlled by British Timken and that under no circumstances would we consider building a plant in Australia. I pointed out to them that it would be almost impossible to get delivery on any machine tools suitable for the manufacture of anti-friction bearings and that no bearing manufacturer in this country had excess machinery which could be shipped to Australia. Mr. Gutteridge wanted to know if we would be interested in establishing a plant in Australia if he could secure priorities for the necessary equipment. I told him that I did not think he could secure such priorities, but if he did we would not be interested as I had previously pointed out that

British Timken controlled the sale of Timken bearings in Australia."

87. The inquiry of the British Purchasing Commission was answered in the same vein by Umstattd:

> "Your letter of February 26th has been received.
>
> "When Messrs. Chamberlain and Gutheridge visited us about ten days ago we told them that under no circumstances would The Timken Roller Bearing Company establish a plant for the manufacture of bearings in Australia. We have a contract with British Timken Limited which precludes our establishment of a manufacturing plant in Australia. Such a plant would have to be built by British Timken Limited."

88. These communications demonstrate that the parties not only sought the preservation of their respective sales fields, but that they supported the agreements by the maintenance of price fixing arrangements. The protective discount policy insured the parties against competition from each other in replacement bearings. Defendant sold at a 70% discount for export in its own territory, but quoted prices representing a 50% discount from the American list on standard bearings in response to unsolicited inquiries from British Timken's territory.

89. Other steps were taken to prevent outsiders from disturbing the agreements as the particular situation required.

90. In January of 1928 D. E. Hobley, (sales manager of British Timken), wrote to Hess:

> "In Budapest, Hungary, Timken bearings are serviced by Mr. Michael Pal, and he has been doing remarkably good business for us during the last year. In the same city there is a house called Messrs. Denes & Friedmann, who are the representatives of the Timken-Detroit Axle Company through their British connection. As you know, we have established service prices for bearings identical with your own and operate with

the same discounts, but we are much alarmed to find that Messrs. Denes & Friedmann can sell Timken Axle sizes considerably cheaper than our own distributor.

• • •

"It seems to us that the Timken Detroit Axle Co. are taking advantage of their position inasmuch as they buy from you at low prices and ship them over to our territory on a small margin of profit and this does interfere with our service prices."

91. In February 1928 Hess replied to Hobley:

"We have finally concluded arrangements with Timken Detroit Axle Company with reference to the sale of our bearings through their distributors in Europe, and particularly in Budapest, Hungary.

"Mr. Emmett, of the Automotive Products Company, London is in touch with this situation, and I believe it would be wise for you to call upon him. He will receive instructions from Timken Detroit to the effect that he should not undersell us or you on service bearings."

92. They deviated from adherence to protective prices only in cases where competition of outsiders required that it be done.

93. In June, 1944 E. H. Austin (defendant's manager of Service Sales), wrote:

"Joe Cornell handed me your letter of June 2 which resulted in my discussing this with Mr. Klinedinst. I think before we definitely commit ourselves to quoting 70% on general sizes and 60% on Ford on the orders to which you refer, we better find out just exactly what is involved—bearing sizes, quantities, etc. Perhaps you could tell us a little bit more about Cymot, Ltd. for it is well that we are given what information is available on any of these companies that we give consideration to quoting our export prices in British Timken markets.

"You brought up an age old subject, namely, the policy that we should employ in quoting on inquiries emanating from British Timken territory. I pointed out to Mr. Klinedinst the weakness in our pricing policy in the British Timken market, emphasizing the fact that buyers for the B T market are becoming familiar with the fact that we are protecting British Timken and by so doing do not have a price that is anywhere near competitive to Bower. As a result, it now develops that we don't even get inquiries for a lot of reqnirements. They are automatically referred to our competitors. Naturally it cannot be expected that Bower will establish an export policy comparable to ours in territories that we cover and another pricing policy to be in line with us in British Timken territories."

94. In the joint territory of Russia, the pricing provisions spelled out in written contracts were carried out to the letter.

95. The contractual obligations for the interchange of information relating to the manufacture of bearings and of all inventions and discoveries, whether they were patented or not were construed by defendant, British and French Timken to be for their mutual benefit only, to the exclusion of all others. Accordingly any information pertaining to their manufacture was denied to outsiders unless consent was obtained from the party affected. In December, 1932 Hess wrote Dewar:

"Upon my return to this famous country I find a cable from Birmingham with reference to a statement made by Ford Dagenham that we have granted Ford America a license to manufacture Timken bearings according to our patents, and it puzzled me just a little bit because this is the situation I described to you when I explained that we had dropped the Bower suit and had given Ford such a license as they describe. We, however, explained to them that we could give them no such license for England or any European plant as

British Timken was our exclusive licensee and that anything in this regard which they desired would have to be discussed with you."

96. The inhibition imposed by the contracts on British and French Timken, not to manufacture or sell tapered roller bearings, except under the name "Timken" was observed and both companies throughout the years before and after 1928, to date, have become identified as producers of "Timken" bearings. The goodwill they built up and the competitive position they acquired in the allocated territories was under the name "Timken". The retention of the goodwill and place of dominance in their business field depended on the continued right to use the name. The severance of contractual relations meant the termination of their ability to profit by the many years of experience in manufacture and successful business dealings with their customers. In turn no competitor of British or French Timken was permitted to use the trade mark "Timken".

97. In addition to dividing the world into restricted manufacturing and marketing areas, maintaining price fixing arrangements, and interchange of discoveries, know how and inventions to the exclusion of others, defendant, British Timken and French Timken co-operated to shut out the competition of other dealers in tapered roller bearings.

98. The rigid territorial divisions were followed at all times except when adherence to such restrictions would result in the possibility of loss of business. They were made for the dual purpose of protection against each other and to eliminate the competition of other tapered bearing producers.

99. Dewar's testimony in this regard was:

"We had a common enemy in the Swedish S. K. F. who had begun the manufacture of tapered roller bearings, and our general policy was that if a tapered roller bearing was sold it had got to be a Timken and not a S. K. F. To us it was really immaterial whether it was made in the United States or whether it was made in

Great Britain or France, provided it carried the name 'Timken'. We used to sell at the request of the American Company in the Argentine and the American Company has sold at our request in our territories."

100. Hobley, (in charge of British Timken's sales) commented:

"The whole object of that arrangement was that if clients in our territory insisted on buying bearings from Timken we would let them do so. If there were clients in the Timken Company's territory who wished to buy from Great Britain we would supply them. A commission would be granted in either case. That was in order to combat competition; that was the whole basis of it."

101. Klinedinst wrote to Dewar on December 4, 1940:

"We are primarily interested, of course, in keeping Timken bearings to the front during this trying period and the further desire to help you in every way possible since we know how difficult it is to eradicate a competitor in foreign fields after he once gets a start."

102. W. R. Timken, during the trial, in answer to the question: "What is the procedure that you follow now on orders from British Timken territory?", replied:

"Well, I would say it varies, depending upon what territory it is and whether they can make delivery. Where they can make delivery they would naturally get the business. You see, during the war we felt there was a very great opportunity to improve the Timken position in Australia and the East Indies, due to the fact that we thought at that time the SKF of Sweden was completely cut off from export, and we were willing to try to under mine their position by any means we could, including selling bearings at a loss if necessary."

103. The sales of bearings by defendant, British Timken and French Timken, to each other were on a most favorable

basis to supplement the plan of strict compliance with the allocated areas and to protect themselves from competition by outsiders. In December, 1929, Hess, in a letter told Dewar:

> "With this situation confronting us we are going to be bothered by rather serious competition from S.K.F., and the thought has occurred to us that it may be possible for you to supply bearings for our industrial requirements in Canada. According to our records there is a 15% duty on English products as compared with our 30% and, if you can sell bearings at low enough base prices, there is no question but that we can hold—or I should rather say get—a big bulk of this industrial bearing business in Canada."

Dewar replied:

> "I should love to help you compete with S.K.F. in Canada. I heard quite casually the other day from a representative of the American motor industry, (who was in London and whom I met but whose firm I do not know) that for their assembly factory in Canada they have placed an order with S.K.F. for bearings which will be manufactured in Luton, as they were able to buy these *taper roller* bearings made by S.K.F. Luton more cheaply in Canada than they can buy yours.
>
> "I do want to take every possible step we can to keep S.K.F. out of the taper roller bearing business anywhere."

In August, 1939 the matter of SKF (a Swedish bearing manufacturer) competition continued to concern defendant and British Timken. Klinedinst wrote Dewar:

> "We are having our troubles with the SKF Company not only in this country but in Canada as well and in many foreign countries such as Japan, South America, and elsewhere due to their making price reductions very far below those that we have ever extended to anyone in their respective field.
>
> . . . . . .

"However, the thought that we have in mind is that we should make a study of the Canadian situation with the thought in mind that perhaps some arrangement might be set up whereby we could be appointed exclusive Canadian distributors for British Timken handling tapered rollers, balls, and straight rollers, not only for service requirements but for new installations as well in all of the various industries. There would be some advantages in this and perhaps many disadvantages. We can see, however, that industrial and service bearings shipped by SKF from Sweden into Canada take a duty of 17½% while they are free from England. This would give us that advantage.

"While this arrangement might not be feasible, it is certainly worth while thinking about, and it appears to us a good club to put over the SKF Company's head."

104. Defendant and British Timken made certain that the alloy steel made by defendant, especially adapted for the manufacture of bearings, was not made available for use by their competitors.

105. In a letter in September, 1934, Dewar told Hess:

"The position is one of considerable difficulty because I do not feel inclined to agree to give you carte blanche to sell tubing in our territory; it might conceivably react to our disadvantage if your tubing were sold to our competitors."

Hess in reply, stated defendant's policy:

"• • • please understand that under no circumstances would we sell our tubing to any one in the world who might as a result harm British Timken, French Timken or American Timken. We have not yet reached this necessity in merchandising our Steel and Tube product."

106. The collaboration of defendant, British Timken and French Timken to eliminate competition with each other and to eliminate the competition of other bearing producers

was augmented by agreements of British Timken and French Timken with their competitors abroad, to share customers and sales in certain markets and to stabilize prices. Hess referred to the association resulting from the agreement as a cartel in reporting on its success to H.H. Timken (the founder and at the time president of defendant Company).

107. Aside from the cartel arrangement, discussions were had concerning prices between defendant, British Timken and their foreign competitors.

108. In December, 1932, Dewar wrote J.D. Spray (director and vice president of defendant company):

> "I take it that you are trying to improve the price level in the Canadian market. Is it your suggestion that you and ourselves should try to arrive at a general arrangement with SKF regarding quotations to Ford in Canada and at Dagenham, or for other manufacturers in Canada as well as Ford? As I believe you are aware, we have not as yet had to reduce our f.o.r. prices for Canada as low as we have had our prices driven down for Ford Dagenham.
>
> "During Mr. Hess's visit, he told us of certain events on your side of the water. The result of this information has been that we are engaged at present in negotiating an arrangement with SKF to cover orders placed by Ford Dagenham. As the SKF position is at present, their English Company is only interested in Dagenham. Their Swedish Company is interested in the Canadian market and in all the other places where they assemble cars.
>
> "As you probably know, we have at present practically the whole of the Ford European business with the exception of a percentage in England and with the exception entirely of their German orders. Our proposed agreement for Dagenham will be on the basis of us having 70% and SKF having 30% of the work.
>
> "I would add, in addition, that we hope to come to an arrangement on Service work for all Bearings in England as part of the same arrangement."

109. Dewar also reported to Hess about a meeting in Paris at which British Timken, R.I.V. (a large Italian bearing manufacturer), and S.K.F. were represented. He said among other things:

> "After that I re-iterated that in my opinion—and it was an opinion only as I had no right in any sense whatever to speak for the T.R.B., Canton, and I had no knowledge of what was in their thought—I felt that the key to such very close cooperation, as joint manufacturing, lay between SKF, Gothenburg, and the T.R.B. in canton.
>
> "Mr. Batt then informed us that he had had some discussions of an informal nature with T.R.B. regarding the possibility of stabilizing prices in the Canadian market."

110. Although the cartels were formed without defendant's execution of the actual agreements, they were the result of the understandings and cooperation of defendant with British and French Timken to bring them about. Defendant's territory was affected. It was the beneficiary of their operations. Its officials were in consultation with the officers of British and French Timken concerning them, they prompted and approved the agreements.

111. In November of 1932 Hess wrote H. H. Timken:

> "One thing is very encouraging about the operation of the cartel. Between SKF and ourselves we have raised prices about 5% and come to a definite agreement as to service prices in France.
>
> • • • • • • •
>
> "Dewar and I have been discussing what to do in case they try to reduce our volume to the quota figure and after considering various plans, we have come to the conclusion to try and hold our present volume (about $400,000.00 sales annually) and in exchange for this higher quota, offer SKF one half of our steel tonnage in France. This seems like a good move and

will possibly be quite acceptable to SKF as their steel production in Sweden must be very low at this time."

112. The report of Hess in September, 1933, on his European trip, sheds considerable light on defendant's part in the cartel operation:

"During the current year, real progress has been made in cooperation with SKF to not only stabilize sales prices but to raise them generally, and contracts for the last half, do in many cases, call for a 5% increase in prices. The need for this is vital when we consider the fact that automotive and commercial vehicle sales prices have declined about 30% since 1929. This is due almost entirely to SKF competition but our present relations with them in England are quite cordial and we feel that for the next year we face no further price cuts. This relationship with SKF started with our offering to split the Ford business on a 70-30 basis during my visit last fall, but it is interesting to know that we continue to receive 90% of Ford business, due in all probability to the fact that we are considered 100% British, and of even more importance, we give Ford excellent service and have assigned one man to spend practically all of his time at Dagenham.

* * * * * * *

"Both Mr. Dewar and Mr. Pascoe are watching the R.I.V. (Italian) situation very carefully and Mr. Dewar is keeping in constant friendly contact with Angellis, head of R.I.V. Our latest information is that the R.I.V. plant is very slack due to the let-down in Russian orders, and our British associates feel that they will use every means to sell this output at low prices, all over the world. This, of course, might affect us materially in South America and Canada where we have maintained good service prices, but it is the writer's opinion we shall have no great difficulty in the U.S.A. as long as the present tariff is maintained and with the depreciated dollar.

"As is generally known, we are members of the French anti-friction bearing cartel. This cartel was started in July 1932 and expires at the end of this year."

113. The cartel agreement between SKF and French Timken provided for a division of all of the French bearing business on a percentage basis, French Timken only participating in the tapered roller bearing market; SKF, in both ball and tapered markets.

114. As stated in the agreement, "In order to arrive at the allocation of the market as provided in as precise a manner as possible, an intimate commercial collaboration will be established between the two contracting parties, which will have to determine by agreement the tariff prices and discounts for the retail market, the prices and delivery dates quoted for all large orders or important customers." The parties agree to contact each other "at least every month" and to push the standardization of bearing sizes.

115. The cartel agreement between SKF and British Timken was not only an arrangement on prices of bearings and the percentage of the total bearings each was permitted to sell, but the parties agreed not to sell replacements of the other's bearings. The division of business as to specific customers was set up on a quota basis. When one of the parties exceeded its quota on a certain customer that party was required to raise its prices until there was compliance with the agreement.

116. The lengthy recital of letters, reports and memoranda paints such a clear picture of the conduct of the accused companies over the period of years that the Court feels it serves the necessary purpose of pointing out the patent reasons for resolving the factual issues which are involved. It leaves no room for dispute or contradiction on the salient facts.

117. The evidence conclusively establishes to the satisfaction of the Court the assertions of the Government: that defendant, British Timken and French Timken have manu-

factured and sold during the period from 1928 to date a substantial portion of the world's production of anti-friction bearings and that they have imposed restraints on foreign commerce; by (1) allocating trade territories throughout the entire world each agreeing with limited exceptions not to manufacture or sell in the other's territory; by (2) fixing of prices on products sold by any party in the territory of the other party; by (3) mutual cooperation and assistance to protect each other's markets and to eliminate the competition of outsiders and by (4) participation in foreign cartels which restrict exports by United States producers.

118. The contentions that defendant stifled or eliminated competition and restrained trade, by exclusively exchanging present and future know-how and inventions, patented or unpatented, and by compulsory use of the trade mark "Timken" by British and French Timken, by prohibition against their dealing in products under any other name, and by requiring that they cease using that name upon the termination of the agreements, will be discussed later in this opinion.

119. The analysis of the evidence is susceptible of but one conclusion. It discloses an extensive and far reaching combination to smother all competition between defendant, British and French Timken and to stifle or suppress competition of other manufacturers by joint effort against them or by agreement with them.

120. It is readily seen that the present relationship of the parties in not only the culmination of the successive agreements beginning in 1928. The combination is, as well, the outgrowth of the principal agreements in 1909, when world markets were divided and competition was eliminated. Those contracts were not merely patent licenses for the manufacture of tapered roller bearings in limited areas, but they encompassed fields beyond the ambit of the existing patent rights. U. S. v. U. S. Gypsum Co., 333 U. S. 364, U. S. v. National Lead Co., 63 Fed. Sup. 513, 523, aff'd 332 U. S. 319, Morton Salt Co. v. G. S. Suppiger Co., 314 U. S. 488, Ethyl Gasoline Corp. v. U. S. 309

U. S. 456. The territorial restrictions applied to markets where defendant had no patent rights. Interstate Circuit, Inc. v. U. S., 306 U. S. 208, 228. They included future development and inventions in the industry. U. S. v. National Lead Co., supra, Ethyl Gasoline Corp. v. U. S., supra, Pope Manufacturing Co. v. Gormully, 144 U. S. 224.

121. After the expiration of the principal patents, the restrictions imposed continued. Without the benefit of the limited monopoly power of the patents the agreements followed the same pattern. They no longer revolved around the patents, but were without pretense contracts for the avowed purpose of suppressing competition. Duncan (Timken's London counsel) pointedly said in November 1927:

> "As we understand the position, the main advantage derived by the English Company under the Agreement will be the advice and information to be received from you, the right to use the name "Timken" and the absence of your competition. Do you not think that it would be better to accentuate these advantages in the Agreement, rather than leave them merely as incidents in a patent license?"

122. When in 1928 the American, British and French companies agreed to continue their activities, British Timken had grown from infancy in the bearing industry to a position of dominance and was a potential competitor with whom defendant had to reckon.

123. The relationship effected and maintained was not that which prevails between a manufacturer and its exclusive foreign agents for the distribution of its product. Each company was a manufacturer and distributor, independent of the others, but joined for the sole and only purpose of mutual benefits. It is not even contended that defendant, British Timken and French Timken ever competed.

124. The inflexible territorial limitations imposed by the parties on each other, which they violated only to prevent

others from encroaching on the protected markets, were designed for the purpose of preventing competition and were reinforced by price agreements. The word "Timken" had become synonymous with tapered roller bearings. To lend support to the desire to eliminate the competition of other producers, defendant supplied British and French Timken, and them alone, with know-how in the production of bearings. It insisted that bearings produced and sold by them be identified by the name "Timken".

125. The cartel agreements in France, England and Italy were made by British Timken and French Timken with the knowledge, approval and cooperation of defendant to effectuate the plan of excluding competition of others in the territories of defendant, British and French Timken.

126. The extent to which they were successful in impeding competition is of no moment. It is sufficient that that was the end sought to be accomplished. Associated Press v. U. S., 326 U. S. 1, 12, U. S. v. Socony-Vacuum Oil Co., Inc., 310 U. S. 150. The French Anti-Friction cartel, the English SKF-British Timken cartel and the agreements with Bock and R.I.V. fortified defendant in the overall plan of suppressing competition in the sale of tapered bearings.

127. It is an imperative of the Sherman Act that all combinations in restraint of international trade and all agreements to restrict competition be condemned. U. S. v. National Lead Co., supra, U. S. v. Addyston Pipe & Steel Co., 85 Fed. 271, 291, U. S. v. Aluminum Co. of America, 148 Fed. (2d).

The very aim of all the antitrust laws is to ban conduct and practices which destroy free and unhampered competition. That postulate has been repeatedly announced by the courts even before the legislative enactment. Within the last decades the decisions reiterating it have covered thousands of printed pages. They have been regarded as inimical to economic freedom. The Government refers to the instant combination as an international cartel, which appellation is assailed by defendant. That name applied to the combination has no significance, other than to label

it as a pool of "separate firms to maintain prices above a competitive figure". (Webster's New International Dictionary). It is merely descriptive of the combined relationship between defendant, British Timken and French Timken. If the term connotes vice or illegality it is clearly applicable.

128. The strict allocation of markets to the members of a combination of competitors in the various parts of the world and the eradication of competition among them violates the Sherman Act. U. S. v. American Tobacco Co., 221 U. S. 106, U. S. v. National Lead Co., supra.

129. The contracts by which it was agreed that in a particular area anti-friction bearings might be sold by only one of the members of the combination, necessarily were intended to and had the effect of eliminating competition. The Supreme Court repeatedly recognized the inherent danger of such agreements to our system of free enterprise, and held that agreements or arrangements for dividing markets were illegal under the Sherman Act. U. S. v. American Tobacco Co., supra, U. S. v. Addyston Pipe & Steel Co., supra, U. S. v. National Lead Co., supra.

130. The fact that defendant, British and French Timken were manufacturing and selling only tapered bearings does not immunize the combination against the operation of the antitrust laws. It is true that there is competition between tapered and other types of anti-friction bearings to the limited extent pointed out earlier. The prohibitions of the Sherman Act, however, are equally applicable to combinations in restraint of trade when only part of the commerce is stifled. As was said in Eastman Kodak v. Federal Trade Commission, 158 Fed. (2d) 592, 594, cert. denied 330 U. S. 828:

> "Hence it will not do to say that all film is in the same class. If a purchaser wants a color film he must be able to buy it from more than one manufacturer if there is to be 'free and open competition with commodities of the same general class'; that he can buy a black and white film will not serve to destroy the monopoly of the sole producer of color film."

and in U. S. v. Yellow Cab Co., 332 U. S. 218, 225:

> "Hence it is enough if some appreciable part of interstate commerce is the subject of a monopoly, a restraint or a conspiracy."

and again in U. S. v. Socony-Vacuum Oil Co., 310 U. S. 150, 225 (footnote 59): "And the amount of interstate or foreign trade involved is not material (Montague & Co. v. Lowry, 193 U. S. 38) since § 1 of the Act brands as illegal the character of the restraint not the amount of commerce affected."

131. The benefits of a competitive price system under the Sherman Act would be lost to the vast number of manufacturers whose machinery and equipment are geared to use only tapered bearings, if the operation of the Act were to be construed otherwise.

132. The practice of selling only at prices agreeable to the party into whose territory the sales were made and the provisions of the contracts for agreed prices on replacement parts and the other price fixing arrangements of defendant, British and French Timken must be condemned as violations of the Sherman Act. U. S. v. Masonite Corp., 316 U. S. 265.

In U. S. v. Socony-Vacuum, supra, the Supreme Court said:

> "Thus for over forty years this Court has consistently and without deviation adhered to the principle that price-fixing agreements are unlawful per se under the Sherman Act and that no showing of so-called competitive abuses or evils which those agreements were designed to eliminate or alleviate may be interposed as a defense.
>
> . . . . . .
>
> "Whatever economic justification particular price-fixing agreements may be thought to have, the law does not permit an inquiry into their reasonableness. They are all banned because of their actual or potential threat

to the central nervous system of the economy." (Footnote 59).

In U. S. v. Line Material Co., 333 U. S. 287, it was said:

> "Price fixing in any form is perhaps the most powerful of all inducements for abandonment of competition. It offers security and stability; it eliminates much of the uncertainty of competitive practices; it promises high profits."

and again in U. S. v. Paramount Pictures, Inc., 334 U. S. 131, 143:

> "We start, of course, from the premise that so far as the Sherman Act is concerned, a price-fixing combination is illegal per se. United States v. Socony-Vacuum Oil Co., 310 U. S. 150; United States v. Masonite Corporation, supra. We recently held in United States v. Gypsum Co., 333 U. S. 364, 400, that even patentees could not regiment an entire industry by licenses containing price-fixing agreements."

133. Both the territorial sales limitations and price fixing constitute a menace to international trade in tapered bearings.

134. No less harmful and injurious to the unrestricted flow of commerce in tapered bearings was and continues to be the association of defendant, British and French Timken for the purpose of protecting each other's markets and the exclusion of outsiders from the tapered bearing market. Such conduct is denounced by the antitrust laws. Associated Press v. U. S., supra; Montague & Co. v. Lowry, supra; Standard Sanitary Mfg. Co. v. U. S., 226 U. S. 20; U. S. v. Trenton Potteries Co., 273 U. S. 392.

135. The participation in the foreign cartels by defendant completed the circle within which the combination operated to forestall competition. The circumstances outlined above under which defendant took part in the operation of the cartels leave no room for escape for defendant

from the prohibitions of the Sherman Act. The ban on restraints of imports and exports has been consistently enforced by the courts. United States v. General Dyestuff Corp., 57 Fed. Sup. 642; United States v. Nord Deutscher Lloyd, 223 U. S. 512. What was so well said in United States v. National Lead Co., supra, 524, is equally pertinent when applied to the facts in this case:

> "The several agreements relating to manufacture and trade within the European markets are but some of the links in the chain which was designed to enthrall the entire commerce * * *."

136. Nor does the fact that the cartel agreements were made on foreign soil relieve defendant from responsibility. U. S. v. Nord Deutscher Lloyd, supra. They had a direct and influencing effect on trade in tapered bearings between the United States and foreign countries.

137. There is no charge made in the complaint that the parties engaged in the practice of exclusively exchanging present and future know-how and inventions, patented or unpatented. Evidence seeking to establish such claim was offered at the trial. Although it does not convincingly appear that either the exclusive exchange of know-how or the enforcement of the trade mark restrictions alone served as direct instruments to eliminate competition, they have been most helpful in buttressing other illegal conduct to achieve the desired result. They were integral parts of the general scheme to suppress trade.

138. Are the contentions urged by the defendant sufficient to overcome such manifest violations of the Sherman Act?

139. The first contention of defendant is that even if the agreements between the three Timken companies for division of territory, and any incidental arrangements as to price contained therein were made, any restraint resulting therefrom to constitute a violation of the Act, must be found to be unreasonable. Defendant's position is that it undertook to extend its activities by the purchase of British

Timken and the formation of French Timken with Dewar. It protests that it was not done for the purpose of eliminating competition and that it did not have that effect, that there has been no intent to unduly restrain trade but that it was done for good business reasons. Defendant says the division of markets between the companies was reasonably ancillary to the acquisition of British Timken and the formation of French Timken.

140. In advancing the argument that only such contracts or combinations are within the condemnation of the Act as prejudice the public interest by unduly restricting competition or obstructing trade, defendant concedes that:

141. "It would appear, superficially, that contractual provisions like those involved in the case at bar that American Timken will not sell bearings in the territories of British and French Timken, respectively, and vice versa, tend to prevent competition between the parties."

142. The contention made invites a discussion of the rule of reason doctrine applied by the courts to the Sherman Act. A vast body of decisions may be found dealing with the doctrine. For the present purpose, it will suffice to say, that it is now firmly established that the statutory provision, "Every contract, combination * * * in restraint of trade * * * is hereby declared to be illegal * * *" means that all unreasonable restraints of trade offend the Act. Standard Oil Co. v. U. S., 221 U. S. 1; U. S. v. Columbia Steel Co., supra. It is equally well recognized that the determination of what constitutes unreasonable restraint is the province of the courts. Judicial construction of the law has declared certain restraints unreasonable. With but rare exceptions, since the decisions in the Standard Oil case and the American Tobacco case in 1911, activities which theretofore were stricken down as illegal restraints have been regarded since as unreasonable per se.

143. In view of the settled law and the facts, defendant's contention that the restraints were reasonable must be rejected as untenable. The restraints on commerce, here

proved by abundant evidence. have been denounced as unreasonable per se.

144. Defendant seeks to draw a parallel between the instant facts and those in the Columbia Steel case, supra. By contradistinction from the facts in that case defendant, British Timken and French Timken are separate corporations who in their respective territories, both before and after their agreements, were potential competitors in the tapered bearing market. They were the largest dealers in tapered bearings in their respective territories. They occupied dominant positions in the entire anti-friction bearing industry. Defendant did not acquire British and French Timken.

145. The defense that the combination was formed without intent to restrain trade, for good business reasons, was denied validity in numerous cases. If good business reasons and expressions of good intent would serve as justifications for restraining trade and stifling competition the Sherman Act would render no aid to the free flow of commerce. The Act aims to bulwark the national economy and insists that individual interests give way to the benefit of all. Standard Sanitary Mfg. Co. U. S., supra, 49; Addyston Pipe & Steel Co. v. U. S. supra; Eastern States Retail Lumber Dealers' Association v. U. S., 234 U. S. 600.

146. There is nothing in the evidence to indicate a lack of intent to restrain trade. Indeed, all that the evidence discloses is an intent to form a smoothly operating combination to control commerce in the tapered bearing industry throughout the entire world.

147. In the face of the numerous agreements and the clear expressions of defendant's officers in the volumes of letters and memoranda offered in evidence, it is difficult to understand how anyone can disclaim a clear intent to restrict competition.

148. It is likewise difficult to place credence in the assertion that there was no intent to restrain trade when one

reads the following comments of defendant's president, pertaining to domestic trade:*

> "Louie Klinedinst and I were in New York last week and had a long talk with Fred Hughes and Lester Sigourney of New Departure and arrived at a mutually satisfactory selling price for flanged type bearings both ball and tapered roller. We held the price on these bearings at a point where a nice profit will be made for both companies, and I feel that we did a pretty good job as New Departure might have been out of line if we had not told them our prices, and in that event we should have had to cut our prices."

and

> "All three of the principals involved agreed that the patent was not valid and that if any license was taken out it would be merely a move for legalizing the fixing of prices so that we would not be threatened by either the Clayton or Sherman laws."

149. It is next urged by defendant that any restraints imposed by the agreements were ancillary to the creation of a close relation between it and Dowar, analogous to a partnership or joint venture. It is suggested that the purpose was to expand its bearing business in European markets, and necessarily involved the investment of large sums in the acquisition and development of British and French Timken and hence not in violation of law. In this connection defendant assumes that since the parties could lawfully agree to be excluded from each other's territories, they could lawfully agree also that any incursions into each other's territories should be made only at prices agreeable to the party in whose territory the sale was made. It says that such a provision was reasonably ancillary to prevent competition by defendant with the corporations through which the common undertaking was conducted.

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* Letter dated April 5, 1933; Umstattd to H. H. Timken.

150. Both the assumption made and the conclusion reached are wholly erroneous. The common undertaking was a joint venture only in the sense that they jointly undertook to continue the manufacture and distribution of bearings with all the limitations and restrictions which had theretofore been imposed. The joint venture was not ancillary to the agreement. Regardless of the descriptive term used to denote the affiliation, it did not constitute a legal basis for the avoidance of the consequences of the conduct which eliminated competition.

151. Throughout the trial great emphasis was placed on this phase of the defense. The record abounds with repetition of "joint venture", "partnership", "partnership in the laymen's sense". All of the defendant's officers and employees took great pains to make reference time and again to "our joint venture" and to "our partners".

152. It will be recalled that the relationship of defendant, British Timken and French Timken in respect of the manufacture and sale of bearings did not originate with the agreement between defendant and Dewar. Ever since 1909 defendant had maintained the territorial market restrictions with the predecessors of British Timken, and in France with the predecessor of French Timken.

153. The agreements made in 1928 and the activities restricting commerce, were antedated by other agreements and activities of similar nature. Licensing of patents first served as the basis for the restrictions, but they were continued despite the expiration of the patents. Although the question, whether the early agreements founded on patent ownership transgressed the law may not be in issue in this case, the fact that in their essence they set the pattern for the restraints, is of great and fundamental importance. The only substantial change in the relationship of the parties resulting from the Dewar-defendant contract was that defendant acquired a stock ownership in British Timken and French Timken. The execution of the 1928 contracts did not mark the beginning of new business contacts. They merely extended the restrictive arrangements which

had existed for almost twenty years between potential competitors.

154. The only conclusion which may properly be drawn is, that the restraints were not ancillary to the "joint venture". To the contrary, the arrangements were made to carry on effectively the combination; to eliminate competition between the parties and to frustrate any competition of outsiders.

155. The underlying motive of Dewar for making the agreement which was recognized by defendant was Dewar's desire to escape defendant's competition and to continue the existing contracts.

156. Both British Timken and French Timken were managed and operated by Dewar. Except for such powers possessed by virtue of its stock ownership and the contracts, defendant had no control over the business conduct of either. While it is true that officers and employees of defendant visited the plants of the two foreign companies from time to time to give advice in respect of the improved production and it is also true that technological information was supplied by defendant, all such assistance was in support of the combination to eliminate competition among the parties and with others.

157. British Timken and French Timken retained their corporate independence and jealously guarded their interests in dealings with defendant. A few years after the Dewar-defendant contract was made, Dewar asserted the "very separate and distinct entities of the various Companies concerned" and Hess abandoned, even in name, the partnership fiction when he wrote in October of 1934:

> "* * * some of the things we formerly did willingly and freely, without any recompense, as affecting only our partner Michael Dewar, and ourselves, now becomes a matter of these same things being done for another company in which we hold a 25% interest only. Thus, as you will see from my various future letters, we feel it is quite desirable to definitely set up in our new agreements several points beyond question of a

doubt that in the past would only be the occasion of a simple letter from either of us to each other, thus settling any divergence of opinion in almost every instance."

158. In 1948 Dewar, when his depositions were taken in London, proclaimed: "'Me' is British Timken."

159. It is quite obvious from these expressions of the officers of the respective companies that even if the stock investment of defendant and the co-operation between them indicated a pre-existent fiction of a "joint venture" or partnership in their own judgment, by 1934 neither believed that such relationship existed.

160. The facts are that defendant did not build plants in Europe or purchase subsidiaries abroad. It simply acquired substantial interests in a dominant manufacturer of bearings in England, participated in the formation of and invested in the stock of a potential competitor in France. The repeated assertion that it was in a joint venture or was a member of a partnership does not make it so.

161. Even if we were to assume, arguendo, that there was a "joint venture" between the parties and that an Ohio corporation could become partner in a business undertaking with a citizen of England or an English corporation (10 Ohio Jurisprudence § 632, § 857, Ohio v. Standard Oil Co., 49 O.S. 137), no immunity is afforded to defendant from the violations of the Sherman Act.

162. The argument is predicated on the oft quoted opinion of Judge Taft, later Chief Justice Taft, in Addyston Pipe and Steel Co., supra, in which restraints of trade resulting from a legal partnership agreement were held not to run afoul of the law. That decision does not uphold the type of conduct which is here attacked.

163. If a joint venture or partnership is formed for the purpose of a lawful business enterprise and restraints result from the right to protect established business interests no violation of law occurs. But if the association is formed for the purpose of continuing a combination to allocate

exclusive sales territories in the world, to fix prices and to eliminate competition both within and without the combination, it cannot hide from the effects of the law under the cloak of a joint venture or partnership. Were it otherwise, an easy way could be found to circumvent the law by entering into agreements purportedly to protect a joint venture or partnership.

164. Defendant also asserts that any restraints imposed by the contracts were ancillary to its agreements to furnish know-how to British Timken and other Timken companies. It says that the covenants by which it agreed not to compete in the territory in which British and French Timken were to use this know-how and by which each of them in turn, agreed not to compete in defendant's territory were reasonably ancillary to the sale of the know-how under the contracts. It concludes that the law permits the restriction not to compete in each other's territory as a recompense for its contribution to the foreign companies of advice and instruction in the manufacture of bearings and the quality of steel used and information with respect to inventions, discoveries and practices whether patented or not.

165. In taking this position it principally relies on the Addyston Pipe case, supra. It is pointed out that the agreements "by the seller of property or business not to compete with the buyer in such a way as to derogate from the value of the property or business sold" and "by the buyer of property not to use the same in competition with the business retained by the seller" were held in that case to be ancillary restraints not in violation of the Sherman Act.

166. Defendant goes so far as to argue "that, due to the more restrictive nature of a patentee's monopoly, he is more restricted in the conditions which he may impose, than is the seller of unpatented property such as know-how, which is available to any member of the public who can discover it" and "that the legal principle which supports a patentee's agreement not to sell in the licensed territory is just as applicable to one who licenses or transfers know-how".

167. The precise legal basis for the argument so advanced is not disclosed. Analogy is drawn between Fowle v. Park, 131 U. S. 88 and Dr. Miles Medical Company v. Park & Sons Company, 220 U. S. 373 and the instant case.

168. It must be noted at the outset of the discussion of the problem, that the know-how furnished by defendant to the other companies was not a secret process for the manufacture of tapered roller bearings. Other manufacturers were admitted to the plants of British and French Timken, where they could observe all the know-how put into operation. In the extensive record of the testimony dealing with the assistance given by the officials and technical staff, there is no trace of any secret process which was imparted by them. No contention was made at any time that such was the case. The know-how consisted of designs, data showing how defendant manufactured its product, the advice of defendant's employees and help of like nature.

169. Reference is made to a patentee's right to impose restrictions in respect of the patented products.

170. The patent monopoly is so circumscribed as not to be an instrument in restraint of trade to a greater extent than is consistent with the privileges granted. The proposition of law has been firmly established that the patent does not empower its owner to restrain trade in processes or devices which are not embraced within the scope of his patent. U. S. v. Line Material Co., supra; Standard Sanitary Co. v. U. S., supra; U. S. v. U. S. Gypsum, supra. The law has too jealously guarded the benefits derived from a free flow of commerce to permit even the reward for the development of the useful arts and sciences to be greater than essential to encourage inventions.

171. The limitations imposed by the judicial opinions on the use of patents to restrain trade are too well-known to justify a lengthy discussion of them. Those opinions only serve as guide posts to resolve the question here presented.

172. In order to sustain the argument of defendant, this Court is asked to find that one who transmits his skill in

the manufacture of a product to another is entitled to a greater reward than one who is instrumental in the advancement of science by his inventive genius. Such finding would be obviously wrong.

173. In Ethyl Gasoline Corp. v. U. S., supra, 456, the court said:

> "He may not, by virtue of his patent, condition his license so as to tie to the use of the patented device or process the use of other devices, processes or materials which lie outside of the monopoly of the patent licensed."

174. During the existence of the tapered bearing patents defendant could not legally allocate markets on processes which were not within the ambit of its patent monopoly. Therefore, it defies all sense of logic to say that upon the expiration of the patents defendant could lawfully engage in like conduct and practices upon the theory of supplying know-how on unpatented processes.

175. One who possesses greater knowledge or superior skill in the manufacture of a product is entitled to be fairly and adequately compensated if he furnishes his knowledge or skill to others. He is not entitled, however, to exact as a price for such contribution, complete freedom from competition. The quid pro quo for furnishing of know-how cannot be an absolute license to avoid the provisions of the Sherman Act. The harm caused thereby would be too great a tribute to knowledge and skill when viewed in the light of public policy.

176. It would seem that after the lapse of years since the passage of the Sherman Act, every type of economic venture has been under the scrutiny of judicial eyes to determine whether it clashes with the mandate of the Act. The ingenuity of business enterprise, however, makes it inevitable that new practices be examined as they arise. So in this instance a phase of business conduct must be weighed in the light of the general principles of the antitrust laws without the benefit of specific decisions for guidance.

177. We are, here, confronted with a situation, wherein a patentee upon the expiration of its patent monopoly, seeks to justify the perpetuation of the favored position it enjoyed by virtue of the patent through the ingenious theory of furnishing know-how. If lawful restraints and monopolies could be predicated on the ownership of know-how they could last ad infinitum. This Court cannot subscribe to such unharnessed privilege.

178. The contracts to divide the world into exclusive marketing areas cannot be defended as ancillary to the transfer of know-how by defendant.

179. The next contention advanced by defendant is, that if any restraints were imposed by the Business Agreements, they were ancillary to the licensing of the trade mark "Timken" to British and French Timken and therefore were not contrary to law.

180. Neither factual nor legal justification may be found to give merit to the contention.

181. Defendant maintains that the objectives which it desired in 1928 to achieve in respect of the mark were:

> "(1) The affirmation of its equitable ownership of the mark in England and in various portions of the British Empire.
>
> (2) The disposition of the French and German trade-mark problems to the end that it would ultimately become the owner of the trade-mark registrations in those countries.
>
> (3) The removal of any possibility of challenge to it of its registrations in certain European countries wherein, as has been shown, they could be questioned on the basis of prior use.
>
> (4) The establishment of a reversionary right in it in the mark on termination of the contract with the British and French Companies."

182. It is readily discernible from the recital of these objectives that defendant had serious doubt of its owner-

ship of the mark in 1928 in the various territories assigned to British and French Timken. In fact in some markets British Timken's predecessor was the owner of the mark. In France S. M. G. had registered it. In Germany one Prausnitzer was the sole owner of the trade mark "Timken". It is apparent from the testimony that defendant could not use the mark in a great portion of the world.

183. At that time defendant was primarily concerned, therefore, not in safeguarding the trade mark rights which it then possessed, but rather in acquiring the rights obtained by other manufacturers, as a consequence of the early patent license agreements, in areas where defendant had agreed not to manufacture and sell. Its own covenants not to make or sell bearings in territories allotted to others brought about the situation that the trade mark "Timken" was registered and owned by others.

184. Defendant's assertion that it was the sole equitable owner of the mark is unimpressive. The agreements attempted to remedy its dubious trade mark rights.

185. Its own counsel in England, forcibly brought the matter to defendant's attention in a letter on April 2, 1927 as follows:

> "We are glad to note that you are endeavoring to obtain a controlling interest in British Timken. This is in line with our own suggestions and will put you in control of the trade-mark 'Timken' all over the world, whereas, under existing conditions, there is a danger that, if your present license agreement with British Timken should be terminated, you might not be able to prevent others from establishing a right to use the word 'Timken' in certain countries from which you are excluded by the agreement from doing business."

186. Despite counsel's optimism concerning world control of the mark, great difficulty was encountered in effecting trade territories, specifically recited in them as follows:

187. It is true that from the inception of the business dealings with foreign producers and distributors, defendant

scrupulously guarded its right in the trade name. Every agreement contained a provision that on all bearings sold, the name "Timken" be affixed. It is also true that the officials of defendant impressed company counsel with the importance of the preservation of the trade mark. But the trade mark provisions of the challenged contracts were subsidiary and secondary to the central purpose of allocating trade territories, specifically recited in them as follows:

> "The Companies parties hereto for their mutual advantage and convenience in working have agreed to make arrangements for an interchange between them of information and facilities and in connection therewith to define their respective territories and for other purposes in manner hereinafter appearing."

188. The evidence conclusively proves that defendant entered into the agreements not for the purpose of exercising its right to protect the trade mark "Timken" from its unlawful use by British and French Timken nor to protect the public from British or French Timken passing off their products as those of defendant, but for the purpose of preventing competition in the sale of bearings. Through the years 1909-1924, defendant enjoyed freedom from competition, because of its patent monopoly. It now attempts to defend the extension of this right on the basis of granting British and French Timken the use of its trade mark.

189. Assuming that the restraints were reasonably ancillary to protect the trade mark and that the law sanctions such ancillary restraints, defendant's contention nevertheless is founded on the tenuous premise that it was the equitable owner of the mark outside of the marketing territory allocated to it.

190. Defendant did not and could not have a right to license a trade mark in markets where it did not own the mark.

191. Defendant maintains that the trade mark is its property; that the ownership of any property is in a limited sense monopolistic; that in the exercise of such a limited

monopoly power, defendant has the right to exact as a consideration for the use of its property, an agreement with others not to compete.

192. The conflict between the Sherman Act and the limited patent monopoly has been the subject matter of innumerable litigated cases. The courts have attempted to harmonize the opposing basic policies inherent in their respective economic concepts. They tried to fit the antitrust laws within the frame work of the Constitutional grant of a patent monopoly. Whether within the provisions of the Sherman Act commerce may be restrained to the extent that it is reasonably ancillary to protect a trade mark has not been decided or discussed by the courts.

193. Trade marks in our economic system provide the method by which one seller may be enabled to distinguish his goods from those of another. Fundamentally the basic function of the law pertaining to trade marks is to safeguard the good will of one manufacturer or distributor against the sale of another's merchandise as his. Canal Co. v. Clark, 80 U. S. 311, Hanover Star Milling Co. v. Metcalf, 240 U. S. 403. The right to protect it is bestowed by the law not only to reward business enterprise and prevent piracy on successful and established ventures, but at the same time to prevent deception of the public into believing that they are purchasing one product instead of another.

194. The trade mark right as all other rights is not without bounds. The owners rights are canalized within the exercise of the trade mark's accepted and defined functions. The law is replete with decisions which set out their functions and limitations.*

195. Some of them are lucidly delineated in United Drug Co. v. Theodore Rectanus Co., 248 U. S. 90, 97, 98 as follows:

> "The asserted doctrine is based upon the fundamental error of supposing that a trade-mark right is a

* Whatever extension of trade mark rights is encompassed in the Lanham Act (Title — U.S.C.A. sec. 1051 *et seq.*), its enactment did not open the door to employ a trade mark as an instrument to undermine the antitrust laws. This is borne out with transparent clarity by its legislative history.

right in gross or at large, like a statutory copyright or a patent for an invention, to either of which, in truth, it has little or no analogy. Canal Co. v. Clark, 13 Wall. 311, 322; McLean v. Fleming, 96 U. S. 245, 254. There is no such thing as property in a trade-mark except as a right appurtenant to an established business or trade in connection with which the mark is employed. The law of trade-marks is but a part of the broader law of unfair competition; the right to a particular mark grows out of its use, not its mere adoption; its function is simply to designate the goods as the product of a particular trader and to protect his good will against the sale of another's product as his; and it is not the subject of property except in connection with an existing business. Hanover Milling Co. v. Metcalf, 240 U. S. 403, 412-414.

"The owner of a trade-mark may not, like the proprietor of a patented invention, make a negative and merely prohibitive use of it as a monopoly. See United States v. Bell Telephone Co., 167 U. S. 224, 250; Bement v. National Harrow Co., 186 U. S. 70, 90; Paper Bag Patent Case, 210 U. S. 405, 424.

"In truth, a trade-mark confers no monopoly whatever in a proper sense, but is merely a convenient means for facilitating the protection of one's good-will in trade by placing a distinguishing mark or symbol—a commercial signature—upon the merchandise or the package in which it is sold."

196. In order to resolve the instant question all that need be said is that the trade mark right is not comparable to the right the owner has in a chattel or realty; it is not a right in gross or at large; it is not such a right as is awarded to an inventor in the product of his invention. U. S. v. Masonite Corp., 316 U. S. 265.

197. Even the patent monopoly is not broad enough to encompass the power to engage in conduct and practices to eliminate competition such as were employed by defendant, British and French Timken. U. S. v. National Lead, supra; U. S. v. Line Material Co., supra; Hartford-Empire

v. U. S., 323 U. S. 386, 433; Mercoid v. Mid-Continent Co., 320 U. S. 661, 665; Standard Sanitary Co. v. U. S., supra; U. S. v. Gypsum, supra; Ethyl Gas v. U. S., supra; U. S. Masonite Corp., supra; Federal Trade Commission v. Beech-Nut Co., 257 U. S. 441; Interstate Circuit v. U. S., supra; U. S. Paramount Pictures, 334 U. S. 131, 143 (see note 12).

198. A trade mark is not the product of invention. The privileges which are accorded to the owner of a patent are predicated upon invention and are safeguarded to carry out the Constitutional intent to promote the progress of science and the useful arts. If a trade mark were to be given the power of monopoly, it would not be limited in time as in the case of a patent. The public would not benefit from an invention and there would not be the ultimate gain which flows from the disclosure of a patent. That is the foundation for the patent monopoly.

199. A trade mark brands a product as to its origin. The law empowers the owner or the originator of a mark to protect his wares against the imitator who seeks to palm off merchandise as his by the use of the same mark. He is given the right to enjoin such practices. The public interest is served by that protection which in the exercise of all rights is paramount. Deception is prevented.

200. The trade mark may become a detrimental weapon if it is used to serve a harmful or injurious purpose. If it becomes a tool to circumvent free enterprise and unbridled competition, public policy dictates that the rights enjoyed by its ownership be kept within their proper bounds. If a trade mark may be the legal basis for allocating world markets, fixing of prices, restricting competition, the unfailing device has been found to destroy every vestige of inhibition set up by the Sherman Act. The rights pertaining to trade marks and trade names were well known long before that legislative enactment was passed by Congress. It is certain that it was never intended that the consequences of violations of the antitrust laws may be escaped by the licensing of trade marks.

201. Defendant vigorously asserts its position, that since exports and imports of anti-friction bearings from and into the United States in foreign commerce over the years have been relatively insignificant, an injunction to prevent the alleged restraints would be a vain and needless gesture on the part of the Court. The basic purpose of the Sherman Act, it says, is to insure trade on a competitive basis. The argument goes that inasmuch as there is no price competition in bearings imported into or exported from the United States, and since it is impossible for American manufacturers or foreign manufacturers to engage in the exporting or importing of bearings to each other's markets on a successfully commercial basis, the illegality which is essential to the granting of equitable relief does not exist.

202. Several days were devoted, in the trial of the case, to defendant's effort to sustain this contention. Tables of figures were offered in addition to the statements of defendant's officials, to prove that the volume of exports and imports in tapered roller bearings was negligible. Whether the absence of trade was the result of the competitive restrictions charged by the Government or of natural economic forces was not pointed out.

203. Several witnesses testified that the economic dislocation of world markets precipitated by the first world war, and the depression which followed, caused a near chaotic condition in foreign commerce. It was augmented, they said, by the policies of the various nations to encourage purchase of domestic goods. The "Buy British" slogan was mentioned as illustrative of this program, in which nearly all countries engaged. The tariff regulations, the formation of the sterling bloc, the fluctuation of currency values, the government restrictions against imports and exports also contributed to the net result, they maintained, that producers were unable to compete with foreign manufacturers on a profitable basis. They concluded that this condition has prevailed not only in the roller bearing industry, but it affected all industries.

204. In the consideration of this claim the question immediately arises: If all the impediments to foreign trade

existed ever since 1914, which became more and more pronounced to the present day, why were the contracting parties, defendant, British Timken and French Timken so concerned about airtight agreements to keep each one within its own commercial domain? The repeated and persistent provisions of the successive contracts, for territorial restrictions, contradict any claim of lack of ability to compete.

205. Local and national pride in domestic goods and sales resistance to foreign made products have always been obstacles to import and export trade. The ingenuity of the American businessman, fortified by the advantages of free competition in many instances has been able to penetrate the strongest tariff walls.

206. The evidence bears out the fact that there was and there is actual and potential competition in the international roller bearing market. The contracts were consummated for the very purpose of regulating and restricting it.

207. How else could this portion of Dewar's testimony be explained:

Q. Is it your intention to say that it was immaterial to you who sold as between American Timken and British Timken at all times, or just when you were in competition with S.K.F.?

A. Our main object in life was to sell Timken tapered roller bearings. Naturally, I did not want the American Timken Company to sell bearings in our territory unless —well, in our territory.

Q. In other words, you did not mean that as between a bearing made in Canton and one made in Birmingham, you did not care which was sold in your territory—they both have the name "Timken" on them?

A. Yes.

Q. But you are interested in selling bearings made in Birmingham in your territory?

A. Yes, certainly; but if we were unable to sell a bearing made in Birmingham, we preferred to sell in our territory a bearing made in Canton or in France rather than a S.K.F. bearing made in Gothenburg.

Q. So in other words, if you were trying to get the business from S.K.F., it was then that it was immaterial to you which Timken bearing was sold?

A. Well, I should have put it the other way round: it was when S.K.F. was trying to get the business from us. After all, we started.

Q. You used the phrase 'common enemy' referring to Swedish S.K.F. Were they a common enemy at all times, or were they not during some time?

A. They were a common enemy all the time.

Q. And they were a common enemy at the time you entered into the arrangements in France in 1934, and the arrangements in England in 1932?

A. They were largely a common enemy from the time we ever heard of them up to now inclusive.

Q. So that they were a common enemy with whom you had friendly arrangements?

A. We occasionally had a truce—like the Russians and the Germans.

and that of William R. Timken:

Q. Now, you said Mr. Dewar wanted to know where he stood.

A. Yes.

Q. In what respect? Would you be a little more explicit?

A. Well, he wanted to know where his—what he was putting his money into. He didn't want to get into a dog fight with us.

Q. About territories in which to sell bearings, you mean?

A. Yes, it would hardly be economical to support two sets of distributors in the same country, for instance. Therefore, he wanted a clear understanding of what territories his company would serve.

208. It is not merely conjecture to conclude, that had it not been for the rigid restrictions provided in the contracts and their strict enforcement in actual practice, the volume of business with foreign countries would have been considerable in size. The officers of defendant admitted that the need for bearings from the United States was

continuously shown by the inquiries made by foreign purchasers. Small competitors of defendant in the United States were able to make shipments abroad on a relatively large scale. The last war accentuated the demand, but defendant adhered to its obligation as a member of the combination and refused to make sales. Forsythe's report to Klinedinst:

"We have received definite orders from their sales territories which upon being referred to British Timken were turned down at their instructions." is convincing evidence of the potential competition and the destructive effect of the combination.

209. Political and social changes have repeatedly caused fluctuations in international trade. Our own economy has always been affected by the currents of trade regulations abroad. But violent as the variations have been, commerce with foreign nations has remained one of the great influences on our own economic welfare. The provisions of the Sherman Act, pertaining to free competition with other nations, have not become a dead letter as a consequence of the world events of the past thirty-five years.

210. The evidence presented is convincing that defendant, British Timken and French Timken have formed a world cartel in tapered roller bearings. They have divided the world into exclusive sales territories. They have fixed prices. They agreed to and have effectively eliminated competition among themselves. They agreed to and did attempt to eradicate the competition of outsiders. They combined with competitors to fix prices. The defenses offered do not constitute justifications for such patent violations of the antitrust laws.

211. The Government is entitled to a decree. The exact nature of the needed remedy to prevent future violations will be determined at a hearing set for that purpose.

Freed, United States District Judge.

March 3, 1949.

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In the Supreme Court of the United States

OCTOBER TERM, 1950.

No. 352

THE TIMKEN ROLLER BEARING COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

BRIEF OF APPELLANT

In Opposition to Appellee's Statement Opposing Appellant's Statement of Jurisdiction and Motion to Dismiss or Affirm.

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In the Supreme Court of the United States

OCTOBER TERM, 1950.

No. .....

THE TIMKEN ROLLER BEARING COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

BRIEF OF APPELLANT
In Opposition to Appellee's Statement Opposing Appellant's Statement of Jurisdiction and Motion to Dismiss or Affirm.

I. THE APPELLEE'S STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM WERE NOT FILED AND SERVED WITHIN THE TIME SPECIFIED BY RULE 12, PARAGRAPH 3.

Rule 12 of this Court provides that a statement opposing jurisdiction must be served within 15 days after the appeal papers are served, which in this case expired on August 15, 1950. It was not until August 16, 1950, 16 days after the acknowledgment of service by the Solicitor General on July 31, that the appellee filed in the District Court and served on counsel for the appellant its statement and motion to dismiss or affirm. We call this matter to the Court's attention for such disposition as to it may seem fit pursuant to Rule 12, paragraph 6, which provides that, if there is a failure to comply with its provisions, the Court "may take such action as it deems proper."

II. THE APPELLEE'S MOTION TO DISMISS THE APPEAL SHOULD BE DENIED.

The appellee's motion to dismiss is based upon the ground that the excessive number of assignments of error makes it impossible to determine the grounds upon which the appellant relies in seeking a reversal of the judgment of the District Court. If, therefore, the assignment of errors is fairly sufficient to apprise this Court and opposing counsel of the grounds upon which the appellant relies, the motion is not well taken.

The assignment of errors contains separate headings setting forth general assignments of error each relating to a particular subject as follows: holding of the court; failure to hold; final judgment; failure to make findings of fact and conclusions of law; purported findings of fact; purported conclusions of law; requested findings of fact; and a few general assignments which are self-explanatory. Under each of these general headings are set forth specific assignments of error explaining and supporting the general assignments. While it is true that, due to the nature of this case, and the unusual situation, hereinafter discussed, created by the adoption by the District Court of its memorandum opinion as its findings of fact and conclusions of law, the specific assignments are numerous, we are quite sure that an examination of the assignment of errors itself will disclose, clearly and unmistakably, that it does state the grounds of error upon which the appellant relies in seeking a reversal of the judgment of the District Court.

It is the position of the appellant, specifically asserted and preserved by appropriate action in the court below, that the District Court did not state its findings of fact and conclusions of law in the manner required by law and the Federal Rules of Civil Procedure, and that the memorandum opinion of the Court, adopted by it as its findings

and conclusions, does not meet the requirements of Rule 52 thereof which provides that "if an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein" in that it does not include findings of underlying, subsidiary and ultimate facts on all issues in the case, separately found; includes discussion of portions of the evidence and the Court's reasoning with respect thereto; mingles statements of fact with arguments and inferences of the Court; and does not set forth the Court's conclusions of law separately stated.

The greater number of the specific assignments of error relate to alleged defects in purported findings and conclusions in the District Court's opinion, and its failure to make, at the appellant's request, additional findings and conclusions.

As a result of the District Court's action, in adopting its memorandum opinion as its findings of fact and conclusions of law and in overruling the appellant's objections thereto, we were required in preparing our assignment of errors to examine and analyze many of the paragraphs of the memorandum opinion to determine which of them might be regarded as proper findings and conclusions, for we had to proceed upon the assumption that the District Court's memorandum opinion might be upheld by this Court as constituting sufficient findings and conclusions despite our contention to the contrary. In so doing we could not safely undertake to group isolated statements of fact as to each subject contained in the numbered paragraphs which the District Court had adopted as its findings and conclusions, and assign as error that the composite thereof constituted a single finding of fact which was erroneous, for to have done so might have invited the contention that such a broad assignment was too indefinite in form and in contravention of Rule 9 of this Court which

requires that the assignment of errors "shall set out separately and particularly each error asserted." In the latest treatise on the subject of procedure in this Court, *Supreme Court Practice*, by Stern and Gressman (1950), it is stated (p. 210):

> "Error should be assigned to each finding of fact appellant wishes to challenge as unsupported by evidence."

We were thus relegated to assigning separately as error each material statement of fact which we considered to be unsupported by evidence. These are assignments, numbers 42 to 110, inclusive.

The same is true of the District Court's purported conclusions of law, which are the subjects of assignments, numbers 111 to 136, inclusive. It was incumbent upon us to assign as error those which, as applied in the case at bar, we consider erroneous. And, here again, we were required to select the statements which appeared to be the conclusions of law upon which the District Court relied in entering its judgment, and could not safely attempt to interpret the memorandum opinion and group the statements of abstract principles therein contained with other statements which might be specifically applicable to the case at bar. Hence, the necessity of assigning as error, separately and particularly, the statements we deemed to be the purported erroneous conclusions of law of the District Court.

Assignments numbers 135 to 196, inclusive, based upon the District Court's failure to make new and additional findings of fact and conclusions of law, cover in substance those requested in our motion after judgment which do not duplicate findings and conclusions purportedly made by the District Court in its memorandum opinion. The only other conceivable way in which error could have been assigned in this regard would have been to incorporate the requested findings and conclusions by reference, but such an assign-

ment would be of doubtful legality, and in any event, would have required the reviewing court and opposing counsel to examine more material than that contained in these assignments.

As to the assignments relating to the judgment, numbers 10 to 38, inclusive, the provisions therein, except those by which the court retained continuing jurisdiction and assessed costs against the defendant, are either in the nature of general orders of injunction against the appellant or such as may be deemed to be beyond the permissible discretion of an equity court, even assuming that the District Court was right in holding against the appellant on the merits of the case. Moreover, certain provisions constitute violations of the appellant's constitutional rights, *Hartford Empire Company v. United States*, 323 U. S. 386. Error in retaining jurisdiction and assessing costs is assigned on the basis that the entire judgment was erroneous, in order to forestall any possible contention that the appellant has waived its contentions as to the merits of the case by failing to assign error in entering the judgment in its entirety.

In the preparation of the assignments of error we have examined the records in other similar cases, in which, as here, the assignments were necessarily quite numerous.

Counsel for the appellant, in preparing their assignments of error, have attempted so to do in conformity to the applicable rules and general practice. We respectfully submit that there is no defect therein sufficiently grave to deprive the appellant of its right to ask this Court to consider the merits of the judgment of the District Court and thus afford it the only right of review available to it under the law.

III. THE APPELLEE'S MOTION TO AFFIRM THE JUDGMENT OF THE DISTRICT COURT SHOULD BE DENIED.

(1) The Joint Venture.

It should be made clear that the joint venture is the relationship arising from the agreements between the appellant and its British associate, Dewar.

Contrary to the appellee's first contention on this point, the affirmance in *United States v. Bausch & Lomb Optical Company*, 321 U. S. 707, by a divided court of the judgment of the District Court, is a precedent by analogy in the case at bar, although it did not relate to international trade. The opinion of the District Court in that case discloses that the words "joint venture" are not "casually used" therein, contrary to the statement of the appellee. It also demonstrates that the ancillary restraints doctrine is not limited to a situation in which the seller of a business agrees not to compete for a period of time with the buyer thereof, as the appellee's statement suggests. In that case, the District Court stated (p. 398) that the standards set forth in "the classic opinion" in *United States v. Addyston Pipe & Steel Company*, 85 Fed. 271, are "substantially similar" to those set forth in the *Restatement of the Law of Contracts*, §§ 515, 516. The Court then quoted Section 516 of the *Restatement of the Law of Contracts*. The pertinent part of the quotation is as follows (p. 398):

> "'The following bargains do not impose unreasonable restraint of trade unless effecting, or forming part of a plan to effect, a monopoly: * * *
>
> "'A bargain by a partner not to interfere by competition or otherwise with the business of the partnership while it continues, or subject to reasonable limitations after his retirement;'"

The Court referred to the statement in the *Addyston Pipe Co.* case that the "very statement of the rule implies that the contract must be one in which there is a main purpose,

to which the covenant in restraint of trade is merely ancillary," and then said (p. 398):

> "*The arrangement, though not a partnership in legal form, is functionally a joint enterprise*[1] in which one will produce and the other market the commodity. United States v. Addyston Pipe & Steel Co., supra, 85 F. at page 281."

The court then held that no monopoly had resulted from the arrangement. In the case at bar, the restraints imposed by the agreements between the appellant, British Timken and French Timken were reasonably necessary to the formation and conduct of the joint venture in the general nature of a partnership between the appellant and Dewar, as well as for other reasons, and no monopoly was intended nor resulted.

Whether such an arrangement is vertical or horizontal is a matter of no moment because the necessary effect in either case would be to prevent competition between actual or potential competitors on the basis of independent price fixing, which is the ultimate core of competition, *United States v. Socony Vacuum Oil Company*, 310 U. S. 150, 226, note 59, citing *Handler, Federal Anti-Trust Laws—a Symposium* (1931), pages 91, *et seq.*

The appellee's second contention is that any agreement which allocates exclusive territory to actual or potential competitors is illegal *per se*, regardless of whether or not it is ancillary to a lawful main purpose.

As to this contention, it has been held that an agreement, the only purpose of which is to allocate territory, fix prices, or to foreclose the market to others, is illegal *per se* and can never be justified on the basis of reasonableness. Moreover, it has also been decided that a bargain, which might otherwise involve a reasonable ancillary restraint of trade, is illegal if it effects, or forms part of a plan to effect, a monopoly, *United States v. Addyston Pipe*

[1] Emphasis throughout is ours.

& Steel Company, 85 Fed. 271. However, where there is a valid main purpose to which the restraint is ancillary, and neither a monopolistic purpose or effect, exclusive allocation of territory is not illegal *per se.* It was so held as a matter of common law (which is the basis of the Sherman Act, *Apex Hosiery Company v. Leader,* 310 U. S. 469, 498), in *Fowle v. Park,* 131 U. S. 88, 97, and under the Sherman Act, *Thomas v. Sutherland,* 52 Fed. (2d) 592; *Kentucky Natural Gas Corporation v. Indiana Gas & Chemical Corporation,* 118 Fed. (2d) 831; *Cole Motor Car Company v. Hurst,* 228 Fed. 280, cert. den. 247 U. S. 511. The situation is the same as that relating to price fixing, as to which it is well settled that an agreement, the main purpose of which is to fix prices, is illegal *per se, United States v. Socony Vacuum Oil Company,* 310 U. S. 150, *supra,* but that an agreement providing for fixing prices ancillary to a legal main transaction, such as the granting of a patent license, is not illegal *per se, United States v. General Electric Company,* 272 U. S. 476, adhered to on this point, *United States v. Line Material Company,* 333 U. S. 287, and *United States v. United States Gypsum Company,* 333 U. S. 364.

We assume that this Court will review the District Court's purported findings of fact which may be contrary to our contentions on this point, which we believe are clearly erroneous and opposed to the uncontroverted evidence in the record, *United States v. United States Gypsum Co.,* 333 U. S. 364. The situation in this respect is not like that presented in *United States v. Yellow Cab Company,* 338 U. S. 338, in which the lower court credited the testimony of witnesses for the successful party, who were observed by the court, instead of documentary evidence offered by the other party. In the case at bar the appellee's case was based on documentary evidence and on portions of depositions taken at the appellant's instance in England, with the exception of the testimony of one witness, the chief sales executive at the time of the appellant, who testified principally as to the nature of its business.

(2) Licensing of the Trademark.

The second important question relates to the right of an American company to license its trademark abroad.

First, the appellee states that "whatever right an American company might have to license its trademark abroad, it would have this right only upon a national basis * * *." Presumably, this means that, if an American company owns a trademark in several foreign countries, it would not be possible to license it in all of such countries to the same person, but it would have to be licensed in each country to a different person. Obviously, no authority is cited for this proposition and, if it is to be a rule of law by which American business should be bound, certainly a declaration on this subject by this Court is essential.

Second, appellee contends that actually no question of licensing trademarks abroad is involved here, because "appellant does not own the mark 'Timken' in such important areas of potential competition as Great Britain, France and Germany."[2] The District Court made no finding whatsoever as to whether the appellant owned or did not own the mark generally, or in any particular country. The appellee offered no proof as to the ownership of the trademark and the uncontroverted evidence is that the appellant is the owner thereof, not only in the three countries mentioned in the appellee's statement, but in substantially all of the commercially important countries of the world as well.

The difficulty with this position of the appellee is that it proceeds on the assumption that registration and ownership are necessarily one and the same thing, and its confu-

---

[2] This is a surprising contention because there is no allegation in the amended complaint that the appellant does not own the trademark "Timken," but instead the prayer for relief supports no possible interpretation other than that it is the owner thereof, because the appellee prays for an order enjoining the appellant from selling, assigning or transferring the mark to British Timken or French Timken in such a way as to exclude its use by the appellant anywhere in the world.

sion on this point is quite apparent. Ever since the joint acquisition by the appellant and Dewar of British Timken and German Timken, and their joint organization of French Timken, in 1927 and 1928, the *registrations* of the trademark "Timken" in some countries have been held by the foreign Timken companies as a matter of convenience. However, ownership thereof by the appellant has been expressly recognized by the parties at all times, as the provisions for its disposition in favor of the appellant at the termination of the 1938 business agreement conclusively demonstrate.

The appellee next states, in this connection, that:

> "In fact, appellant is at present taking steps to obtain a *license* of the mark in Great Britain from British Timken."

This is a serious misconception of the purpose and intent and, in fact, the language of the memorandum agreement between the appellant and British Timken of October, 1949, paragraph I of which provides, substantially, that British Timken "will maintain the registrations obtained by it" in specific countries and the appellant "will be entered as a *registered user*" thereof in any of those or other countries where that is, or shall become, possible.

Third, the appellee contends that the judgment of the District Court provides for nothing that interferes with the right of the appellant to license the trademark. However, an examination of Section VII of the final judgment itself will show how completely unfounded this statement is.

As illustrative of the appellant's position in this regard, and without attempting at this time to refer to all of the probable effects upon the appellant of the judgment of the District Court upon this subject, and particularly Section VII thereof, we call this Court's attention to some of the respects in which this section interferes seriously, with the right of the appellant to license its trademark.

By certain of the terms of Section VII of the judgment, the defendant is enjoined and restrained from entering into, performing, adhering to, maintaining, furthering or renewing, directly or indirectly, any contract, agreement, etc. with British Timken or French Timken for

> "C. The transfer of any right or immunity under a trademark or name, relating to the production of antifriction bearings, upon the condition or requirement that British Timken and/or French Timken * * * shall:
>
> 1. allocate or divide territories or markets for the production, sale or other distribution of antifriction bearings; * * *
>
> 5. exclude any producer or distributor from any market for antifriction bearings, or interfere with or restrict any producer or distributor in competing in any such market; * * *
>
> 8. receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto, (a) information, advice, assistance, or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method, or other technical information relating to the production of antifriction bearings, or (b) any material or machinery used in the production of antifriction bearings, or any information, advice, assistance or rights with respect to any such material or machinery."

This language discloses to what great lengths the District Court went in its judgment on the subject of trade mark licensing. The judgment by its terms not only interferes with the licensing of the trademark, but imposes restrictions with respect thereto which, if applied generally, would make it virtually impossible for an American owner of a trademark to license it abroad.

Thus, under Section VII, C, 1, it would be impossible for the appellant to license a trademark on a territorial basis. If we assume, as the appellant contends, that it is the owner of the trademark throughout the world, it could

not license either British Timken or French Timken to use it in any single country or group thereof unless the license was mutually nonexclusive and covered all countries in which the appellant owned the mark. Otherwise, there would be an allocation or division of territories for the production, sale or distribution of bearings in violation of the judgment. More than that, the appellant as owner of the trademark in the United States, could not license it abroad to British Timken and French Timken and exclude them as licensees, by agreement, from the use of the mark in America as that would likewise involve an allocation of territories in contravention of Section VII, C, 1.

Examining the language of Section VII, C, 5, we find that to comply with the terms thereof, if it appeared desirable to American Timken, as owner of the trademark, to grant a license thereof in a foreign country to British Timken, but it did not wish to license that company in other areas of the world, it could not grant the contemplated license unless it also licensed the use of the trademark to British Timken in every country in the world where the appellant owned the mark.

In Section VII, C, 8, American Timken, as licensor of its trademark, is required to extend to all third parties the same information which it gives to its trademark licensees, British Timken and French Timken, on the subject of its product or the means and methods and equipment used in its manufacture. Generally speaking, under the law of this country, it is essential to the validity of a trademark license that the owner thereof supply information concerning its product to its licensee in order to make sure that the quality thereof is maintained by the licensee. To hold that the licensor must give the same information to all third parties is certainly to establish a new rule in the field of trademark licensing law and one which should be examined by this Court.

The appellee has cited no authority in support of the provisions of the judgment to which specific reference has just been made, and it is the appellant's view that the District Court's judgment on the subject of trademark licensing is not supported by any authority.

The principal cases relied upon by the appellant upon the general subject of the licensing of trademarks, are those relating to the use of patents and copyrights, namely, the *National Lead, Ethyl Gasoline Corporation, Interstate Circuit, Inc.*, and *Paramount Pictures* cases but do not sustain the broad proposition for which they are cited by the appellee.

The only trademark decision referred to is the *Rectanus* case, and it did not involve trademark licensing.

Apparently, the appellee's purpose in referring to patent and copyright cases is to intimate that the rights of the owner of a trademark are less than are those of the owner of a patent.

This idea of a lesser right in a trademark as compared with that in a patent is very confusing. Practically, a trademark is entirely different from a patent. Patents and copyrights are limited monopolies granted because the public is interested in having the invention or creation disclosed, described and registered. The patentee may grant as many licenses as he pleases. In contrast, a trademark is not the result of monopoly but is a symbol to distinguish one product from another competing product. It serves as an indication of origin or as a guarantee of quality of certain products, and when such mark is used by the owner or by the licensee, it must be used under conditions which preserve its functions to serve as such a symbol. Restraints on manufacture in connection with patent licensing must be carefully circumscribed and restricted, but this is not so as to a trademark, the value of which depends upon its use and its function as a symbol.

The owner of a patent may prevent, by reason of his patent monopoly, other persons from using or manufacturing the patented process or product but the owner of a trademark cannot prevent other persons from manufacturing the identical article covered by the mark. He can only prevent third parties from applying the same symbol to the goods as is applied by him as the owner of the trademark. Thus, the theory that the licensing of a trademark is necessarily restrictive is a false one, and the contention that cases relating to the licensing of patents and copyrights are necessarily applicable to a case which involves the licensing of a trademark, and is not a sound one.

The District Court regarded this question as being new and important, for in paragraph 192 of its memorandum opinion, this statement is found:

> "The conflict between the Sherman Act and the limited patent monopoly has been the subject matter of innumerable litigated cases. The courts have attempted to harmonize the opposing basic policies inherent in their respective economic concepts. They tried to fit the antitrust laws within the frame work of the constitutional grant of a patent monopoly. *Whether within the provisions of the Sherman Act commerce may be restrained to the extent that it is reasonably ancillary to protect a trademark has not been decided or discussed by the courts.*"

(3) Divestiture.

The equity jurisdiction of the District Court is prescribed by Section 4 of the Sherman Act, 26 Stat. 209, which provides that it is vested with jurisdiction "to prevent and restrain violations" of the Sherman Act. We contend that under the decisions of this Court divestiture can be decreed only (1) where the property involved was acquired illegally in the conduct of a combination to monopolize, in order to take from the defendant the fruit of his wrongdoing, or (2) where it has been used for the purpose of carrying out a

combination in restraint of trade, in order to prevent resumption of past illegal practices. The appellee goes further, contending that divestiture can properly be ordered for the purpose of removing an inducement to the defendant not to compete. The only purpose of such divestiture would be "to prevent and restrain" the defendant from failing to compete, but the Sherman Act "does not compel competition," *United States v. United States Steel Corporation*, 251 U. S. 417, 451. It is demonstrable that *United States v. Crescent Amusement Company*, 323 U. S. 173, *United States v. National Lead Company*, 332 U. S. 319, and *United States v. Paramount Pictures, Inc.*, 334 U. S. 131, cited by the appellee involved findings of fact which justified divestiture on one or both of the two bases therefor above set forth. That portion of the decision in the *National Lead Co.* case which sustained the action of the District Court in refusing to require divestiture of domestic plants because there was no finding by the lower court that these plants "had been acquired or used in a manner violative of the Sherman Act" (p. 351) sustains the appellant's position.

Illegal acquisition was not in issue in the case at bar, because the amended complaint charged that the conspiracy commenced in 1928 (after the acquisition by the appellant and Dewar of British Timken stock in 1927), and the District Court made no finding that such acquisition was illegal nor an integral part of the agreement imposing alleged restraints.

There is no finding by the District Court that the appellant ever used its stock in either British Timken or French Timken to control them, but, on the contrary, the District Court held that Dewar exercised control of the ordinary affairs of these companies (Memorandum Opinion, pars. 44, 54). The appellee's claim that appellant exercised control over British Timken through its one out of four directors, is patently unsound. Its statement that the record

discloses that the appellant in 1935 used its influence to bring about a 30 year extension of the 1935 business agreement is contrary to the uncontroverted evidence which discloses that such extension was insisted upon by the English brokers who negotiated with Dewar for the sale by the appellant and Dewar of a portion of their stock in British Timken. There was no finding by the District Court on this point, because the reason for the extension was considered unimportant (Memorandum Opinion, par. 67).

Therefore, there is here presented the important question as to whether the District Court, under its jurisdiction to "prevent and restrain" violations of the Sherman Act, could properly order divestiture merely to induce competition rather than to prevent and restrain interference with it.

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In the Supreme Court of the United States

OCTOBER TERM, 1950.

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Appellant,

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THE UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION.

BRIEF FOR THE APPELLANT, THE TIMKEN ROLLER BEARING COMPANY.

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In the Supreme Court of the United States

OCTOBER TERM, 1950.

No. 352.

THE TIMKEN ROLLER BEARING COMPANY,
Appellant,

v.

THE UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION.

BRIEF FOR THE APPELLANT, THE TIMKEN ROLLER BEARING COMPANY.

This is an appeal from a judgment of the district court against The Timken Roller Bearing Company, defendant in that court, appellant in this Court, in a civil action for an alleged violation of Sections 1 and 3 of the Sherman Act, granting equitable relief to the United States of America, plaintiff in that court and appellee herein.

OPINION BELOW.

The opinion of the district court (R. 958) is reported in *United States v. The Timken Roller Bearing Company*, 83 Fed. Supp. 284 (D.C. N.D. Ohio, 1948).

JURISDICTION.

The judgment of the district court herein was entered on February 15, 1950 (R. 1172). Motions by the appellant for a new trial, and to amend, and to make new, and additional, findings of fact and conclusions of law were filed on

February 24, 1950 (R. 1181), and overruled on June 14, 1950 (R. 1252). A petition for appeal was allowed on July 28, 1950 (R. 1253-1255). The jurisdiction of this Court is conferred by Section 2 of the Act of February 11, 1903, as amended (32 Stat. 823; 36 Stat. 1167; 58 Stat. 272; 62 Stat. 989; 15 U. S. C. § 29; 49 U. S. C. § 45). Probable jurisdiction of the case was noted by this Court on November 6, 1950 (R. 1327).

QUESTIONS PRESENTED.

The appellant, The Timken Roller Bearing Company (hereinafter called American Timken), in 1927 acquired jointly with Michael B. U. Dewar, an English businessman, all of the stock of British Timken, Ltd. (hereinafter called British Timken), an English corporation, and now owns 30.26% of its ordinary shares of stock. Since Dewar's death on December 21, 1950, American Timken has taken steps to exercise an option to acquire his 23.74% thereof. American Timken and Dewar also jointly caused Societe Anonyme Francaise Timken (hereinafter called French Timken), a French corporation, to be organized in 1928, and since then American Timken has owned, and now owns, 50% of its stock, and has acted to exercise its option, which accrued at Dewar's death, to acquire more stock giving it voting control, and it expects to purchase the balance of the stock from Dewar's holding company pursuant to an agreement giving it the first refusal thereof.[1] The district court found

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[1] These facts are stated in substance in support of a motion in the district court, a copy of which is attached to a motion for postponement of oral argument filed in this Court which was denied in March, 1951.

In the district court this case was tried, considered and decided upon the basis that Dewar was alive. His death has had two principal effects in that, first, it terminated the joint adventure between him and American Timken hereinafter referred to, and also made operative the options on his British and French Timken stock. Be-

(Continued on following page)

that business agreements and other arrangements between the three companies, which have been engaged principally in the manufacture and sale of tapered roller bearings invented and patented by the founders of American Timken, constituted an illegal combination in restraint of trade, contrary to Sections 1 and 3 of the Sherman Act. The questions presented are:

1. Whether the restraints of trade, if any, resulting from the business agreements, contracts and understandings between American Timken and British Timken and French Timken have been at all times, and are, reasonably and lawfully ancillary to the creation and maintenance of a lawful joint adventure and enterprise by American Timken and Dewar through their joint acquisition and control of

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(*Continued from preceding page*)

cause of these changes in the factual and legal situation after perfection of the appeal to this Court, American Timken, having determined that it was the proper course of procedure under the authorities, of which *Roemer v. Simon*, 91 U. S. 149, is the leading case, moved the district court that it request leave of this Court to take additional evidence due to the changed circumstances and to reconsider its judgment herein in the light thereof. At the same time, feeling free so to do under the broad provisions of the district court's order staying execution of its final judgment (R. 1255), it has taken steps to exercise the options, advising the district court of its intention so to do in the motion filed therein.

The motion in the district court was filed January 24, 1951, and was heard and submitted on February 14, 1951. The court advised counsel, in substance, that due to pressure of other business the motion could not be considered for at least thirty days, being advised by counsel that, in all probability, this appeal would be set for hearing in this Court in the month of April, 1951. In this situation American Timken filed its motion in this Court seeking postponement of the oral argument until the October Term, 1951, in order to enable the district court to decide the motion before it. The district court has just overruled this motion, on April 10, 1951.

American Timken has taken this action in both courts on the theory that this appeal should not be considered and decided upon the basis that Dewar is still alive when he is, in fact, dead, and believing that the motion which it filed in the district court was the only proper and authorized method to get before it and this Court new facts, due to the changed circumstances, so that this case may be considered and decided in the light thereof.

British Timken and German Timken (now defunct), and joint organization and control of French Timken, to develop foreign trade and good will of American Timken in anti-friction bearings under a license of the trademark "Timken."

2. Whether such restraints of trade, if any, have been at all times, and are, reasonably and lawfully ancillary to the licensing of the trademark "Timken" by American Timken to British Timken and French Timken, including the supplying of exclusive information by American Timken to them as to the production of anti-friction bearings in connection with such trademark licenses.

3. Whether the purported findings of fact upon which the district court based its final judgment are clearly erroneous.

4. Whether the district court erred in not making, as requested by American Timken, proper findings of underlying ultimate and subsidiary facts on all issues in the case, separately found, and conclusions of law separately stated, as required by Rule 52 of the Federal Rules of Civil Procedure (because the findings of fact and conclusions of law did not sufficiently appear in the memorandum filed by the court); in adopting, upon the motion of the appellee, the court's memorandum opinion as its findings of fact and conclusions of law; and in overruling American Timken's motion after judgment that the court adopt, in lieu of such purported findings and conclusions the proposed findings and conclusions submitted by it with its motion.

5. Whether the final judgment of the district court is erroneous, beyond its jurisdiction, exceeds the permissible limits of the discretion conferred upon it, deprives American Timken of its property without just compensation and without due process of law, contrary to the Fifth Amendment to the Constitution of the United States, and should be reversed, in that:

(a) It enjoins American Timken in perpetuity from granting to, or receiving from, British Timken and French Timken exclusively "in such a way as to deny any third person access thereto" know-how, machinery, materials and patents, even though it was not alleged in the amended complaint that these constituted any part of the means adopted by American Timken and its alleged co-conspirators to carry on the alleged conspiracy, and in this respect deprives it of its property without due process of law, contrary to the Fifth Amendment;

(b) It enjoins American Timken in perpetuity from entering into any agreement with British Timken or French Timken, or any subsidiary, successor, assign, sales agent, representative or distributor thereof, to fix resale prices of anti-friction bearings produced by American Timken, thus depriving it of its rights under the Miller-Tydings Act (50 Stat. 693, 15 U. S. C. § 1);

(c) It enjoins American Timken in perpetuity from refusing to sell anti-friction bearings to any person at prices and on terms corresponding with those regularly offered to purchasers of the same classification for resale in American Timken's territory, and from failing to provide services or assistance relating to the disposition or use thereof comparable to that made available to distributors or users of bearings in American Timken's territory, where the reason for such refusal is that the bearings are for resale, or other distribution, in the territory of British Timken or French Timken, or in some country in other than American Timken's territory, as defined in the final judgment, thus exceeding the court's jurisdiction to prevent and restrain violations of the Sherman Act under Section 4 thereof, and depriving American Timken of its property without just compensation and without due process of law, contrary to the Fifth Amendment of the Constitution of the United States;

(d) It enjoins American Timken from entering into any agreement with British Timken or French Timken for the transfer of any right or immunity under any trademark or name relating to the production of anti-friction bearings upon the condition that either of them shall allocate or divide territories for the production or sale of anti-friction bearings, exclude any producer or distributor from any market for anti-friction bearings, or receive, grant, or exchange know-how or materials or machinery used in the production of anti-friction bearings in such a way as to deny any third person access thereto, thus depriving American Timken of its lawful right to license the trademark "Timken," or any other trademark, in various respects;

(e) It requires American Timken to divest itself of all its stockholdings and financial interest, either direct or indirect, in British Timken and French Timken, when the uncontroverted evidence in the record discloses, and the district court found, that such stockholdings and interest were not acquired in connection with the alleged conduct of the alleged conspiracy and the stock had not been used to control British Timken and French Timken in the carrying out thereof, the only basis upon which the appellee urged such divestiture being that the ownership of such investments by American Timken would constitute an inducement and incentive not to compete with British Timken and French Timken, and the uncontroverted evidence in the record discloses that such divestiture would constitute a hardship to, and punishment of, American Timken.

STATUTES INVOLVED.

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, as amended (15 U. S. C. §§ 1, 3 and 4), provides in part as follows:

"SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * * Every person who shall make any contract or engage in any combination or conspiracy declared * * * to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

"SEC. 3. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

"SEC. 4. The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys for the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * *"

STATEMENT.

The appellee, on July 31, 1946, brought this suit under Section 4 of the Sherman Act against American Timken alone to prevent and restrain an alleged combination in unreasonable restraint of trade between American Timken and British Timken and French Timken, in violation of Sections 1 and 3 of the Sherman Act (R. 1).

The amended complaint (R. 13-25) alleges that, beginning in 1928 and continuously thereafter the three Timken companies have conspired and combined in restraint of interstate and foreign commerce of the United States by entering into contracts, agreements and understandings, and continuously planning and acting together, to eliminate competition between themselves and with others in the manufacture and sale of anti-friction bearings in all markets of the world. The alleged means have consisted of allocating to each company an exclusive territory into which the other companies shall not sell nor ship anti-friction bearings except in completed articles of manufacture and for replacement of bearings therein; fixing and agreeing upon prices of replacement bearings shipped into each other's territory, and upon prices of bearings sold and shipped to Russia; allocating the use of the trademark "Timken" to each of the companies in its territory, and requiring that British Timken and French Timken use that trademark exclusively and surrender it to American Timken upon termination of such contracts, agreements and understandings; entering into agreements with other manufacturers in certain territories regulating and allocating the sale of bearings; and furnishing aid to each other in restricting and eliminating in their respective territories competition from others.

The amended complaint further alleges that the combination has resulted in "unreasonable" restraint of imports into, and exports from, the United States and that, although the apparent shortage of anti-friction bearings has created large potential export markets for those of Ameri-

can manufacture and American Timken has expanded its productive facilities during World War II, nevertheless, the continuation of the combination will prevent it from seeking and acquiring many foreign markets and will thus reduce its production of bearings and employment of labor (R. 22, 23).

The appellee prays an injunction against the combination, cancellation of certain business agreements between the three companies, that American Timken be enjoined from transferring the trademark "Timken" to the other companies in such a way as to exclude it from using the trademark throughout the world, and that it be required to divest itself of its stock holdings and financial interests in British Timken and French Timken (R. 23, 24).

The evidence introduced at the trial on the part of the appellee consisted of approximately 191 exhibits, the oral testimony of one witness, the vice president in charge of sales of American Timken, and portions of depositions taken by American Timken, while the evidence of American Timken consisted of 249 exhibits, the oral testimony of several officials and employees of American Timken and certain other witnesses, and portions of such depositions.

Following the trial and the submission of briefs, the district court filed a memorandum on March 3, 1949, holding that American Timken had engaged in a combination in restraint of foreign commerce (R. 958).

Thereafter, acting purportedly pursuant to Rule 4B of the district court, which requires the prevailing party to prepare a draft of findings of fact and conclusions of law, the appellee submitted a proposed journal entry adopting the district court's memorandum as its findings and conclusions. American Timken filed a motion that the district court reject and disregard this document and require the appellee to submit a draft of findings and conclusions as required by Federal Rule of Civil Procedure 52(a) on the ground that the court's memorandum did not contain findings and conclusions as contemplated by the Federal Rules

of Civil Procedure and the decisions of this Court (R. 1018). The district court overruled the motion (R. 1021), and entered an order adopting its memorandum as its findings and conclusions (R. 1020).

The district court's purported findings of fact and conclusions of law are intermingled in 211 numbered paragraphs (R. 958). Error has been assigned to what appear to be each of the court's ultimate findings and to others which are clearly erroneous (R. 1256, 1269-1288).

The district court's memorandum clearly shows that it proceeded throughout, in its consideration of this case, upon the assumption that American Timken, British Timken and French Timken were not only separate and distinct corporate entities, but also independent operating units and factors, and potential or actual competitors, in a mythical tapered roller bearing industry.[2] Proceeding upon this fundamentally mistaken theory, the court held that the various cooperative activities in which they had engaged constituted a combination in restraint of trade. The court disregarded uncontroverted evidence introduced by American Timken which disclosed that British Timken had been acquired and French Timken organized as integral parts of a joint enterprise between American Timken and Dewar to promote the manufacture and sale in foreign countries of tapered roller bearings manufactured according to the methods developed by American Timken under license of the trademark "Timken." This evidence disclosed that the agreements and arrangements between American Timken and Dewar involved complicated contractual arrangements for control of these companies and the conduct of their business startlingly similar to those involved in *United States v. Scophony Corporation*, 333 U. S. 795, characterized by this

[2] There was no hint nor suggestion in the amended complaint of the existence of such an industry. Except in the opening paragraph where American Timken is described as a manufacturer of tapered roller bearings every reference therein is to the anti-friction bearing industry.

Court as creating "*what practically, if not also technically, was a joint adventure*[3] * * * ."

Thus, the significance of many of the purported findings of fact can be determined only if viewed in relation to other undisputed facts which they ignore or fail properly to evaluate.

American Timken, after the entry of final judgment, filed a motion asking the court (R. 1181) to amend it and to make new, and additional, findings of fact and conclusions of law by adopting those submitted by it with the motion as Exhibit A thereto (R. 1190-1250), which included the facts largely ignored by the district court. This was overruled (R. 1252).

On August 1, 1949, the appellee, pursuant to Rule 4A of the district court, filed a proposed final judgment (R. 1022), and American Timken filed objections thereto (R. 1035-1082), and submitted its draft of judgment which it proposed as a substitute for the draft submitted by appellee. After a further hearing (R. 1082-1169) at which evidence was taken as to the form of the decree, the district court on February 15, 1950 (R. 1172) entered its final judgment in which it incorporated to a large extent several of the drastic and involved provisions contained in the appellee's proposed draft. The unconstitutional aspects of these provisions were called to the district court's attention in American Timken's objections to the appellee's draft and are discussed hereinafter under Section V hereof.

Subsequent to the filing of the appeal, and after probable jurisdiction had been noted by this Court, Dewar died, on December 21, 1950, and the joint enterprise between him and American Timken came to an end, giving rise to new questions which will be discussed hereinafter. However, the facts relied upon by American Timken with respect to the joint enterprise are still of vital importance in determining whether or not the conduct of American Timken and

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[3] Italics throughout are ours unless otherwise indicated.

British Timken and French Timken was legal at the time the district court considered the case and entered final judgment therein, and whether the remaining contractual rights, consisting of the business agreements between the three companies and those between American Timken and Dewar, were legal at the time they were entered into, thus preventing their being stricken down even after Dewar's death.

THE TIMKEN COMPANIES AND THEIR POSITION IN THE INDUSTRY IN WHICH THEY COMPETE.

Although it is not charged that American Timken has attempted to *monopolize*, or has combined with British Timken and French Timken in an attempt to monopolize, the industry in which they operate, in violation of Section 2 of the Sherman Act, nevertheless the impression to be drawn from the district court's memorandum is that these three companies, each allegedly dominant in its particular territory, combined to control, or, in other words, monopolize, the industry in which they compete throughout the world.[4]

[4] The district court stated that command of their volume of business "spells out the dominant position of the defendant, British Timken and French Timken both in the *tapered* and *anti-friction* bearing industry" (Mem. par. 15; R. 961); that by 1928 American Timken "became the Titan of the *roller* bearing industry" (Mem. par. 35; R. 965); that, although conflicting claims had been made at the trial "as to the exact percentage of the total *tapered roller* market controlled by" American Timken, the precise figures were unimportant, because its advertising in 1941 to the effect that it was many times over the largest manufacturer of tapered roller bearings in the world, was "sufficient indication of the position of (American Timken) in the industry" (Mem. par. 35; R. 965, 966), and that "British Timken's potent leadership in the industry compared favorably with that of" American Timken, the former having become a "potential formidable competitor in the field *of roller bearings*," and that "the accused agreements between 1928 and 1938 were made between two manufacturers, who on the basis of the evidence, were properly characterized as the largest manufacturer in the world and the largest manufacturer in Great Britain respectively" (Mem. par. 36; R. 966); that in 1928 British

(Continued on following page)

The italicized words in note 4 below show that it is not clear from the district court's memorandum as to whether the industry referred to was a bearing, anti-friction bearing, roller bearing or tapered roller bearing industry, although the court appears to have had the last named in mind.

Since the decision of the district court appears to have been largely influenced by the theory that American Timken, as the "Titan" of an alleged domestic tapered roller bearing industry, acquired a substantial interest in the "dominant" manufacturer in that industry in England, helped organize, and acquired a half interest in, the "dominant" manufacturer therein in France, and thereafter combined with them to "control" the industry throughout the world, the most useful way to commence the statement of facts would appear to be to define the industry in which the three Timken companies compete with others, describe its operation, particularly with relation to foreign trade, and demonstrate their position in it.

The Scope of the Bearing Industry.

Generally speaking, the bearing industry consists of the manufacture and sale of two types of bearing, namely, friction bearings and anti-friction bearings (Mem. pars. 17-19; R. 961, 962).

(*Continued from preceding page*)

Timken "had grown from infancy in the *bearing* industry to a position of prominence and was a potential competitor with whom (American Timken) had to reckon" (Mem. par. 122; R. 996); that British Timken and French Timken were potential competitors of American Timken in "the *tapered bearing* market," where they were "the largest dealers in tapered bearings in their respective territories," and "occupied dominant positions in the entire *anti-friction bearing* industry" (Mem. par. 144; R. 1001, 1002); that "all that the evidence discloses is an intent to form a smoothly operating combination to control commerce in the *tapered bearing* industry throughout the world" (Mem. par. 146; R. 1002); and that American Timken "acquired substantial interests in a dominant manufacturer of bearings in England, participated in the formation of and invested in the stock of a potential competitor in France" (Mem. par. 160; R. 1005).

Friction bearings merely slide on the shaft and depend solely on oil or some similar substance to reduce friction, while anti-friction bearings consist of a circular group of steel rollers or balls revolving between two circular raceways which reduce friction between moving mechanical parts (Mem. par. 17; R. 961).

Bearings are subject to one or both of two kinds of pressure, namely, radial load, which consists of pressure from the top, and end thrust load, which consists of pressure from the side. In many instances there is a resultant pressure which is both radial and end thrust load (R. 465, 466). Both ball bearings (R. 38; 477) and roller bearings (R. 38; 477) are designed to take radial and end thrust loads in varying degrees depending on the purpose for which they are to be used. The load on friction bearings, in general, is radial (R. 476). Thus it is seen that competition between particular types of bearings depends to a large extent on the nature of the radial and end thrust loads to which the particular bearing will be subjected in the point at which it is to be located, and, therefore, upon its economy as adequately designed to meet these loads, and the salesmanship of its manufacturer.

Special friction bearings are, in general, much cheaper than anti-friction bearings (R. 484). Many companies which manufacture other products make their own friction bearings and there are other companies which specialize in making them (R. 484-485). There are well over a thousand companies manufacturing friction bearings in the United States alone (R. 484).

Many more friction bearings are produced in the United States than anti-friction bearings (R. 59; 484) and they are in competition therewith "in almost every instance where a piece of mechanism moves" (R. 484). An important part of the business of all anti-friction bearing manufacturers is to induce users of friction bearings to substitute anti-friction bearings therefor (R. 61). Thus, prior to 1922 American Timken's business was practically all in the

automotive field, but at that time it inaugurated a sales program to bring about the use of its tapered roller bearings in the general industrial field, and, since then, one of its greatest problems has been to persuade customers to accept its anti-friction bearings in place of their friction, or "plain," bearings (R. 61-63).

Manufacturers of all types of anti-friction bearings always have been regarded as competing in what is called the anti-friction bearing industry.[5]

There are two general types of anti-friction bearings, roller bearings and ball bearings, tapered roller bearings being a style of the former (Mem. par. 18; R. 962).

There are also other styles of roller bearings consisting principally of the straight and hourglass types (R. 38) and they are used on many applications, in fact "almost every place where there is any mechanical movement" (R. 470, 471).

Ball bearings are of many types for many different purposes (R. 467) and are designed to take radial and some end thrust loads (R. 467). They compete with roller bearings, and particularly tapered roller bearings, as to much the same applications as those as to which roller bearings compete among themselves (R. 474), and had a wide and general acceptance in the trade before tapered roller bearings came on the market, having been in general use for 25 years prior to that time (R. 472). They were brought to America originally from Europe (R. 57, 58; 499, 500).

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[5] They were so regarded for the purpose of organizing an association to enable the industry to conform to the National Industrial Recovery Act, 48 Stat. 195, which has continued as the Anti-Friction Bearing Association, the trade association of that industry (R. 494, 495). Most of the larger producers of anti-friction bearings, including American Timken, belong to the Association (R. 494). Moreover, the United States Tariff Commission, in its reports to the Congress, recognizes that ball and roller bearings, including tapered roller bearings, constitute the anti-friction bearing industry (Deft's. Exh. 173, R. 2223; offered, R. 801), and the amended complaint alleges a combination in restraint of trade in anti-friction bearings (R. 17).

The greatest sales problem which American Timken had, while it was engaged primarily in the automotive field, prior to entering into the industrial field in 1922, was to convince automobile manufacturers that they should use tapered roller bearings instead of ball bearings (R. 57, 58). Aside from the field in which small bearings, such as diminutive types which can be seen only with a magnifying glass (Deft's. Phys. Exh. 54, offered, R. 486), are used almost to the exclusion of roller bearings, and that in which large roller bearings are more practical due to the bulky housing required for large ball bearings (R. 59, 60), ball bearings and roller bearings compete (R. 60, 61).

It is estimated that in at least 90% of the places where anti-friction bearings are used either ball bearings or roller bearings can be applied (R. 489).

As American Timken's vice president in charge of sales testified, "the whole thing becomes a matter of engineering and price and salesmanship" (R. 60). Whether a particular type of anti-friction bearing is used depends upon salesmanship and its economical use in the particular spot (R. 65; 489).

The Method of Marketing Bearings.

While it may be difficult to understand why anti-friction bearings with different designs and types of rollers compete with each other on the basis of salesmanship and economy the answer is clear when the method of marketing them is known.

Unlike many products which are sold to the general public, bearings are sold for incorporation into other end products, such as automobiles and machines of various kinds. Therefore, bearing sales fall into two main categories, namely, original installation business, constituting approximately 95%, and replacement sales, constituting 5%, of business done (Mem. par. 21, R. 962).

Since the introduction of a bearing to prevent friction between a moving part and a stationary part can be ac-

complished by different means, competition for original installation business resolves itself primarily into an engineering design problem. Therefore, sale of bearings for original installation involves contact with the customer by American Timken's sales engineers in competition with those of other manufacturers of all types of anti-friction bearings. They obtain from the customer's design engineers layouts of the end product which show the points at which bearings are to be located. Engineers for the various companies manufacturing ball, straight roller, tapered roller and other types of anti-friction and friction bearings who are competing for the original installation business on a particular machine then prepare layouts showing how their bearings can best be used therein, which are submitted to the customer, accompanied by their respective propositions (R. 43, 61, 64-66; 498). The customer then decides upon the type of bearing to be used, depending upon economy in the price of a suitable bearing and its mounting (R. 65).

American Timken maintains sales engineers in sales offices located in the principal cities of the United States for the purpose of securing original installation business in this manner (R. 498), and British Timken and French Timken do the same (R. 391).

Competition between different types of anti-friction bearings for original installation business ends at the point of the adoption of the design for the specific type to be used in the customer's machine. Once the particular type of bearing is incorporated, other types, with rare exceptions (R. 65), cannot be substituted for replacement so that such bearings must be of the same type and character as the original bearings (Mem. par. 20, R. 962). However, this does not mean that there is no competition for replacement business. Thus, tapered roller bearings manufactured by competitors of American Timken are interchangeable with its bearings (R. 530). Bearing assemblies, manufactured by American Timken and its competitors, consisting of cup and cone, fit the same opening and are interchangeable,

and cups manufactured by the former's competitors are sometimes combined by its customers with cones made by it, or vice versa (R. 534).

Obviously, since, after the original installation of bearings in a machine or other end product has been made no other type ordinarily can be substituted, a satisfied customer is most likely to order a replacement bearing from the manufacturer who provided the bearing originally installed (R. 394; 669; 890). Therefore, the sale of bearings for original installation provides the basis for replacement sales (R. 889, 890).

Replacement business is conducted by American Timken through authorized distributors and stocking jobbers who purchase various sizes of bearings at discounts from list prices which are changed from time to time in order to meet competition (R. 893, 894). British Timken (R. 892) and French Timken (R. 152) follow the same practice. In addition to that which comes to dealers or jobbers, replacement business, consisting of unsolicited inquiries to the manufacturer from persons who have had no previous contact with its sales organization, runs between $15,000 and $25,000 in value per year to American Timken (R. 890, 895).

Thus it is seen that, due to the inherent nature of the bearing industry, competition therein, which depends primarily on ingenuity in the design of bearings to meet the requirements of a particular job and the cost of a particular type thereof as applied to the job, is on a broad scale indeed.

To say, as did the district court (Mem. pars. 19-20, R. 962), that tapered roller bearings, while they compete with other types of anti-friction bearings and to a much lesser extent with friction bearings, nevertheless, because of their design and applicability for particular use, enjoy freedom from competition and fulfill a requirement not supplied or satisfied by others, and to conclude, therefore, that there is a distinct tapered roller bearing industry, is to disregard

completely the great mass of uncontroverted evidence in the record by officials of American Timken and British Timken as to actual conditions of competition in the bearing industry.

One might as well say that SKF is the dominant manufacturer in the barrel type roller bearing industry, or that the Chrysler Corporation is the Titan of the Chrysler motor car industry!

The Position of the Timken Companies in the Bearing Industry.

American Timken was first organized by Henry Timken and his sons, H. H. Timken and W. R. Timken, about 1898 or 1899 as The Timken Roller Bearing Axle Company and was moved from St. Louis, Missouri, to Canton, Ohio, about 1902. It manufactured axles and tapered roller bearings (R. 457). The tapered roller bearing was invented by the joint efforts of Henry Timken and one Heinzelman, and was a patented product (R. 465). American Timken at the present time manufactures tapered roller bearings, alloy steel, seamless tubing and removable rock bits, and employs approximately 16,500 persons (Mem. par. 6; R. 960). Its sales in 1947 were approximately $77,000,000 (Mem. par. 10; R. 960). Although no figures are available as to the position of anti-friction bearing manufacturers in relation to manufacturers of friction bearings, the record discloses that American Timken manufactures approximately 25% of the total production of anti-friction bearings in the United States (Mem. par. 12; R. 961). In 1927, when American Timken acquired British Timken with Dewar, its sales represented approximately 23.6% of those of the domestic anti-friction bearing industry.[6] American Timken

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[6] This figure is arrived at by comparing the value of total production of anti-friction bearings in the United States in 1927, $99,849,000, shown by Defendant's Exhibit 178 (R. 2257, offered, R. 849) with American Timken's net sales in that year, $23,590,179 shown by Defendant's Exhibit 229 (R. 2544, offered, R. 948).

manufactures 50% of roller bearings made in the United States (R. 495), and manufactured from 71 to 81.2% of tapered roller bearings produced therein in the years 1941 through 7 months of 1945 (Mem. par. 11, R. 960, 961), and not to exceed 85% thereof in 1927 (R. 54).

In 1927, American Timken was competing in the manufacture of tapered roller bearings with approximately 8 other companies (R. 52, 53), and at the present time competes with 14 manufacturers thereof (R. 69, 70; 490). There are now more manufacturers than ever before (R. 48). It also competes with 18 manufacturers of roller bearings (R. 70, 71; 490), 25 of ball bearings (R. 71) and 6 of special type bearings, such as the SKF barrel type bearing and the spherangular bearing (R. 71). Some of these companies manufacture more than one type of bearing. Among these competitors are Hyatt, a division of General Motors Corporation, which manufactures tapered and straight roller bearings (R. 490), and American SKF, a subsidiary of Swedish SKF, parent of the largest organization for the manufacture of anti-friction bearings in the world (R. 490, 491). Bower which sold $20,000,000 worth of bearings in 1947 (R. 75), and which entered the field about 1927, has grown much faster than American Timken since that time (R. 72). Another strong competitor is New Departure (R. 72).

British Timken and French Timken are much smaller than American Timken.

British Timken manufactured about 5% of anti-friction bearings in England in 1927 (R. 211), and now manufactures about 20% thereof (Mem. par. 13, R. 961). In 1927 it was competing with such ball bearing manufacturers as Hoffman, Ransome & Marles, Skefko, the English subsidiary of SKF, and two other smaller companies (R. 272). Skefko also manufactured tapered roller bearings after American Timken's basic British patents expired in 1924 and had cut heavily into British Timken's market therefor, as will be seen hereinafter. British Timken has manu-

factured from 70% to 90% of tapered roller bearings produced in England since 1927 (Mem. par. 13, R. 961), and employs approximately 2,400 people at the present time (Mem. par. 7, R. 960). Its sales, including those of its subsidiary, Fischer Bearings Company, Ltd., which manufactures ball bearings, totalled $14,700,000 in 1947 (Mem. par. 13, R. 961).

French Timken employs only 510 people (Mem. par. 8, R. 960), and its sales in 1947 totalled only $2,274,723 (Mem. par. 14, R. 961). It manufactures approximately 10% of all anti-friction bearings made in France, including 80% of tapered roller bearings (Mem. par. 14, R. 961). Other manufacturers of tapered roller bearings in France are French SKF, Rossi and Renault, which also manufacture ball bearings and other types of anti-friction bearings (R. 441, 442).

As in the case of American Timken, the high percentage of tapered roller bearings manufactured by British Timken and French Timken is accounted for by the fact that they have pioneered in the field of tapered roller bearings in the markets which they have served. Because the production of ball bearings therein greatly exceeded that of tapered bearings, the ball bearing companies were very well known, and the sale of tapered roller bearings has involved largely displacing ball bearings (R. 396, 397), the tapered roller bearing competing therewith 90% of the time (R. 210).

Some idea of the Timken companies' present position in world trade may be obtained from Defendant's Exhibit 184 (R. 2291; offered, R. 874, 875), a report to the Congress on "Post-War Imports and Domestic Production of Major Commodities" by the Tariff Commission, in which it is stated as to anti-friction bearings (R. 2293):

> "In the United States there are 20 to 30 manufacturers, the largest of which is a subsidiary of an automobile manufacturer. Two large firms are affiliated, respectively, with a Swedish and a British bearing maker.

> "The Swedish company (commonly called S.K.F.) has a large plant in Sweden and subsidiaries which are the largest producers in Germany and France. The pre-war output of this company is estimated at about one-third of the world supply."

As to the situation in 1934, see Defendant's Exhibit 173 (R. 2223; offered, R. 801; 2224).

It is quite obvious, therefore, that far from being dominant in the anti-friction bearing industry, in which they compete with others primarily, American Timken and British Timken occupied in 1927, and the three Timken companies occupy now, relatively modest positions in their respective spheres of operation.

Foreign Commerce in Anti-Friction Bearings.

Since the district court held (R. 1174) that American Timken had combined with British Timken and French Timken "in restraint of trade and commerce in anti-friction bearings *between the United States and foreign nations*," it becomes important to discuss the nature of foreign trade in that general type of bearings.

A great mass of uncontroverted testimony by the witnesses for American Timken and certain of its exhibits disclose (1) that the only practical way for it to develop foreign trade in tapered roller bearings was, in 1927, and is now, by having them manufactured by affiliated foreign corporations managed by nationals of the countries in which they operate, and (2) that, for various reasons, there has been in the past, and is now, little, if any, foreign commerce in anti-friction bearings.

Inability to compete for foreign bearing business except through foreign affiliates.

The foreign countries in which the world's machinery, aside from that built in the United States, is chiefly manufactured are located in Western Europe. Bearings are

invariably components of such machinery, and the demand for anti-friction bearings outside of the machinery producing countries consists of replacement, as distinguished from original installation, business (R. 847). During most of the period from 1928 to date, outside of the United States, Germany was the largest manufacturer of capital goods, the United Kingdom second, and France third (R. 669).

Since practically all of the manufacturing of machinery outside of the United States from 1927 to date, has taken place in the Western European nations, it has been necessary to obtain original installation business from customers located there in order to do any business with them, due to the natural tendency of replacement sales to follow original installation business and, therefore, to go to the manufacturer who originally made the bearings (R. 394; 519-521; 669). For example, if a machine were owned by a manufacturer located in an Eastern European country and the bearings originally installed therein were of German make, they would ordinarily be replaced with bearings of the same German make.

The record discloses without contradiction, in substance, that an American manufacturer of anti-friction bearings, at any time from 1927 on, could not have exported bearings manufactured in the United States to the United Kingdom, France, or the other Western European countries which constitute substantially the only free manufacturers of capital goods in the world outside of the United States, in successful competition with those manufactured therein.[7] See testimony of deVegh, qualified (R. 774, 775) international economist (R. 782, 783; 796; 868); Pascoe,

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[7] The principal foreign countries in which anti-friction bearings have been produced during the period covered by the complaint in this case, 1928 to date of the judgment, are Sweden, Germany, Italy, the United Kingdom, France and Switzerland, probably ranking in the order named (Deft's. Exh. 173, R. 2223; offered, R. 801; R. 2224), all of which are located in Western Europe.

second in command of British Timken and intimately connected with the bearing industry since 1930 (R. 395, 396); Umstattd, President of American Timken, qualified (R. 503, 504) from business experience, study and travel (R. 510, 511); Hess, President of American Bosch Corporation (R. 315), and formerly assistant to the President of American Timken and in charge of its foreign business, qualified also (R. 316, 317; 667, 668), by business experience and visits to British, French and German Timken (R. 667 ; and DeKrafft, qualified (R. 808-812) as a business consultant with foreign experience (R. 824). Lemarie, Director of French Timken, so testified as to the situation in France (R. 443).

It also appears that it was necessary for a manufacturer to establish plants to produce bearings in those Western European countries in which original installation business was to be obtained (R. 392-394; 505-511; 668, 669).

The only countries in Europe in which it would have been profitable during this period to establish a bearing plant were England, France, Germany, and possibly Italy (R. 551).

Not only has it been necessary for an American manufacturer of bearings to operate plants in England, France and Germany since 1927 in order to obtain original installation bearing business therein, but also it has been advisable to operate them under local management with local personnel (R. 505, 506).

There are numerous reasons why establishment of plants in foreign countries, incorporated and operated as local concerns, is necessary.

First, manufacturers of capital goods are reluctant to purchase bearings from producers who are not located nearby because they desire to have speedy technical advice and service available due to the technical nature of the business (R. 392; 513, 514).

Second, there is always a national hostility toward the product of foreigners in countries where there is a strong manufacturing economy, and a pronounced national interest in supporting the product of manufacturers located therein, which has always been of special importance to American Timken because the tapered roller bearing was first developed by it and has been essentially an American product competing largely with the ball bearing, an older product developed locally in the Western European countries before tapered roller bearings were sought to be sold therein (R. 382, 383; 396, 397). Evidence of the "Buy British" attitude in England as early as 1924 appears from a report attached to a letter of October 17, 1924 constituting part of Defendant's Composite Exhibit 236 (R. 2554, offered, R. 944) in which the sales manager of British Timken stated that, while American Timken had offered to send British Timken American-made bearings to help it with its British business, the majority of motor car makers would have only a British-made article (R. 2589); from the fact that Dewar insisted upon British control of British Timken as a condition of his participation in its acquisition in 1927 because a "product made by foreigners though produced here is unpopular. All letterheads must carry a list of directors and the nationality of each other than British" (Deft's. Exh. 16, R. 1735; offered, R. 262); and from Dewar's testimony that a special agreement was made by American Timken and British Timken, for British Timken representation in Argentina, because the British-owned railways in that country wished to place orders for cars and locomotives in England fitted with Timken bearings (R. 181). The same attitude in France resulted in French Timken's having a Frenchman do all its contact work while the director of the company at the time, an Englishman, stayed in the background (Deft's. Exh. 129, R. 2077, 2082; offered, R. 647).

Third, the method of selling bearings for original installation requires the services of engineers who are famil-

iar with the practices of a particular country in which sales are to be made and with the temperament of the customers of that nationality (R. 395, 396; 506; 668).

Fourth, during the entire period from 1927 on, restrictions on imports, exports and foreign exchange imposed by England, France, Germany and other Western European countries have made it necessary to manufacture bearings in those countries in which they are to be sold for original installation, and practically impossible to export bearings manufactured in the United States to those countries in successful price competition with bearings manufactured therein. DeVegh testified at length as to the economic situations in those countries and the various details of the restrictions imposed by them resulting in the evolution of a complete change in foreign trade, commencing in 1914 at the time of World War I, from free competition on the basis of price, regulated only by tariff restrictions, to a trade administered and controlled by governments under rigid licensing systems in which price competition has no place because they are administered according to the political and economic theories of the particular countries which impose them (R. 774-807; 834-888). He testified further as to the restrictive situation with respect to foreign trade resulting from current control of exports, imports and foreign exchange in the United Kingdom since World War II (R. 832-863) and expressed the opinion that, due to the licensing systems, which are designed to encourage full domestic production and permit imports from America only when they cannot be obtained elsewhere without dollars, it will be impossible for an American manufacturer of anti-friction bearings to sell any substantial quantity thereof into the British Empire and the sterling area countries generally in competition with those manufactured in the Empire in the foreseeable future (R. 864, 865) and that the same is true with respect to France and Europe in general (R. 866-868).

The record is replete with practical examples of the effect of these restrictions on trade, such as the inability of British Timken to purchase American tubing after the break in the sterling dollar exchange in 1931 (Deft's. Exh. 116, R. 2034, offered R. 641); the necessity for many years of an import license in Australia and evidence that the article to be imported cannot be obtained from the United Kingdom or from a sterling area country (R. 761, 765-767); and testimony of DeKrafft as to his experiences with English currency controls (R. 817, 821, 823).

Fifth, there is a strong national interest in each country in having an economy which is as nearly integrated as possible and not dependent upon an outside source of supply for such an important item in the economy, particularly from the military point of view, as anti-friction bearings (R. 779, 780). Witnesses gave uncontroverted testimony as to this attitude in England (R. 504); France (R. 443); Russia (R. 392; 753-755; 515, 516); Holland, Spain, Australia and Brazil (R. 393, 394); Canada (R. 510); Germany (R. 750, 751); and Switzerland (R. 755).

Sixth, continental bearings are largely manufactured to metric rather than inch measurements, which makes it much more practical to have a plant in a metric country when sales are to be made there (R. 507).[8]

Seventh, high tariffs in the United Kingdom, France and Germany have made it advisable to establish plants there. Defendant's Exhibit 180 (R. 2259, offered, R. 851) is a schedule obtained from the Department of Commerce showing the latest tariff rates prevailing in various countries, including the United Kingdom, France and Germany as of 1947 (R. 850-852). It indicates that the United Kingdom imposes a tariff similar to our own, namely 33½% ad valorem on roller bearings, and that France ordinarily

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[8] Out of 500 sizes of bearings manufactured by French Timken, 100 to 110 are metric because this is necessary to sell bearings to all companies controlled by the French government (R. 442).

imposes a tariff of 28% thereon (suspended January 1, 1948) plus additional levies on imports of approximately 12.36% which have not been suspended. A high French tariff motivated Hess in 1927 to recommend that a plant be established in France for the purpose of performing at least the finishing operation on bearings in order to avoid the full impact of the French tariff in effect at that time (Deft's. Exh. 32, R. 1834; offered, R. 372; 1838), which was one reason for the joint organization by American Timken and Dewar of French Timken (Hess, R. 378, 379).

The negligible amount of exports and imports of bearings.

As a result of some or all of the foregoing causes, export trade of the United States in anti-friction bearings over the years has been negligible.

Defendant's Exhibit 173 (R. 2223; offered, R. 801), a report of the United States Tariff Commission issued in October, 1934, on the subject of anti-friction bearings (R. 801) analyzes the exports thereof from the United States as follows (R. 806):

> "Domestic exports to principal markets.
>
> "Domestic bearings are exported principally to Canada with lesser amounts going to European countries, Latin American countries, Japan, Australia, and the Philippine Islands with occasional large shipments to Soviet Russia. Export statistics, by principal markets, are given in the following table.
>
> * * *
>
> "Exports from the United States are principally bearings used in the manufacture of automobiles in Canada in plants affiliated with American automobile producers. The balance of the exports are largely repair and replacement parts for American-made machines and devices, and types of bearings not produced in Europe."

Table 13 (R. 2235, 2236) constituting part of Defendant's Exhibit 173, shows that exports to Canada during the cen-

sus years from 1923 to 1933 were consistently higher than to other countries "for the well-known reason that Canada is in its manufacturing geared to American industry, especially to automobile production, and so forth, and is largely supplied by subsidiaries of American corporations located in Canada," (DeVegh, R. 839), and that on the average exports to Canada constituted 64.1%, to the United Kingdom 6.5%, and to France 1.5%, respectively, of exports from the United States (R. 2236). Defendant's Exhibit 175 (R. 2238-2255; offered, R. 842) is a compilation of exports and imports of the ten major producing and consuming countries in the years 1934 and 1938 prepared from original statistics of each individual country (R. 842) which brings Defendant's Exhibit 173 up to 1938 (R. 843). Defendant's Exhibit 176 (R. 2256; offered, R. 847) shows the value of exports of anti-friction bearings from the United States to Europe, the United Kingdom, and the rest of the world from 1927 to 1947, and brings the story of exports from the United States up to date, including the war and post-war years (R. 846). It shows that the bulk of American anti-friction bearings exported went to non-European countries except during the war (R. 847). The figures contained in these tables corroborate for the entire period, 1927 through 1947, the statement quoted from Defendant's Exhibit 173, namely, that exports from the United States consist chiefly of those to Canada for original installation, made to plants affiliated with American manufacturers, and of replacement parts to other regions of the world for American-made machines and devices.

Imports of anti-friction bearings into the United States have also been negligible.

They are analyzed as follows in Defendant's Exhibit 173 (R. 2223; offered, R. 801; 2226):

> "The domestic producers have established a high reputation through high quality products and service. Mass production methods are generally used in the American plants, and two of the largest bearing fac-

tories are owned by one of the principal domestic automobile producers.

"Production in Europe is principally in Sweden, Italy, Germany, the United Kingdom, and France. The principal foreign company is Swedish controlled (S. K. F.) and has plants in each of the above countries, except Italy, and in the United States and Czechoslovakia and has agencies and offices throughout the world. This company is as favorably situated as the domestic producers in relation to raw material, equipment, and skilled workmen, and produces high quality bearings. *Imports into the United States are principally from the S. K. F. plants and from Hoffman of England. These imports go largely to their American affiliates and are largely sizes and types which they do not advantageously produce here.* In earlier years large quantities of bearings came from Italy. There is no foreign competition in domestic markets in cheap bearings which represent a very small part of the total domestic consumption."

Table 4 of Defendant's Exhibit 173 demonstrates that exports from the principal producing countries into the United States from 1923 to 1933 were comparatively small. It was stated in the report contained in Defendant's Exhibit 173 that imports amounted to less than 1% of the American production (R. 2226). Defendant's Exhibit 177 (R. 2256A; offered, R. 848) is a table showing the value of imports of anti-friction bearings into the United States from 1923 to 1943, and in 1947, which was prepared from information obtained from the United States Department of Commerce (R. 847; R 848). It shows that, of the European countries known as producers of anti-friction bearings, only Germany, Italy (until 1929), Sweden and the United Kingdom imported regularly into the United States even as high as $100,000 worth of bearings annually, and that, after the 1929 depression, the Italian manufacturer gave up its attempt to sell bearings in the United States (R. 848).

Inability of British Timken and French Timken to compete in the United States.

The uncontroverted evidence in the record is that British Timken could not have sold bearings in competition in the United States in 1927 and thereafter (R. 272, 273; 412, 513, 514), and that this would be more pronounced in the case of French Timken (R. 514). The principal reasons for this condition, which will continue indefinitely, are (1) the high protective tariff of the United States, and (2) the comparatively high cost of manufacture by European manufacturers.

The United States tariff at the present time is 8 cents per pound, plus 35% ad valorem (Deft's. Exh. 182, R. 2283; offered, R. 869). Table 5 of Defendant's Exhibit 173 (R. 2223; offered, R. 801; 2229) shows that from 1923 to 1933 the United States tariff on bearings averaged between 54.4% and 61.9% of the declared value (R. 837). Table 8 shows that the rate on roller bearings varied between 53.6% in 1923 and 65.3% in 1933. In short, duty on an imported bearing would range on the average from 55 to 60% of the value thereof (R. 837). Defendant's Exhibit 183 (R. 2287; offered, R. 870) gives the same type of information for roller bearings in the years from 1926 to 1943 (R. 870). The high tariff would prevent foreign manufacturers from selling their bearings in this country on a profitable basis (deVegh, R. 870). Pascoe (R. 412) and Umstattd (R. 513) based their opinions that British Timken could not have sold bearings on any practical commercial basis in the United States in part on the existence of this barrier.

In addition to the tariff handicap, the cost of production in the United Kingdom and European countries is higher than that in the United States because orders there are much smaller, which prevents "long runs" of bearings on particular orders and necessitates much more frequent setting up of machines, with different tooling, to take care

of different orders for different sizes, thus increasing tremendously the unit cost of production. (R. 333, 640; Deft's. Exh. 115, R. 2034; offered, R. 640). Pascoe testified that for this reason, as well as others, British Timken's price level has always been higher than that of American Timken (R. 411). Defendant's Exhibit 114 (R. 2030; offered, R. 638; R. 2031), a comparison in 1930 of American Timken's costs with those of British Timken, and Defendant's Exhibit 128 (R. 2054; offered, R. 647; R. 2068) a report comparing their standard bearings costs in 1932, show that American Timken's costs were approximately half those of British Timken even after the latter had adopted American methods of production for a period of several years from and after 1927.

Thus for many reasons, it would have been absolutely impractical for American Timken to attempt to compete for original installation business in foreign trade by exporting its products from this country, and the only practical method for successfully introducing its tapered roller bearings in foreign markets was to acquire or create foreign plants, preferably incorporated as foreign corporations and staffed and managed by local personnel, in order to obtain the best results, and to manufacture bearings locally therein; and that it would have been impossible for British Timken or French Timken to compete in this country for business over the period from 1928 on, during which the combination is alleged to have taken place. The conclusions of the district court to the contrary in the face of this mass of uncontroverted evidence are found in paragraphs 204 through 209 of its memorandum (R. 1015 to 1017), and are not convincing.

EARLY EFFORTS OF AMERICAN TIMKEN TO PROMOTE THE SALE OF TAPERED ROLLER BEARINGS IN THE EUROPEAN AND ENGLISH MARKETS.

While the amended complaint alleges that the combination and conspiracy between American Timken and the other two Timken companies had begun in or about the year 1928 (R. 17), it also sets forth certain facts as the "Background of the Conspiracy" (R. 16), and the district court found it to be essential to examine American Timken's prior activities, which the appellee claimed "culminated in the agreements, contracts and understandings to eliminate competition, assailed in this action" (Mem. par. 23, R. 962). The district court placed great importance on this background as appears from the examination of paragraphs 152 through 155 of its memorandum (R. 1003-1004), in which it disposed of one of American Timken's main contentions largely upon the basis thereof.

However, the evidence discussed by the district court in this connection constituted only a very small portion of that introduced, all of which was uncontroverted, and none of which tended to establish in the slightest degree any intention on the part of American Timken to gain control of the industry in which it competed, either alone or by combination, during the "background" period, i.e., from 1909 through 1927.

On the contrary, the evidence discloses merely that American Timken, commencing in 1909, entered into license agreements with a subsidiary of a large English concern which, between 1909 and 1927 proved to be unsatisfactory for two reasons; namely, first, the tapered roller bearing business in England and on the European continent was not developed by the licensee as actively as it should have been; and, second, certain trademark difficulties developed in respect of the trademark "Timken," the family name of the founders of the company, in England, France and Germany, the full details of which will be explained hereinafter.

In 1909, American Timken, then a young and very small company[9] licensed The Electric & Ordnance Accessories Company, Ltd. (hereinafter called E. & O. A.), a subsidiary of Vickers, Ltd., a large English enterprise "described as manufacturing everything from battleships to baby carriages" (Mem. par. 24; R. 962, 963), to manufacture and sell tapered roller bearings in the United Kingdom under one agreement covering three basic British product patents (Deft's. Exh. 189, R. 2305; offered, R. 936), and, on the Continent, under a second contemporaneous agreement (Deft's. Exh. 190, R. 2322; offered, R. 936, 937), covering two French patents, a Russian patent and a German patent (as soon as the latter could be obtained) upon payment of a royalty of 15% of net sales. Under these two agreements E. & O. A. was licensed to manufacture and sell only "so far as the licensor lawfully can do so," was given an exclusive territory and restricted thereto, was prohibited from manufacturing or selling anti-friction bearings other than those made under the patents, was required to use the mark "Timken" exclusively in the sale thereof and to follow the method of manufacture and the instructions which American Timken was required to provide, and its price was restricted to some extent (Mem. par. 24-27; R. 962-964).

The execution of the two license agreements certainly does not indicate the intention of strong potential competitors to divide the world and eliminate competition, which might be implied from the district court's statement. At the time these agreements were made, American Timken was in its infancy, attempting to promote a new product in competition, principally, with the older well established ball bearing companies, since the tapered roller bearing did not become soundly established in this country until some time in the 1920's (R. 499). E. & O. A. was not a

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[9] As late as 1905 American Timken employed only 65 people (R. 57).

"potential" competitor in 1909, since it did not manufacture tapered roller bearings prior to the making of this agreement, but was instructed by Vickers to start their manufacture in that year (R. 427). It was doing work on electrical motors, heating apparatus, etc., and some government ordnance work (R. 427, 428), and commenced the bearing operation in 1909 in one shop about 200 feet by 400 feet with not more than a couple of dozen employees (R. 428).

Thus, actually American Timken in 1909 undertook to arrange for the development of foreign trade in patented tapered roller bearings under the name "Timken" by one of the largest British concerns, having outlets all over the world, at a time when American Timken was not in any position to undertake such distribution on its own behalf.[10]

E. & O. A. continued the manufacture of tapered roller bearings under the patent license agreements until some time in 1920 when the patent rights were assigned to Wolseley Motors, Limited, another Vickers subsidiary (Mem. par. 28, R. 964).

Some time prior to 1924 E. & O. A., or its successor in interest, sublicensed a French manufacturer, Societe Mecanique de Gennevilliers (hereinafter called SMG) under the 1909 license agreements (Mem. par. 53, R. 969).

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[10] The fact that the 1909 license agreements contained provisions that the licensee should

> "* * * use the word 'Timken' exclusively in connection with the Roller Bearings made or sold by it under this agreement and in connection with the sale of such Bearings."

and that,

> "* * * the Licensee shall be entitled to describe itself as sole Licensee within the same limits."

(Deft's. Exh. 189, R. 2305; offered R. 936; Art. XI, R. 2316); (Deft's. Exh. 190, R. 2322; offered R. 936, 937; Sec. 32, R. 2333), demonstrates that American Timken was seeking to project its goodwill ahead of its business by requiring the use of the surname of its founders in connection with the foreign sale of tapered roller bearings. *A license to use the name, therefore, was clearly implied.*

The first two documents in Defendant's Exhibit 236 (R. 2554-2556; offered R. 944) demonstrate that American Timken objected to the transfer of operations from E. & O. A. to Wolseley Motors because it did not view with favor having bearings manufactured by a motor car manufacturer; that it was dissatisfied with operations by E. & O. A.; that Wolseley Motors was attempting to placate American Timken by providing for an entirely separate organization, with separate offices, plant, officials, and staff under an entirely different name, to manufacture the bearings; and that British Timken representatives were denied access to American Timken's plant until a satisfactory agreement was reached about March 29, 1920 (R. 2556). In this connection, it will be noted that the 1909 license agreements were amended by supplemental agreements dated April 6, 1920 between American Timken and Wolseley Motors as the assignee of E. & O. A. (Mem. par. 28; R. 964) and signed by Ely, American Timken's representative, in the presence of an English witness in London (Deft's. Exh. 191, R. 2338; offered R. 936, 937; R. 2342; and Deft's. Exh. 192, R. 2343; offered R. 936, 937; R. 2346), and that British Timken was originally organized on April 20, 1920 (Deft's. Exh. 199; R. 2359; offered R. 937, 938).

The 1920 Modifications of the 1909 Agreements and Efforts to Deal With the Trademark.

Pursuant to this agreement, the 1909 license agreements were modified in 1920 by supplemental agreements which changed them in some unimportant particulars (Mem. pars. 28, 29; R. 964), and further provided that if the principal agreements should be "rescinded" Wolseley should abandon the use of the word "Timken" as part of its name and in all other respects and secure to American Timken the exclusive use thereof (Mem. par. 30; R. 964, 965). This provision did not cover the situation as to what was to be done with the name and trade-mark "Timken" in the

event that the 1909 agreements were not rescinded but instead expired in accordance with their terms, and American Timken was advised by its American trademark counsel that these 1920 supplemental agreements should be revised in order to have the licensee definitely recognize American Timken's proprietary right in the word "Timken" and agree that all rights in that word should revert to it at the expiration of the license agreements (Deft's. Exh. 63, R. 1947, offered R. 579; Deft's. Exh. 66, R. 1952; offered R. 580). American Timken's American trade-mark counsel suggested that it obtain registration of the British trademark in England (Deft's. Exh. 65, R. 1950; offered R. 579), and this led to further correspondence between American Timken, its American trade-mark counsel, British Timken and English trade-mark solicitors with a view to obtaining registration of the mark, first by American Timken and later, when this was found not feasible, by British Timken, subject to an agreement as to its disposition at the expiration of the 1909 license agreements.[11] American Timken instructed its American trade-mark counsel to proceed to obtain registration by British Timken with an agreement for the assignment of the registration by it to American Timken upon termination of the 1909 license agreements, as amended, and to proceed with registration in other European countries without waiting for this matter to be settled (Deft's. Exh. 80, R. 1964; offered R. 586). It thereupon proceeded to obtain registration of the trade-mark in twenty-two countries in the years 1922, 1923 and 1924 (Deft's. Exh. 87, R. 1972; offered, R. 587), including all of the important European countries, except France

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[11] Deft's. Exh. 67, R. 1953; offered R. 580; Deft's. Exh. 68, R. 1953; offered R. 580; Deft's. Exh. 69, R. 1954; offered R. 581; Deft's. Exh. 70, R. 1955; offered R. 581; Deft's. Exh. 71, R. 1956; offered R. 583; Deft's. Exh. 72, R. 1957; offered R. 583; Deft's. Exh. 73, R. 1959; offered R. 584; Deft's. Exh. 74, R. 1959; offered R. 584; Deft's. Exh. 76, R. 1960, offered R. 585; Deft's. Exh. 77, R. 1961; offered R. 585; Deft's. Exh. 78, R. 1962; offered R. 585; Deft's. Exh. 79, R. 1963; offered R. 585.

and Germany in which it could not obtain registrations because the mark had already been registered by others as hereinafter set forth.

American Timken was only able to do this after it registered the surname "Timken" as its mark in the United States in 1921, pursuant to the act of March 19, 1920 which permitted, for the first time, the registration of a surname as a trade-mark in this country (R. 577) because the law of most foreign countries requires an American applicant to supply a certified copy of its home application for the mark.

According to Dr. Ladas, an expert on international trademark law (R. 603-605), prior use of the trademark in 13 of these countries by British Timken, which was doing business therein, put American Timken's registrations of the mark therein in jeopardy, in the absence of an agreement with British Timken (Ladas, R. 609, 610; 613-615).

Unsatisfactory Production and Sales Methods of the Vickers Subsidiary (1920-24).

Umstattd, who commenced to attend the meetings of the officers of American Timken in 1922 (R. 517), testified that they were of the opinion that British Timken was not advancing nearly as fast as American Timken in new fields of endeavor, such as the industrial field, and had not taken full advantage of the technical information which American Timken was passing on to it (R. 517), and that he learned that the British licensee's methods were inferior to American Timken's, its costs were higher and its quality of bearing at that time was quite inferior (R. 517).

This uncontroverted testimony is corroborated by correspondence between Ely, former vice president and treasurer of American Timken (R. 252), and various representatives of Vickers' subsidiary and others, disclosing that American Timken was dissatisfied because of its inferior manufacturing and sales methods; failure to push sales

vigorously in new fields, such as the industrial field; lack of cooperation to observe or take advantage of American Timken's manufacturing methods in order to reduce costs; continuous insistence upon cutting the rate of royalty, which resulted in its reduction from an original 15% to 5% on ordinary business and 2½% on business in England with Ford, one of American Timken's principal customers; and domination of the business by Wolseley Motors, a motorcar manufacturer competing with the other automobile makers, which were the principal prospective customers for bearings. This correspondence is contained in Defendant's Exhibit 236 (R. 2554; offered R. 944), a collective exhibit containing 27 unnumbered documents which illustrate the situation as it was portrayed to American Timken through Ely.

Threatened Claims by British Timken to the Mark, and the Resultant 1925 Amendments to the 1909 Agreements.

Finally, in 1924, after repeated requests by British Timken that the rate of royalty be reduced from 10% to 2½% on large volume business in order to meet competition from Skefko, the SKF subsidiary in England (Deft's. Exh. 236, R. 2554; offered R. 944; R. 2567; 2571, 2577 and 2578), Lothrop, at that time Works Manager for American Timken, was sent to England to observe British Timken's operations and to bring it up to date on American Timken's practices of production (Deft's. Exh. 83, R. 1966; offered R. 586).

Upon Lothrop's return, he advised Ely that the British Timken representatives had given him the impression that American Timken had no right under any condition to the name "Timken" in England (Deft's. Exh. 83, R. 1966; offered, R. 586; R. 1967). On February 23, 1924 Ely received a letter from American Timken's trademark counsel (Pltf's. Exh. 173, R. 1683; offered R. 949, 950) in which

the latter advised that an arrangement which Lothrop apparently had made with British Timken, to refer the matter of the value of the license of its remaining British patents to the British patent solicitors of American Timken and British Timken, was unsatisfactory because it wholly overlooked the license of the trademark from American Timken to British Timken.[12]

A month later, on March 25, 1924, Ely answered British Timken's latest request for a reduction of royalty (Deft's. Exh. 242, R. 2662; offered, R. 946), stating that American Timken's English solicitor, A. J. M. Duncan, would get in touch with British Timken (Deft's. Exh. 243, R. 2668, offered, R. 947), and on the same day wrote Duncan (Deft's. Exh. 83, R. 1966; offered, R. 586), stating that "the one thing we prize over all others is the name 'Timken,' and we must have entire control of this name" (R. 1967), and that, as a last resort "in order to get everything that we desire in clearing the name 'Timken,' and in having entire control of it, we could consider even down to 2½% on the Ford business only, and 5% on all other business" (R. 1969).

Duncan's negotiations with British Timken resulted in an agreement by which the royalty payable by British Timken and by SMG, its French sublicensee, was reduced to 5% on ordinary business and 2½% on Ford business commencing January 1, 1925 (Deft's. Exh. 244, R. 2669; offered, R. 947; Deft's. Exh. 245, R. 2670; offered, R. 947; Deft's. Exh. 246, R. 2670; offered, R. 947; Deft's. Exh. 247; R.

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[12] The trade-mark counsel stated in part (R. 1683):

"* * * Judging from your letter, Mr. Lothrop seems to have in mind that the patent lawyers will undertake to pass on the extent of legal protection afforded to the British licensee by the several British patents with a view to determining the justice of the British Company's claim to a reduction of its royalty. *The defect in this proposition is that it wholly overlooks the trade-mark license, that is to say, the great value to the British Company of the right to use the word 'Timken' on its products and the further great right of excluding you from competition with it.*"

2671; offered, R. 948). The two formal agreements evidencing this modification of the 1909 license agreements as to the United Kingdom (Deft's. Exh. 88, R. 1991; offered, R. 587), and as to Europe (Deft's. Exh. 194, R. 2347; offered, R. 936, 937), extended the prior agreements for a term of five years to January 1, 1929, reduced the royalties as hereinbefore specified, and provided that the name "Timken" should belong exclusively to American Timken, and that British Timken should be deemed to be using it as part of its exclusive license and, upon the expiration of the agreements, should change its name and do everything necessary to secure to American Timken the exclusive right to the name "Timken" (Mem. par. 31, R. 965).[13]

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[13] Section 4 of the agreement as to the United Kingdom (Deft's. Exh. 88, R. 1991; offered, R. 587), provided as follows (R. 1992):

"4. The name 'Timken' shall belong exclusively to the Licensor Company and during the continuance of the Principal Agreement as modified from time to time the Licensee Company shall be deemed to be using the said name as part of the subject matter of the licence contained in the Principal Agreement and shall have the right to use the said name accordingly and upon the expiration or other determination of the Principal Agreement as modified from time to time the Licensee Company will take such steps as may be necessary to change its name and will otherwise cease to have any right in the said name or to make use of the same in any way and during the continuance and after the expiration or sooner determination of the Principal Agreement as modified from time to time the Licensee Company will execute and do at the expense of the Licensor Company such acts and things as may be reasonably necessary to secure for the Licensor Company so far as practicable an exclusive right to use the said name in connection with bearings and other products dealt in by the Licensor Company and to secure and protect so far as practicable the property and rights of the Licensor Company in respect of the said name and enable the Licensor Company to obtain or preserve the exclusive right aforesaid but nothing herein contained shall in any way affect or restrict the right of the Licensor Company to change its name in any manner during the continuance of this Agreement."

Section 5 of the agreement as to Europe (Deft's. Exh. 194, R. 2347, offered R. 936, 937), was substantially identical (R. 2349).

Continued Unsatisfactory Progress of British Timken After the 1925 Amendments.

Even after this agreement had been reached on June 19, 1924 (Deft's. Exh. 247, R. 2671; offered, R. 948), and although British Timken's request that the royalty be reduced to 2½% on all large volume business had been specifically rejected and had been limited to Ford business, British Timken officials continued to ask for reduction to 2½% on various orders other than Ford business (Deft's. Exh. 236, R. 2554; offered, R. 944; R. 2580, 2581, 2583).

Defendant's Exhibit 236 also demonstrates that in 1924 British Timken was just getting under way in the industrial field (R. 2586); that its sub-licensee in France, SMG, had been a disappointment because of competition from SKF (R. 2586); that in 1925 British Timken was "frankly very disappointed" with the business done by SMG in France (R. 2601); and that in the summer of 1926 E. W. Wooler, an official of American Timken, found on a visit to British Timken that it was using antique equipment (R. 2603), had no interest in new equipment because the management was opposed thereto on account of lack of funds (R. 2605), and that the average Timken bearing prices in England were 10% higher than those of ball bearings, which was a very serious handicap (R. 2604).

At about this time, in 1926, Vickers had become overextended and was in considerable financial difficulties (R. 230). Wolseley Motors had even been under the necessity of pledging the share capital of British Timken, which it owned entirely, to a bank to support an over-draft which was guaranteed to Wolseley by Vickers (R. 232). Dewar, previously managing director of Vickers' largest subsidiary, director of its Commercial Board, and chairman of its Sales Committee for all its subsidiaries (R. 230, 231), had been appointed Vice Chairman of Wolseley Motors in order to try to save as much as he could for Vickers out of the Wolseley Motors re-organization (R. 230). This undoubt-

edly accounts for the unsatisfactory condition of affairs which Wooler found on his visit.

Thus, the information available to American Timken, both from British Timken, and otherwise, demonstrated that neither British Timken nor its sub-licensee in France, SMG, were giving to it an adequate return for the use of its name and methods in their respective spheres of trade.

Failure of the 1925 Amendments to the 1909 License Agreements to Cure the Trademark Situation.

Although American Timken had obtained for the first time, by means of the 1925 amendments to the 1909 license agreements, specific recognition by British Timken that it and its sub-licensee, SMG, were using the name and trade-mark "Timken" as licensees thereof with a duty to do everything necessary to return it to American Timken upon the expiration of the license agreements, this provision was inadequate because it referred in terms only to the name "Timken," and not to the trade-mark also, and might be construed as merely requiring that British Timken change its name at the termination of the agreements. Moreover, if American Timken were to maintain that this contract was intended also to apply to the trade-mark, its ability to enforce the agreement was doubtful, because under British law at that time a trade-mark could not be assigned in gross and could only be validly transferred to American Timken provided the assignor also transferred its entire business (R. 610, 611). The 1925 supplemental agreements contained no such agreement by British Timken, and American Timken was advised by English trademark counsel in January, 1926 (Deft's. Exh. 99, R. 2005; offered, R. 594; R. 2006), that, in the absence of such transfer of the good will, upon termination of the license agreements it must establish its own rights by user. This would have required it, practically, to establish a plant of its own in the United Kingdom

upon the abandonment of the mark by British Timken and to manufacture bearings there under its trade-mark.

Moreover, American Timken, even after the making of the 1925 supplemental agreements was in a situation in which it was unable to obtain registration of the trade-mark "Timken" in France, because British Timken's sub-licensee in that country, SMG, had obtained in 1921 (Deft's. Exh. 37, R. 1849; offered, R. 447) prior registration thereof (Mem. par. 53, R. 969) without the knowledge of, and to the consternation of American Timken (Deft's. Exh. 81, R. 1965; offered, R. 586; Deft's. Exh. 82, R. 1965; offered, R. 586). SMG's registration in France, being by the first user, was incontestable under French law (R. 612), and American Timken had no claim on SMG, except, perhaps, as a sub-licensee of the trademark from British Timken.

American Timken also had been unable to obtain registration of the trade-mark in Germany because one Prausnitzer, the German representative of British Timken, had already registered the mark there in 1916 (Deft's. Exh. 44, R. 1907; offered, R. 454) and had successfully opposed American Timken's application (R. 292; Deft's. Exh. 89, R. 1993; offered R. 590). Under German law, Prausnitzer, as the first registrant, had incontestable title to the trade-mark, irrespective of prior use (Ladas, R. 613), so that he could exclude American Timken from the German market.

In the course of attempting to reach some arrangement as to these registrations in the United Kingdom, Germany and France by joint registration in 1925 and 1926,[14] American Timken received from its English solicitor (Deft's.

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[14] See Deft's. Exh. 89, R. 1993; offered R. 590; Deft's Exh. 90, R. 1995; offered R. 590; Deft's. Exh. 91, R. 1996; offered, R. 591; Deft's. Exh. 92, R. 1997; offered, R. 591; Deft's. Exh. 93, R. 1999; offered, R. 591; Deft's. Exh. 94, R. 2000; offered, R. 592; Deft's. Exh. 95, R. 2001; offered, R. 592; Deft's. Exh. 96, R. 2001; offered, R. 593; Deft's. Exh. 97, R. 2002; offered, R. 593.

Exh. 98, R. 2003, offered, R. 594), a copy of an opinion which he had obtained from eminent British trade-mark counsel. (Deft's. Exh. 99, R. 2005; offered, R. 594), in which they recommended that a pending joint application for registration of the trademark by British Timken and American Timken be abandoned (R. 2006), that the existing agreements be terminated, and that one of two alternatives be adopted, either (1) to make a new agreement, or (2) "*to combine the interests of the Companies by one practically absorbing the other*" (R. 2007).

Early in January, 1927, American Timken's American trademark counsel made the same suggestion, stating (Deft's. Exh. 100, R. 2008, offered, R. 595), that the trademark difficulties with respect to Great Britain, New Zealand, France and Germany "*could be surmounted if you were to take over the business of British Timken.* This would merge the somewhat conflicting titles of yourselves and British Timken, and, from a legal standpoint, is by far the best way of handling the situation" (R. 2008-2009). At the time this procedure did not seem feasible, for American Timken's secretary replied on February 2, 1927 that such a course would be "a very large order, and we do not know now and we may not know for years whether this will be advisable." (Deft's. Exh. 101, R. 2009; offered, R. 595).

Thus, by the beginning of 1927, it was apparent that British Timken, hampered by the financial difficulties of its parent corporation, Wolseley Motors, and the latter's parent Vickers, as well as by its own inefficient management, and its sub-licensee in France, SMG, were not producing satisfactory results for American Timken, and that the best way to dispose of the latter's complicated trade-mark difficulties in Great Britain, Germany and France would be to acquire British Timken if this were possible and practicable.

THE ACQUISITION, BY AMERICAN TIMKEN AND DEWAR, OF BRITISH TIMKEN, AND THEIR CREATION OF FRENCH TIMKEN.

In 1926 Dewar, then Vice Chairman of Wolseley Motors and, therefore, in charge of its subsidiary, British Timken, visited the United States as a member of a British Commission to study economic conditions, and spent some time at American Timken's plant (Mem. par. 37, R. 966). He discussed costs of production with Lothrop, then President of American Timken, with a view to reducing British Timken's costs (R. 234), and on February 11, 1927, sent cost data to Lothrop on the four sizes of bearings which British Timken manufactured in largest quantity (Deft's. Exh. 1, R. 1714, offered, R. 237; Deft's. Exh. 2, R. 1715; offered, R. 237).

In 1927, shortly after his return to England, Dewar first became interested in personally acquiring British Timken. As an officer of Wolseley Motors he knew of the existing contracts between American Timken and British Timken and their terms, and that they would expire on June 21, 1929 (Mem. par. 37; R. 966).

On March 10, 1927 (only two months after American Timken's trademark counsel had recommended that it acquire British Timken, if possible) Dewar wrote to Lothrop advising that he had become chairman of British Timken, that he contemplated making an offer to Vickers for its purchase which would require about £300,000, and that he did not "know whether your company (American Timken) would care to be interested if I were to make such an offer either permanently or on the basis of the money loaned being paid out of profits" (Mem. par. 38; R. 966, 967). Subsequently, on March 28, 1927, Dewar cabled American Timken asking if it would extend its agreement with British Timken for ten years if he took it over, because he would like to do so "but did not think it wise without a ten years arrangement with" the latter. On the next day American

Timken cabled Dewar that it was willing to consider an additional ten-year license and a reduction of royalty, and that British Timken's operation costs could be reduced 25% or more, and further stated that

> "* * * we would be more interested, however, in joining with you in purchasing the company from Vickers and making the necessary investment" (Mem. par. 40, R. 967).

Dewar replied on March 30, stating that the matter was urgent, that it was essential that the company should have British control of its ordinary capital,[15] and that he was prepared to put up approximately half (Deft's. Exh. 7, R. 1725; offered, R. 250).

On the same day American Timken wrote Dewar forwarding a comparison of its costs with those of British Timken, and stating that "we believe it is entirely possible for your costs to be reduced 25% or more" (Deft's. Exh. 3, R. 1716; offered, R. 237), and on the next day, March 31, 1927, cabled Dewar that it was willing to become interested in British Timken to the extent of one-half or more of the amount necessary to acquire and reorganize it, and asking if it should send a representative to close the deal (Deft's. Exh. 8, R. 1725; offered, R. 251). On April 1, 1927, Dewar acceded to this suggestion (Deft's. Exh. 9, R. 1726; offered, R. 251), and on the same day American Timken advised its American trade-mark counsel that it was negotiating the purchase of *a controlling interest* in British Timken, and asked for (Deft's. Exh. 102, R. 2010, offered, R. 596), and obtained (Deft's. Exh. 103, R. 2011; offered, R. 596; Deft's. Exh. 104, R. 2011; offered, R. 597), advice as to what should be done regarding the name registration, and instructed its

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[15] He was of this opinion because British Timken would then be a British controlled company so far as British consumers, including the Government, were concerned, and this was important because foreign controlled companies always met with greater sales resistance in England than British controlled companies (R. 250).

representative that the registration of the name "Timken" in the United Kingdom, France and Germany must be definitely cleared up (Deft's. Exh. 105, R. 2013; offered R. 597; R. 2014).

American Timken thus seized the opportunity to acquire a controlling interest in British Timken, as suggested by both its American and British trade-mark counsel.

Negotiations Between American Timken and Dewar.

Ely, who had left the company on amicable terms, was appointed agent for American Timken in negotiations with Dewar (Deft's. Exh. 11, R. 1727; offered, R. 251; Deft's. Exh. 12, R. 1727; offered, R. 252) and, after he arrived in London on April 13, 1927, had almost daily conferences with the latter covering every phase of British Timken (R. 257). In the negotiations between them, Ely insisted that the name "Timken" should be kept the property of American Timken so far as possible (R. 258). Dewar insisted upon British control of the ordinary operations (R. 259) because a product made by foreigners, although produced in England, was unpopular, and, under foreign control, his investment in the business would be in jeopardy (Deft's. Exh. 16, R. 1735, offered R. 262; Dewar, R. 259-262), and Ely agreed thereto provided American Timken should be protected if the profits of British Timken should fall below a certain figure (R. 259; 263). They agreed that control should go to American Timken if Dewar should become incapacitated or die, and that each should have first options on the other's shares of British Timken in the event that either should desire to sell (R. 264). It was agreed that a company owned and operated by American Timken and Dewar should be organized to manufacture bearings in France because SMG was operating in an unsatisfactory manner (R. 263; 288), because of the French tariff and of French hostility to foreign products and because, also, the largest automobile manufacturer in France, Citroen, had

decided to use tapered bearings (R. 289). They also discussed the German situation and decided to form a German company to operate the same way as in France (R. 263; 292).

During the course of these negotiations, Ely, in England, making his recommendations and report to American Timken, stated in a very instructive letter (Deft's. Exh. 17, R. 1735; offered, R. 265):

> "I feel that there are three plans that should be given consideration.
>
> "1st. Our complete control of British Timken or its successor, without other stock holders, other than qualifying directors' shares, and this is the plan I would recommend if there was available in our organization the proper person or persons, to spend a year to 2 years reorganizing plant, sales etc. capable of contacting properly in Germany, and starting there a small company, and making entirely new arrangements in France. The present arrangement is most unsatisfactory.
>
> "2nd. Our control with a working minority of British interest. This also requires time in making proper and suitable connections and would be probably the best plan, if Mr. Dewar, or a man of his type were available. To my straight question to Mr. Dewar on this set-up, he said 'No' without qualification.
>
> "3rd. British control of new Company, only so long as British control operates Company with satisfactory profit and dividends. This is the plan I now recommend, and will cover in more detail.
>
> "In connection with the third plan its whole success depends upon the ability of the British control.
>
> "This brings us to Mr. Dewar—* * *."

Ely then recommended the third plan because Dewar was willing to accept it and was a man of exceptional ability and business contacts. He stated that Dewar expected to cut British Timken costs twenty to twenty-five per cent

with American Timken's assistance and wanted the latter "very much *as partners*,"[16] because, as a partner, it would then have an interest in the profitable operation of British Timken.

On May 12, 1927, pursuant to an agreement reached with Dewar, American Timken offered to purchase all of the shares of British Timken from Vickers, provided that an arrangement satisfactory to the purchasers should be made with Prausnitzer by British Timken (Deft's. Exh. 19, first document, R. 1742; offered, R. 267). This condition was withdrawn on Ely's recommendation that American Timken and Dewar deal directly with Prausnitzer (Deft's. Exh. 20, R. 1743; offered, R. 268), and the offer was accepted (Deft's. Exh. 19, second document, R. 1742; offered, R. 267). In Ely's cable advising American Timken that the offer had been accepted by Vickers (Deft's. Exh. 20, R. 1743; offered, R. 268), he stated that "an old agreement of Vickers with Prausnitzer provides for cancellation and surrender of name which solicitors feel could be accomplished with slight if any cost" This demonstrates that one of American Timken's purposes in purchasing a one-half interest in British Timken was to cure the German trade mark situation.

The Basic Agreement Between American Timken and Dewar.

On May 16, 1927, American Timken and Dewar executed a written instrument called "Heads of Agreement" which constituted in effect the memorandum of the concurrence of the parties on the basic subject matter of the negotiations, to be later "embodied in more formal documents as soon as practicable" (Mem. par. 41; R. 967).

This document (Deft's. Exh. 15, R. 1730; offered, R. 260) provided (1) that American Timken would contribute

[16] Dewar confirmed making this statement to Ely (R. 262, 265).

£52,500 and Dewar £47,500 (i.e. 52½% by American Timken, and 47½% by Dewar) for the purchase of the entire 50,000 shares of stock of British Timken, 26,250 to be issued to American Timken and 23,750 to Dewar; (2) that the articles of incorporation of British Timken should be altered to provide for two classes of shares, Dewar to own the majority of the "A" class, which should control the company with respect to its ordinary affairs until a minimum net profit of £15,000 was not earned and a dividend of "twenty-five per cent gross" was not paid in any year, in which event such control should pass to American Timken, as owner of a majority of the shares of the "B" class; (3) that shareholders should be able to transfer shares with the consent of the majority, but must first offer them to the other shareholders; (4) that Dewar was to be the managing director while the shares he owned controlled the company; (5) that upon his death, or incapacity for six months to perform the duties of director, American Timken should have the right to purchase his shares; (6) that a new agreement should be entered into between American Timken and British Timken extending for ten years the terms of the existing 1909 license agreements between them, subject to modifications, and generally upon terms and conditions to be mutually agreed upon, including among others, any practical steps to be taken for the protection of the name "Timken," and securing the exclusive reversion thereof in all countries to American Timken at the termination of the new agreement; and (7) that arrangements should be made for the formation of continental companies for the manufacture and/or sale of bearings subject to a royalty to be divided between American Timken and British Timken.

The Comparative Insignificance of British Timken at the Time of its Purchase.

At the date of the purchase of British Timken by American Timken and Dewar, British Timken even though it was manufacturing a large percentage of the tapered roller bearings made in the United Kingdom because it had specialized in their manufacture, was by no means the "dominant" manufacturer of bearings and "potential competitor (in 1928) with whom defendant had to reckon," which the district court pictured it to be (Mem. par. 122; R. 996). At this time, British Timken owned virtually no manufacturing equipment, and that which it owned was obsolete (Deft's. Exh. 31, R. 1800; offered, R. 318; R. 1801); it leased its plant and machine tools from Wolseley Motors (R. 240, 241); had practically no assets, *other than a certain amount of good will* [17] (R. 241); its largest net sales in its history to that time were £240,202 in 1926 (Deft's. Exh. 230, R. 2545; offered, R. 943), or approximately $1,000,000, as compared with American Timken's $24,362,805 of sales in that year (Deft's. Exh. 229, R. 2544; offered, R. 943); it employed not to exceed 500 people and manufactured not to exceed 100 sizes of tapered roller bearings, mostly automobile sizes (R. 430) while American Timken was employing between 3500 and 4000 people as early as 1919 (R. 456) and in 1927 was making 887 cone, 359 cup, and 54 thrust bearing sizes (Deft's. Exh. 185, R. 2296; offered, R. 902); even three years later, in 1930, its cost of manufacture of three of the four sizes of bearings which it produced in the largest quantities was approximately 200% of American Timken's on two sizes, and 135% on the third (Deft's. Exh. 114, R. 2030; offered, R. 638); its management was "more

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[17] This goodwill, consisting of the right to use the name and trademark "Timken," was valued by Ely at £30,000 out of £100,000 paid for British Timken (Deft's. Exh. 20, R. 1743; offered, R. 268), yet in 1927 the right of Vickers' subsidiary to use that name was to terminate in one and one-half years under the 1909 license agreements.

or less asleep," as Ely advised American Timken during the negotiations (Deft's. Exh. 17, R. 1735; offered, R. 265; R. 1739); the existing license agreement between American Timken and British Timken had only about one and a half years to run; and, as Dewar testified in substance, the latter probably could not have continued to manufacture and sell bearings in the absence of the relation it had had with American Timken (R. 276).

The Implementation of the Heads of Agreement of 1927.

Pursuant to a more formal agreement, made on March 16, 1928 (Deft's. Exh. 197, R. 2354; offered, R. 937), which carried out the Heads of Agreement in accordance with its provision that the agreements therein should be embodied in a more formal document, American Timken and Dewar jointly caused the following things to be done.

New by-laws (Deft's. Exh. 198, R. 2356; offered, R. 937) and new articles of association (Deft's. Exh. 199, R. 2359; offered, R. 937; R. 2363, 2364) of British Timken were adopted. The by-laws carried out the agreement between American Timken and Dewar as to control (R. 2356-2358) and Section 26 of the amended articles gave shareholders the first refusal on each others' stock (R. 2371-2373).

An agreement was made between British Timken and Dewar which made him managing director thereof (Deft's. Exh. 24, R. 1763; offered R. 278).

An agreement was entered into between American Timken and Dewar as to options on shares of British Timken (Deft's. Exh. 200, R. 2394; offered, R. 938) which gave the former an option on Dewar's shares in British Timken as well as in any subsidiary company controlled by British Timken in the event of his death or incapacity, and gave each party the first refusal of the other party's shares in British Timken and in every subsidiary company in the event that either should desire to sell. This agree-

ment was supplemented by a contemporaneous agreement (Deft's. Exh. 201, R. 2397; offered R. 938).

A business agreement (Deft's. Exh. 23, R. 1754; offered, R. 274) between American Timken and British Timken was entered into as of January 1, 1928 to be in effect for ten years, and all existing contracts between them were cancelled (Mem. par. 47, R. 968). It contained all the essential features of a trademark license, including provisions for the use of the trademark "Timken," for the preservation of its distinctiveness as such by both parties, and for its return to American Timken at the termination of the agreement. It also contained the essential requirement that American Timken would supply British Timken with technical information regarding the design and manufacture of bearings which British Timken was required to follow. It provided for the areas in which British Timken was authorized to use the mark and the term of such use. It also contained provisions for patent licenses between the parties and for the exchange of engineering know-how between them. This agreement established equitable ownership of the English trademark in American Timken under the then existing English law (Ladas, R. 612), and amounted thereunder to a waiver by British Timken of any right it might have had to set aside, on the ground of prior user by British Timken, registration of the trademark "Timken" in any foreign country in which American Timken had registered the trade mark (Ladas, R. 615, 616).

An agreement was entered into by American Timken, British Timken, Dewar and Prausnitzer (Deft's. Exh. 44, R. 1907; offered, R. 454; Deft's. Exh. 45, R. 1922; offered, R. 454) on March 13, 1928 by which American Timken, British Timken and Dewar acquired the majority of an increased issue of common shares of Prausnitzer's company, Deutsche Timken Gesellschaft (hereafter called German Timken), gave Prausnitzer a 20 to 25% interest in it and named him manager in exchange for the trade mark (Mem. par. 57, R. 970), and the articles of incorporation of German

Timken were changed in such a way as to give to British Timken control (through ownership of a special class of stock) of its management in ordinary matters, and to American Timken control of extraordinary matters, and to the other shareholders first refusal of Prausnitzer's stock in the event of his death, incapacity, insolvency or retirement.

A business agreement between British Timken and German Timken modeled upon the business agreement of January 1, 1928 between American Timken and British Timken was entered into (Deft's. Exh. 47, R. 1935; offered, R. 454) which allocated Germany as German Timken's exclusive territory for the distribution of anti-friction bearings (Mem. par. 57, R. 970). German Timken was discontinued in 1934 (Mem. par. 57, R. 970) when "the Hitler situation became rather acute" (R. 293).

On July 11, 1928, pursuant to correspondence (Deft's. Exh. 202, R. 2399; offered, R. 938; Deft's. Exh. 203, R. 2403; offered, R. 938; Deft's. Exh. 204, R. 2403; offered, R. 939; Deft's. Exh. 205, R. 2404; offered, R. 939) between American Timken, Dewar and Duncan, American Timken's British solicitor, statutes of incorporation of French Timken were adopted (Deft's. Exh. 206, R. 2412; offered, R. 939), drawn in such a way as to give to British Timken control (through its special B shares) over its ordinary affairs, and to American Timken over extraordinary matters. The B shares were originally owned by British Timken (Deft's. Exh. 250, R. 2673; offered, R. 956; Deft's. Exh. 251, R. 2673; offered, R. 956), thus carrying out the arrangement for ordinary control of the enterprise by Dewar through British Timken. As shown by Defendant's Exhibit 249 (R. 2672C; offered, R. 956) American Timken in 1928 advanced all of the funds necessary for the initial operation of this company and thereafter its investment was never less than 70% of the funds actually invested therein.

A business agreement on the model of the one between American Timken and British Timken was entered into

between British Timken and French Timken on June 16, 1928 (Deft's. Exh. 29, R. 1789; offered, R. 291).

French Timken purchased from SMG the trademark rights and the name "Timken" (Mem. par. 54, R. 969), commenced operations by first importing semi-finished products from British Timken, and by 1933 was engaged in the manufacture of all the component parts of tapered roller bearings (Mem. par. 56, R. 969, 970).

MAINTENANCE OF THE JOINT ADVENTURE, AND OF THE TRADEMARK LICENSES, SINCE 1927.

The original agreement between American Timken and Dewar obviously contemplated that he should contribute his skill, sales contacts and active management of the enterprise, and that American Timken should license its trademark and contribute its know-how, and general backing, during a period which was to extend for at least ten years. Upon termination of this relationship, into which American Timken entered primarily because of Dewar's personal characteristics and ability, by Dewar's death, American Timken was protected by its options to acquire his stock and thus take over control of the companies acquired or organized pursuant to the venture, and ultimately to have its trademark rights returned to it. In the meantime Dewar was to control the operations of the companies while managing them.

This fundamental arrangement was maintained at all times. Even when a portion of the stock of British Timken was sold to the public in 1935, the parties were careful to maintain joint control thereof at that time, so that American Timken now owns 30.26%, and Dewar's estate 23.74%, of its issued and outstanding common shares. Thus, the other stockholders of British Timken have been allowed to participate in its profits but have had no real voice in its management. The contractual arrangements for this joint control of British Timken were maintained consistently at all times, as will be seem.

The fact that there was a definite joint adventure, is demonstrated by a vast amount of evidence, not commented on by the district court,[18] which shows (1) that American Timken and Dewar maintained their basic relationship throughout, even when adjustments as to the companies controlled by them were made from time to time to meet changes in circumstances; and (2) that British Timken and French Timken, making and selling bearings under the trademark "Timken," were operated in close collaboration with American Timken, practically as parts of one enterprise in the foreign field.

Transactions Involving Adjustments by American Timken and Dewar as to Companies Controlled by Them.

The significant transactions which demonstrate how the essential relationship between American Timken and Dewar was maintained up to the time of his decease are as follows.

In 1929 Porter, Vice President in charge of automotive sales of American Timken at the time (R. 51), visited British Timken (Deft's. Exh. 113, R. 2025; offered, R. 637; R. 2025), and inaugurated negotiations with Dewar. Defendant's Exhibits 207 through 227[19] demonstrate that an

[18] The district court appears to have considered such evidence, as well as other evidence relating to the business agreements between the Timken companies, unimportant, stating as to the latter, that testimony as to why they were modified and extended and various covenants were inserted in them, and why the present contracts have such long duration, are "of no significance" because "the controlling facts are that they were made and that they contained certain provisions" which might make them illegal under the Sherman Act (Mem. par. 67, R. 971, 972).

[19] Deft's. Exh. 207, R. 2450; offered, R. 939; Deft's. Exh. 208, R. 2451; offered, R. 939; Deft's. Exh. 209, R. 2451; offered, R. 939; Deft's. Exh. 210, R. 2451; offered, R. 939; Deft's. Exh. 211, R. 2452; offered, R. 939; Deft's. Exh. 212, R. 2452; offered, R. 940; Deft's. Exh. 213, R. 2453; offered, R. 940; Deft's. Exh. 214, R. 2453; offered, R. 940; Deft's. Exh. 215, R. 2454; offered, R. 940; Deft's. Exh. 216, R. 2454; offered, R. 940; Deft's. Exh.

(Continued on following page)

increase in capitalization in French Timken was desired at that time in order to handle the business of Citroen, the largest French motorcar manufacturer, which was going to give French Timken its business (R. 289).

Dewar, however, was unwilling to invest more of his own funds in French Timken because his interest in the enterprise was at the maximum. Strough, secretary of American Timken at the time (R. 586), cabled Porter that "Dewar should not object to our desire to keep him *equal partner* in growing business" (Deft's. Exh. 221, R. 2457; offered, R. 941), and that American Timken was willing to increase Dewar's financial compensation, assuming that he would obligate his share of the venture for the funds advanced by it to keep him an equal partner.

Dewar proposed that American Timken advance the necessary funds to French Timken and that one-third of British Timken's profits after 1929 be devoted to repaying the advances (French Timken common stock to be issued in their place), subject to the condition that the 1928 ten-year business agreement between American Timken and British Timken should be extended to fifteen years (Deft's Exh. 219, R. 2456; offered, R. 940).

The business agreement was extended by a letter agreement (Deft's. Exh. 25, R. 1766; offered, R. 280), and Dewar's proposal was carried out by a complicated program, which preserved the essential relationship between the parties, although it changed the form thereof to some extent. The parties transferred their French Timken common stock to an American holding company, International & Commercial Investments, Inc. (hereinafter called ICI); their sub-

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(Continued from preceding page)

217, R. 2455; offered, R. 940; Deft's. Exh. 218, R. 2455; offered, R. 940; Deft's. Exh. 219, R. 2456; offered, R. 940; Deft's. Exh. 220, R. 2457; offered, R. 940; Deft's. Exh. 221, R. 2457; offered, R. 941; Deft's. Exh. 222, R. 2459; offered, R. 941; Deft's. Exh. 223, R. 2460; offered R. 941; Deft's. Exh. 224, R. 2462; offered, R. 941; Deft's. Exh. 225, R. 2465; offered, R. 941; Deft's. Exh. 226, R. 2474; offered, R. 941; Deft's. Exh. 227, R. 2476; offered, R. 942.

scriptions thereto being in the ratio of 105 for American Timken to 95 for Dewar, or 52½% for American Timken to 47½% for Dewar, the ratio of their original investments in British Timken, and, by means of the corporate structure of ICI and agreements between the parties at that time, arrangements were made for Dewar to control French Timken until it should fail to earn 15% on its invested capital, American Timken obligated itself to purchase preferred stock of ICI in order to provide funds which the latter could invest in French Timken, and a British Timken annual dividend of one-third of its annual profits was devoted to purchase of ICI common stock until its preferred stock should be retired. These agreements are incorporated in Defendant's Exhibits 224 (R. 2462; offered, R. 941), 225 (R. 2465; offered, R. 941), 226 (R. 2474; offered, R. 941), and 227 (R. 2476; offered, R. 942). The parties thus, in effect, mortgaged one-third of Dewar's profits in British Timken to pay for his increased interest in French Timken, while maintaining the same essential relation as between them with respect to French Timken.

Again, in 1934, when the value of British Timken stock had increased greatly, Dewar desired to realize on part of his investment therein and to avoid the existing arrangement by which his share of one-third of the profits was used to pay for his interest in French Timken through purchase of common stock in ICI. He therefore came to this country and presented to American Timken's officials a memorandum, as a basis for negotiations, in which he proposed that he and American Timken should each sell a portion of their shares in British Timken on the British market while maintaining control thereof through the formation of a holding company (Deft's. Exh. 26, R. 1766; offered, R. 281). At this time American Timken had invested in French Timken, pursuant to the arrangements made in 1929 to increase its financing, either by purchase of preferred shares of ICI or by loans, over $823,000 as against Dewar's investment of $31,960 (Deft's Exh. 249, R. 2672C; offered, R. 956). In

this memorandum Dewar discussed French Timken's losses, pointed out that its control under the existing agreements should pass into American Timken's hands, stated that he would like, either to have the latter take over, or to make a new arrangement for his control, and asked for cancellation of the existing agreements and a new agreement for a definite sum to be invested by him in ICI (R. 1769, 1770).

As a result of these negotiations, Heads of Agreement (Deft's. Exh. 228, R. 2483; offered, R. 942; first document, R. 2483) were executed on August 15, 1934, by which the parties rearranged their joint venture to provide (1) for an increased number of shares of British Timken, all of one class, American Timken and Dewar each to sell one-half of their holdings thereof to the public at a specified price; (2) for transfer of the remaining 50% of shares of British Timken owned by Dewar and American Timken to a holding company organized in such a way as to maintain the same rights as to voting control between them as had been provided formerly by the articles of association and by-laws of British Timken and with the same options of the parties on each other's shares in the event of sale; (3) for adjustment by American Timken and Dewar (contingent upon consummation of the sale of British Timken stock to the public) of their interests in French Timken, German Timken and ICI, and its wholly-owned subsidiary, International Bearings Investments, Inc. (hereinafter called "IBI") pursuant to which American Timken and Dewar would each own a one-half interest in each of these corporations, Dewar would pay American Timken $250,000 in cash out of the proceeds of the sale of his British Timken stock, and would give it his note without interest in the amount of $150,000, secured by pledge of his one-half interest in French Timken, German Timken, ICI and IBI, and payable only from distributions with respect thereto in excess of $7500 per year, he to have control of French Timken during his lifetime and active management thereof until it should fail to pay annually $24,000 in dividends or other distribu-

tions from accrued earnings, and control to pass to American Timken in the event of his death, retirement, or in the event of French Timken's failure to make such payments; (4) for amendment of the 1928 business agreement between American Timken and British Timken in certain respects, and its continuance in effect for fifteen years after the sale of the British Timken stock to the public, and (5) for freeing of French Timken from any obligation to pay royalties or service fees to American Timken or British Timken.

Acting pursuant to the Heads of Agreement of August 15, 1934, American Timken and Dewar caused various agreements and other documents to be executed for the purpose of carrying them out. Defendant's Collective Exhibit 228 (R. 2483; offered R. 942) contains, in addition to the Heads of Agreement, certain of the documents and correspondence relating to this matter which show that the parties caused corporate action to be taken by British Timken and made a series of agreements in the fall of 1934 to be effective if and when the British Timken stock should be sold (R. 2488-2495; 2509-2511; 2523-2525); caused the sale in June, 1935, of 50% of their increased stock in British Timken (R. 2525, 2526), American Timken purchasing 10,000 shares at the sale,[20] and the organization of a holding company known as Timken Holdings, Limited,[21] to "'continue the implementation" (Dewar, R. 282, 283) of the original agreement as to control of British Timken as between American Timken and Dewar, as specified in the Heads of Agreement, by means of class A and B shares of Timken Holdings (R. 914, 915; 2513; 2526-2528; 2529-2533); and deposited in the Westminster Bank of London, England,

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[20] This was done because American Timken felt that "it should maintain somewhat greater ownership" in British Timken than was reached by its joint holdings with Dewar (R. 912).

[21] Plaintiff's Decree Exhibit 7 (R. 2697; offered, R. 1159, 1160) is a copy of the articles of incorporation and by-laws of Timken Holdings, Ltd.

in the joint names of American Timken, Pascoe and a Luxembourg corporation, called the Lux Company, Dewar's holding company,[22] as trustees, all of the stock of, and 236 promissory notes issued by, French Timken, pursuant to a trust agreement providing for the pledge of Dewar's interest in French Timken and German Timken, which had now become one-half thereof, to secure payment of his note to American Timken as specified in the Heads of Agreement of August 15, 1934 (R. 2534-2543).

This agreement provides in substance for the payment of the Lux Company's $150,000 note to American Timken out of Dewar's share of the profits from French Timken and also from German Timken's assets, and assures American Timken control of French Timken if its indebtedness is not reduced by $24,000 in any year after 1927. At the present time there is a balance of $165,000 in the Westminster Bank account (R. 920) available to repay the balance of American Timken's advances to French Timken, and thus to enable it to salvage some of its unequal investments in that company.

Thus, in 1934 and 1935, American Timken, in order to keep Dewar satisfied, permitted sale of 50% of their British Timken stock to the public, insured its control by purchasing 10,000 shares at the sale, and made careful provision with Dewar to preserve their control of British Timken and also their relation as between themselves both as to British and French Timken. Dewar was permitted to realize on part of his investment but, as a condition, was required to pay $250,000 of the proceeds toward his half interest in French and German Timken in accordance with the policy previously exhibited (Deft's. Exh. 211, R. 2452; offered,

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[22] The Lux Company was a holding company for Dewar, apparently referred to as the Luxembourg Company No. 2 in a previous agreement of September 29, 1934, providing for the procedure, contingent upon sale of the shares of British Timken, which was subsequently carried out (Deft's. Exh. 228, R. 2483; offered R. 942; R. 2495, 2496).

R. 939) to keep him "an equal partner in a growing business."

In connection with this rearrangement of the relations between themselves, the parties caused American Timken and British Timken to enter into a new business agreement (Mem. pars. 58-62; R. 970, 971) effective January 31, 1935, which incorporated some changes requested by Dewar in his memorandum which constituted the basis of the 1934 negotiations between the parties. Although this agreement was originally effective for 16 years, it was subsequently amended to extend for 30 years to January 1, 1935 (Deft's. Exh. 131, R. 2090; offered, R. 654; Deft's. Exh. 132, R. 2092; offered R. 655; Deft's. Exh. 133, R. 2092; offered, R. 655; Deft's. Exh. 134, R. 2093; offered, R. 655; Deft's. Exh. 135, R. 2093; offered, R. 656) at the insistence of the English brokers with whom Dewar negotiated because they felt British Timken stock could not be sold to the public without a long-term agreement with American Timken "particularly for the use of the name," since the good will of British Timken "rested largely in the association with" American Timken (Dewar, R. 284).

The business agreement of June 19, 1928 between French Timken and British Timken was also modified in a new contract, on July 15, 1935 (Mem. par. 63, R. 971), which incorporated the amendments agreed upon by American Timken and Dewar in the Heads of Agreement of August 15, 1934.

Another significant transaction occurred in 1936 when Dewar recommended to American Timken certain action with respect to the funds of French Timken (Deft's. Exh. 231, R. 2547; offered, R. 943; Deft's. Exh. 232, R. 2547; offered, R. 944; Deft's. Exh. 233, R. 2548; offered, R. 944; Deft's. Exh. 234, R. 2551; offered, R. 944; Deft's. Exh. 235, R. 2553; offered, R. 944), which he stated was equivalent to taking such funds away from French Timken's control but *"so far as our partnership is concerned"* was for its ulti-

mate benefit (Deft's. Exh. 233, R. 2548; offered, R. 944; R. 2549).

In 1938, the parties caused two new business agreements to be entered into, one between American Timken, British Timken and French Timken (Deft's. Exh. 27, R. 1771; offered, R. 291), and the other between American Timken, British Timken and Dewar respecting the operations of French Timken (Deft's. Exh. 28, R. 1780; offered, R. 291), amounting in effect, to a guaranty by the latter's shareholders of its performance of the first 1938 agreement (R. 916; 930-931), which superseded the preceding business agreements, and were to govern their relations until the date specified in the 1935 amendments to the 1928 business agreements, namely, 1965 (Mem. par. 64; R. 971).

In March, 1948, in connection with a new issue of preferred stock by British Timken (R. 923), American Timken and Dewar rearranged their relations with respect to British Timken for the last time and entered into an agreement (Deft's. Exh. 239, R. 2656; offered, R. 945) which permitted Dewar to withdraw his British Timken stock from the control of Timken Holdings, Limited, and a contemporaneous agreement (Deft's. Exh. 240, R. 2659; offered R. 945) which took the place of Timken Holdings, Limited, in defining and maintaining the relation between the two parties. The latter agreement gives American Timken an option to purchase specified shares, constituting all the ordinary shares of British Timken owned by Dewar at the time of the agreement (which constituted 23.74% of its voting stock) in the event of his death or his being incapacitated for six months to act as its director, or in the event that he desires to sell his shares, and also gives American Timken the right to control the vote of Dewar's shares combined with its shares if at any time the profits of British Timken available for dividends based on an average of three consecutive years are reduced below £50,000 for one year.

The Mass of Technical Information and Assistance Supplied by American Timken to British Timken and French Timken Under the Joint Venture and Pursuant to the Trademark License.

At all times since the inception of their relation in 1927 the basic plan of operation between American Timken and Dewar has been to manufacture bearings in England, France and Germany to be interchangeable with bearings manufactured by American Timken, according to methods developed by it, and accompanied by its full collaboration in giving British, French and German Timken the benefit of patents and know-how which it has developed over the years. The uncontroverted evidence of Umstattd (R. 521, 522), Dewar (R. 105; 176, 177), Pascoe (R. 400, 401; 414, 415) and Hobley, former sales manager of British Timken (R. 173; 438), is, in substance, that the whole purpose of the parties was to sell Timken bearings all over the world in competition with bearings manufactured by competitors and that if for some reason one Timken company could not sell advantageously in a portion of its territory another should make the sale.[23] This system, of course, has overcome difficulties resulting from conditions of foreign exchange and production facilities of the companies (R. 521). The foreign Timken companies have been able to sell immediately types of bearings which they were not equipped to produce in large quantity by calling upon American Timken to supply them until they were tooled up to produce on a commercial basis if the market warranted (Dewar, R. 115; Pascoe, R. 400; Moreland, R. 748-750). The same reasons that make it advisable for American Timken, in the conduct of its operations in

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[23] In the event of such sales the company making the same pays compensation of a specified percentage, or other amount, to the company in whose territory the sale is made, for the selling and servicing job performed by the latter (R. 417), as in Australia during the last war (R. 417) where British Timken was maintaining technical engineers at its own expense (R. 414, 417).

the United States, to divide its sales activities among district offices which do not compete with each other in their respective districts, dictate the same policy as between the associated Timken companies (R. 933).

The fundamental basis of this joint method of operation has been interchangeability of bearings manufactured by the three companies, which are in most instances identical (R. 106; 406, 407). The part numbers of new bearings developed by American Timken, British Timken and French Timken are assigned by American Timken according to a system maintained by it and kept in its master book in its engineering department in Canton (R. 406, 407; 695-697), and blueprints covering the design of new bearings are automatically exchanged as a matter of routine (R. 406, 407; 692).

A substantial amount of American Timken's uncontroverted evidence, all of which was ignored by the district court, demonstrates in detail the close cooperation which has existed between American Timken and British Timken and French Timken for the purpose of securing integrated production and sale of bearings under the trademark "Timken," consisting largely of the transfer of "know-how" from American Timken to British Timken and French Timken in order to establish and maintain in them American Timken's methods in the design, production and sale of tapered roller bearings.

The policy of installing and using American Timken's methods in the operation of British Timken and French Timken to the greatest extent practicable has never been departed from, and is being maintained today. Dewar himself testified that it had always been British Timken's policy to carry out American Timken's suggestions (R. 311, 313), and that, in his opinion, it was "difficult to conceive that we could have started out" without its cooperation (R. 276). Pascoe testified that there is a constant "stream of information" from American Timken (R. 407-409) as to production methods, machines and products which has

helped British Timken materially in reducing its costs and increasing production (R. 410, 411). British Timken's methods are practically identical with those used by "Timken America" (Ellis, R. 433, 434). The same know-how has been communicated principally by British Timken to French Timken (R. 309; 419), and has been practically all one way, from American Timken to the foreign Timken companies (R. 527).

With respect to the all important design of bearings to meet the requirements of customers for original installation business, when British Timken develops a need for a certain bearing, it cables American Timken for a bearing of a certain size and designates the dimensions, and American Timken then works out the design and sends British Timken the part number and detailed prints as soon as possible together with prints of the tooling to be used in manufacturing it (R. 694).

In addition to designing new bearings for British and French Timken, American Timken gives them its new ideas with respect to designs and any information which they may request for bearing applications which it is making. It sends British Timken copies of its weekly reports to heads of sales and engineering departments showing the type of work and bearing applications being done for its customers (R. 708-711). Defendant's Exhibit 163 (R. 2141; offered, R. 710), and Defendant's Exhibit 163A (R. 2146; offered, R. 710) are typical reports. If British Timken requests it, American Timken gives it the same complete information which it would give to its own men in the field with respect to any particular bearing application (R. 711, 712). Defendant's Exhibit 164 (R. 2153; offered, R. 713) is a tabulation of all of this type of work which American Timken has done for British Timken and French Timken from 1937 to date (R. 713, 714).

In addition to this assistance in the design and application of bearings, American Timken has often sent men to British Timken to assist and instruct its engineers in

the design of new types of bearings such as industrial and railroad bearings (Moreland, R. 747-749); (Eastburg, R. 681-683). American Timken also assisted in organizing British Timken's bearing design department (Deft's. Exh. 154, R. 2128; offered, R. 664; Deft's. Exh. 155, R. 2129; offered, R. 665; Deft's. Exh. 156, R. 2130; offered, R. 665).

Installation and perpetuation of American Timken's methods of production at British Timken and French Timken has been, of course, one of the most important factors of the joint enterprise.

Hess, assistant to the President of American Timken, went to England as soon as British Timken had been acquired in order to help "in making tapered roller bearings like we made or as close to it as possible" (R. 317). His report on this trip (Deft's. Exh. 31, R. 1800; offered, R. 318) demonstrates the extensive study which he made and the tremendous amount of innovation which was necessary. His recommendations included purchase of some parts from American Timken, purchases of new machinery, and passing of the 1927 British Timken dividend called for in the agreements between American Timken and Dewar in order to enable the purchase of the machinery (R. 1825-1827).

Thereafter, employees of American Timken, expert on various processes, went to the British and French Timken plants almost every year, except the war years 1939 to 1945 (R. 525, 526), as needed, to introduce and maintain American Timken's methods. The testimony and reports of several of these men demonstrate the great amount of work done in this respect. See evidence of Sloan (R. 718-726; Deft's. Exh. 167, R. 2158; offered, R. 720; Deft's. Exh. 168, R. 2172; offered, R. 724), Shuler (R. 726-735; Deft's. Exh. 169, R. 2185; offered, R. 729), Nauman (R. 735-742) and Travis (R. 742-746). American Timken even procured a man from another company to go to British Timken and give it technical information as to forging practices which the former did not, itself, use (R. 431, 432-433).

Conversely, the record discloses that at least nine employees of British Timken (R. 670; 688; 699; 714-716) and two from French Timken (R. 670; 688; 715) have come to American Timken's plant for instruction and training.

New methods, designs, bearings, materials, machine tools and tooling which are worked out in American Timken's extensive research department, to which only ten of its employees are admitted without pass (R. 706), are sent to British Timken "more or less as a matter of routine" (R. 703). This research department is five times as large as British Timken's (R. 278) and the latter has benefited greatly from periodic visits of its officials thereto for the purpose of studying American Timken's methods (R. 277, 278). American Timken has also assisted British Timken and French Timken in the acquisition of new machine tools and equipment at no profit to itself (R. 704, 705; 916, 917). Defendant's Exhibits 162 (R. 2131; offered, R. 706), 162-A (R. 2134; offered, R. 706), and 162-B (R. 2135; offered, R. 706), are lists of such equipment purchased since 1928.

One of the most significant facts indicating the existence of a joint enterprise is the elaborate system set up by American Timken in 1927 for comparison of British Timken and French Timken costs with its own (R. 357-359). British Timken and French Timken both submitted very detailed data as to their costs for the purpose of this comparison. The number and details of these reports are shown in Defendant's Exhibit 113 (R. 2025; offered, R. 637) and in Defendant's Exhibit 141 (R. 2104; offered, R. 659), a memorandum specifying the data received from 1928 up to the time Hess left the company in 1936 (R. 659). Sample reports of various kinds from British Timken[24]

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[24] Deft's. Exh. 109, R. 2016; offered, R. 636; Deft's. Exh. 110, R. 2019; offered, R. 636; Deft's. Exh. 111, R. 2019; offered, R. 636; Deft's. Exh. 112, R. 2020; offered, R. 637; Deft's. Exh. 120, R. 2041; offered, R. 643; Deft's. Exh. 121, R. 2048; offered, R. 644; Deft's. Exh. 122, R. 2049; offered, R. 645; Deft's. Exh. 123, R. 2050; offered, R. 645; Deft's. Exh. 124, R. 2051; offered, R. 645; Deft's. Exh. 125, R. 2051; offered R. 646.

and French Timken[25] to American Timken, and correspondence demonstrating American Timken's insistence on them appear in the record. Costs of British Timken and French Timken were compared with those at American Timken's Canton and Columbus plants in percentages of a standard cost, or par value, of 100% (R. 638, 639; Deft's. Exh. 114, R. 2030; offered, R. 638; R. 2031; Deft's. Exh. 145, R. 2109; offered, R. 660; R. 2110). Defendant's Exhibits 115 (R. 2034; offered, R. 640), 116 (R. 2034; offered, R. 640), 117 (R. 2036; offered, R. 641), 118 (R. 2038; offered, R. 642), and 119 (R. 2039; offered, R. 643) are correspondence demonstrating how these cost comparisons were used to pick out expensive points in the foreign Timken companies' cost structures, and to cure them by sending American Timken's employees to cut costs by improving methods of production.

With respect to sales and advertising, American Timken has sent its employees to British Timken and French Timken to assist them in selling bearing applications (Moreland, R. 747, 748; 751, 752; 755, 756; Eastburg, R. 683-686), and has furnished them with copies of engineering journals and periodic additions thereto (R. 716, 717).

American Timken also supplies British Timken and French Timken with copies of its three mediums of advertising (Deft's. Exh. 188, R. 2302; offered, R. 918) as soon as they are prepared (R. 917, 918).

Thus it can be seen that American Timken has assisted British Timken and French Timken in every way possible in the production and sale of bearings, pursuant to the

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[25] Deft's. Exh. 136, R. 2094; offered, R. 656; Deft's. Exh. 137, R. 2094; offered, R. 657; Deft's. Exh. 138, R. 2095; offered, R. 658; Deft's. Exh. 139, R. 2095; offered, R. 658; Deft's. Exh. 140, R. 2097; offered, R. 658; Deft's. Exh. 142, R. 2106; offered, R. 660; Deft's. Exh. 143, R. 2107; offered, R. 660; Deft's. Exh. 144, R. 2108; offered, R. 660; Deft's. Exh. 145, R. 2109; offered, R. 660; Deft's. Exh. 146, R. 2111; offered, R. 661; Deft's. Exh. 147, R. 2119; offered, R. 662; Deft's. Exh. 148, R. 2120; offered, R. 662; Deft's. Exh. 149, R. 2123; offered, R. 663; Deft's. Exh. 150, R. 2124; offered, R. 662.

basic plan for licensing the trade-mark "Timken" and for the integrated sale of tapered roller bearings by those companies throughout the world thereunder.

Other facts relating to the case are discussed under Section III, *infra*.

SPECIFICATION OF ERRORS TO BE URGED.

American Timken specifies as errors to be urged each of the errors assigned (R. 1257-1315) as summarized in points numbers 1, 2, 4, 5, 7, 8 and 9 of its Statement of Points to be Relied Upon (R. 1327-1332), except those specified by assignments of error numbers 8 and 200-203, inclusive.

SUMMARY OF ARGUMENT.

I.

In 1927, pursuant to a plan agreed upon with a British business man, M. B. U. Dewar, in Heads of Agreement entered into between them, American Timken, a manufacturer of tapered roller bearings in the United States, joined with Dewar in the purchase of a small British company, British Timken, Limited, for the sum of £100,000, or approximately $500,000. Of this price American Timken paid 52½% and Dewar paid 47½%. Prior to the date of the purchase the English company had been a patent and trade-mark licensee of American Timken, and was manufacturing tapered roller bearings. Although subsequently some of the stock was sold to the public, at all times since that date control of this company has been maintained by American Timken and Dewar by contract between them until the latter's death in December, 1950.

Pursuant to the plan, a new company, French Timken, was organized by American Timken and Dewar in 1928, and it acquired the French trademark "Timken." The plant was acquired and equipped, 70% of the cost being supplied by American Timken and 30% by Dewar. Later Dewar's interest was increased to 50% and American Tim-

ken's interest was decreased to 50%, but there have been no other owners of the company since its organization until Dewar's death in December, 1950.

Also pursuant to the plan, a controlling interest in German Timken was acquired at the same time by a joint capital contribution of American Timken and Dewar and the German "Timken" trademark registration was acquired by it. This company was dissolved in 1934 when the Hitler regime came into power in Germany.

Pursuant to the plan, agreements were entered into between American Timken and Dewar providing for the management and operation of these companies by Dewar. The agreements also defined their rights as against each other, and preserved the closely knit character of the enterprise as between them. The relationship between American Timken and Dewar was always regarded by, and referred to by, them from the beginning as a "partnership," and their agreements, supplemented by the corporate setups of its instrumentalities, created a joint adventure between American Timken and Dewar to manufacture and sell tapered roller bearings under the trademark "Timken" in foreign countries through the three instrumentalities, British Timken, French Timken and German Timken. This joint adventure was strikingly similar to the arrangement held by this Court to constitute a practical joint adventure in *United States v. Scophony Company of America*, 333 U. S. 795.

Whatever restraints were contained in the agreements between the parties were reasonably ancillary to a valid main purpose, namely, the creation and conduct of the joint adventure, and they are not, therefore, unreasonable. This Court so held in *United States v. Bausch & Lomb Optical Co.*, 321 U. S. 707, with respect to the agreement of a manufacturer not to compete with its customer and distributor in the distribution of the product manufactured for the customer. In such a case the restrictions imposed are clearly analogous to those resulting from the agreement of

a partner not to compete with the partnership, which has always been regarded as creating a reasonably ancillary restraint of trade.

It was, of course, reasonable and proper that the territories in which British Timken and French Timken would operate should be described in the agreements between American Timken and Dewar, and it is the contention of American Timken that such agreements spelling out the areas of operation were also reasonably ancillary to the creation of the joint adventure.

The imposition of these restrictions, under the circumstances, did not unduly prejudice the public interest, because the combination of the operations of these three companies pursuant to the joint adventure did not tend to monopolize trade in anti-friction bearings in the markets in which they compete.

Therefore, no violation of Sections 1 and 3 of the Sherman Act was shown justifying the rendition of any judgment by the district court against American Timken, and the death of Dewar subsequent thereto, even though it terminated the joint adventure, should not prevent the culmination of the agreement between him and American Timken by which the latter has the option to convert British Timken and French Timken into its majority-owned and wholly-owned subsidiaries, respectively, pursuant to its options on Dewar's stock therein at his death, which it has exercised.

II.

Reference has been made to the fact that prior to its acquisition in 1927 by American Timken and Dewar, British Timken had been a patent and trademark licensee of American Timken. When the first license agreements were made between American Timken and E. & O. A., a predecessor of British Timken, in 1909, the former projected its good will into the British and European markets by requiring the

use of the name "Timken" by E. & O. A. in connection with the manufacture and sale of bearings by that company. An amendment of the 1909 license agreements was negotiated with British Timken in 1925, the effect of which was explicit recognition by British Timken of its position as a licensee of the name "Timken" during the term of the license.

By 1928 American Timken was the registered owner of the trademark "Timken" in all of continental Europe except Germany and France, such registrations having been obtained shortly after 1920 when, for the first time, American Timken was able to obtain registration in the United States of this surname as its trademark and used such American registration as the basis of obtaining registrations abroad.

In England American Timken was the equitable owner of the trade-mark, and at the time French Timken and German Timken obtained the registrations of trademarks in those two countries, pursuant to the Heads of Agreement of 1927 between American Timken and Dewar, the former was the equitable owner and licensor of the mark to those two companies by reason of the agreements therein contained and the subsequent investment of its funds in those two companies jointly with Dewar based upon the understanding that it was to be the owner and licensor of the mark to them.

The fact that American Timken had not obtained registration of the trademark in certain countries is unimportant because registration is not the sole test of ownership of a trademark.

In all the negotiations with Dewar for the purchase of British Timken and the organization of French Timken and German Timken, Dewar recognized that American Timken was the owner of the trademark. Beginning in 1928 and continuing with the business agreements of 1935 and 1938, American Timken has validly licensed the use of the trademark by controlled licensing thereof to British Timken and

French Timken. The Lanham Act evidences the policy of this country in favor of controlled licensing of trademarks under conditions which will prevent deception of the public as to the quality of the goods produced under the license. This is also international policy, fostered by the United States and evidenced by the Conventions between various governments, including the United States, which permit controlled licensing thereof. The uncontroverted evidence discloses that American Timken, pursuant to the policy by which tapered roller bearings manufactured by the three Timken companies are interchangeable and of the same quality, has at all times insured that the principles of controlled licensing of the trademark to British Timken and French Timken shall be carried out.

The territorial provisions of the business agreements in connection with the licensing of the trademark by American Timken to British Timken and French Timken are not violative of the Sherman Act, but instead, just as in the case of a patent license, are reasonably ancillary to the main transaction by which the trademark is licensed as held in the only decision on this point, *The Coca-Cola Bottling Co. v. The Coca-Cola Co.*, 269 Fed. 796.

III.

The purported findings of fact upon which the district court based its judgment are clearly erroneous.

(1) The district court's conclusions that American Timken divided up world markets commencing in 1909 when it licensed a subsidiary of Vickers, Ltd. to commence manufacturing tapered roller bearings and that thereafter it combined with potential or actual competitors, dominant in a mythical roller bearing industry, are contrary to the uncontroverted evidence in the record. In 1909 American Timken was a very small company commencing the manufacture of a new patented product which was not established in this country until the 1920s. The Vickers subsidiary, E. & O. A., had never previously manufactured

bearings. E. & O. A.'s successor by assignment of the 1909 license agreements, Wolseley Motors, another subsidiary of Vickers, was a motor car manufacturer, and British Timken, the wholly-owned subsidiary organized by Wolseley Motors in 1920 to take over the business, was not a potential or actual competitor of American Timken from that time until its acquisition by American Timken and Dewar, jointly, in 1927. It was continually in difficulty, appealing to American Timken for assistance, and, due to antiquated methods, lack of finances and other reasons did not develop the business satisfactorily in England.

SMG, British Timken's sublicensee under the 1909 license agreements until 1928, also was not an actual or potential competitor of American Timken, and its performance was unsatisfactory even to British Timken. The district court's finding that American Timken invested in and organized a potential competitor in France when French Timken was created jointly by it and Dewar in 1928, and necessarily commenced the manufacture of tapered roller bearings on a small scale backed by American Timken's funds, indicates the paucity of evidence upon which these findings that American Timken combined with dominant potential competitors are based.

On the contrary, the uncontroverted evidence discloses that the 1909 license agreements were not different from ordinary license agreements involving patents and trademarks, and that, due to the failure of the Vickers subsidiaries and SMG to develop the business properly, as well as trademark difficulties, American Timken had very good business reasons for taking over British Timken with Dewar and organizing a new French company, French Timken, to develop business on the continent, rather than that American Timken was attempting to bolster up a combination for the express purpose of suppressing competition in foreign trade in anti-friction bearings inaugurated by the 1909 license agreements.

(2) The district court's finding that American Timken had combined to suppress competition in the "tapered roller bearing industry" is clearly erroneous, because contrary to a great mass of uncontroverted evidence in the record which shows that the Timken companies compete in the anti-friction bearing industry with companies which, particularly in foreign markets, are much more powerful than are the Timken companies. Ball bearings were firmly entrenched, not only in this country but also in the British and European markets, long before tapered roller bearings were invented and tapered roller bearings compete with other styles of roller bearings, with ball bearings and with special types of anti-friction bearings in 90% of the instances in which competition exists, as well as with friction bearings on many types of business.

(3) The district court's decision was based essentially on an ultimate finding, unsupported by evidence and reached in disregard of uncontroverted evidence, which caused it to disregard entirely the uncontroverted evidence demonstrating that American Timken and Dewar had carried on a joint adventure from 1927 on, and that the licensing of the trademark in restricted territories was entirely proper. This finding was, in substance, that American Timken and the Vickers subsidiaries had divided up world markets and eliminated competition by reason of the 1909 license agreements, and that, after the basic British product patents covering tapered roller bearings had terminated in 1924, American Timken and British Timken, the Vickers subsidiary, nevertheless extended the 1909 license agreements, by amendments thereto in 1925, for an additional five-year period, with the result that the license agreements were no longer valid contracts "but were without pretense contracts for the *avowed* purpose of suppressing competition." The district court therefore found that the agreement made between American Timken and Dewar in 1927 merely *continued* this combination *for the specific*

purpose of suppressing competition and that the agreement between them, conceding for the sake of the argument that it was a valid joint adventure in form, was merely a "cloak" for this purpose.

This essential and basic finding, which swept away American Timken's defense in this respect, was clearly erroneous because the district court completely ignored uncontroverted evidence which showed that American Timken, in extending the 1909 license agreements, acted pursuant to advice of its trademark counsel that, even though the basic British bearing patents had ceased in 1924, nevertheless the agreements licensed use of the trademark "Timken" by American Timken to British Timken, which justified their continuance and the continued payment of royalty by the latter to the former. The one item of evidence relied upon by the district court as indicating an "avowed" purpose to suppress competition was a letter by American Timken's British solicitor to it (which of course was not binding upon it), which expressed the same point of view as that of its American trademark counsel.

Since the question of whether the license of a trademark is a valid basis for restrictive territorial provisions is still one which, as the district court stated, has not been decided by the courts, this evidence failed to disclose an intentional combination to restrain trade which would justify the conclusion that a joint adventure, otherwise valid, was merely a cloak for a combination in restraint of trade, and that, therefore the restraints imposed thereby, which would otherwise be ancillary to the creation of a lawful joint adventure, were unreasonable.

(4) The evidence relied upon by the district court as demonstrating conduct of an intentional restraint of trade by the three Timken companies from 1928 on is just as reconcilable with the conduct of a legal joint adventure as with the conduct of a combination for the pur-

pose of suppressing competition and controlling world trade in tapered roller bearings, and therefore the district court's decision to the contrary is clearly erroneous.

In view of all of the foregoing, it is clear that a mistake has been committed by the district court, in that, in basing its decision upon findings that there was an intentional combination in restraint of foreign trade, and, therefore, it should disregard much of the evidence introduced by American Timken, it overlooked and disregarded vital facts disclosed by the uncontroverted evidence.

IV.

The district court erred in not making proper findings of fact and conclusions of law as required by Rule of Federal Procedure 52, in that it adopted its memorandum as its findings and conclusions, with the result that there are not specific findings of all of the underlying and subsidiary facts which must be found to determine all of the issues which this case presents, the purported findings contain discussions of portions of the evidence and the court's reasoning, and statements of fact are mingled with reasoning and inferences, contrary to the intent of the rule as announced by the decisions of this Court. The district court's failure to make proper findings and conclusions as urged by American Timken has resulted in the necessity of the detailed discussion of the facts in this brief.

V.

The decree is erroneous and without precedent, exceeds the permissible limits of the discretion conferred upon the district court by Section 4 of the Sherman Act, and deprives American Timken of its property without due process of law in the following respects:

(1) In enjoining American Timken from assigning, licensing, receiving or transferring patents, know-how, material, machinery or trademark or name "in such a way as

to deny third persons access thereto," because it is not charged that the exclusive exchange of any of the above was an essential part of the violation found by the district court, and these provisions in effect confiscate American Timken's property without due process of law.

(2) In enjoining American Timken from refusing to sell bearings or to provide services with respect thereto, in certain territories, it interferes with the right of a company to decide where, on what terms and to what extent it will carry on its business, and to select its customers and manner of doing business, and, in effect, forces it to do business.

(3) In enjoining certain arrangements with respect to the trademark and name "Timken," it interferes with valuable rights of American Timken in the family name of its founder, under both United States and foreign law.

(4) In ordering American Timken to divest itself of its stock interests in British and French Timken, and enjoining further acquisitions thereof, it achieves no remedial purpose under the Sherman Act, but imposes a penalty and severe hardship under circumstances without precedent in the field of anti-trust law, and will prevent American Timken and its customers from competing effectually in foreign markets by depriving the former of control of its trademark "Timken."

ARGUMENT.

I.

ANY RESTRICTIVE PROVISIONS IN THE BUSINESS AGREEMENTS BETWEEN AMERICAN TIMKEN, BRITISH TIMKEN AND FRENCH TIMKEN ARE REASONABLE AND PROPER PARTS OF THE JOINT ADVENTURE BETWEEN AMERICAN TIMKEN AND DEWAR WHICH ORIGINATED IN THE HEADS OF AGREEMENT OF MAY 16, 1927.

The facts stated demonstrate that American Timken and Dewar acted throughout from 1927, and thereafter, contemporaneously intending and considering that they were to be "partners," pursuant to a definite agreement and program, defined in the Heads of Agreement of May 16, 1927, from which they never departed.

Pursuant to this program, they jointly acquired British Timken and German Timken, and organized French Timken, and maintained, by means of agreements and provisions in the corporate articles and by-laws of these instrumentalities by which the joint venture was conducted, an elaborate system of control both as against outsiders and between themselves, with provision for turning the joint venture over to either partner in the event the other should desire to withdraw, and to American Timken in the event of Dewar's decease by means of the options provided for in their agreements.

As will be seen, it is not necessary that this joint enterprise should have constituted what is known as a "joint adventure" in a technical legal sense in order to decide the question of whether any restraints of foreign commerce imposed by its operation violated the Sherman Act. In fact, while no general partnership was created, because the relation was limited to business to be conducted in the territories assigned to the European Timken companies, it contained the elements of a limited partnership or joint venture with respect to a particular line of business. See

Kasishke, et al. v. Baker, 146 Fed. (2d) 113 (CCA 10, 1948), in which the court held on facts quite similar to those involved here that a joint venture was created.

The fact that American Timken and Dewar understood that they were to be "partners" when the latter communicated this desire to American Timken, during their negotiation of the joint enterprise in 1927 supported by their subsequent contemporaneous characterizations of their relations as such in 1929 and 1936,[26] establishes that such was

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[26] The district court referred to only two items of evidence as rebutting these clear indications of the nature of the relation intended to be created, both of which are reconcilable with the partnership theory.

In Plaintiff's Exhibit 175 (R. 1687; offered, R. 950) Hess, paving the way for the rearrangement of the joint adventure upon sale of stock of British Timken to the public, stated that the partners were arranging a new 15 year deal, and that "In the so-called 'New Deal' we feel and hope that our past pleasant cordial relationship will continue, but at the same time it is the writer's opinion that we now have to consider that 50% of British Timken stock will be in the hands of the public" so that arrangements which might have been covered previously by "a simple letter" between the partners should be covered completely by formal agreements, because "*should you in the future wish to retire* from active participation in British Timken; *we might be very unwilling*, as far as American Timken is concerned *to continue the same relationship with some future partner as in the past*" (R. 1689). Dewar replied (Pltf's. Exh. 176, R. 1691; offered, R. 950) that he had no "thought of retiring from active business," but that, either his "interest would remain in my family" so that "there would be some other Dewar" and that with this thought in mind he had procured Pascoe "*in order to preserve continuity of management and association* with yourselves," or that American Timken would purchase his interest in British Timken upon his decease in which event American Timken would own "the controlling interest in British Timken" and appoint its own management.

This correspondence merely indicates the desire of American Timken to make provision for the situation which would occur *when the partnership with Dewar should end* by his decease. The district court quoted part of this letter (Mem. par. 157, R. 1004, 1005).

The district court also stated (Mem. par. 158, R. 1005), that in 1948 Dewar "proclaimed: 'Me' is British Timken." The com-

(Continued on following page)

the relation which the parties intended to, and did, create. As the court said in *Reid v. Shaffer*, 249 Fed. 553 (CCA 6, 1918), in which a joint venture was found to exist, "the relation of the parties to each other is determined by their intention" (p. 560). Thus, in *First Mechanics Bank v. Commissioner of Internal Revenue*, 91 Fed. (2d) 275 (CCA 3, 1937) the court, finding the existence of a joint venture, referred to evidence that the president of the corporate venturer had addressed the individual venturer "as a 'partner with us'" in their correspondence (p. 278), and, in summarizing facts showing "that the relationship of joint venture was intended and created by the parties" (p. 279), included such evidence of intention.

The district court's reference to the repeated characterization of the joint enterprise as such by American Timken's witnesses at the trial (Mem. par. 151, R. 1003) including statements by such as Hess (R. 317; 371), who was no longer employed by American Timken and had no personal interest in the outcome of the case, contained no mention of the above *contemporaneous* references to the relationship made at a time when there was no possible ulterior purpose to be served thereby.

The relation between American Timken and Dewar

(Continued from preceding page)

plete lack of probative value of this statement, removed from its context, appears as follows in his testimony as part of the *defendant's* case:

"Q. What would you say, occupying the position which you have with British Timken and being an engineer yourself, as to the value of the cooperation that British Timken get from American Timken along the lines suggested by that paragraph in the contract and of your own knowledge?

A. It is difficult to conceive that we could have started without that.

Q. And if it did assist you in starting, as you have just suggested, state whether or not it has been of great value, or not to you throughout the years? *By 'to you' I mean 'to British Timken.'*

A. *'Me' is British Timken.* It has been of very great advantage."

is strikingly similar to that involved in *United States v. Scophony Corporation of America*, 333 U. S. 795. In that case Scophony, Ltd., a British corporation, undertook to introduce its patented product into this country. To that end, it organized Scophony Corporation of America jointly with American motion picture and television interests, setting up a system of control through class A shares owned by the British company and class B shares owned by the American interests, accompanied by agreements for exclusive licensing of patents by the British company to the American company, hemispheric division of territories between them and the interchange of technical information. With respect to this complicated arrangement, this Court said (p. 811):

> "First was the phase of attempting to set up in this country as manufacturer and seller of television equipment. When that failed, the company turned to licensing and exploiting its patents by other means. *This was done through the complicated arrangements for what practically if not also technically was a joint adventure with other companies.* That project was carried out not merely through corporate forms and arrangements but by contracts binding the participating companies to the common enterprise, as well as the special medium of executing it, American Scophony. In this each corporate participant had its special functions, controls and restrictions created in part by share ownership in American Scophony, but also in important respects by contract both beyond the stock controls and dictating their character."

The arrangements, very similar to those made in the case at bar, are described in more detail in note 22 of the opinion in that case (p. 811). On the basis of the existence of such a practical joint adventure, this Court held that, because Scophony, Ltd. was engaged therein, it was "transacting business" and was "found" in this country for the purpose of service of process upon two of its directors located here. The contention of the British company that it merely held

an investment in Scophony Corporation of America, and therefore was not "found" in this country, was denied.

We are aware of the fact that this Court has said in such cases as *United States v. Yellow Cab Company*, 332 U. S. 218, that common ownership and control of various corporations are impotent to liberate a combination in restraint of trade from the impact of the Sherman Act, because an unreasonable restraint may result as readily from a conspiracy among those affiliated or integrated under common ownership as from one among those otherwise independent (p. 227).

However, if a particular relation, involving something more than mere joint ownership of corporations, is to be regarded as a joint adventure for one purpose, as it was in *United States v. Scophony Corporation of America*, 333 U. S. 795, *supra*, then certainly it should be so considered for all purposes, including that disclosed in the case at bar.

That a restraint of trade must be unreasonable in order to violate the Sherman Act, *Standard Oil Company v. United States*, 221 U. S. 1, is, of course, axiomatic. A restraint may be unreasonable either because (1), although otherwise reasonable, it is accompanied by a specific intent to accomplish a forbidden restraint; or (2) because it falls within that class which are unreasonable *per se*, such as price fixing or concerted refusal to deal; or (3) for the reason that, regardless of specific intent, it creates unreasonable power over the particular market involved, with resultant unreasonable lessening of competition therein, and, therefore, prejudices "the public interests by unduly restricting competition or unduly obstructing the course of trade,"[27] *United States v. Paramount Pictures, Inc.*, 334 U. S. 131, 173-174, and *United States v. Columbia Steel Company*, 334 U. S. 495, 522.

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[27] *Nash v. United States*, 229 U. S. 373, 376; *Thomson v. Cayser*, 243 U. S. 66, 84; *Appalachian Coals, Inc. v. United States*, 288 U. S. 344, 360; *Sugar Institute, Inc. v. United States*, 297 U. S. 553, 597; *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 501.

The question here presented is whether any restraints arising from the creation and operation of the joint adventure in the case at bar have been unreasonable for any of these three reasons. The question of whether there was a specific intent to accomplish the forbidden restraint of stifling competition will be discussed in Section III, *infra*.

The fundamental question otherwise involved on this point is whether it is unreasonable for two parties to a joint adventure, American Timken and Dewar, to arrange for the areas in which the business operations of the companies involved were to be conducted. The territorial provisions of the business agreements were not for all purposes exclusive. The provisions of the 1938 business agreement are typical of those which appeared in all of the earlier contracts. Paragraph 6A and B thereof, provides in material part as follows (Deft's. Exh. 27, R. 1771; offered, R. 291; R. 1776):

> "6. Each of the Companies parties hereto as a covenantor Company hereby covenants with each of the other Companies parties hereto as a covenantee Company that during the life of this Agreement the covenantor Company will not directly or indirectly make or sell or authorize others to make or sell bearings in the territory of the covenantee Company or in the territory of the covenantor Company knowing them to be for shipment into the territory of the covenantee Company save and except as follows to-wit:
>
> "(A) The covenantor Company may make or sell or authorize others to make or sell in its territory bearings for delivery or shipment into the territory of the covenantee Company as assembled component parts of completed articles of manufacture manufactured in the territory of the covenantor Company or as assembled component parts of completed units of manufacture manufactured in the territory of the covenantor Company for incorporation into such completed articles of manufacture.
>
> "(B) The covenantor Company in its territory may accept and execute orders for bearings for ulti-

mate destination in the territory of the covenantee Company for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorize sales to or known to be destined for manufacturers in the territory of the covenantee Company or sales at prices in conflict with the wishes of the covenantee Company and the covenantor Company from time to time will notify the covenantee Company of the details of the sales authorized under this paragraph and will pay to the covenantee Company an amount equal to five per centum of the net sale price received under any sales so authorized not being sales made through or at the request of the covenantee Company."

It is clear from this language that an American manufacturer of equipment (automobiles, trucks, etc.) whose equipment contained bearings manufactured in the United States could not be prevented by the agreements from selling either the completed product or component parts thereof in the territory in which manufacturing operations were conducted by the other parties to the agreement. It is equally clear that bearings as spare parts for such equipment could be supplied by such a manufacturer. It will be noted, of course, that the agreement stated that the prices at which such replacement bearings were to be supplied would be agreeable to the party in whose territory the bearings were being sold, but the record is clear that this provision of the contract has never been followed by the parties since the first agreement was made in 1928 (R. 896). In only one segment of the bearing business were the parties excluded from sales in the territory assigned to the other parties to the agreement, sales of bearings for original installation in equipment manufactured in such areas. The only other reference to prices in the agreements was in respect of sales to Russia, in the 1938 agreements, and the record is clear that at no time has this provision ever been invoked by the parties under the contract (R. 898, 899). There was no attempt made in the

agreements by American Timken to establish prices for the sale of bearings by British Timken or French Timken, nor did the agreements contemplate that either British Timken or French Timken would participate in the establishment of prices by American Timken.

Thus, the question of reasonableness becomes immediately apparent—whether a contract containing the provisions just outlined can lawfully be made a part of a joint adventure for the ownership and operation of foreign businesses. Exclusive cross licensing of patents and exchange of future know-how and inventions, patented or unpatented, were, of course, incidental to the creation of the joint adventure.

This Court resolved this question in *United States v. Bausch & Lomb Optical Company*, 321 U. S. 707, in which it held that the elimination of competition between parties to a joint adventure does not constitute an unreasonable restraint *per se* and does not violate the Sherman Act, if the result is not to prejudice the public interest by unduly restricting competition or obstructing the course of trade.

The statement of the facts in this Court's opinion discloses that Soft-Lite Lens Company, Inc., the sole distributor of pink tinted lenses under the trade name "Soft-Lite," limited itself to the distribution of lenses, and entered into an arrangement with the Bausch & Lomb Optical Company, a manufacturer of optical glass, by which the latter manufactured the glass and ground the lenses for the former. The parties agreed to an exclusive arrangement by which Soft-Lite purchased exclusively from Bausch & Lomb and the latter agreed not to sell its pink tinted glass to lens manufacturers, *or pink tinted lenses to the optical trade*, and that any orders therefor which it might receive would be transmitted to Soft-Lite (p. 711). Moreover, the parties cooperated in other ways, such as price fixing on adjuncts for trade distribution, such as cleaning cloths; an agreement by Bausch & Lomb to sell second quality lenses only in foreign

countries where Soft-Lite had no offices and at prices acceptable to both parties; and discussion of prices to wholesalers to which Soft-Lite sold, some of which were subsidiaries which had been acquired by Bausch & Lomb (pp. 711-714).

Although the district court, in *United States v. Bausch & Lomb Optical Company*, 45 Fed. Supp. 387 (D. C. S. D. N. Y. 1942), found that Soft-Lite had violated the Sherman Act by controlling resale prices of its wholesalers and retailers, it absolved Bausch & Lomb from any guilt in connection with its restrictive arrangement with Soft-Lite. The Government's appeal on this branch of the case, in which it urged that the "agreement of Bausch & Lomb not to sell pink tinted glass or lenses to any competitor of Soft-Lite, *and not to compete with Soft-Lite in the marketing of any pink tinted lens* unreasonably" restrained "commerce in violation of the Sherman Act" (pp. 718, 719), was denied by this Court, it being "equally divided upon the issue raised" thereby (p. 719).

The basis of the district court's decision was that the restrictive agreement was reasonably ancillary to a joint enterprise analogous to a partnership as well as a bargain for exclusive dealing and, since it did not unreasonably interfere with competition in the industry, was not violative of the Sherman Act. The district court said (45 Fed. Supp. 387, 398):

> "In a lay sense, the withdrawal of Bausch & Lomb from competition with Soft-Lite in the distribution of pink tinted lenses, and its refusal to sell pink tinted glass to competitors of Soft-Lite pursuant to arrangement, is a restraint of trade."

The court then referred to the rule of reason, stating that the "classic opinion" in *United States v. Addyston Pipe & Steel Company*, 85 Fed. 271 (CCA 6, 1898), aff'd. 175 U. S. 211, set forth standards for determining whether a restraint is unreasonable substantially similar to those

contained in the *Restatement of the Law of Contracts*, §§ 515 and 516; quoted § 516;[28] pointed out that in the *Addyston Pipe* case the court had specified that a reasonable restraint is such only as affords a fair protection to the interests of the party in favor of whom it is given and is not so large as to interfere with the interests of the public, and that the contract must be one in which there is a lawful main purpose, to which the covenant in restraint of trade is merely ancillary; and then said (p. 398):

> "In the case at bar the main purpose of the contract is to provide a source of supply for Soft-Lite. The restraining covenant is for the protection of the purchaser who is spending large sums to develop his good will and enlarge the public patronage of a relatively new article of commerce. *The arrangement, though not a partnership in legal form, is functionally a joint enterprise* in which one will produce and the other market the commodity. United States v. Addyston Pipe & Steel Co., supra, 85 F. at page 281.

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[28] "'§ 516. *Instances of Reasonable Restraints.*

"'The following bargains do not impose unreasonable restraint of trade unless effecting, or forming part of a plan to effect, a monopoly:

"'(a) A bargain by the transferor of property or of a business not to compete with the buyer in such a way as to injure the value of the property or the business sold;

"'(b) A bargain by the buyer or lessee of property or of a business not to use it in competition with or to the injury of the seller or lessor;

"'(c) A bargain to enter into partnership with an actual or possible competitor;

"'(d) *A bargain by a partner not to interfere by competition or otherwise with the business of the partnership while it continues*, or subject to reasonable limitations after his retirement;

"'(e) A bargain to deal exclusively with another;

"'(f) A bargain by an assistant, servant, or agent not to compete with his employer, or principal, during the term of the employment or agency, or thereafter, within such territory and during such time as may be reasonably necessary for the protection of the employer or principal, without imposing undue hardship on the employee or agent.'"

"It is clearly a 'bargain to deal exclusively with another,' Restatement, supra, § 516.

"It is not necessary to find and I do not find that Soft-Lite's specifications for the glass constituted a secret formula for the protection of which a restraining covenant would be proper. There is nothing contrary to public policy in the arrangement. Nothing in the evidence indicates that Bausch & Lomb enjoyed a monopoly in the manufacture of glass for lenses, whether pink or otherwise. On the contrary, the evidence is clear that other manufacturers of lenses have had access to pink glass from other sources and that the success of Soft-Lite has stimulated emulation and competition. See Federal Trade Commission v. Raymond Bros.-Clark Co., 1924, 263 U. S. 565, 44 S. Ct. 162, 68 L. Ed. 448, 30 A. L. R. 114.

"I conclude that the exclusive arrangement between Bausch & Lomb and Soft-Lite taken independently of the distribution system is not violative of the Sherman Act."

The only bargain for exclusive dealing in the foregoing case was that for the mutually exclusive sale and purchase of pink tinted glass and lenses. Therefore, the basic justification for Bausch & Lomb's agreement not to compete with Soft-Lite in the marketing of pink tinted lenses must have been the fact that the arrangement, "though not a partnership in legal form," was "functionally a joint enterprise," and the court necessarily held that the agreement by Bausch & Lomb not to compete with the enterprise was reasonably ancillary to the arrangement between the parties for the same reason as would be a bargain by a partner not to interfere by competition with the business of the partnership.

The doctrine of this case is similar to that applied in *Kinsman v. Parkhurst*, 18 Howard (U. S.) 289, in which a covenant by a part owner of a patent to form a partnership for the manufacture and sale of a patented product by only one of the partners, and the discontinuance there-

of on his own account was held legal at common law; *Morse Twist Drill & Machine Company v. Morse*, 103 Mass. 73, 75, in which a covenant of one organizer of a corporation which purchased his business and patents not to compete therewith was held valid; and *Anchor Electric Company v. Hawkes*, 171 Mass. 101, in which the partnership principle was also applied by analogy in the case of a corporation.

The relation between the parties in the *Bausch & Lomb* case was much less similar to a partnership or joint venture than was that between American Timken and Dewar here, because he and American Timken invested their funds in the instrumentalities of the enterprise, British and French Timken, whereas there was no such close relation between Bausch & Lomb and Soft-Lite, and here the control provisions have operated just as they would in a partnership or joint adventure whereas in the *Bausch & Lomb* case there was no such close integration between the parties.

Obviously, the arrangement between Bausch & Lomb and Soft-Lite effectively prevented that competition between them on the basis of independent price fixing, which is the ultimate core of competition, *United States v. Socony Vacuum Oil Company*, 310 U. S. 150, 226, note 59, citing *Handler, Federal Antitrust Laws—a Symposium* (1931) pp. 91, *et seq.*, just as effectively as though the parties had agreed upon exclusive territories for the distribution of pink tinted lenses or upon prices thereof.

Where there is a valid main purpose to which the restraint is ancillary, and neither a monopolistic purpose nor effect, exclusive allocation of territory is not illegal *per se*. This, and other courts, have so held as a matter of common law (which is the basis of the Sherman Act, *Apex Hosiery Company v. Leader*, 310 U. S. 469, 498), *Fowle v. Park*, 131 U. S. 88, 97, and, under the Sherman Act, *Thoms v. Sutherland*, 52 Fed. (2d) 592; *Kentucky Natural Gas Corporation v. Indiana Gas & Chemical Corporation*, 118 Fed. (2d) 831;

Cole Motor Car Company v. Hurst, 228 Fed. 280, cert. den. 247 U. S. 511. The situation is the same as that relating to price fixing, as to which it is well settled that an agreement, the only purpose of which is to fix prices, is illegal *per se*, *United States v. Socony Vacuum Oil Company*, 310 U. S. 150, *supra*, but that an agreement providing for fixing prices ancillary to a legal main transaction, such as the granting of a patent license, is not. *United States v. General Electric Company*, 272 U. S. 476, adhered to on this point, *United States v. Line Material Company*, 333 U. S. 287, and *United States v. United States Gypsum Company*, 333 U. S. 364.[29]

Thus, it is clear that parties to a joint adventure in the nature of a partnership, even though it involves corporations as its instrumentalities, as in *United States v. Scophony Corporation of America*, 333 U. S. 795, and *United States v. Bausch & Lomb Optical Company*, 321 U. S. 707, *supra*,[30] may properly covenant not to compete with it during the period of its operation. This justifies the covenant of American Timken not to compete with the European Timken companies by selling bearings in the latters' territories.

It is just as clear that the agreements by each of the European Timken companies not to compete with American Timken, one of the joint adventurers, in its territory, provided for reasonable restraints ancillary to the joint adventure. Otherwise, American Timken would have been using not only the money which it invested in the enterprise, but also its know-how and such patents as it might have, to

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[29] See *Packet Co. v. Bay*, 200 U. S. 179, in which the restraints contained in a patent license agreement, *Bement Co. v. National Harrow Co.*, 186 U. S. 70, were likened to a covenant against engaging in business by the seller ancillary to sale of a business (p. 185).

[30] The district court, although these two controlling decisions were called to its attention, made no reference thereto in its memorandum, possibly for reasons discussed in Section III, *infra*.

create competition for itself. Therefore, the agreement was similar in principle to a bargain by the buyer of property not to use it in competition with the seller, or that of a servant or agent not to compete with his employer or principal during the term of the employment or agency or thereafter, which are long recognized forms of valid ancillary restraints, *Restatement of the Law of Contracts*, § 516, subparagraphs (b) and (f), *supra* note 28, justifiable because they secure the seller or employer "against an increase of competition of his own creating," *United States v. Addyston Pipe & Steel Company*, 85 Fed. 271, 281.

The extension of the 1928 business agreements for five years from 1929 merely continued the term of the joint enterprise and obviously was intended to protect Dewar during the time that he was obligating his interest in British Timken to reimburse American Timken for making advances to keep him as an "equal partner" therein. Assistance from American Timken and absence of its competition with British Timken and French Timken for this additional period insured British Timken's making the profits out of which Dewar's obligation was to be paid. American Timken was entitled to the continuing protection of the covenants in its favor for reasons previously stated.

The sale of stock of British Timken to the public in 1935 and the extension of the period of the joint venture in connection therewith for thirty years, did not change the situation. Plaintiff's Exhibit 175, *supra*, note 26, shows that American Timken was willing to continue with Dewar as its partner for an additional period of time, but desired that the agreements between the Timken companies should cover every contingency because of the possibility of Dewar's decease. The subsequent correspondence of the parties in 1936 shows that they regarded the "partnership" between them as continuing after this re-arrangement of their affairs was made.

Obviously, agreements between corporations ordinarily are not made to terminate upon the death or with-

drawal of an individual and, therefore, the business agreements were made to extend to a certain date, 1965. It was anticipated that the venture would terminate, in the event of Dewar's death, by American Timken's taking over the control and management of British and French Timken, in which event it was quite obvious that the restrictive provisions would become meaningless, even if not done away with, because it was not to be expected that American Timken would compete with its own majority-owned subsidiaries, or vice versa, in the respective territories which they had previously served, for the same reasons that "a subsidiary will in all probability deal only with its parent for goods the parent can furnish," *United States v. Columbia Steel Company*, 334 U. S. 495, 523.

However, the insistence of the English brokers who marketed the British Timken stock on a long term agreement constituted another altogether independent justification for continuance of the restrictive covenants, because they were reasonably ancillary to the sale of the stock by protecting the purchasers thereof in the enjoyment of their property. This type of restraint is similar to that of the seller of a business who makes such a covenant to protect his purchaser. See *S. Jarvis Adams Company v. Knapp*, 121 Fed. 34 (C. C. A. 6, 1903); *Knapp v. S. Jarvis Adams Company*, 135 Fed. 1008 (C. C. A. 6, 1905), *National Enameling & Stamping Co. v. Haberman*, 120 Fed. 415 (C. C. Conn. 1903), *Peterson v. Johnson Nut Company*, 204 Minn. 300, 283 N. W. 561 (1939); *Diamond Match Company v. Roeber*, 106 N. Y. 473, 13 N. E. 419 (1887); and *Connors Bros. Ltd. v. Connors* (1940), 4 All Eng. Rep. 179 (Privy Council). On the other hand, American Timken in agreeing to sell part of its stock and at the same time to extend the period of the business agreements pursuant to which it was required to assist British and French Timken, was entitled to a continuance of protection against competition of its own making. *Thoms v. Sutherland*, 52 F. 2d 592 (C. C. A. 3, 1931); *Alden v. Wright*, 175 App. Div. 692, 162 N. Y.

Supp. 668 (App. Div., 1st Dept. 1916), *Wilgus v. Indian Lake Amusement Company*, 37 N. E. (2d) 210 (Oh. App., 1941), and *Fishman v. Fishman*, 137 N. J. Eq. 151, 43 Atl. (2d) 837 (N. J. Ch. 1945) aff'd. per curiam, 137 N. J. Eq. 454, 45 Atl. (2d) 325 (N. J., 1946).

Certainly, it cannot be contended that the maintenance of this joint venture has had the effect of prejudicing the public interest by unduly restricting competition or obstructing the course of trade.

The Timken companies compete with others in the anti-friction bearing industry, and it is obvious from the previous discussion that they have been subjected to most strenuous competition, even with respect to tapered roller bearings alone since the patents have expired and are being subjected to increasingly stronger competition, by such companies as Bower in this country and SKF in foreign markets.

American Timken's 25% production of the anti-friction bearing industry in this country has not changed since 1927 while British Timken has only 20% of the production in England, and French Timken 10% of that in France. The three companies combined would appear therefore not to have in excess of 23.2% of the production in that industry at the present time. Certainly, these percentages are modest as compared with the percentages of the industry involved in such cases as *United States v. United States Steel Corporation*, 251 U. S. 417. After considering the cases in which this question was involved, Judge Learned Hand, in *United States v. Aluminum Company of America*, 148 Fed. (2d) 416, *supra*, stated that, in determining whether or not a company has a monopoly in a particular industry "it is doubtful whether sixty or sixty-four per cent would be enough; and certainly thirty-three per cent is not" (p. 424). In *United States v. Columbia Steel Company*, 334 U. S. 495, *supra*, this Court held that, even if it should be assumed that in the future United States Steel Corporation could be expected to sell 13 per cent of the total

of structural steel products in Consolidated's trade area, and the latter 11 per cent (a total of 24 per cent), it could not be said that there would be an unreasonable restraint of trade resulting from the elimination of competition between Consolidated and the United States Steel structural fabricating subsidiaries.

Under all of these circumstances, it is clear that the joint operation of the Timken companies cannot result in giving them such a dominant position in the industry as to unduly restrain competition or obstruct trade. They are in the same position as were the parties in *United States v. Bausch & Lomb Optical Co.*, 321 U. S. 707, *supra*, in which the court emphasized the growth of competition after the organization of the joint venture in that case. It is significant in this connection that it is not charged that the Timken companies have attempted to monopolize the industry.

Nor has it been shown that the operation and practices of the Timken companies under their business arrangements have prejudicially affected the public interest in any manner.

On the contrary, the public interest has frequently been benefited thereby, as, for example, during World War II when British Timken, losing, through bombings, bearings and materials therefor needed in the war effort, was able to obtain exact replacements quickly from American Timken, SKF being of no assistance because of the metric sizes of its bearings (Pascoe, R. 408-410).

If, as we contend, the operation of the joint venture from 1927 to the date of Dewar's decease on December 21, 1950, long after the final judgment of the district court, was legal, then it goes without saying that there was no basis in fact for the judgment by the district court against American Timken.

Moreover, now that American Timken is in a position to become the majority stockholder of British Timken and the sole stockholder of French Timken by the exercise of

the options which it was granted as a part of the original plan, and the two corporations, therefore, will become its subsidiaries, the legal questions involved are those presented by the corporate integration cases such as *United States v. United States Steel Corporation*, 251 U. S. 417; *United States v. Paramount Pictures*, 334 U. S. 131; and *United States v. Columbia Steel Company*, 334 U. S. 495, *supra*. In the latter case this Court pointed out (page 527) that "the same tests which measure the legality of vertical integration by acquisition are also applicable to the acquisition of competitors in identical or similar lines of merchandise." Certainly, for the same reasons as those previously urged with respect to the joint venture, during its continuance, it is obvious that the acquisition by American Timken of these two subsidiaries will not prejudice the public interest by unduly restricting competition or obstructing the course of foreign commerce of the United States.

II.

ANY RESTRICTIVE PROVISIONS IN THE BUSINESS AGREEMENTS BETWEEN AMERICAN TIMKEN, BRITISH TIMKEN, AND FRENCH TIMKEN ARE REASONABLE AND PROPER PARTS OF THE LICENSE OF THE TRADEMARK "TIMKEN" BY AMERICAN TIMKEN TO BRITISH TIMKEN AND FRENCH TIMKEN.

This case presents an important question in respect of the right of the owner of a trade-mark to license it in various countries of the world, and the further question as to the terms upon which such licenses may be granted.

In paragraph 192 of its memorandum opinion (R. 1011) the district court made this observation:

> "Whether within the provisions of the Sherman Act commerce may be restrained to the extent that it is reasonably ancillary to protect a trade-mark has not been decided or discussed by the courts."

Preliminarily, it should be stated that the appellee's position as to ownership of the mark by American Timken, in connection with its licensing thereof, has been inconsistent throughout this case.

In the amended complaint references to the use of the trade-mark by American Timken appear at two points. In Section VI under the heading "Offenses Charged:" and in subparagraph (e) of paragraph 20 the appellee alleged that one of the means of carrying out the combination was (R. 18, 19):

> "allocating the use of the trade-mark 'Timken' to each of the parties in its designated territory, requiring that the co-conspirators not manufacture, sell or otherwise deal in bearings except under the trade-mark 'Timken' and requiring said co-conspirators to agree to surrender to the defendant rights in the name 'Timken' upon termination of such contracts, agreements and undepstandings;"

And in paragraph 5 of the prayer of the amended complaint the relief sought in respect of the trade-mark is as follows (R. 24):

"That the defendant Timken be enjoined from transferring, selling or assigning the trade-mark 'Timken' to or for the use of co-conspirators Limited or Francaise, or the successors and assigns thereof, so as in any manner to exclude the defendant from using the trade-mark 'Timken' anywhere in the world."

From this language there are two very clear conclusions to be drawn. First, the case was tried on the theory that American Timken was the owner of the trade-mark "Timken"; and, second, the relief sought was to prevent it from licensing the trade-mark to British Timken or French Timken on an *exclusive basis*. There never has been any amendment of the pleadings, and the case proceeded to trial on the basis of the allegations made in the amended complaint. It was not until oral argument in the case that the plaintiff in the district court adopted any position to the effect that American Timken did not own the trade-mark "Timken," and that, as a result, it did not have such ownership as would sustain the licensing of the trade-mark.

In the appellee's motion filed in this Court in opposition to American Timken's Statement of Jurisdiction the claim was made that it did not own the trade-mark in substantial areas of the world. In fact, there was no finding by the district court, as will appear from an examination of its memorandum (R. 958-1018), on the question of the ownership of the trade-mark.

One point should be made clear at the outset and that is that the license of the trade-mark granted by American Timken to French and British Timken was never an *exclusive* license. The provisions in the 1938 business agreement as to the trade-mark are typical of those which appeared in all of the earlier contracts with British Timken and French Timken and there was at all times a common use of the trade-mark for some purposes.

1. American Timken Owns and Has Owned, the Trade-Mark "Timken," Either by Registration, or Equitably, in All Important Countries of the World.

The facts as to the early trade-mark situation are important for several reasons.

First, as bearing on the question of the intent, purpose and motive of American Timken in interesting itself in the acquisition of British Timken and the establishment of French Timken, American Timken contended in the district court, and reasserts its contention in this Court, that it desired to correct any problems which might have arisen prior to 1927 as to the ownership of the trade-mark "Timken," and did not intend in any way to thwart international trade illegally.

Second, the facts demonstrate that American Timken at all times owned the trade-mark "Timken." As heretofore stated, while this action was commenced by the appellee on the theory that American Timken was the owner of the trade-mark, nevertheless, belatedly and without any amendments of pleadings or otherwise, it has undertaken to contend that American Timken does not own it.

The 1909 agreements between American Timken and E. & O. A. were, basically, patent licenses but in addition they served the purpose of developing goodwill for the ultimate benefit of American Timken in the mark. When they were made American Timken was not manufacturing or selling in the British or European markets. At that time it was devoting all its resources to the business of exploiting the development and sale of tapered roller bearings—a type of anti-friction bearing which was new in the anti-friction bearing market and was competitive with other anti-friction bearings, namely, ball and straight roller bearings, the use of which had been widely extended in Europe theretofore and which had been brought to the United States after much development work had been done on them in Europe (R. 499-500). No such pre-

liminary work had been done in Europe on tapered roller bearings, and the business of promoting their development and sale by American Timken in America was distinctly a new, and essentially an American, business.

It is clear that the early agreements were made for the purpose of developing the foreign market for tapered roller bearings. Because of the novelty of the product, and of the then short existence of the business life of American Timken in America, it is not surprising to find that the 1909 agreements required the licensee to manufacture and sell American Timken's patented bearings under the name "Timken" exclusively (see *supra*, p. 34).

This constituted, essentially, an attempt by American Timken to project its good will ahead of its business by requiring the use of the surname of its founder in connection with the product of the British licensee, and causing the foreign public to identify them by that name.

Therefore, there was a clear inference of the right of American Timken to demand that the use of the name "Timken" be discontinued at the termination of the 1909 license agreements.

As has been stated, American Timken was not making sales in England or Europe as of the time the 1909 contracts were executed. No European manufacturer of products in which anti-friction bearings were used would have considered making itself dependent upon a type of anti-friction bearing untried in the European market, the manufacturing source of which was 3,000 miles away. It could not be said that American Timken assigned in effect to the British licensee any common law rights in a trade-mark by making the 1909 agreements. Rather it projected its reputation into the territory of the British licensee ahead of American Timken's use there of the name "Timken" as a trade-mark. In fact, the record discloses that the latter was not using the word "Timken" as a trade-mark on any of its products as of that date. By stipulation it is

agreed that it commenced marking its product with the mark "Timken" in 1912 (R. 949).

The British licensee commenced the manufacture of tapered roller bearings on a small scale in 1909, and continued manufacturing on that scale during the First World War until 1920. The record shows (Ellis, R. 430) and (Hobley, R. 436) that at all times its product bore the trade-mark "Timken." The effect of this user by the British licensee over the years was to create as between it and American Timken, certain rights of user in the word "Timken." At the same time there existed in American Timken the equitable right described by Dr. Ladas when he gave his opinion as to the effect of the contract under English law (Ladas, R. 612).

While there was no provision in either of the 1909 agreements by which the British licensee was obligated to assign to American Timken, upon termination, the common law rights which it might have acquired in the mark by its use on the bearings under the agreements, on the other hand, the provisions therein requiring the British licensee

> "to use the name 'Timken' exclusively in connection with the Roller Bearings made or sold by it under the agreement"

and to always describe itself as a licensee, necessitate the interpretation that it amounted to an agreement on the part of the British licensee that its rights to the trade-mark terminated with the end of the agreement, so that, at least on the abandonment thereof, American Timken could then acquire new rights in the trade-mark by using it on its own product (Ladas, R. 627).

As previously seen, in 1920 the rights of E. & O. A., as licensee of American Timken, were assigned to Wolseley Motors, another subsidiary of Vickers, the assignment being made with the consent of American Timken.

In the meantime, with the enactment by Congress of the Trade-mark Act of March 19, 1920, permitting, for the

first time, the registration of surnames which had been used in commerce for more than one year, American Timken registered, in 1921, the mark "Timken" in the United States for use on its products (R. 577), which had been in effect for a substantial period of time prior thereto (R. 949).

As detailed in the Statement (*supra*, pp. 36-38) at this time American Timken, which had been concerned as early as 1911 about maintaining exclusive rights in the name of its founders (Deft's. Exh. 60, R. 1945; offered, R. 577; Deft's. Exh. 61, R. 1946; offered, R. 578), became concerned about its rights therein in England and other foreign countries, and proceeded to obtain registrations of the trade-mark in many of them as early as 1922 after it had laid the necessary ground work by obtaining registration in this country. The following is a list of the registrations in British Timken territory and the dates upon which they were obtained (Deft's. Exh. 87, R. 1972-1991; offered, R. 587):

Australia	in 1923	Jugoslavia	in 1924
Austria	" 1923	Luxembourg	" 1923
Belgium	" 1922	Netherlands	" 1922
Bulgaria	" 1923	Norway	" 1922
Czechoslovakia	" 1923	Poland	" 1926
Denmark	" 1923	Portugal	" 1924
Finland	" 1923	Roumania	" 1923
Greece	" 1926	Spain	" 1923
Hungary	" 1923	Sweden	" 1923
India	" 1923	Switzerland	" 1923
Italy	" 1922	Turkey	" 1923

Nevertheless, British Timken, in the absence of agreement to the contrary, could have contested some of these registrations on the ground of prior use in the countries in which American Timken had obtained them.

In 1924, pursuant to the negotiations detailed in the Statement (*supra*, pp. 39-41), American Timken, shocked

by the statements made by British Timken to Lothrop, and willing to do practically anything to preserve its right in the name (Deft's. Exh. 83, R. 1966; offered, R. 586), obtained express recognition by British Timken that it was using American Timken's name as licensee, and, in fact the 1925 amendments to the 1909 license agreements were based upon continuation, by express license, of what had previously been an implied trade-mark license. However, these amendments were not properly worded to cover the trade-mark as such, and American Timken was advised later that there could be no such license of a trade-mark in gross under English law, as distinguished from a sort of equitable license, accomplished by agreement of the licensee to cease using the mark upon expiration of the agreement.

As previously seen, British trade-mark counsel, in 1926, advised that this type of contract could be enforced (Deft's. Exh. 99, R. 2005; offered, R. 594; R. 2006), and Ladas testified that it gave American Timken equitable ownership of the mark under English law at that time (R. 612).

It is clear from all the testimony that before 1909 and thereafter American Timken had the right to use the name "Timken," for it was the surname of its founder. The question of the status of American Timken's rights under the 1909 license agreement as to the United Kingdom, inasmuch as it was to be enforced in England, is preeminently a question of English law. In the trial in the lower court, the appellee offered no proof whatsoever on the subject of English or, in fact, any foreign law. In contrast, Dr. Ladas testified that under English law prior to, and after, 1928 it was possible for one party to have legal ownership of the mark while another had the equitable ownership thereof (R. 612). *This evidence is undisputed in the record.*

The business agreement of 1938 (Deft's. Exh. 27, R. 1771; offered, R. 291; R. 1773) defines the territory of British Timken as consisting of:

(1) The United Kingdom of Great Britain and Northern Ireland.

(2) All countries in Europe with the exception of France and Russia, and

(3) All colonies and dependencies of Great Britain and European countries other than France (except those adjacent to America).

As to the United Kingdom and Ireland, Ladas' opinion, interpreting the agreements under British law, is clear that American Timken was, at all times prior to 1938, the equitable owner of the mark in England and that as the result of an amendment to the English Trademark Law in 1938 (Ladas, R. 611), British Timken is now in a position, without having to transfer its goodwill, to comply fully with the requirement of the contract that the mark, including British Timken's registration thereof, be assigned to American Timken upon termination of the agreement.

French Timken is also a party to the 1938 Agreement and Dr. Ladas testified that it is in a position to transfer all right, title and interest in the trademark to American Timken upon the termination thereof (Ladas, R. 626).

It has been urged in the course of the trial of this case that the trademark difficulties of American Timken in France and Germany and in England were the result of the 1909 agreements which from time to time have been referred to as unlawful although never have opposing counsel given any clear statement of the basis of their characterization of these agreements as unlawful. As a matter of fact, there is no sound basis for calling them unlawful. It was impossible for American Timken to register the mark "Timken" in foreign countries until it had registered the mark in the United States, *Ladas, Protection of Industrial Property,* 477, 538; *Derenberg, Trademark Protection and Unfair Trading,* 716. Such registration was impossible until the amendment of the American Trademark Act in 1920. Thus, it was not pos-

sible for American Timken to register the mark in either France or Germany where registrations had been obtained, as heretofore outlined, by SMG and by Prausnitzer. The difficulty was, not the 1909 agreements, but the fact that it was impossible for American Timken to register a mark that consisted of the surname of the founder of the company in a foreign country until there was an American registration to support the foreign registration.

As to the three groups of countries included in British Timken territory, the situation was as follows.

In the United Kingdom of Great Britain and Northern Ireland, no registration could be obtained by American Timken because it could not show that the surname "Timken" had acquired a secondary meaning as indicating association of such name in the public mind in Great Britain with American Timken (R. 620).

On the European continent, American Timken had obtained registrations in all countries of Europe except France and Germany.

The only country in Europe where no registration was obtained by American Timken was Russia. There no registration was obtained, undoubtedly because, long after the establishment of the Soviet regime in Russia in 1919, the value of a trade-mark registration in that country was seriously questioned. Even today, few companies in the United States consider it worth while to obtain registration therein since, as is well known, imports into Russia are made only by Soviet controlled State trusts and there is no free international commerce.

With regard to France and Germany, no valid registration could be obtained by American Timken since the mark had already been registered with priority by other persons.

In all colonies and dependencies of Great Britain and of European countries the situation was as follows:

French colonies—No registration could be obtained there since a French registration extends to the whole

French Empire, with the exception of Morocco and Tunis (R. 450-451, 624).

Spanish colonies—American Timken's Spanish registration extended to all Spanish colonies.

Portuguese colonies—American Timken's registration in Portugal extended specifically to the Portuguese colonies but no direct registration may be obtained in them. It follows that the company which has a registration for a trade-mark in Portugal has practical protection in the colonies, since another party cannot obtain registration for the same or similar mark in Portugal with the view to extending it thereto (R. 631, 632).

British colonies—These are of several groups:

Colonies in which there is no special registration of trade-marks, or where only the owner of a British registration may obtain local colonial registration (R. 616). The inability of American Timken to obtain in its name registration in Great Britain explains why these colonies could not be covered by local registration..

Colonies in which separate registration could be obtained, but because of their commercial or industrial unimportance American trade-mark owners often avoid obtaining local registration. Such colonies are, for instance, Gambia, Gold Coast Colony, Southern Rhodesia, Nigeria, and the like.

British dominions. Of these, two were excluded from British Timken's territory: Canada and Newfoundland (as adjacent to North America). In two, registrations were obtained by American Timken, Australia and India in 1923 (Deft's. Exh. 87, R. 1972; offered, R. 587). This left only the Union of South Africa and New Zealand. In these two, as well as in a large number of other British colonies of the second group, American Timken could not obtain registration because "Timken" was unregisterable *per se* as a surname, and American Timken was not in a position to show secondary meaning of the mark.

Dutch colonies—Two of these, Dutch Guiana and Dutch West Indies were excluded from British Timken's territory because adjacent to South America. In the third Dutch colony, Netherlands East Indies, no registration had been obtained.

It is clear from the foregoing discussion that American Timken had acquired equitable title to the trademark and that it was a rather unimportant portion of British Timken's territory in which such title was not evidenced by registration as early as 1928.

The Fact that American Timken Was Unable to Obtain Registration of the Trademark in Certain Countries is Unimportant Because Registration is Not the Sole Test of Ownership of a Trademark.

It is well settled in common law countries, including the United States, that registration is nothing more than evidence of a right established by user. This Court so held in *American Trading Company vs. H. E. Heacock Company*, 285 U. S. 247, stating (p. 257):

> "Accordingly we must assume that it was the intention of the Congress in the Federal Trademark Act in 1905 to provide with respect to trademarks used in commerce between continental United States and the Philippine Islands a protection similar to that which was accorded by the Act to the use of trademarks in interstate commerce. *As to the latter, the Federal Statute did not attempt to create exclusive substantive rights in marks*, or to afford a refuge for a piracy through registration under the Act, but to provide appropriate procedure and to give the described protection and remedies where property rights existed. The acquisition of such property rights in trademarks rested upon the laws of the several states."

See also *United Drug Company vs. Rectanus*, 248 U. S. 90; 99; 2 *Callman, Unfair Competition and Trade-Marks*, 1670, and 2 *Nims on Trade-Marks*, 732. On the same point see *M'Ilhenny Company v. Gaidry*, 253 Fed., 613 (CCA 5,

1918); *General Baking Company v. Gorman*, 3 Fed. (2d), 891 (CCA 1, 1925); *Macauley v. Malt-Diastase Company*, 4 Fed. (2d), 944 (C. A., D. C., 1925); *Mulhens & Kropff, Inc. v. Ferd Muelhens, Inc.*, 38 Fed. (2d), 287 (D. C., S. D., N. Y., 1929); *E. F. Pritchard Company v. Consumers Brewing Company*, 136 Fed. (2d), 512 (CCA 6, 1943); *May v. Goodyear Tire & Rubber Company*, 10 Fed. Supp. 249 (D. C. D. Mass., 1935); *Slaymaker Lock Co. v. Reese*, 24 Fed. Supp., 69, (D. C. E. D. Pa., 1938); *Charles Broadway Rouss, Inc. v. Winchester Co.*, 300 Fed. 706 (CCA 2, 1924); *Armstrong Paint & Varnish Works v. Nu-Enamel Corporation*, 305 U. S. 315.

A second proposition illustrates the unimportance of registration in respect to ownership of a trademark. *A licensee of a trademark may hold a registration in its name during the term of the license.*

While the appellee commented in the court below upon the fact that registration of the mark for certain countries (Great Britain and Northern Ireland, New Zealand and the Union of South Africa) are in the name of the licensee, British Timken, and contended that this indicated that American Timken is not the owner of the mark, the rule is well established that a licensee may register a mark during the period of his license and that such registration is in no wise inconsistent, either with the ownership of the mark by the licensor, or with the licensee's right of user as licensee for the term of the license. Thus, in *Scandinavia Belting Company vs. Asbestos & Rubber Works of America*, 257 Fed. 937 (CCA 2, 1919), the court said (p. 955):

> "But in the case now before us this court holds that one who has the exclusive right to use a trade-mark in the United States has such a special ownership therein as entitles him to its registration *during the period of his exclusive use.* 'Ownership' is the right by which a thing belongs to some one in particular to the exclusion of all others. And the right to the exclusive use of this trade-mark in this country was in this plaintiff for a period of 27 years or 7 years be-

yond the registration period fixed by the statute. To say that the relation which existed between the English and the American company was that of agency does not help the defendant, for if it be conceded that the relation is that of agency it must also be conceded that it is an agency coupled with an interest, and the right to the exclusive use is one which cannot be withdrawn, and an interest sufficient to prevent revocation is sufficient to make the plaintiff such a special 'owner' of the trade-mark as entitled it to register the same under the provisions of the act. To hold that one who has the exclusive right to use a trademark has no right to have it registered under the act would be, in our opinion, subversive of the policy and intent of the statute."

Cf. *LaLanne vs. F. R. Arnold & Company*, 39 Fed. (2d), 269 (Ct. Cust., Pat. App., 1930) and *Smith vs. Dental Products Company*, 140 Fed. (2d), 140 (CCA 7, 1944).

Thus, it is clear that under American law there is no particular significance attached to registration where the agreement between the parties is clearly a license agreement. It should be stated again, however, that the problem of whether the same rule applies in the jurisdictions abroad where the registrations were in the names of the licensees is substantially a problem of local law there. The 1938 business agreement, like the earlier agreements, was not called specifically a trademark license, obviously because in England, at that time, it was not possible to have an out-and-out license of the trademark (Ladas, R. 611), although a license of a trademark was possible in all other countries covered by the agreements (Ladas, R. 619) However, a license was intended because the Heads of Agreement of 1927 contemplated a new business agreement extending the terms of the 1909 license agreements, as amended in 1925, which provided for trade mark licenses.

The record discloses that, under the 1938 contract, American Timken owns the trademark throughout the world. The question of ownership in a given country in

volves the law of that country, for rights in a trademark do not extend beyond the confines of individual countries. Therefore, if the appellee proposed to contend that the appellant was not the owner of the mark "Timken," it was incumbent upon it to offer proof concerning the law of the countries in which it was claimed that American Timken was not the owner thereof. *No such proof was adduced on behalf of the appellee.*

There is a third reason why registration is not determinative of the right to license use of a trademark.

The position taken by the appellee, that an American company cannot invade a foreign market by licensing a foreign company to develop good will in its trademark in one or more foreign countries before the American company actually has invaded that market to the point that it can evidence its ownership in the mark by registration in that area, is clearly unsound. Indeed, under the authorities cited below, the appropriate interpretation of the 1909 agreements was that American Timken was using the operations of its first licensee under the 1909 agreements to develop good will in the name "Timken" in advance of any activity of American Timken in the market covered by the license agreements. The law of the United States is that one of the legitimate functions of a trademark license is to develop good will in the name of the licensor by licensing the use of the mark in an area where the licensor had not previously invaded. This was the holding of the Circuit Court of Appeals for the Sixth Circuit in *E. F. Pritchard Company vs. Consumers Brewing Company*, 136 Fed. (2d) 512 (CCA 6, 1943) in which the Court said (p. 519):

> "It is true, as contended by appellee, that a naked license to use a trade-mark is of no more validity than a naked assignment thereof. *Lea v. New Home Sewing Machine Co.*, C. C. N. Y., 139 F. 732. But a trade name, like a trade-mark, may be assigned, licensed, or lent, as long as it remains associated with the same

product or business with which it has become associated in the public mind. An owner of a trade name who lends the use of such a trade name, may resume its exclusive use according to the terms of the lending. *Cardinal v. Taylor,* 302 Mass. 220, 19 N. E. 2d 58. A manufacturer of a certain commodity, by agreeing to allow the purchaser thereof the use of its trade name for a certain period did not lose the exclusive right to the name after the expiration of the term; *J. F. Rowley Co. et al. v. Rowley,* 3 Cir., 18 F. 2d 700; *and one may introduce his trade-mark and create a demand for his variety of goods in a new territory by licenses. Vermont Maple Syrup Co., Inc. v. Johnson Maple Syrup Co. et al.,* D. C. Vt., 272 F. 478."

In *Vermont Maple Syrup Company v. F. N. Johnson Maple Syrup Company,* 272 Fed. 478 (D. C. D. Vt., 1921), the Vermont Company, the licensee of the Johnson Company, having learned that the mark of the latter was not registered, took out registration in its own name under the laws of the United States and of various New England states and then claimed that it was the first one to use the mark in that area and that it thereby acquired the exclusive use of the mark, notwithstanding that it was the licensee, and sued to enjoin the Johnson Company from using the mark in that area. The court held that the Vermont Company should be enjoined from infringing the mark, because "a person may introduce his trademark and create a demand for his variety of goods in new territory by licenses" (p. 479).

Thus, even though it be conceded arguendo that American Timken was not the "owner," by user, of the mark in certain areas (and we do not use the term "owner" in this instance as synonymous with registrant) it was entirely proper for it to license the use of the mark in these areas in which its business had not been expanded to the point that by use it could claim to be the owner of the mark. This is a proper means of developing good will in advance of actual ownership of the mark so that upon termination of

the license, the licensor will have had it developed for his use and benefit as a result of the good will efforts of the licensee.

We think that from all the foregoing that there can be no serious question as to the right of American Timken as owner of the mark "Timken" to license its use.

Acquisition of the Trademark in France and Germany, Where Registrations Had Not Been Obtained by American Timken.

In discussing the action of American Timken in trying to resolve the trademark situation in 1927, the district court made an observation (Mem. par. 183; R. 1009), in our view totally unsupported by any evidence, that:

> "At that time defendant was primarily concerned, therefore, not in safeguarding the trademark rights which it then possessed, but rather in acquiring the rights obtained by other manufacturers, as a consequence of the early patent license agreements, in areas where defendant had agreed not to manufacture and sell * * *"

In fact, any reasonable analysis of the situation in respect of the trademark leads to exactly the opposite conclusion from that expressed by the court.

Let us assume that it had been possible for the trademark "Timken" to have fallen into unfriendly hands in many European countries, including England and France, as well as the other countries in which there could have been a question as to how successful American Timken might have been in maintaining its ownership of the trademark. It is to be borne in mind that at no time was American Timken foreclosed from these countries by the 1909 agreements, for in all of them there was a provision making it possible for American Timken to supply bearings to American automobile manufacturers for inclusion in the cars which they manufactured and sold in those countries. More than that, each such American manufacturer who used Tim-

ken bearings in his cars also could sell replacement bearings for such purpose in any European country. If the ownership of the mark "Timken" had been established in a foreign company, not only would American Timken have been foreclosed from selling bearings directly in such country, but any American manufacturer using Timken bearings would also have been prevented from shipping his equipment into such country if it was equipped with bearings marked "Timken." The problem of supplying bearings to literally thousands of American manufacturers without the trademark "Timken" on them would have been well-nigh insurmountable.

Therefore, instead of pursuing the objective stated by the district court, in truth, American Timken was maintaining a competitive position for itself and its customers in the European market by undertaking to straighten out the trademark situation.

The French Trade-Mark Situation.

The registration by SMG, British Timken's sub-licensee, of the mark in 1921 (see p. 44, *supra*), was *prima facie* incontestable in France unless American Timken was prepared to show in a French court that its use of the mark in France antedated the use there by SMG. American Timken had no direct contractual relationship with SMG by which the former might urge an interpretation that the equitable rights to the trademark belonged to it.

While, in the district court the appellee made much of the fact that a sub-licensee of American Timken's British licensee had registered the mark in France, all that can be fairly deduced from the proof as to this situation is that American Timken's British licensee was extremely careless in making its contract with the French company by failing to provide, either for registration in its own name of the mark in France, or for its return to the former upon termination of the sublicense with the French company.

Quite clearly it was proper, lawful and appropriate for American Timken to have for one of its purposes in the 1927 negotiations with Dewar the recognition of the former's rights in the French trademark in France. Far from being evidence of anything unlawful, that act on the part of American Timken displayed a measure of foresight calculated to keep it and its customers in the United States in a competitive position in the French market.

The German Trademark Situation.

Under the German law the registration of the trademark by Prausnitzer during World War I (p. 44, *supra*), was incontestable since the first registrant acquires title thereto (Ladas R. 613). Prior user was of no avail whatever, so that neither American Timken nor British Timken could dispute his title to the trademark. Both companies could have been excluded from the German market at the whim of this registrant, who had the right to apply the mark "Timken" to roller bearings of his own manufacture or those of any party sold by him. Moreover, Prausnitzer could have exported from Germany to all countries in which neither British nor American Timken had yet used the mark, and thus could have acquired by first user or by registration rights in the trademark "Timken" adverse to both companies.

In the district court the appellee sought to imply some ulterior purpose of American Timken in undertaking to obtain return of the registration of the mark in Germany. On any fair analysis, however, what does its action actually imply? Is there any real significance in the fact that a German national, Prausnitzer, registered an American surname for a kind of goods made by American Timken in the United States and by its English licensee in England, when Prausnitzer himself was not engaged in any manufacturing enterprise? The real fact, of course, is that Prausnitzer was able, because of the combination of the law in Ger-

many with the disruption of trade with Germany resulting from wartime conditions, to place himself in a strong bargaining position as to the trademark "Timken," of which he took full advantage. Certainly the fact that American Timken undertook to recover the registration of the mark from its piratical holder raises no presumption of any desire or intent to violate the antitrust laws or to restrain competition. Prausnitzer was not a manufacturer. There was no threat of competition from him but his position in respect of the mark was a serious one in that he could have prevented the importation into Germany of bearings, or products containing bearings, marked "Timken." Instead, the obvious result, and purpose, of its reacquiring the registration of the mark in Germany was to keep it and its customers in a stronger competitive position there than it otherwise would have been.

In the district court the appellee claimed that as of 1928 there were many areas in the world in which American Timken did not own the trademark "Timken." In fact, by that time the English situation had been crystallized to the point of an acknowledgment by British Timken in the 1925 amendments to the 1909 agreements that American Timken was the equitable owner of the trademark in England. Only in France and Germany were there outstanding registrations of the mark which had been obtained in the fashion heretofore outlined. Elsewhere on the continent of Europe there was no registration in the name of British Timken or any third party, for as has been pointed out as soon as it was possible to do so American Timken had actually obtained registrations in practically every commercial area of the world.

There is not, of course, the slightest evidence in the record to sustain any claim that consideration was ever given by American Timken to acquiring the ownership of the mark "Timken" in France for the purpose of suppressing competition by SMG, the then holder of the registration in that country. In fact, the record shows that

the principal manufacturing operations of the licensee, SMG, were devoted to ball bearings and its production of tapered roller bearings was so insignificant as to make any contention that such a purpose motivated American Timken's officers clearly contrary to the undisputed evidence (R. 440, 441).

All of this activity preceded the making of the 1928 contracts and, what is of perhaps even greater importance, took place long before there was any suggestion or hint of a possibility of making a contract looking toward the acquisition of whole or part ownership in British Timken.

In conclusion on this point, American Timken, in making the arrangement with Dewar in 1927, wished to acquire an interest in British Timken and to establish French Timken and German Timken in part to resolve finally the trademark situation. The mass of uncontroverted evidence in the Statement, including particularly the advice by American trademark counsel in 1927, shows this.

The effect of the 1928 business agreement with British Timken was to establish the equitable ownership of the mark in England, which had been recognized by the 1925 supplemental agreements with British Timken in a form that was not completely satisfactory to American Timken. By the establishment of French Timken, through the investment of American Timken and Dewar, and its purchase from SMG of the trademark registration in France, the French trademark problem was settled, and by the acquisition of German Timken, in which American Timken also invested a substantial amount, the trademark situation in Germany was disposed of by having an assignment from the registrant, Prausnitzer, to the German company. Upon dissolution of that company, the mark was transferred to British Timken inasmuch as it was licensed to use it in that area. Obviously, equitable ownership of the trademark in France and Germany by American Timken was recognized by the parties as early as the Heads of Agreement of 1927

in which, in Section 10(a), it was specifically provided that "any practical steps to be taken for the protection of the name Timken and securing the exclusive reversion of the name *in all countries*". (Deft's. Exh. 15, R. 1730; offered, R. 260; 1733) to American Timken at termination of the new business agreement between American Timken and British Timken extending the substance of the existing agreements between them for ten years. The Statement also discloses that during the negotiations prior to the making of the Heads of Agreement American Timken's representative, Ely, and Dewar agreed upon the formation, acquisition or organization of companies in France and Germany to manufacture and sell tapered roller bearings under the trademark "Timken." Thus, the whole plan contemplated acquisition of the French and German trademarks and licensing thereof to the Timken companies in those countries with equitable ownership and the ultimate right to the trademark at termination of the business agreements between the companies vested in American Timken. The agreement plainly called for a reversion of the trademark rights developed by the British and French companies to American Timken upon termination of the agreement.

While the provisions of the 1928, the 1934 and the 1938 agreements are not identical, in dealing with the subject of the use of the trademark, those contained in paragraphs 3 and 4 of the 1938 agreement (Deft's. Exh. 28, R. 1780-1789; offered, R. 291; R. 1782, 1783) are substantially the same as those contained in the earlier agreements[31] and are

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[31] "3. (A) Each of the parties hereto will use his best endeavours to maintain the distinctive character of the Trade-Mark 'Timken' and refrain from any act calculated to prejudice the rights of the parties hereto in respect thereof as now existing.

(B) It is intended that if the American Company shall so request then the British Company in its territory and if the American Company or the British Company shall so request then the French Company in its territory shall join with the requesting Company in an application for concurrent registration of the

(Continued on following page)

clearly based upon ownership of the trademark by American Timken.

2. American Timken Has Validly Licensed Use of the Trade-mark, By Controlled Licensing Thereof, to British Timken and French Timken.

The ownership of any property is in a limited sense monopolistic. It is so to the extent that any person, as the owner, can exclude any other person from a variety of rights in respect of his property, but the right that is called property, associated as it is with such exclusions, is that which the courts have undertaken to protect under our system of jurisprudence. See *Trade-Marks—Monopoly or Competition*, 43 Mich. Law Rev. 659.

In the well-known *Trade-Mark* cases, *United States v. Steffens*, 100 U. S. 82, this Court said in defining a trademark that (p. 92):

> "* * * It is a *property right* for which damages may be recovered in an action at law and the violation of which will be enjoined by a Court of Equity with compensation for past infringement. * * *"

(Continued from preceding page)

Trade-Mark 'Timken' if and so far as such registration is possible in the territory of the requested Company.

(C) It is intended that if and when the Business Agreement shall be terminated so far as regards the British Company or the French Company the British Company in the former case if and so far as it may be requested in writing by the American Company and the French Company in the latter case if and so far as it may be requested in writing by the American Company or the British Company shall cause the name 'Timken' to be eliminated from its corporate name and from the name of any person firm or Company controlled by it and shall refrain and cause any person firm or Company controlled by it to refrain from using the name 'Timken' as part of or in connection with his their or its name or as a Trade-Mark or Trade Name or otherwise and shall refrain from any act calculated to obstruct or delay the requesting Company in any steps which it may take with a view to establishing the right of the requesting Company to the use exclusively so far as practicable of the said name in the territory of the requested Com-

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In *Dupont Powder Company v. Masland*, 244 U. S. 100, this Court made the much quoted statement that (p. 102):

> "* * * The word 'property' as applied to trade-marks and trade secrets is an unanalyzed expression of certain secondary consequences of the primary fact that the law makes some rudimentary requirements of good faith * * *"

In *Bourjois & Co. v. Katzell*, 260 U. S. 689, the Court said (p. 692):

> "* * * *The monopoly in that case (of a patent) is more extensive but we see no sufficient reason for holding that the monopoly of trade-mark so far as it goes is less complete.* It deals with a delicate matter that may be of great value but that easily is destroyed and therefore should be protected with corresponding care. * * *"

What then is the "property" that is referred to in the decisions from which quotations have just been set forth? What is the nature of the "monopoly" possessed by the owner of a trade-mark? A trade-mark represents an authentic seal which denotes the origin and the quality

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pany and so far as practicable shall assign or cause any person firm or Company controlled by it to assign to the requesting Company or as it may direct any Trade-Mark or other rights in respect of the said name in its ownership or control.

"4. (A) It is intended that so long as the British Company or the French Company is actually engaged in the manufacture of bearings the British Company shall follow any advice given by the American Company and the French Company shall follow any advice given by the American Company or the British Company with respect to the manufacture of bearings pursuant to the Business Agreement so far as the same shall be economically practicable under the circumstances of the business of the Company advised.

(B) It is also intended that the manufacturing operations of the British Company and the French Company shall at all reasonable times be open to inspection in the former case by the American Company and in the latter case by the American Company and the British Company or the representatives of the Company desiring such inspection."

of the goods that bear it. This Court in *Mishawaka Rubber & Woolen Mfg. Co. v. S. S. Kresge Co.*, 316 U. S. 203, stated (p. 205):

> "The protection of trade-marks is the law's recognition of the psychological function of symbols. If it is true that we live by symbols, it is no less true that we purchase goods by them. A trade-mark is a merchandising short-cut which induces a purchaser to select what he wants, or what he has been led to believe he wants. The owner of a mark exploits this human propensity by making every effort to impregnate the atmosphere or the market with the drawing power of a congenial symbol. Whatever the means employed, the aim is the same—to convey through the mark, in the minds of potential customers, the desirability of the commodity upon which it appears. Once this is attained, the trade-mark owner has something of value. If another poaches upon the commercial magnetism of the symbol he has created, the owner can obtain legal redress * * *."

Thus, when courts refer to the protection of a trade-mark, they speak, essentially, of the protection of the business and the goodwill which it represents. Mr. Justice Holmes expressed this idea in *Prestonettes v. Coty*, 264 U. S. 359 as follows (p. 368):

> "* * * A trade-mark only gives the right to prohibit the use of it so far as to protect the owner's goodwill against the sale of another's product as his. * * *"

It is this right of ownership which this Court has held is sufficient to support a controlled license of a trade-mark.

The right of the owner of a trade-mark to license it has been recognized by the enactment by Congress of the Lanham Act, the international conventions to which the government of the United States is a party, and decisions of this and other courts in the United States.

All of these references show that there is no fundamental policy in the United States against the controlled licensing of a trade-mark. Admittedly, whether a proper

license is executed in a given country is a matter that must be controlled by the law of that country.[32]

The Lanham Act (60 Stat. 427) Effective 1947, Evidences United States Congressional Policy in Favor of Controlled Licensing of Trade-marks.

Section 5 of the Lanham Act permits licensing of the trade-mark to "related" companies;

> "Where a registered mark or a mark sought to be registered is or may be used legitimately by related companies, such use shall inure to the benefit of the registrant or applicant for registration, and such use shall not affect the validity of such mark or of its registration provided such mark is not used in such manner as to deceive the public."

The term "related company" is defined in Section 45 of the Act as follows:

> "The term 'related company' means any person who legitimately controls or is controlled by the registrant or applicant for registration in respect to the nature and quality of the goods or services in connection with which the mark is used."

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[32] Seemingly, the appellee concedes the soundness of this position for, in its "Statement Opposing Jurisdiction and Motion to Dismiss or Affirm" this statement appears:

> "The second important question alleged to be involved in this case is the right of an American company to license the use of its trademark 'Timken' abroad on a territorial basis. Whatever right an American company might have to license its trademark abroad, it would have this right only upon a national basis and only if (1) the law of the nation in question permits the licensing of trademarks and (2) the American company complies with the requirements of such law."

The amazing thing is that having adopted this position, the appellee should undertake to challenge the ownership of, and the licensing of the trademark by, American Timken in this case, when no proof of any sort was offered by the appellee on either subject. On the contrary, the uncontroverted evidence offered on behalf of American Timken shows beyond any question that the licenses given were permitted by the laws of the various countries and that there has been full compliance with the laws of the various jurisdictions covered by the licenses given to British Timken and French Timken.

This designation obviously includes "control" by way of contract and clearly contemplates a situation in which a licensor is required to take steps to see that the product manufactured pursuant to the trade-mark license is in quality the equal of the product of the licensor.

The licenses given by American Timken to British and French Timken correspond to the policy exhibited by Sections 5 and 45 of the Lanham Act, in that they provide means for control of these "related companies," "in respect to the nature and quality of the goods or services in connection with which the mark is used" as specified by Section 45 of the Lanham Act. Section 4 of the 1938 business agreement, quoted *supra* note 21, provides for such control by American Timken, the licensor.

This Court upheld a controlled license in *Bacardi Corporation of America v. Domenech*, 311 U. S. 150, discussed *infra*.

The Timken Companies Under Their Agreements Have Conformed to the Requirements of Controlled Licensing of Trade-marks.

In practice, British Timken and French Timken, as licensees of American Timken, correspond to its "related companies," as defined in the Lanham Act, or controlled licensees under the rules laid down by the United States courts.

The Statement discloses that information in respect of the manufacture of anti-friction bearings furnished by American Timken to the licensees of its trade-mark falls generally into three categories. They are, first, information concerning bearing applications, second, that concerning design of bearings to fit the applications, and third, that as to tooling to be used on machine tools for the manufacture of bearings. In the latter connection and closely associated with it is the necessity of further information as to how to use the machines and tools after the latter have been designed.

The testimony is simply overwhelming that there has been a constant stream of information on all points from American Timken to British and French Timken which commenced as soon as the first agreements were signed in 1928 and has been constant since that time, resulting in full compliance with the "guarantee" requirements of the law relating to trademark licensing.

The Policy of the United States as Evidenced by the International Conventions to Which this Country is a Party Supports the Controlled Licensing of a Trade-mark.

While, as we have noted, the Lanham Act as such does not have extra-territorial effect, one of the purposes of the enactment of the law was to bring our trademark law into conformity with the international conventions to which this country is a signatory and to give effect to their provisions. This purpose is expressed in Section 45 of the Act in the following language:

> "The intent of this act is * * * to provide rights and remedies stipulated by treaties and conventions concerning trademarks, trade names and unfair competition entered into between the United States and foreign nations."

The efforts of the United States Government toward the adoption of international legislation with respect to licensing of trade-marks date from at least 1910. The United States has been, since 1910, a party to the Pan American Convention for Trade-Marks and Other Rights of Industrial Property and since 1887 a party to the International Convention for the Protection of Industrial Property of 1883 which has been revised several times, most recently in 1934.

The United States took the initiative for the adoption of the Pan American Convention for the Protection of Trade-Marks signed at Buenos Aires on August 20, 1910 at the Fourth International Conference of American

States.[33] This Convention, ratified by the United States on March 21, 1911,[34] contains Article VII which provides:

> "The ownership of a trade-mark includes the right to enjoy the benefits thereof, and the right of assignment or *transfer* in whole *or in part* of its ownership *or its use* in accordance with the provisions of the laws of the respective States."

Thus, the United States, ever since 1910, has had an agreement with its twenty sister Republics to the south that the owner of a trade-mark may license the use thereof as a part of the whole system of the inter-American protection of trade-marks.

At the special Pan American Conference convened in Washington in 1929 the General Inter-American Convention for Trade-Mark and Commercial Protection[35] was adopted on February 20, 1929 which contains Article 11, consisting of two paragraphs, the first of which deals with assignment of trade-marks and the second with licenses. The text of this article reads:

> "The transfer of the ownership of a registered trade-mark in the country of its original registration shall be effective and shall be recognized in the other Contracting States * * *
>
> "The use and exploitation of trade-marks may be transferred separately for each country and such transfer shall be recorded upon the production of reliable proof that such transfer has been executed in accordance with the internal law of the State in which the transfer took place * * *".

This is a reiteration of the provision of the 1910 Convention, set forth even more clearly and explicitly. At the London Conference for revision of the International Con-

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[33] Cuarta Conferencia Internacional Americana, Buenos Aires, 1911, Vol. I.

[34] 39 Stat. at L., Pt. 2, p. 1675.

[35] 46 Stat. 2907. The convention is commented upon and applied by this Court in *Bacardi Corporation v. Domenech*, *supra*.

vention for the Protection of Industrial Property in 1934,[36] it was the United States Government itself which proposed a similar provision on licensing of trade-marks in the desire to create international legislation on this subject for the forty-odd countries party to such International Convention, just as it had helped to create such in the relations of the twenty-one American Republics. Its proposal for amendment of the Convention[37] read as follows:

> "Moreover, the countries of the Union will permit the use of the same trade-mark by companies related to each other so that the products sold by them are manufactured according to the same processes and technical formulas with the result that their appearance and nature are equivalent, provided that these products are duly marked with the name of the company who places them on sale with the indication of the country or place where they have been manufactured or produced."

It was on the basis of this proposal of the United States Government that the official conference undertook to insert a provision on licensing of trade-marks in the International Convention and that finally the text of Article 5 (c)(3)[38] was adopted, on the insistence primarily of the American delegation, as follows:

> "The simultaneous use of the same mark on identical or similar products by industrial or commercial establishments considered as joint owners of the mark according to the provisions of the national law of the country where protection is sought, shall neither prevent registration nor diminish in any way the protection accorded the said mark in any country of the Union, provided the said use does not result in inducing the public into error and is contrary to public interest."

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[36] See *Actes de la Conference Reunie a Londres* which are the minutes of the Conference published by the International Bureau of Berne in 1934.

[37] *Ibid.* p. 281.

[38] See *Actes*, pp. 281, 388, 460, 515.

While the proposal of the American Government was not adopted in the exact language proposed, in the final form of the amendment adopted the principle of licensing the use of a trade-mark by the proprietor thereof to a related company, subject to the condition that there be no deception of the public with regard to the origin of the products bearing the licensed trade-mark, became part of this Convention. The Convention was ratified by the United States on October 28, 1938, and is now part of our law.

The second paragraph of Article 11 of the Inter-American Convention of 1929, quoted *supra*, was considered by this Court in *Bacardi Corporation v. Domenech*, 311 U. S. 150. In this case the trade-mark was owned by a Cuban corporation which had used it on rum manufactured by it. The Cuban corporation licensed the plaintiff, Bacardi Corporation, to manufacture rum in accordance with its formula and under its trade-mark in Puerto Rico. The legislature of Puerto Rico undertook to prevent the use of the mark in Puerto Rico by enacting a statute that forbade the use of any trade-mark on any product made in Puerto Rico which had been used elsewhere than in continental United States and Puerto Rico. The question presented to this Court was whether or not enactment of the Puerto Rican legislature was valid under the existing law. Commenting upon the effect of the Inter-American Convention and its second provision, this court said (p. 164):

> "Then there is the additional recognition of the right to transfer the ownership of a registered mark, and also to transfer separately for each country the use and exploitation of trade-marks when the transfer is executed in accordance with the law of the place where it is made and is duly recorded. It will be observed that the right of protection of foreign marks on compliance with the prescribed formality is accorded in each of the ratifying states irrespective of citizenship or domicile. When the foreign mark is entitled by virtue of the treaty to registration in a ratifying state and is

duly registered there, the substantive right in its protection in that state attaches."

As a result of these considerations, the enactment of the Puerto Rican legislature was held invalid.

We submit that the proposals of the representatives of the American Government at the international conventions as outlined and the language of the international convention heretofore quoted and considered by this Court in the *Bacardi* case demonstrate clearly a policy on the part of the United States to permit licensing of trademarks on an international basis, country by country.

Controlled licenses of trademarks have been recognized by our courts. The late Edward S. Rogers, an acknowledged authority on the law of trademarks for the United States, summarized the development of trademark law in this and other countries in a report to the International Law Association in 1930 as follows, *Derenberg, Trademark Protection and Unfair Trading* (p. 586):

"The American courts are beginning to realize that the value of a trademark does not depend upon the personal identity of the producer of the goods bearing it, that the mark is valuable only to the extent that the producer, by making a good article, has given the mark value. If the guarantee of quality which the mark implies is reserved by proper standards, there is no reason to insist that the commercial origin of the goods should remain unchanged."

This principle has been recognized in a variety of situations.

Licensing to controlled subsidiaries was approved in *Keebler Weyl Baking Co. v. J. S. Irvins' Sons, Inc.*, 7 Fed. Supp. 211 (D. C. E. D. Pa. 1934).

Licensing of his trademark by a distributor to a company manufacturing his product for him, subject to his supervision as to quality, was upheld in *Knight, Inc. v. Milner & Co.*, 283 Fed. 816 (D. C. N. D. Ohio 1922), and in *Freeman v. Huyck*, 7 Fed. Supp. 971 (D. C. N. D. N. Y. 1934).

Licensing use of the trademark in the sale of a product incorporating another product, such as Coca-Cola syrup, produced by the owner of the mark, subject to regulations imposed by the owner as to incorporation, has been upheld in *Coca-Cola Co. v. Bennett*, 238 Fed. 513 (CCA 8, 1916), *Coca-Cola Co. v. J. G. Butler & Sons*, 229 Fed. 224 (D. C. E. D. Ark., 1916), and *The Coca-Cola Bottling Co. v. The Coca-Cola Co.*, 269 Fed. 796 (D. C. Del. 1920).

This court has consistently recognized that trademark rights may be held concurrently on a territorial basis by different persons or corporations. Thus, in *Hanover Star Milling Company v. Metcalf*, 240 U. S. 403, it established the concept of "bona fide concurrent user" within the limits of the United States. It said (p. 416):

> "* * * But the mark of itself cannot travel to markets where there is no article to wear the badge and no trade to offer the article."

The court held that all three users of the mark "Tea Rose" for flour were the owners thereof in the respective areas in which they had been the first users. This Court applied the same principle in *United Drug Company v. Rectanus*, 248 U. S. 90; *Bourjois & Co. v. Katzell*, 260 U. S. 689; and in *American Trading Company v. Heacock Co.*, 285 U. S. 247.

Thus, it is clear that under American law, and by every reasonable consideration, the ownership of a trademark may be on a territorial basis, and that a license may be executed on that basis which may be absolute in form; and that, at the same time, there may be concurrent user of the same mark in other areas of the world or in other states of the United States if an ownership of the mark can be shown in such differing areas or countries.

3. The Territorial Provisions Set Up in the License of the Trademark "Timken" From American Timken to British Timken and French Timken in the Respective Countries Assigned to Each Company Are Not Violative of the Sherman Act.

An analysis of the various portions of the business agreement of 1928 (Deft's. Exh. 23, R. 1754; offered, R. 274) shows clearly that it was in form and content nothing more than an ordinary trademark license agreement. The subsequent business agreements have not differed essentially from the 1928 agreement.

Clause 1 confirms the pre-existing rights of use of the trademark by the licensee British company for the territory of the 1909 agreement and thus defines the territory to which the trade-mark license extends. The character of this licensee's rights is emphasized by Clause 9 which prohibits sub-licensing without the written approval of the licensor, and by Clause 15 which prohibits assignment of the license and provides that upon liquidation of the licensee the agreement is terminated.

Clause 2 provides that the two parties shall make reciprocal use of patents pertaining to improvements in the products for which the use of the mark is licensed, and Clause 5 is corollary to this, since it requires the licensee to work the patents in the licensed territory because failure to do so may cause forfeiture of the patents. And, of course, the affirmative use of the trade-mark by the licensee in such territory is incidentally required, since failure to use may expose the trade-mark to forfeiture under provisions of foreign laws that non-use of a trade-mark for a certain term may be held to be abandonment. This is an extremely significant provision indicating that failure of the licensee to use the mark in any such territory is proof that the license of the trade-mark is not being availed of and the license to that extent is revoked.

Clause 3 confirms the reversionary rights of American Timken in its trade-mark and its equitable rights therein which are the foundation of the agreement.

Clause 4 lays the foundation for the validity of the license by providing for the supplying of technical instruction and information for the manufacture of the products by the licensor to the licensee and the compliance by the licensee with such instructions. Part of the same system of control of the licensee by the licensor is the covenant under Clause 6 that the licensee may not manufacture or sell bearings except under the terms of the agreement, which means that the licensor could not allow the mark "Timken" to be used on products made not in conformity with its standards and instructions since this would tend to destroy the goodwill and reputation of the trade-mark.

Clause 6 contains also the requirement that all bearings made by the licensee shall bear the trade-mark "Timken." This is also a necessary incident to the license. American Timken could not be expected to supply know-how and technical information—results of large investment and development expense—to promote the manufacture and sale of a product sold in competition with "Timken." The whole purpose of the arrangement of American Timken from the beginning was to create a market and a goodwill for "Timken" on a world wide basis. Of course, the licensee was put into the disadvantageous position by which, at the termination of the license, it would have to adopt a new mark for its products, but this is incident to any license agreement. Any "Coca-Cola" bottler whose bottling agreement is terminated will find himself in the necessity, if he wishes to continue his bottling business, of having to adopt a new mark and try to maintain or create a new market for it. In any case, the position of the licensee is mitigated by Clause 14 which gives

it a six-month period to enable it to shift to a new trade-mark while still selling "Timken" bearings.

Clause 7 is a natural incident of a trade-mark license agreement. American Timken could not expect British Timken to invest in, and develop, a business in a large territory of the world for "Timken" products and at the same time engage in a commercial fight with the same company which licensed it. Nor could American Timken be expected, as a penalty for granting this trade-mark license, to have the licensee engage in a commercial struggle with the licensor. And yet, keeping in mind the necessities of international trade, American Timken, as the licensor, restricted the effects of the license granted to the licensee and in effect made such license non-exclusive for certain important purposes which did not involve direct invasion by the licensor of the licensee's territory, which would have nullified the license. The license was non-exclusive in the following respects: completed manufactured articles made in the United States containing "Timken" bearings could be freely imported into the licensed territory of the licensee; replacement bearings for such completed articles could be freely imported by American Timken into the same territory; and manufacturers of vehicles in the United States could import American Timken's bearings into the territory licensed.

Corresponding rights were granted to the licensee.

Clauses 10 to 12 determine the royalty payment under the license—a normal provision in such an agreement.

In conclusion, there is no provision in the whole agreement which is not a natural and reasonable clause of an ordinary trade-mark license agreement.

It has already been shown in this brief that this Court has recognized the right to own and the right to transfer trademarks on a territorial basis and indeed the right to license them on a territorial basis. It seems clear to us,

therefore, that, if a license agreement does no more than that, it is not unlawful and does not extend the rights of a licensee beyond the ordinary scope of trademark ownership.

The first reason that suggests itself for this conclusion is the fact that ownership or right of user of a trademark does not preclude any third party from engaging in competition with the owner or licensee of the trademark in the sale of the product covered by the mark. Thus, even though American Timken owns and uses the trademark "Timken" to distinguish antifriction bearings of its manufacture, no third party is thereby precluded from making the same kind of antifriction bearings under a different mark in the United States or any place else in the world where American Timken owns the mark, in competition with it, or its licensees. The "monopoly" owned by American Timken through the medium of the trademark is limited in scope. It is limited to the point that it can only lawfully object to a competitor's undertaking to use the trademark "Timken," or a trademark similar thereto, in connection with the manufacture of a similar product which is in competition with American Timken's.

It is easy to pin the badge of "monopoly" on a trademark as a means of trying to make it appear that it is therefore an undesirable medium for use in the economic world. In fact, it is an instrument for the promotion of competition.

We have already referred to many instances in which this Court and other American courts have sustained the right to own and use a trademark on a territorial basis. Admittedly, a patent is not the same as a trademark in many respects. It has been recognized generally, however, that it is proper for the owner of a patent to grant a license thereof on a territorial basis. In *Agawam Woolen Company v. Jordan*, 74 U. S. 583, in discussing the general

principles of law involved in the rights of a patentee, this Court said (p. 593) that:

> "He may assign the letters patent by an instrument in writing either as to the whole interest or any undivided part thereof; or he may grant and convey to another the exclusive right under the patent to make and use and grant to others to make and use the thing patented within and throughout *any specified district.*".

See also, *United States v. General Electric Company*, 272 U. S. 476; *Ethyl Gasoline Corporation v. United States*, 309 U. S. 436, 456; *L. E. Waterman Company v. Kline*, 234 Fed. 891 (CCA 4, 1916); *American Equipment Company v. Tuthill*, 69 Fed. (2d) 406 (CCA 7, 1934); *Becton, Dickinson & Company v. Eisele & Company*, 86 Fed. (2d) 267 (CCA 6, 1936); *American Lecithin Company v. Warfield*, 105 Fed. (2d) 207 (CCA 7, 1939); and *Extractol Process Limited v. Hiram Walker & Sons, Inc.*, 153 Fed. (2d) 264 (CCA 7, 1946).

Thus, it is well established that the owner of a patent may license it in the United States and restrict the licensee as to area and such a license may be exclusive if the parties wish it to be. If this is the rule as to the licensing of patents, there is no sound reason why the same rule should not apply to the licensing of a trademark as well. As previously seen, territorial restraints in a patent license agreement are, basically, restraints reasonable because ancillary to the valid transaction of licensing the patent. In the only case decided involving licensing of a trademark in exclusive territories, *The Coca-Cola Bottling Co. v. The Coca-Cola Co.*, 269 Fed. 796, *supra*, the court held the restraints legal on this basis, saying (p. 814):

> "The defendant points out certain covenants of paragraphs 6, 7, 11, and 12 of the contract as amended in 1915 to show that the contract is in restraint of trade. It cites *Floding v. Floding*, 137 Ga. 531, 73 S. E. 729, and other cases, to show that the courts of Georgia refuse to recognize an agreement not to oper-

ate the same business in a territory very large in area as being in reasonable restraint of trade. But such cases have no analogy to the case at bar, where the effect of the contract was not to transfer the whole business of the vendor, but only an incidental and potential business arising out of the main business of the vendor. It is unnecessary to analyze the several covenants pointed out as being in unreasonable restraint of trade. Those covenants at most operate as a partial and not as a general restraint, and are 'merely ancillary to the main purpose of a lawful contract, and necessary *to protect the covenantee in the enjoyment of the legitimate fruits of the contract, or to protect him from the dangers of an unjust use of those fruits by the other party,' or were covenants necessary to protect the Georgia corporation in its retained business.* Such provisions are valid. *United States v. Addyston Pipe & Steel Co.*, 85 Fed. 271, 29 CCA 141, 46 LRA 122; *John D. Park & Sons Co. v. Hartman*, 153 Fed. 24, 82 CCA 158, 12 LRA (N. S.) 135. I find in the contract nothing having an effect or intended to have an effect to defeat or lessen competition or to encourage or tend to create a monopoly, nor do I find anything therein that may be said to be in unreasonable restraint of trade."

In conclusion, on this point, the territorial limitations were necessary, would have been observed in any event, and were not so restrictive as to indicate wrongful intent.

The numerous restrictions on the transaction of international trade as to which there is an abundance of proof in the record show beyond any doubt that there are many times when licensing the use of the trademark abroad in one or more countries is the only method available to an American company for the transaction of foreign business. The mark involved in this case is a manufacturing mark. Aside from any trademark consideration, if both the licensor and the licensee are making and selling, it is entirely conceivable that a licensee would not be willing to risk the investment in a business for the manufacture of a

product covered by a trademark unless he could be certain of not incurring the risk of having his business destroyed. As a matter of ordinary business prudence, he would feel obliged not to enter into any license agreement if, as a practical result, he knew that the laws of the United States would require the licensor to immediately set up a competing manufacturing and sales organization with his (the licensee's) at the risk of being held in violation of the Sherman Act.

In fact, the agreements for the territorial restrictions in the territory of British Timken and French Timken accomplished no more than what was essential for the protection of the trademark for both the licensor and the licensee. Even if there had been no such clause in the agreement of 1938 and the predecessor agreements, American Timken, of its own free will and not as a matter of contractual stipulation, would have refrained from using its mark if such use would have destroyed it in Great Britain and France. The use it made by the exempted sales for use in completed automobiles, replacement parts, etc., did not impair the validity of the trademark. Such goods were only dealt in by dealers who were service agents for the imported machines, which distinguished American Timken's goods by the fact that they were imported for replacement parts for use in foreign equipment only, and were marked with an indication of origin so that no confusion really arose between its goods and those of British Timken by such imports on a small scale.

Finally, the agreement in this instance did not seek to engraft upon the ownership right of American Timken anything beyond that reasonably included in the scope of the trademark as such. There was no requirement that either of the foreign companies purchase from American Timken any particular number of bearings or any surplus bearings. There was no agreement establishing the price at which British Timken or French Timken would sell bear-

ings in the markets in which they were to operate. Indeed, American Timken made possible the importation into this country of products produced in the territories of the licensees equipped with Timken bearings which otherwise would not have been permitted entry into the United States. As of the time that the agreements were executed in 1928, American Timken was the admitted owner of the trademark in the United States. It had registered with the customs authorities its ownership of the mark. Thus, any product which was produced by a manufacturer outside of the United States, in which a bearing carrying the mark "Timken" was included, could have been stopped at the port of entry. The agreement contemplates, however, that any product manufactured in the territory of the foreign Timken companies which is equipped with a bearing marked "Timken" shall be permitted to come into the United States as well as replacement bearings therefor. Clearly, the license agreement, instead of restricting trade, expanded the opportunity for trade in a fashion that is entirely reasonable and proper.

We submit, therefore, that the business agreements from 1928 and thereafter have in nowise violated the Sherman Act, and that the inclusion of territorial provisions in a trademark license of the type involved in this case, is entirely lawful. Therefore, for this reason alone the arrangements between the three Timken companies are lawful.

III.

THE PURPORTED FINDINGS OF FACT UPON WHICH THE DISTRICT COURT BASED ITS JUDGMENT ARE CLEARLY ERRONEOUS.

It is American Timken's contention that the district court proceeded throughout in its consideration of this case upon an assumption as to material matters of fact which is wholly inconsistent with, and unsupported by the evidence, which is indisputably to the contrary.

The findings of fact to which American Timken excepts and assigns as clearly erroneous, are set forth in detail in its assignment of errors (Numbers 42-110, inclusive; R. 1269-1283), and, relying thereon, we proceed to call the Court's attention to some of the most outstanding mistakes and misconceptions of the district court as to what we believe to be controlling questions of fact.

We are aware that Federal Rule of Civil Procedure 52(a) provides that the findings of fact of the trial court shall not be set aside upon review "unless clearly erroneous," and that this Court on this appeal will not try the case *de novo*. We submit, however, that the rule announced by this Court in the recent case of *United States v. United States Gypsum Company*, 333 U. S. 364, is applicable here. It was there held that, under Rule 52(a), "a finding of fact by the trial court is 'clearly erroneous' when, although there is evidence to support it, the reviewing court upon the entire evidence is left with the definite and firm conviction that a mistake has been committed" (p. 395.)

1. The District Court's Conclusion That At Various Times American Timken Was Combining With Potential or Actual Competitors is Clearly Erroneous.

At various points in its memorandum, the district court indicated that American Timken, pursuant to the business agreements from 1909 on, was dealing with actual or potential competitors. This idea obviously colored the district court's decision and influenced it in its conclusion that

American Timken had continued, in 1927, a combination for the specific purpose of stifling competition which had been formed some time before its acquisition of British Timken in 1927 (see section 3, *infra*).

American Timken and E. & O. A. The court made the observation at one point that the present relationship between the parties is "the outgrowth of the principal agreements in 1909, *when world markets were divided and competition was eliminated*" (Mem. par. 120, R. 995), thus clearly implying that, when the 1909 patent license agreements were entered into, they amounted to division of the world by potential competitors. Actually, as the Statement shows, E. & O. A., Vickers' subsidiary with which those agreements were made, had never manufactured any type of anti-friction bearing prior to the making of the 1909 agreements and commenced operations with a staff of not more than a half a dozen people.

American Timken and the Vickers subsidiaries from 1909 to 1927. The district court, again, stated that after the basic patents pertaining to the tapered roller bearing had expired in 1924, the 1909 license agreements, as amended in 1925, "were without pretense, contracts for the avowed purpose of suppressing competition" because they no longer revolved around the patents (Mem. par. 121, R. 995). Again the district court clearly continued the thought that the parties had divided world markets and eliminated competition, thus, at least, implying the existence at that time of a combination between strong potential competitors to control the alleged tapered roller bearing industry.

Actually, the Statement shows that Wolseley Motors, which took over the licenses from E. & O. A. in 1920, was not a possible competitor of American Timken because it had always been an automobile manufacturer, and British Timken, which was organized in 1920 to handle the bearing business as a wholly owned subsidiary of Wolseley Motors,

was no more a strong potential competitor than was its parent at that time. The Statement further discloses that from 1920 to 1927 British Timken was continually calling for assistance from American Timken in order to meet competition, and as late as 1926 was in a very poor condition to compete even in its own British market. Indeed in Ely's letter to Duncan as late as 1924 (Deft's. Exh. 83, R. 1966; offered, R. 586; R. 1967) he suggested the possibility of canceling the license agreement because British Timken's production was below the minimum specified in the license agreement. No good reason is suggested as to why American Timken would consider such a company a *strong* potential competitor.

American Timken and British Timken in 1927, at the time of American Timken's acquisition of the latter. This, of course, is the most important situation in which the district court found that American Timken was dealing with a potential or actual competitor. The district court found that in 1927 British Timken was a prosperous concern which had grown faster than American Timken and that its potent leadership in the industry compared favorably with that of American Timken so that it had become "a potential formidable competitor in the field of roller bearings" (Mem. pars. 34, R. 965; 36, R. 966). All the evidence is plainly to the contrary. In the Statement the relative impotency of British Timken is described.

The mass of uncontroverted evidence as to the actual situation of British Timken, and its predecessor subsidiaries of Vickers from 1909 to 1927, discussed in the Statement, all of which was ignored by the district court, shows without question that British Timken was not a "potential formidable competitor" of American Timken or any other company in the field of roller bearings. It was calling for help at all times, due to competition from SKF, it could not manufacture tapered roller bearings at a cost which enabled it to be competitive with the bearing manufacturers

in its own country, and, even after American Timken acquired it and had introduced American methods of production, its costs were still twice those of American Timken on comparable bearings. On the basis of comparative sales in 1926 it was 1/25th the size of American Timken and employed 500 people at that time, whereas American Timken was employing many thousands.

The district court's finding that British Timken had grown relatively faster than had American Timken is erroneous. This statement is undoubtedly based upon calculations which were contained in the appellee's brief in the district court in which it contended that British Timken sales had almost doubled in the six-year period preceding 1928, while American Timken's had increased only about 35%. This result was arrived at by comparing British Timken sales for the years 1922 through 1926 (Deft's. Exh. 230, R. 2545; offered, R. 943) with American Timken's sales for the years 1922 through 1927 (Deft's. Exh. 229, R. 2544; offered, R. 943). British Timken's sales of £240,202 in 1926 were almost double its sales of £139,370 in 1922, which, however, had decreased from £145,364 in 1921 and £212,524 in 1920, so that the period from 1922 through 1926 was not a representative period. Figures on American Timken's sales prior to 1922 do not appear in the record.

Dewar, who knew more about the matter than anybody else is uncontradicted when he said, in substance, that, without American Timken's help British Timken would never have survived.

This entirely erroneous conception of the condition of British Timken in 1927 obviously influenced the district court in its consideration of the propriety of the business agreements made in 1928 originally, and continued during the years 1928 and 1938 between the two companies, because the court said that they were "made between two manufacturers who on the basis of the evidence, were

properly characterized as the largest manufacturer in the world and the largest manufacturer in Great Britain respectively" (Mem. par. 36, R. 966).

American Timken and French Timken. Perhaps the outstanding example of the district court's erroneous conception of the potential or actual competitive conditions between American Timken and the other Timken companies is that with regard to French Timken. Here the district court found that American Timken "participated in the formation of and invested in the stock of *a potential competitor* in France" (Mem. par. 160, R. 1005). How a corporation which American Timken participated in organizing, and more than 70% of whose capital was furnished by it, could be regarded as an important "potential" competitor is difficult to understand.

Again, the district court called attention to the fact that ever since 1909 American Timken had maintained territorial market restrictions "in France with the predecessor of French Timken" (Mem. par. 152, R. 1003). The uncontroverted evidence discloses that the district court's finding that SMG was a "predecessor" of French Timken was clearly erroneous, for two reasons: first, because American Timken never had *any* contract with SMG and, second, because SMG was an entirely independent bearing manufacturer which, after selling the trademark to French Timken upon its organization by American Timken and Dewar, subsequently sold all of its assets to SKF *and became an SKF subsidiary in 1930* (R. 441).

Moreover, the uncontroverted evidence in the record discloses that not only was it impossible for these foreign companies to compete with American Timken by importing bearings into the United States during the whole period in question, but also that it would have been impossible for American Timken to compete with them on any practical basis for original installation business and consequent replacement sales in the territories in which they operated.

Other anti-friction bearing manufacturers in Europe cannot and do not sell on any substantial basis in the United States and American manufacturers cannot and do not sell in Europe to any extent. The practical reasons have been fully explained. The fact that such foreign companies as SKF and Norma Hoffman have established subsidiaries in this and other countries for the purpose of conducting bearing business in such countries, as shown in the Statement, bears out American Timken's claim in this respect.

American Timken, in addition to producing tapered roller bearings, manufactures an alloy steel tubing which is very advantageous in making anti-friction bearings. It is uncontradicted that since 1927 American Timken has sold this tubing to all its competitors who manufacture roller and ball bearings in the United States. There is no sensible explanation as to why American Timken should supply its competitors in this country with a basic need, plus information as to how to use this tubing to the best advantage, and at the same time make foreign agreements alleged to have as their purpose the stifling of non-existent foreign competition.

Thus, the district court's conclusions with respect to alleged combinations between American Timken and various potential or actual competitors from 1909 on were clearly erroneous, and no doubt had great weight in influencing it to the decision which it finally reached.

2. The District Court's Findings as to the "Dominant" Position of the Timken Companies in the Alleged Tapered Roller Bearing Industry and Market are Clearly Erroneous.

The district court was obviously mistaken in reaching the conclusion that there is a separate and distinct tapered roller bearing ma. et and industry in which American Timken, British Timken and French Timken occupied "dominant" positions (Mem. pars. 9, R. 960; 15, R. 961; and 146,

R. 1002). The Statement, *supra*, shows without question that they compete with others primarily in the anti-friction bearing industry, in which they produce approximately 25%, 20% and 10%, of anti-friction bearings in their separate countries. The district court's statement as to the extent of competition between tapered roller bearings and other types of bearings (Mem. par. 19, R. 962; par. 130, R. 997) ignores the uncontroverted evidence that they compete with other anti-friction bearings 90% of the time for original installation business, and gives the distinct impression that competition with other types of bearings exists only to a quite limited extent. Moreover, the district court's statement (Mem. par. 20, R. 962), that tapered roller bearings "constitute a distinct type of anti-friction bearings which fulfills a requirement not supplied or satisfied by others," is contrary to the uncontroverted evidence that bearings are designed to take radial and end thrust loads, and that ball bearings and other types of roller bearings are designed to perform these functions just as do tapered roller bearings, the only difference being in the way that these objects are accomplished.

Obviously, the frequent references to the "dominant" position of the three Timken companies in the "tapered roller bearing industry" and to their "dominant" position in the anti-friction bearing industry[39] shows how much the district court was impressed by their supposedly controlling influence in determining that they had combined illegally for the purpose of forming a "smoothly operating combination to control commerce in the tapered bearing industry throughout the entire world" (Mem. par. 146, R. 1002). Therefore, the district court's mistake as to the nature and extent of the market in which the three companies compete with others was obviously prejudicial to them.

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[39] See Note 4, *supra*, for a full reference to the district court's statements in this regard.

3. The Treatment by the District Court of the Three Timken Companies as Independent Operating Units For the Purpose of Determining That They Had Combined in Violation of the Sherman Act, and Its Failure to Consider Evidence Which Demonstrated That They Were Engaged in a Joint Venture, and Its Conclusion That Their Relation Was Merely a Continuation of an Illegal Combination in Restraint of Trade Created By American Timken and Vickers' Subsidiaries Under the 1909 License Agreements, as Amended, are Clearly Erroneous.

This is the fundamental mistake made by the district court in its consideration of the evidence in this case.

The court in the course of its opinion did state some (and omitted many more) of the facts surrounding the joint venture of American Timken and Dewar having for its object the manufacture and distribution of tapered roller bearings in foreign lands, the acquisition of British Timken by them, their joint creation of French Timken, their method of managing and controlling the two foreign companies, the license of the trademark, the exchange of know-how, the assistance rendered by American Timken to the two foreign companies, and other evidentiary facts. An examination of its opinion, however, cannot fail to disclose that, throughout, it regarded the two foreign Timken companies as, not only separate and distinct corporate entities (which they at all times were), but as independent operating units and factors in the tapered roller bearing business, *which upon the uncontrovertible evidence, they clearly were not.*

This appears particularly from the following statements in the district court's memorandum:

> "123. The relationship effected and maintained was not that which prevails between a manufacturer and its exclusive foreign agents for the distribution of its product. *Each company* was a manufacturer and distributor, *independent of the others*, but joined for the sole and only purpose of mutual benefits. It is not

even contended that defendant, British Timken and French Timken ever competed." (R. 996)

"144. Defendant seeks to draw a parallel between the instant facts and those in the Columbia Steel case, supra. By contradistinction from the facts in that case defendant, British Timken and French Timken, *are separate corporations* who in their respective territories, both before and after their agreements, were potential competitors in the tapered bearing market. They were the largest dealers in tapered bearings in their respective territories. They occupied dominant positions in the entire anti-friction bearing industry. Defendant did not acquire British and French Timken." (R. 1001)

That the Court treated the three Timken companies as independent units is further evidenced by its adoption in its memorandum of the appellee's statement of the legal questions presented (R. 959):

"4. The factual and legal questions to be determined in respect of the charges of the complaint are posed by the Government as follows:

"5. Within the purview of the Sherman Act is it illegal for the 'defendant and two foreign corporations, which between them manufacture and sell a substantial portion of the world's production of anti-friction bearings, to regulate interstate and foreign commerce by private arrangements embodying the following restrictive practices'?"

The conclusion is irresistible that each of the "two foreign corporations" was here regarded by the district court as a wholly independent unit of operation—thus imparting to the agreements and understandings between the three respective Timken companies the same character as they might have if made between the three acknowledged competitors in any branch of industry as, for example, in the automobile industry, General Motors, Chrysler and Ford. And the following paragraphs throughout the district court's memorandum, dealing with the agreements,

understandings and acts of the respective Timken companies relating to various phases of the case, conclusively demonstrate that the court did consider and treat each of them as an independent operating unit: 15, 72, 78, 79, 88, 95, 99, 117, 124, 128, 129, 132, 134, 146, 147, 150, 154, 157, 160, 183, 204 and 210.

Proceeding upon the basis that the three companies were independent, the district court discussed at great length (Mem. pars. 70, R. 972, through 105, R. 990) evidence tending to show collaboration by them, all of which was just as consistent with the legal joint adventure to which they were parties and the licensing of the trademark as with an illegal combination in restraint of trade between independent operating units. The district court then discussed some evidence relating to agreements made between British Timken and French Timken and SKF subsidiaries in their countries which, as the uncontroverted evidence discloses, were terminated in 1939, have never been in operation since that date, and did not affect American commerce (Mem. pars. 106, R. 991, through 115, R. 994). Based upon this recital of evidence and facts, the district court found that the three companies had engaged in an illegal combination in restraint of trade by allocating territories, fixing prices, mutual assistance to protect each other's markets, and to eliminate the competition of outsiders and participation in foreign cartels (Mem. par. 117, R. 994), and that the evidence disclosed "an extensive and far-reaching combination to smother all competition between defendant, British and French Timken, and to stifle or suppress competition of other manufacturers by joint effort against them or by agreement with them" (Mem. par. 119, R. 995).

The court's answer to American Timken's contention that the restraints imposed upon trade by the business agreements from 1928 on were reasonable because ancillary to the operation of the joint adventure between American Timken and Dewar, was, fundamentally that, even though

"if a joint venture or partnership is formed for the purpose of a lawful business enterprise and restraints result from the right to protect established business interests no violation of law occurs," nevertheless, "if the association is formed *for the purpose* of *continuing* a combination to allocate exclusive territories in the world, to fix prices and to eliminate competition both within and without the combination, it cannot hide from the effects of the law *under the cloak* of a joint venture or partnership" (Mem. par. 163, R. 1006). The district court's theory n this respect was based on *United States v. Addyston Pipe & Steel Company*, 85 Fed. 271; *supra*, in which the court said (p. 291), that, when the case turns on the above proposition of law, "the *actual intent* to monopolize must appear. It is not deemed enough that the mere tendency of the provisions of the contract should be to restrain competition. In such cases the restraint of competition ceases to be ancillary and becomes the *main purpose* of the contract and the transfer of property and good will *or the partnership agreement* is merely ancillary and subordinate to that purpose * * *."

The district court was thus obviously of the opinion that from 1927 on, American Timken and Dewar, in spite of their negotiations upon the basis that they were to be "partners," not discussed at all by the district court (Mem. par. 41, R. 967), and the plan and agreement resulting therefrom, were merely "*continuing a combination*" (Mem. pars. 149, R. 1003, and 163, R. 1007) to restrain trade which had previously come into existence prior to their entering into their Heads of Agreement of May 16, 1927.

Other parts of the district court's memorandum also demonstrate that this is a correct analysis of its essential holding on this point. The court held, in substance, that the alleged combination was the "outgrowth of the principal agreements in 1909 when world markets were divided and competition was eliminated" (Mem. par. 120, R. 995), that those agreements were extended by the 1925 amendments

thereto, after all the basic tapered roller bearing patents had expired (Mem. par. 31, R. 965), and thereafter were no longer based on patents "*but were without pretense contracts for the avowed*[40] *purpose of suppressing competition*" (Mem. par. 121, R. 995), and, therefore, that the restraints were not ancillary to the joint adventure but, instead, the arrangements between American Timken and Dewar were made "to carry on effectively" the pre-existing alleged combination (Mem. pars. 152, R. 1003; 153, R. 1004; 154, R. 1004).

Thus it is seen, that the fundamental basis of the district court's decision was, that the 1909 patent license agreements set the pattern of restraints, that the restraints were continued in effect after the patents expired in 1924 *for the specific purpose of restraining trade*, and this *intentional* violation of the Sherman Act was merely continued by the subsequent relations between American Timken and Dewar, which were merely a "cloak" therefor.

If, therefore, the district court's opinion on this vital fact, which caused it to disregard all of the evidence tending to establish the joint venture, was erroneous; then, certainly, a clear mistake has occurred because the keystone of the arch upon which the court's decision is erected falls to the ground.

In concluding that there was not even a colorable legal basis for the restraints imposed by the 1909 license agreements after the basic patents terminated in 1924, the district court completely ignored uncontroverted evidence that American Timken's American trademark counsel advised it on February 23, 1924, prior to the negotiation of the modifications of the 1909 license agreements, that they had

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[40] The district court based this "avowal" solely on a statement of Duncan in a letter to American Timken that the main advantage to British Timken under the 1928 business agreement would be "the advice and information to be received from you, the right to use the name 'Timken' and the absence of your competition." (Mem. par. 121, R. 995).

not terminated and that they were properly based upon the license of the trademark "Timken" to British Timken, as well as patents (Pltf's. Exh. 173, R. 1683; offered, R. 949, 950).[41] The statement contained in the letter from Duncan to American Timken in 1927 upon which the district court so heavily relied, *supra* note 40, was entirely consistent with this prior opinion by American Timken's American trademark counsel in 1924 and, in fact, expressed the same point of view. Obviously, when they were referring to "the absence of your competition," counsel were speaking of the absence of competition which would result from the continuance of the license agreements based, as they were, upon the license of the trademark "Timken," both in 1925, and later in the 1928 business agreement pursuant to the provision therefor in the 1927 Heads of Agreement.

The district court also disregarded evidence that American Timken received in 1926 an opinion from British trademark counsel (Deft's. Exh. 99, R. 2005; offered, R. 594) in which they stated that the 1925 amendments to the 1909 license agreements clearly licensed the use of the trademark "Timken" and therefore supported the provisions for payment of royalty (R. 2007).[42]

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[41] The trademark counsel stated in part (R. 1683):

"* * * Judging from your letter, Mr. Lothrop seems to have in mind that the patent lawyers will undertake to pass on the extent of legal protection afforded to the British licensee by the several British patents with a view to determining the justice of the British Company's claim to a reduction of its royalty. *The defect in this proposition is that it wholly overlooks the trademark license, that is to say, the great value to the British Company of the right to use the word 'Timken' on its products and the further great right of excluding you from competition with it.*"

[42] Counsel stated (R. 2007):

"With regard to the question of royalties, it is clear that so long as the English Company continues to make bearings according to the methods covered by the later patents which

(Continued on following page)

Regardless of the validity of a license of the trademark to support the restraints imposed by the 1909 license agreements as amended in 1925, therefore, American Timken clearly acted upon the advice of counsel, and the fact that the agreements were extended does not give rise to a valid inference that the territorial restraints were intentionally extended until 1929, without any legal basis, and merely for the purpose of combining to restrict competition, as concluded by the district court. This, of course, constitutes one of the main questions involved in the case at bar, argued Section II, *supra*, and the district court itself stated that whether "Within the provisions of the Sherman Act commerce may be restrained to the extent that it is reasonably ancillary to protect a trademark has not been decided or discussed by the courts" (Mem. par. 192, R. 1011).

If the law is not settled at this late date, American Timken can hardly be charged with *intentionally* conspiring with British Timken in 1924 because it extended patent and trademark license agreements after the basic patents had terminated.

How could the district court's entire decision be otherwise than completely erroneous, when it is entirely based on this fundamental proposition that in 1924 the 1909

(Continued from preceding page)

are still in force, royalties are payable upon all bearings so made.

"Bearings which are not protected by any subsisting Patent would not in our opinion have been 'made under this agreement' within the meaning of Clause 7(4) of the Principal Agreement, had that agreement remained unmodified. The subsequent agreements do not in terms alter the basis of royalty payment except as regards amount; *but the agreement of January 1925 does make the use of the name 'Timken' as between the parties a matter of contract deemed to be the subject of a license and we are upon the whole of the opinion that reading the agreements together the effect is that the English Company is liable to pay royalties on all bearings sold as 'Timken' Bearings.*"

license agreements were extended without legal justification, thus evidencing an *intention* to suppress competition—a proposition entirely unsupported by evidence, and contrary to the only evidence in the record, which showed that the parties *intended* a *legal* trademark license recommended by their legal counsel?

4. The District Court's Findings that the Three Timken Companies Had Combined to Control the Alleged Tapered Roller Bearing Industry, from 1928 and Thereafter, by Stifling Competition of Outsiders, or Combining With Them, Are Clearly Erroneous.

Analysis of the facts relied upon by the district court as proving the appellee's charges demonstrates clearly that they do not support the court's findings as to conspiracy.

The district court found that the parties adhered to their contractual obligations to maintain exclusive territorial divisions as among themselves (Mem. par. 70, R. 972), and that each of them refused orders for shipment outside of its territory, referring them to the company in whose territory they were to be used (Mem. par. 71, R. 973). The court pointed to the fact that in 1929 American Timken, instead of filling an order from Ford for its Cork, Ireland plant, arranged for sale of the bearings by British Timken and shipped bearings to it to fill the order (Mem. par. 73, R. 973). This, of course, was in accordance with the basic policy of the joint enterprise.

A substantial part of the court's memorandum (Mem. pars. 74-85, R. 974-983) was devoted to a discussion of the situation created in 1939 and 1940 by England's entering World War II with the resultant inability of British Timken to handle demands for bearings in its territory expeditiously, due, apparently, to the great demand for them in England. American Timken reminded its employees of its arrangements with its "British and French associates" (Mem. pars. 74-76, R. 974-976) instructing them that it had

made arrangements to handle some small orders direct, but that it was still the policy of the company to persuade prospective customers that its "British and French associates are both able and eager to supply their foreign requirements and that they manufacture a product comparable in every way to our own" (Mem. par. 76, R. 976). Employees were told they could quote a 50% discount from its list price on standard bearings and pay a 5% commission on the net sale thereof to British Timken (Mem. par. 75, R. 975). While the court characterized this as a protective discount policy which insured the parties against competition from each other in replacement bearings because American Timken sold at a 70% discount for export in its own territory but quoted a 50% discount from the American list price on standard bearings in response to unsolicited inquiries from British Timken's territory (Mem. par. 88; R. 985), the uncontroverted evidence shows that this arrangement as to the 50% discount on quoting prices in British Timken's territory was an arrangement which resulted from American Timken's demonstrating to Dewar in 1927 that British Timken's discount on this business was not large enough to meet competition, which caused British Timken to adopt American Timken's discount at that time, 50% from list price (R. 367).

The district court's finding that this system resulted in a serious interference with Australian war production due to British Timken's inability to supply bearings was based upon letters, and not testimony, of British Timken's technical engineer (Mem. par. 80; R. 979) in Australia and its distributor there (Mem. pars. 81, 82, 83; R. 980). As soon as this matter was called to American Timken's attention arrangements were made within a period of months for it to handle business directly in the Australian territory for the duration of the war (Mem. par. 78; R. 979), which is another example of the cooperation between American Timken and Dewar in the operation of their joint enter-

prise. American Timken also advised representatives of the Australian Government that it would not consider building a bearing manufacturing plant in Australia in part because that country was under the jurisdiction of British Timken, but equally because it would be almost impossible to get delivery on any machine tools suitable for the manufacture of anti-friction bearings and no bearing manufacturer had access to machinery which could be shipped to Australia (Mem. pars. 86, 87; R. 983, 984), although it offered to take the matter up with Dewar (Pltf's. Exh. 118, R. 1527; offered, R. 196; R. 1528). Actually the decision of what was to be done in the war effort in Australia was a governmental decision. It is well known that Europe was made the main theater of operation.

The district court stated that the provisions in the 1935 and 1938 business agreements between American Timken and British Timken as to sales in Russia were carried out to the letter (Mem. par. 94; R. 986), although this statement is not supported by any evidence and is contrary to the only evidence in the record, which is, in substance, that this provision was inserted to prevent the state-controlled Russian buying agencies from causing the Timken companies to bid against each other, but that those agencies never sought quotations from American Timken and British Timken on the same business at any time (R. 898, 899).

The district court found that American Timken, British Timken and French Timken construed the contractual obligations for the interchange of information as to manufacture of bearings and of all inventions and discoveries, whether patented or not, as being for their exclusive mutual benefit, because in 1932 American Timken, which had given its big customer, Ford, a license to manufacture bearings under its United States patents, advised Ford that it could not give Ford a similar license in England under its British patents because British Timken was its exclusive licensee (Mem. par. 95; R. 987). Apparently, it is this one instance of the operation of the exclusive pat-

ent license given by American Timken to British Timken, as it had a right to do, upon which are based the elaborate provisions of the district court's final judgment, which prevent American Timken from giving patent licenses, know-how, machines, and material to British Timken or French Timken unless they are also made available to any third parties in the world who desire them.

The district court's important finding that American Timken, British Timken and French Timken "cooperated to shut out the competition of other dealers in tapered roller bearings" (Mem. par. 97; R. 987) was based upon evidence which disclosed, merely, the nature and purpose of the joint enterprise between American Timken and Dewar. This evidence showed that the three companies have considered SKF as "a common enemy," and that their general policy has been that if a tapered roller bearing is sold it must be by a manufacturer of Timken bearings (Mem. par. 99; R. 989), that if customers in British Timken's territory insisted on buying bearings from American Timken they would be permitted to do so "in order to combat competition" (Mem. par. 100; R. 988); that American Timken desired to help Dewar in every way possible during World War II by keeping Timken bearings to the front since it knew "how difficult it is to eradicate a competitor in foreign fields after he once gets a start" (Mem. par. 101; R. 988); and testimony of one of American Timken's executives that it was willing to sell bearings at a loss, if necessary, to compete with SKF in Australia and the East Indies during World War II (Mem. par. 102; R. 988, 989).[43] *In fact, there was no evidence that American Timken ever engaged in unfair competition, such as selling bearings below cost, in competition with SKF and other*

[43] W. Robert Timken testified that American Timken would have sold bearings at below cost because it considers SKF's competition unethical in that American Timken is of the opinion that SKF sells at prices below its costs to "freeze out competitors" (R. 925, 926).

competitors. Expressions such as "eradicating" competitors, "keeping them out," and "combatting" competition were used in the sense of preventing competitors from obtaining business by ordinary competitive methods (R. 563, 564; 934, 935).

The district court found that American Timken and British and French Timken sold bearings to each other on a most favorable basis to "supplement the plan of strict compliance with the allocated areas and to protect themselves from competition by outsiders" (Mem. 103; R. 989, 990), and in support of this finding quoted portions of correspondence which showed that in 1929 American Timken suggested that British Timken supply bearings for its industrial requirements in Canada due to the tariff situation, and Dewar replied that he would love to help American Timken compete with SKF in Canada because he wanted "to take every possible step we can to keep SKF out of the taper roller bearing business everywhere." Dewar testified that he meant that this should be done by "underquoting them in price" (R. 161). The district court stated that in 1939 American Timken made a similar suggestion as a means of "putting a club over the head" of SKF which was making price reductions far below those which American Timken had ever extended in the United States, Canada, and foreign countries such as Japan and South America (Mem. par. 103; R. 989). British Timken was willing to consider the matter, but thought it unlikely that it could help (Pltf's. Exh. 100; R. 1478; offered, R. 179).

The district court stated that American Timken and British Timken "made certain that the alloy steel made by defendant, especially adapted for the manufacture of bearings, was not made available for use by their competitors" (Mem. par. 104; R. 990), and cited one exchange of correspondence in 1934 in which Dewar expressed reluctance to have American Timken's tubing sold to British Timken's

competitors in its territory, and Hess assured him that nothing would be done which might harm any of the three Timken companies (Mem. par. 105; R. 990). The court made no mention of uncontroverted testimony that American Timken sells its steel to its competitors who manufacture ball and roller bearings and gives them instructions in connection with its use (R. 72-74).

The district court devoted considerable attention to the fact that British Timken and French Timken had entered into agreements with their competitors abroad to share information and to stabilize prices, and that discussions were had concerning prices between American Timken, British Timken and their foreign competitors (Mem. pars. 106-115; R. 991-994).

With respect to discussions of prices which took place in 1932 and prior years (Mem. pars. 108, 109; R. 991, 992), the uncontroverted evidence discloses that they were contemporaneous with arrangements made between British Timken and SKF in England and discussed with Spray and Hess of American Timken after they had been made. At this time the Timken companies and SKF were discussing a proposal by the latter that "the SKF Swedish company should buy the American Timken company's interests in Europe, and that The Timken Roller Bearing Company in United States should purchase the SKF's interests in that continent" (R. 207). Thus, in Plaintiff's Exhibit 73 (R. 1455; offered R. 159), Dewar in 1932 stated that he hoped "you will be able to come to a decision soon regarding SKF. I am on the verge of a real row with them in this country," that he had agreed that "pending all these discussions—which have now been going on for a year—we would let them have motorcycle bearings provided they would not interfere with our large motorcycle bearing business" (R. 1456), but that SKF had not abided by this arrangement, and he testified that these references were to this then pending transaction (R. 206, 207). In

Plaintiff's Exhibit 61 (R. 1411; offered, R. 138), Dewar, in 1932, discussed cable correspondence as to comparing American Timken's Canadian prices with those of SKF, referred to the fact that during Hess' visit in 1932 "he told us of certain events on your side of the water," and said that as a result of this information he was attempting to negotiate "an arrangement with SKF to cover orders placed by Ford-Dagenham" (R. 1411, 1412).

Dewar testified that SKF had made the proposal for this world-wide deal, and that "nothing came of it. It dragged on for a year or more and in the end it was turned down flatly by Mr. H. H. Timken" and his financial adviser (R. 207).

Thus, the uncontroverted evidence is that price discussions with SKF occurred in connection with a proposed much larger transaction with SKF which, if entered into, would really have divided up the world. American Timken rejected it.

With respect to agreements with foreign competitors by British Timken and French Timken, while there were such with SKF with respect to England and France until the commencement of World War II in 1939,[44] nevertheless, as the district court found (Mem. par. 110; R. 992) American Timken was not a party to the English and French agreements.

It was merely advised of the English agreement by Hess' correspondence with Dewar, and talks with the latter on the former's trips to England (R. 144, 145).

The first French agreement was made by Dewar with several French manufacturers of anti-friction bearings,

[44] Plaintiff's Exhibit 71 (R. 1453; offered, R. 159) shows that British Timken also had an arrangement with RIV, the Italian bearing manufacturer, as to Russian business, which, however, lasted only six or seven months in 1931 (R. 157). An agreement between British Timken and Bock in 1929 (Pltf's. Exh. 72; R. 1455; offered, R. 159) was so temporary that Dewar did not even recollect its terms (R. 159).

SKF, RIV, SRO, and M & B, apparently without prior consultation with American Timken, to commence July 1, 1932 and to continue for eighteen months. French Timken was given 7% of total French anti-friction bearing business as its quota in 1932, to be limited to 10,000,000 francs, with a guarantee of 80% of its 1932 business for 1933 (Pltf's. Exh. 51, R. 1397; offered, R. 133). This resulted in French Timken's being able to obtain some of the Citroen business which it had lost (Pltf's. Exh. 59, R. 1409; offered, R. 138), but did not interfere with its production, since it exceeded its quota in 1932 (Pltf's. Exh. 60, R. 1409; offered, R. 138; Pltf's. Exh. 63, R. 1416; offered, R. 145; 1431). The renewal of the French agreement was submitted for American Timken's consideration prior to execution thereof (Pltf's. Exh. 65; R. 1436; offered, R. 146). Although American Timken preferred to postpone this matter for another six months, Hess advised Dewar that if he considered "this impossible we go on with you in your judgment. Would suggest two year agreement" (Pltf's. Exh. 70; R. 1453; offered, R. 156). Hess had nothing to do with negotiating this agreement, and American Timken raised no objection to it because Dewar was considered the "managing partner" of British, French and German operations (R. 666).

This agreement did not interfere with exports by American Timken to France because French Timken was continuously exceeding its quota, which indicates that the agreement did not interfere with its production. Dewar testified that in his opinion none of these agreements could have had the effect of restricting exports from, or imports into, the United States of tapered roller bearings (R. 207, 208).

That these cartel agreements were not entered into by British Timken and French Timken for the purpose of rounding out a combination to dominate the mythical tapered roller bearing industry is demonstrated by the circumstances under which the agreement between French

Timken and French SKF was made. As previously seen, in 1929, Citroen, the largest French automobile manufacturer, gave French Timken its bearing business which resulted in a need for great expansion of French Timken. Unfortunately, Citroen a year or two later "fell on rather evil days and the SKF company in Sweden financed them" partly on condition that Citroen use SKF bearings exclusively (Dewar, R. 209). Citroen was compelled to cease placing any orders with French Timken, which left it with practically no orders at all, and Dewar "felt that it was better for us to have some arrangement with SKF to keep the French Timken company alive rather than let it die, which it would have done without such an arrangement" (Dewar, R. 209).

In any event, these agreements terminated at the beginning of World War II in 1939, and have never been renewed (R. 208).

Thus, the evidence relied upon by the district court, substantially all of which was documentary, when examined in the light of all the facts, does not support the court's conclusion that American Timken, British and French Timken had combined to "stifle" all competition between them, and "to stifle or suppress competition of other manufacturers by joint effort against them or agreement with them" (Mem. par. 119, R. 995).

IV.

THE DISTRICT COURT ERRED IN NOT MAKING PROPER FINDINGS OF FACT, SEPARATELY FOUND, AND CONCLUSIONS OF LAW, SEPARATELY STATED, AS REQUIRED BY RULE 52 OF THE RULES OF FEDERAL PROCEDURE.

As previously seen, the district court overruled American Timken's motion to require the appellee to file proposed findings of fact and conclusions of law in accordance with its Rule 4B, entered an order adopting its memorandum as its findings and conclusions, and overruled American Timken's motion at the end of the case that it make new, and additional, findings and conclusions by adopting those submitted therewith.

Federal Rule of Civil Procedure 52(a) requires that in all actions tried upon the facts without a jury, as was the case at bar, "the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment." This command was present also in the predecessor Equity Rule 70½ and is likewise contained in Admiralty Rule 46½ (28 U. S. C. fol. Sec. 723c). By an amendment which became effective March 19, 1948, the text of Rule 52(a) was amplified by adding the language: "If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein."

The provision added by the recent amendment does not in terms purport to change this Court's substantive requirements as to the nature and scope of the findings and conclusions required in complying with Rule 52(a), but rather merely permits the use of such an opinion or memorandum of the trial court as a vehicle for compliance if the special findings and separate statement of the conclusions of law otherwise required by the rule are contained therein.

The decisions of this Court as to the substantive requirements as to findings and conclusions are that (1) there must be specific findings of all of the underlying and sub-

sidiary facts which must be found in order to determine all the issues which the case presents; (2) a discussion of portions of the evidence and the court's reasoning in its opinion do not constitute such findings; and (3) statements of fact mingled with reasoning and inferences do not meet the requirements of the rule, *Interstate Circuit, Inc. v. United States*, 304 U. S. 55; *Kelly v. Everglades Drainage District*, 319 U. S. 415; *Schneidermann v. United States*, 320 U. S. 118; *Mayo v. Lakeland Highlands Canning Co.*, 309 U. S. 310. See particularly *United States v. Aluminum Company of America*, 2 F. R. D. 224 (D. C., N. Y., 1941), in which the court denied the prevailing party's request that it adopt its opinion as its findings and conclusions, for this reason (p. 231).

When the district court's memorandum is examined in the light of the foregoing cases, it is apparent that, although it performs the function and purpose of an opinion, it does not constitute nor include the findings of fact and conclusions of law required by Rule 52(a).

First, the memorandum does not contain complete underlying and subsidiary findings on several important matters which are essential to a determination of "all the issues in the case." Among these, are the facts as to competition among all types of anti-friction bearings in substantially every type of installation; the insignificant volume of foreign trade in anti-friction bearings and the reasons therefor during the years in question; the inability of American manufacturers to export bearings on a commercially successful basis and the resultant necessity of establishing foreign affiliated corporations to manufacture and market bearings locally; the inability of foreign manufacturers to import bearings into the United States on a commercially successful basis; the relations between American Timken and Vickers' subsidiaries, other than those purely contractual; the underlying reasons for American Timken's acquisition of British Timken in conjunction with Dewar,

and the various steps taken by them to effectuate the arrangement between them and to preserve their control of and their respective interests in the European enterprises; the various phases of the basic plan of American Timken and Dewar to secure the integrated production and sale of Timken bearings throughout the world, including the extensive furnishing by American Timken of production and selling know-how to British Timken and French Timken; the circumstances attending the so-called "cartel" agreements between British Timken and French Timken and SKF and the absence of any intention thereby to affect, and of any actual effect upon, foreign commerce of the United States; and the extent of American Timken's rights in the trademark "Timken," and the problem of retaining such rights in view of adverse rules of foreign law relating to registration of trademarks, and American Timken's attempt to solve such problems by contractual provisions with British Timken and French Timken.

Second, the memorandum contains much discussion of, and quotation from, portions of the evidence as to various matters, and the court's reasoning with respect thereto. See, for example, the detailed treatment of the Australian situation during World War II (R. 977-985), of the SKF situation (R. 988-990), and of the foreign cartel arrangements (R. 991-994).

Third, such statements of fact and conclusions of law as are contained in the memorandum are not stated separately in many instances, but must be gleaned from an examination of its entire 60 pages (R. 958-1018). Many statements of fact are embedded in the district court's reasoning and argument, by which its ultimate conclusions are reached.

In short, the memorandum does not comply with the substantive requirements established by this Court with respect to findings of fact and conclusions of law under Rule 52(a).

V.

THE FINAL JUDGMENT OF THE DISTRICT COURT IS ERRONEOUS, BEYOND ITS JURISDICTION, EXCEEDS THE PERMISSIBLE LIMITS OF THE DISCRETION CONFERRED UPON IT, AND DEPRIVES AMERICAN TIMKEN OF ITS PROPERTY WITHOUT JUST COMPENSATION AND WITHOUT DUE PROCESS OF LAW CONTRARY TO THE FIFTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

The jurisdiction of the district court to take action in this case is conferred by Section 4 of the Sherman Act (26 Stat. 209, § 4, 15 U. S. C., § 4) which provides that that court is vested "with jurisdiction to prevent and restrain violations of this Act." Certain of the provisions contained in the district court's final judgment are erroneous, beyond the jurisdiction conferred by Section 4 of the Sherman Act, exceed the permissible limits of the discretion conferred upon the court, or deprive American Timken of its property without just compensation and without due process of law in the following respects.

1. The Injunction Against Assignment, License, Receipt or Transfer of Patents, Know-How, Material, Machinery, and Trademark or Name "in Such a Way as to Deny Any Third Person Access Thereto" is Erroneous.

Section V of the final judgment, subsections G and H [45] (R. 1175, 1176), and Section VII, subsections A, B, C, and

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[45] "V. Defendant is hereby enjoined and restrained from entering into, performing, adopting, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under, any combination, conspiracy, contract, agreement, arrangement, understanding, or concerted plan of action with British Timken, French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof; * * *

"G. To receive, grant, disclose, render available or exchange, in such a way as to deny any third person access

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7 and 8[46] (R. 1177-1179) enjoin American Timken from granting *exclusive* patent assignments or licenses, know-how, machinery and material used in the production of anti-friction bearings to British Timken, French Timken and the other parties named, and also prevent it from granting the same to those parties in exchange for *exclusive* grants and transfers of patent licenses, know-how, machinery and material to any entity whatsoever, including American Timken, but not limited thereto, by preventing such transfers "in such a way as to deny any third person access thereto."

This was done in the face of the district court's statement in its memorandum (Mem. par. 137, R. 1000) that

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(Continued from preceding page)

thereto, any assignment, license or grant of immunity under a patent or patent application, relating to anti-friction bearings;

"H. To receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto, (1) information, advice, assistance or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method, or other technical information, relating to the production of anti-friction bearings, or (2) any material or machinery used in the production of anti-friction bearings, or any information, advice, assistance or rights with respect to any such material or machinery."

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[46] "VII. Defendant is hereby enjoined and restrained from entering into, performing, enforcing, adhering to, maintaining, furthering, or renewing, directly or indirectly, any contract, agreement, combination, understanding or arrangement with British Timken and/or French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof which provides for:

"A. An assignment, license or grant of immunity under any patent or patent application;

"B. The receipt, grant, disclosure, rendering available or exchange of information, advice, assistance or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method or other technical information relating to the production of anti-friction bear-

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"There is no charge made in the complaint that the parties engaged in the practice of exclusively exchanging present and future know-how and inventions, patented or unpatented," and the further rather puzzling statement that "*Although it does not convincingly appear* that *either the exclusive exchange of know-how* or the enforcement of the trademark restrictions alone served as direct instruments to eliminate competition, they have been most helpful in buttressing other illegal conduct to achieve the desired result." If it did not appear that the exclusive exchange of know-how was used as a direct instrument to eliminate competition, it is difficult to see how, in any respect, it could have assisted in carrying out the alleged combination.

Since it was not alleged that the exclusive exchange of patents, know-how, materials and machinery constituted

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(Continued from preceding page)

ings, or of any material or machinery used in the production of anti-friction bearings, or of any information, advice, assistance or rights with respect to any such material or machinery; or

"C. The transfer of any right or immunity under a trade mark or name, relating to the production of anti-friction bearings, * * *

upon the condition or requirement that British Timken and/or French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof shall: * * *

"7. receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto, any assignment, license or grant of immunity under a patent or patent application, relating to anti-friction bearings;

"8. receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto, (a) information, advice, assistance, or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method, or other technical information relating to the production of anti-friction bearings, or (b) any material or machinery used in the production of anti-friction bearings, or any information, advice, assistance or rights with respect to such material or machinery;"

part of the means by which the alleged combination in restraint of trade was carried out, the district court should not have dealt with these matters in its decree. In *United States v. National Lead Company*, 332 U. S. 319, this Court, in denying the Government's prayer that the two defendants be required to divest themselves of certain manufacturing plants said (p. 351), that "There is neither allegation in the complaint nor finding of fact" that the physical properties of the defendants had been acquired or used in violation of the Act. See also *De Beers Consolidated Mines, Ltd. v. United States*, 325 U. S. 212, in which this Court held that a preliminary injunction could not properly be granted, partly because "it deals with a matter lying wholly outside the issues in the suit" (p. 220), and *Hartford Empire Company v. United States*, 323 U. S. 386, in which this Court, in holding erroneous a provision in the decree which required the defendants to license their patents royalty free stated that the Government had not attacked the validity of any patent (p. 414), thus expressing the thought that, as validity of the patents was not in issue, it was improper to treat them as though they were invalid by destroying their value to the owners.

In any event such a provision amounts in effect to confiscation of the defendant's property without due process of law. In *Hartford Empire Company v. United States*, 323 U. S. 386, paragraph 51 of the district court's decree, completely analogous to that under discussion, enjoined each defendant from acquiring, otherwise than through direct issue from the patent office, any patent application, or exclusive rights thereunder, covering any invention embodied or employed in a machine or used in glassware manufacture, except non-exclusive rights or patents on inventions of its employees (pp. 430, 431). This court stated (p. 431) that this provision "seems to prohibit the acquisition of any patent, or of a *restricted* license under any pat-

ent by any defendant. In this respect the paragraph is inappropriate to restrain future violations of the anti-trust laws. The paragraph should be deleted." Confiscation of patents by free licensing, or by provisions against taking or granting exclusive licenses, was denied for the reasons set forth by this court in striking paragraph 24 of the decree (p. 413) with respect to which this court recognized the existence of a constitutional question when it stated (p. 413):

> "That a patent is property, protected against appropriation both by individuals and by government, has long been settled. In recognition of this quality of a patent the courts, in enjoining violations of the Sherman Act arising from the use of patent licenses, agreements, and leases, have abstained from action *which amounted to a forfeiture of the patents.*"

In *United States v. National Lead Company*, 332 U. S. 319, this court in denying the Government's request for a provision for compulsory licenses of the defendant's patents, free of royalties (p. 355), again recognized the existence of a constitutional question in this connection when it said (p. 349):

> "*We do not, in this case, face the issue of the constitutionality of such an order.* That issue would arise only in a case where the order would be more necessary and appropriate to the enforcement of the Antitrust Act than here. * * *"

With respect to know-how, the same objections apply. In *Hartford Empire Company v. United States*, 323 U. S. 386, *supra*, paragraph 24(c) of the judgment required the defendants to make available to any licensee under the compulsory licenses of patents provided for therein all drawings or patterns "relating to the machines or methods used in the manufacture of glassware" embodied in the licensed inventions (p. 413). The Court ordered this paragraph to be deleted without comment (p. 418). In *United States v.*

National Lead Company, 332 U. S. 319, *supra*, this Court denied the Government's request for a provision requiring the defendants to furnish to any applicant, at a reasonable charge, technical information desired by the applicant relating to the processes for manufacturing titanium pigments (pp. 353, 359).

It is obvious that this provision, which impairs American Timken's right to grant or receive exclusive patents, know-how, materials, and machinery, confiscates property rights of American Timken to the same extent and in the same way as that by which such a provision confiscates patent rights. Therefore, such relief was erroneous for the same reasons as those which motivated this Court in condemning confiscation of patents in the *Hartford Empire* and *National Lead* cases.

2. The Injunction Against American Timken's Agreeing With British Timken, French Timken or Any Subsidiary, Successor, Assign, Agent, Sales Representative, or Distributor Thereof to Fix, Maintain or Adhere to Prices or Other Terms and Conditions of Sale or Resale of Anti-friction Bearings in the United States is Erroneous.

Section V of the district court's final judgment [47] (R. 1175, 1176) enjoins American Timken, in substance, from

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[47] "V. Defendant is hereby enjoined and restrained from entering into, performing, adopting, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under, any combination, conspiracy, contract, agreement, arrangement, understanding, or concerted plan of action with British Timken, French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof: * * *

"F. To fix, maintain or adhere to prices or price ranges, or other terms and conditions of sale or resale of anti-friction bearings produced by defendant for sale or other distribution in any territory or market, or produced by any other person for sale or other distribution in the United States."

agreeing with British Timken, French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof to fix, maintain or adhere to prices or price ranges or other terms and conditions of sale or resale of anti-friction bearings produced by American Timken or by any other person for sale or other distribution in the United States. Section VII [48] (R. 1177, 1178) prohibits American Timken from agreeing with the same persons for the transfer of know-how, machinery or material upon the condition or requirement that such person maintain or adhere to fixed prices or price ranges or other terms or conditions of sale or resale of anti-friction bearings (subparagraph 6, R. 1178). The injunction is perpetual in this respect, as in others.

These provisions deny to American Timken rights, which it would otherwise have under the Miller-Tydings Amendment to Section 1 of the Sherman Act, 26 Stat. 209,

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[48] "VII. Defendant is hereby enjoined and restrained from entering into, performing, enforcing, adhering to, maintaining, furthering, or renewing, directly or indirectly, any contract, agreement, combination, understanding or arrangement with British Timken and/or French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof which provides for: * * *

"B. The receipt, grant, disclosure, rendering available or exchange of information, advice, assistance or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method or other technical information relating to the production of anti-friction bearings, or of any material or machinery used in the production of anti-friction bearings, or of any information, advice, assistance or rights with respect to any such material or machinery; * * *

Upon the condition or requirement that British Timken and/or French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof shall: * * *

"6. maintain or adhere to fixed prices or price ranges, or other terms and conditions of sale or resale of anti-friction bearings;"

as amended, 50 Stat. 693,[49] to agree with the entities and persons named in these sections of the final judgment upon minimum prices for the resale of the trademarked bearing which it manufactures, and also of trademarked material, such as its steel tubing, and possible trademarked machinery or technical information which it might wish to market in the future. While, at the present time, British Timken and French Timken are manufacturers, although not in competition with American Timken, it would be possible for American Timken to have the same agent, sales representative or distributor as either one of those two companies [50] and to arrange for "fair trading" its product

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[49] "Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: *Provided*, That nothing herein contained shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia, in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 5, as amended and supplemented, of the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. * * *".

[50] While Section VI of the final judgment prevents American Timken from using British or French Timken or their subsidiaries as agents, sales representatives or distributors, and vice versa, subsections E and F (R. 1177) it does not extend this prohibition to common sales representatives or distributors.

by the latter if it were not for these provisions in the judgment. In *United States v. Bausch & Lomb Optical Co.*, 321 U. S. 707, *supra*, this Court refused to grant a permanent injunction against Soft-Lite by which the Government sought to prevent it from "the execution of resale price maintenance contracts under the Miller-Tydings Act" (p. 729), instead leaving in effect a provision in the judgment which enjoined this practice for six months only. Certainly, in the case at bar, where alleged resale price fixing, if any, played a very minor part, as distinguished from its major importance in the *Bausch & Lomb* case, no more rigorous restrictions should be imposed upon American Timken.

3. The Injunction Against Refusal to Sell Bearings Where the Reason For Such Refusal Is That They Are For Resale or Other Distribution in British or French Territory, and Against Discrimination As to Availability As to Prices, Terms and Conditions of Sale or Failing to Provide Services and Assistance Relating to the Distribution or Use Thereof Comparable to That Made Available to Distributors and Users in American Timken's Territory, Where the Reason For Such Refusal, Discrimination or Failure is That They Are For Use, Resale or Distribution in a Country or Area Other Than American Timken's Territory, is Erroneous.

Section VI, subsection B,[51] (R. 1176-1177) enjoins American Timken from refusing to sell anti-friction bearings to any person at prices and on terms and conditions

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[51] "VI. Defendant is hereby enjoined and restrained from: • • •

B. Refusing to sell anti-friction bearings to any person at prices and on terms and conditions of sale corresponding to those regularly offered to purchasers of the same classification for resale or other distribution in defendant's territory, as herein defined, where the reason for such refusal is that such bearings are for resale or other distribution in British territory or French territory, as herein defined;"

corresponding to those regularly offered to purchasers for resale for distribution in American Timken's territory where the reason for such refusal is that they are for resale or other distribution in British territory or French territory as defined in the judgment.

"British territory," "French territory," and "defendant's territory," respectively, are defined in section 1, G, H and I (R. 1173, 1174), substantially as the territories which are allocated to British Timken, French Timken and American Timken, respectively, by the 1938 business agreements.

Section IX [52] (R. 1179, 1180) contains substantially the same provision with respect, not only to sale and distribution of bearings, but also service and assistance in the distribution or use thereof, where the reason for such refusal is that the bearings are for use, resale or other distribution in some country or area other than American Timken's territory.

Presumably, the purpose of Section VI is to prevent American Timken from refusing to deal with customers in the territories allocated to French Timken and British Timken by the business agreements, and thus to buttress the general provisions in Section V (R. 1175) which enjoin American Timken from combining with British Timken and French Timken to allocate exclusive territory. But, in addition to being unnecessary, this provision goes too far. We believe that, properly interpreted, it does not enjoin

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[52] "IX. Defendant is hereby enjoined from refusing to sell antifriction bearings to any person or discriminating as to availability and prices, terms, and conditions of sale of such bearings or failing to provide services and assistance relating to the distribution or use of such bearings comparable to the services and assistance made available to distributors and users of such bearings in defendant's territory, where the reason for such refusal, discrimination, or failure is that such bearings are for use, resale, or other distribution, either in their original form or incorporated in another product, in some country or area other than defendant's territory as herein defined."

American Timken from refusing to deal with any prospective purchaser of bearings because of business reasons, such as lack of financial stability, or any other reasons, such as personal animosity, except the one reason specified, namely, that the purchaser is located in British or French territory. However, even if so interpreted (and it might not be so liberally interpreted by the appellee or the district court in a future enforcement proceeding) the provision still is too broad, and, in fact, is practically unworkable. One hypothetical example should be sufficient to demonstrate this. Suppose that American Timken should decide, from motives of patriotism, that it did not care to sell bearings to purchasers or distributors located in the territory of French Indo-China because of the possibility that they might be incorporated into military equipment to be used by Communists infiltrating that territory; refusal to sell in such case would be, in part at least, for the reason that such bearings were for resale or other distribution in French territory, and also in a country or area other than American Timken's territory, under Sections VI and IX, respectively. American Timken, then, might be forced to sell in that territory, nevertheless.

While it might be urged, plausibly, that the purpose of Section VI, which is limited to sale of bearings, is merely to supplement the provision against combination to allocate exclusive territories with British Timken and French Timken, it is clear that Section IX goes far beyond any such purpose. It requires American Timken, not only to sell bearings, without discrimination as to availability, prices, terms and conditions of sale, but also to provide services and assistance relating to the distribution or use of the bearings comparable to those made available to distributors and users of such bearings in this country, to purchasers for use, resale or other distribution in their original form, or incorporated in another product, in countries outside of its territory. This possibly might be interpreted by the court as requiring American Timken, at tremendous

expense, to set up a system of sales engineers, comparable to that which it maintains in the principal cities of this country, in other countries all over the world in order to render the technical assistance and advice and other service which it gives to customers in this country with respect to original installation business.

One possible purpose of such a provision is to force American Timken into going into foreign trade in the export of its bearings, whether or not it desires so to do.

The Statement demonstrates without question the impracticability of exporting bearings manufactured in this country in an attempt to obtain original installation business, and the consequent 5% resale business which results therefrom, in foreign countries, and yet this may well be the effect of this portion of the district court's judgment.

The jurisdiction of the district court under Section 4 of the Sherman Act "to prevent or restrain" violations certainly does not extend to forcing American Timken to enter into business relations. That section was never intended to permit a court to require compulsory competition for sale by a defendant. This is made certain by the interpretation placed upon the substantive provisions of the Sherman Act by this Court.

Thus, in *United States v. Bausch & Lomb Optical Company*, 321 U. S. 707, *supra*, this Court refused to incorporate a provision in the judgment that Soft-Lite be required to file with the district court a written statement that it would sell its product, without discrimination, to any person offering to pay cash therefor, because as the Court said (p. 728) "*Congress has been liberal in enacting remedies to enforce the anti-monopoly statutes. But in no instance has it indicated an intention to interfere with ordinary commercial practice.*"

In *Hartford-Empire Co. v. United States*, 323 U. S. 386, the Hartford-Empire Company, as appears from the record in that case (R. 7735) asserted that Section 23 of the dis-

trict court's judgment therein violated the Fifth Amendment of the Constitution. This Court pointed out (p. 412) that paragraphs 21, 22 and 23 of the judgment required, *inter alia*, that all of the corporate and individual defendants, if they should engage in the business of distributing glass making machinery, should "file a writing with the court agreeing to offer, and to continue to offer, to sell any machinery used in the manufacture of glassware to any applicant at reasonable and equal prices and upon reasonable and equal terms and conditions" (p. 412). As previously seen, this Court stated that since the provisions of paragraphs 21 to 24, inclusive "in effect confiscate considerable portions of the appellants' property, we think they go beyond what is required to dissolve the combination," and struck down this portion of the judgment. While this Court, on motion to clarify its opinion in *Hartford-Empire Co. v. United States*, 324 U. S. 570, said that Hartford should be required to lease patented machines and license their manufacture, use or sale on reasonable terms (p. 573) nothing was said as to sale thereof by Hartford or the other defendants.[53]

These provisions, which compel American Timken to deal with persons with whom it might not otherwise desire to deal, are contrary, not only to the provisions of Section 4 of the Sherman Act as interpreted by this Court,[54] but

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[53] While section 12A of the final judgment in that case required sale or lease of machines to all applicants, many of the provisions in the final judgment in that case were agreed upon by the parties; see "Compulsory Patent Licensing By Antitrust Decree," 56 Yale Law Journal 77 (1946), 90. We are advised by counsel in that case that this was the case as to section 12A.

[54] In *United States v. Colgate & Co.*, 250 U. S. 300, this Court said (p. 307):

> "The purpose of the Sherman Act is to prohibit monopolies, contracts and combinations which probably would unduly interfere with the free exercise of their rights by those engaged, or who wish to engage, in trade and commerce—in a word to preserve the right of freedom to trade. In the absence of any

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also to the Congressional policy exhibited by Section 1 of the Robinson-Patman Act, 49 Stat. 1526, 15 U. S. C. A. § 13, which provides, in part, that nothing therein contained "shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade."

4. The Injunction Against American Timken's Entering Into Any Agreement With British Timken or French Timken For the Transfer of Any Right or Immunity Under Any Trademark or Name Relating to the Production of Anti-friction Bearings, Upon the Conditions Forbidden, Is Erroneous.

The district court dealt with licensing the trademark in Section VII, subsection C, subparagraphs 1, 2, 4, 5 and 8 (R. 1178-1179). This paragraph of the decree enjoined American Timken from entering into, maintaining or re-

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purpose to create or maintain a monopoly, *the act does not restrict the long recognized right of trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to the parties with whom he will deal.*"

See, also similar expressions in *Federal Trade Com. v. Raymond Bros.-Clark Co.*, 263 U. S. 565; *Moore v. N. Y. Cotton Exchange*, 270 U. S. 593 (1926), 606; *Brosious v. Pepsi-Cola Co.*, 155 F. (2) 99 (CCA 3, 1945); *Johnson, et al. v. J. H. Yost Lumber Co., et al.*, 117 F. 2d 53 (CCA 8, 1941) 61; *Lipson v. Socony-Vacuum Corp.*, 76 F. 2d 213 (CCA 1, 1935); *Hart v. B. F. Keith Vaudeville Exchange, et al.*, 12 F. 2d 341 (CCA 2, 1926); *United States v. Parker Rust-Proof Co.*, 61 F. Supp. 805 (D. C. Mich., 1945), 812; *Sorrentino v. Glen-Gary Shale Brick Corp.*, 46 F. Supp. 709 (D. C. E. D. Pa., 1942); *United States v. Schine Chain Theatres, Inc., et al.*, 31 F. Supp. 270 (D. C. N. Y., 1940); *Abouaf v. Spreckels Co.*, 26 F. Supp. 830 (D. C. N. D. Cal., 1939) 832; *Union Pacific Coal Co. v. United States*, 173 F. 737 (CCA 8, 1909).

Moreover, the Sherman Act "does not compel competition," *United States v. U. S. Steel Corporation*, 251 U. S. 417, 451; *United States v. General Dyestuff Corp., et al.*, 57 F. Supp. 642 (D. C. S. D. N. Y., 1944); *United States v. Aluminum Co. of America*, 44 F. Supp. 97 (D. C. S. D. N. Y. 1941), (Syl. 54).

newing with "British Timken and/or French Timken, or any subsidiary, successor, assign, agent, sales agent or distributor thereof" any contract for:

> "C. The transfer of any right or immunity under a trade mark or name, relating to the production of anti-friction bearings,
>
> "upon the condition or requirement that British Timken and/or French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof shall:
>
> "1. allocate or divide territories or markets for the production, sale or other distribution of anti-friction bearings;
>
> "2. limit, restrain or prevent importation into or exportation from the United States of anti-friction bearings;
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> • • • • •
>
> "4. refrain from competing or leave any person free from competition in the production, sale or other distribution of anti-friction bearings in any territory or market;
>
> "5. exclude any producer or distributor from any market for anti-friction bearings, or interfere with or restrict any producer or distributor in competing in any such market;
>
> • • • • •
>
> "8. receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto, (a) information, advice, assistance, or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method, or other technical information relating to the production of anti-friction bearings, or (b) any material or machinery used in the production of anti-friction bearings, or any information, advice, assistance or rights with respect to any such material or machinery."

It is obvious that these provisions in the judgment are directly contrary to recognized authority in this country on

the subject of licensing a mark. They restrict American Timken with respect to the trademark in several ways which deny it rights which it would otherwise have under the recognized law. However, the district court did not find nor hold that the Timken companies had used the trademark in such a way as to justify denial to American Timken of these rights. The only statement which the district court made remotely touching on the use of the trademark was that "although it does not convincingly appear that * * * the enforcement of the trademark restrictions served as direct instruments to eliminate competition, they have been most helpful in buttressing other illegal conduct to achieve the desired result" (Mem. par. 137, R. 1000). The district court did not specify in what way their enforcement has been helpful in buttressing the alleged combination, and it is impossible to see how they could have assisted in carrying it out if, as the court stated, it did not appear that the trademark was used as a direct instrument to eliminate competition. Therefore, there is no justification for denying to American Timken its customary rights with respect to use of its trademark.

We have shown heretofore that the allocation of territory in connection with a manufacturer's mark is a recognized part of the ownership of a mark and yet subparagraph 1 clearly does violence to that principle.

Subparagraph 2 is equally erroneous, for its effect is to require the licensor of a trade-mark as a condition of a foreign license to permit the foreign licensee to use the same mark in the United States that the licensor owns in the United States. American Timken is the owner of the mark "Timken" in the United States, and the effect of the Court's judgment is that, if it grants a license of the mark in any foreign country in which it owns the mark to the parties specified, it must provide that the licensee have a license to use the mark in the United States as well. There is certainly no authority for this view of the licensing of trademarks.

If the cases to which we have referred are the law, obviously this provision of the decree injects into the licensing field a matter that is unsupported by the statutes and decisions of the courts in this country. From a practical standpoint, no American company would wish to license a mark abroad if the penalty for so doing is the requirement that it give a license to its licensee to use the mark in the United States.

This section likewise makes it unlawful for an American company to give an exclusive license to one or more foreign licensees in foreign countries without reserving to the American company the right to use the mark in competition with the licensee. In short, this portion of the judgment, as does the quoted subparagraph 4, prevents an American licensor from giving an exclusive license and for practical purposes this would in most instances destroy the value of licensing a trade-mark abroad, since any proposed licensee of a manufacturer's mark would hesitate before undertaking the investment in manufacturing equipment necessary for the installation of a plant to make the product covered by the trade-mark.

Subparagraph 5 embraces the same idea as do the other subparagraphs in that it makes it unlawful for an American licensor to exclude the licensee from any market for anti-friction bearings. This provision is another method of destroying the right to grant an exclusive trade-mark license. The effect of it is that American Timken by granting a license in one country to a licensee, must of necessity grant a license in every country in which it has ownership of the mark, despite the fact that it may have other licensees in other countries. To put the matter concretely, having granted a license to British Timken to use the mark in England and a similar license to French Timken to use the mark in France, the requirement of subparagraph 5 is that a license must be granted to British Timken in the area covered by the French Timken license and conversely

French Timken must be granted a licens to use the mark in the area covered by the British Timken license. More than that, in the other sections of the world where American Timken has ownership of the mark, this requirement of the decree would make it obligatory upon the company to grant licenses to both licensees for the entire world. This proviso in the judgment makes absolutely meaningless the provisions of the international conventions heretofore quoted, the provisions of the Lanham Act, and the numerous decisions of this and other courts as to trademark licenses.

By subsection 8 the district court provided that, if American Timken supplied any technical information as to the product covered by the trade-mark or machinery for the manufacture of that product to its licensee, the same information must be made available to any third person. Certainly there is no authority for the inclusion of such a proviso in a decree dealing with a trade-mark license. The only basis for including such a proviso would be that activity in this regard under the license was unlawful and that, as a penalty for engaging in unlawful conduct, the licensor would be obligated to make information theretofore unlawfully given exclusively to the licensee available to third parties.

The supplying of such know-how and information, not only is not improper, but indeed is necessary (in order to make the licensee's product comparable in quality to the licensor's), if the licensor is to retain ownership in the trade-mark. In *Morse-Starrett Products Company vs. Steccone,* 86 F. Supp. 796 (D. C. N. D. Cal. S. D., 1949), the court considered this question, and stated (p. 805):

> "If the owner of a trademark wants to license the use thereof to another and still retain as his own the enjoyment of the rights stemming therefrom, he must do so in such a way that he maintains sufficient control over the nature and quality of the finished product, over the activities of the licensee, as will enable the licensor to sustain his original position of guarantor

to the public that the goods now bearing the trademark are of the same nature and quality as were the goods bearing the trademark before the licensing, or, that the mark now has the same meaning as far as the public is concerned as it did before the licensing.

"No such control was ever exercised or attempted to be exercised by defendant."

In *E. I. Du Pont de Nemours Co. v. Celanese Corporation*, 167 Fed. (2d) 484 (Ct. Cust. Pat. App., 1948), the court held similarly.

If, as provided in subparagraph 8, the penalty for so doing is the further requirement that such information must be made available to third parties the making of controlled trade-mark licenses will stop immediately. No licensor would be willing to supply data and information to his licensee so that the latter's product will equal the quality of the licensor's product with the knowledge that he must put every third party competitor on the same basis.

This provision of the judgment, therefore, effectively confiscates American Timken's trademark rights, by preventing licensing thereof, whether exclusive or not, just as it confiscates patent rights and know-how, contrary to the decisions of this Court in *Hartford-Empire Company v. United States*, 323 U. S. 386, and *United States v. National Lead Co.*, 332 U. S. 319, *supra*.

5. The Provisions of the Final Judgment which Require American Timken to Divest Itself of All Stockholdings and Financial Interests in British Timken and French Timken, and Enjoin It from Acquiring Any Further Interest and Participation in Their Affairs, Are Erroneous.

In Section VIII of its final judgment (R. 1179),[55] the district court ordered American Timken to divest itself of its interests in British Timken and French Timken, and enjoined it from further acquisition thereof. It is the contention of American Timken that, even if it had violated Sections 1 and 3 of the Sherman Act by the acts and agreements alleged in the amended complaint in this case (R. 13-25), and under the findings of the district court, this severe remedy is not justified in this case.

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[55] "A. Within two years from the date of this judgment, defendant shall divest itself of all stock holdings and other financial interests, direct or indirect, in British Timken and French Timken. Within one year from the date of this judgment, defendant shall present to the Court for its approval a plan for such divestiture.

"B. Defendant is hereby enjoined and restrained, from the date of this judgment, from:

"1. Acquiring, directly or indirectly, any ownership interest in (by purchase or acquisition of assets or securities, or through the exercise of any option, or otherwise), or any control over, British Timken or French Timken, or any subsidiary, successor or assign thereof;

"2. Exercising any influence or control over the production, sales or other business policies of British Timken or French Timken, or any subsidiary, successor, assign, agent, sales representative, or distributor thereof;

"3. Causing, authorizing or knowingly permitting any officer, director, or employee of defendant or its subsidiaries to serve as an officer, director, or employee of British Timken or French Timken or of any subsidiary, successor, assign, agent, sales representative, or distributor thereof."

Principles Governing Divestiture.

In all of the earlier cases, in which a divestiture type of remedy was adopted,[56] there was either a combination of companies by *stock ownership which was itself held to be in violation of the Act, either* because of acquisition of a former competing company, or by the formation of a holding company (the well-known business "trust" of the early 1900's), or, in some cases, also the purchase of assets of competitors which had been forced out of business. Since the acquisition and ownership of the stock of competing companies was the essence of the violation of the Act in these cases, it is apparent that only by requiring the stock to be divested could the violation be ended. Moreover, in all of the cases the violation found was not merely a restraint of trade contrary to Section 1 of the Act, but involved an attempt to monopolize or a monopolization of some area of commerce falling under Section 2.

In the case at bar, the amended complaint did not charge that any combination between American Timken, British Timken and French Timken, constituted a monopoly or an attempt to monopolize; and the district court made no such finding, or any finding on which such a conclusion could be based. Also, as we shall see the district court did not regard American Timken's ownership of the British and French Timken stock as itself illegal.

The divestiture remedy has been given extensive consideration, in some of the more recent cases decided by this Court which have clarified the principles governing the granting of this form of relief.

Of these, the first is *United States vs. Crescent Amusement Company*, 323 U. S. 173 (1944), in which this Court recognized three types of circumstances which warranted

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[56] For a review of these cases, see Hale, "*Trust Dissolution: Atomizing Business Units of Monopolistic Size*," 40 *Columbia Law Review* 615 (1940).

a decree of divestiture: (1) "where the creation of the combination is itself the violation"; (2) where the acquisition of the interests to be divested was "part of the fruits of the conspiracy"; and (3) where "common control was one of the instruments * * * in making the conspiracy effective."

In *Hartford-Empire Company vs. United States*, 323 U. S. 386 (1945), this Court laid down the following general principles with regard to relief in equity suits by the United States under the Sherman Act (pp. 409, 410):

> "The applicable principles are not doubtful. The Sherman Act provides criminal penalties for its violation, and authorizes the recovery of a penal sum in addition to damages in a civil suit by one injured by violation. It also authorizes an injunction to prevent continuing violations by those acting contrary to its proscriptions. The present suit is in the last named category *and we may not impose penalties in the guise of preventing future violations.* This is not to say that a decree need deal only with the exact type of acts found to have been committed or that the court should not, in framing its decree, resolve all doubts in favor of the Government, or may not prohibit acts which in another setting would be unobjectionable. But, even so, the court may not create, as to the defendants, new duties, prescription of which is the function of Congress, or place the defendants, for the future, 'in a different class than other people,' as the Government has suggested. The decree must not be 'so vague as to put the whole conduct of the defendants' business at the peril of a summons for contempt'; or cause the defendants hereafter not 'to be under the protection of the law of the land.'"

The third significant recent decision is *United States vs. Aluminum Company of America*, 148 F. 2d 416 (1945), *supra*, in which the Second Circuit Court of Appeals, sitting in lieu of this Court, refused to direct a dissolution of the Aluminum company, saying (p. 446):

"*Dissolution is not a penalty but a remedy;* if the industry will not need it for its protection, it will be a disservice to break up an aggregation which has for so long demonstrated its efficiency."

The next case was *United States vs. National Lead Company,* 332 U. S. 319 (1947), in which divestiture questions were two-fold: (1) the request of the Government that National Lead and du Pont each be required to divest themselves of two of their principal titanium pigment plants; and (2) the provision in the decree requiring National Lead and Titan, Inc., to divest themselves of stock and other interests in certain foreign corporations, *or in the alternative to purchase the entire stock and other financial interests in those companies.* This Court refused to require divestiture of the producing plant, saying (pp. 351, 352);

"We believe there is neither precedent nor good reason for such a requirement. The violation of the Sherman Act is found in these cases in the patent pooling and in the related agreements restraining interstate and foreign commerce. *There is neither allegation in the complaint nor finding of fact by the District Court that the physical properties of either National Lead or du Pont have been acquired or used in a manner violative of the Sherman Act, except as such acquisition or use may have been incidental or related to the agreements above mentioned.* The cancellation of such agreements and the injunction against the performance of them by the appellant companies eliminate them.

* * * * *

"*There is no finding of fact, and apparently no evidence, showing that the respective principal titanium plants of National Lead or du Pont were acquired in violation of law, that they ever were separately owned or operated,* or that they are adapted to such operation."

This Court affirmed, without much discussion, the provisions for divestiture of the interests in foreign companies,

quoting from the District Court's opinion as follows (p. 363):

> "In other words, the stock acquisitions were *part and parcel of the territorial allocation agreements,* and probably were *a necessary element* in the establishment of the territorial arrangement."

Two more decisions affecting the motion picture industry cast further light on the proper use of the divestiture remedy. *Schine Chain Theatres, Inc. vs. United States,* 334 U. S. 110 (1948), was much like *United States v. Crescent Amusement Co.,* 323 U. S. 173, *supra,* involving the use of the monopolistic buying power of a theater chain to destroy competition. The dissolution plan adopted by the District Court in the *Schine* case, rather than realigning the corporate organization of the chain, required Schine to sell certain theaters in towns where it operated more than one theater. This Court set aside the divestiture provisions of the decree, remanding the case for further findings with respect thereto, and established certain guides for their formulation (334 U. S. 110, pp. 128-130). Here, again, as in the *Crescent Amusement Co.* case, the justifications for divestiture were divided into three classes: (1) that the combination "is itself the violation"; (2) that the defendants are being denied the "benefits of their conspiracy"; and (3) that it breaks up the "monopoly power which violates the Act."

Finally, in *United States vs. Paramount Pictures, Inc.,* 334 U. S. 131 (1948), once again, we find the justification for divestiture expressed along three different lines: (1) acquisitions which were the "fruits" of monopolistic practices or restraints of trade; (2) acquisitions which though lawfully acquired, have been "utilized as part of the conspiracy"; and (3) acquisitions which "would afford opportunity to perpetuate the effects of the restraints of trade." The court in this case also made the following significant statement (p. 153):

"If in such cases the acquisition was not improperly used in furtherance of the conspiracy, its retention by defendants would be justified absent a finding that no monopoly resulted. And in those instances permission might be given the defendants to acquire the interests of the independents on a showing by them and a finding by the court that neither monopoly nor unreasonable restraint of trade in the exhibition of films would result."

This review of the important decisions relating to dissolution and divestiture fails to reveal any principles which support the provisions of Section VIII of the final judgment herein, as applied to the violations of Section 1 of the Act charged in the amended complaint (R. 13-25), and found by the district court. Nowhere in the memorandum herein (R. 958-1018), does the district court explain the reason for ordering divestiture in this case.

Divestiture to break up monopoly power not applicable. We have already noted that monopolization, or attempt to monopolize, the anti-friction bearing industry in any area whatever is not charged in this case. The district court did make certain statements as to the percentages of tapered roller bearings and of anti-friction bearings which were produced by American Timken, British Timken and French Timken in their respective countries (R. 960-961) and declared that this "spells out the dominant position" of these companies "both in the tapered and anti-friction bearing industry" (Mem. par. 15, R. 961). Except for some other general comments in paragraphs 35 and 36 of its memorandum (R. 965-966), the district court made no further findings with respect to American Timken's position in the industry, or regarding its competitors. Clearly, then, divestiture cannot be supported by anything in the record in this case on the "monopoly power" theory of the *Schine Chain Theatres* case, 334 U. S. 110.

Divestiture to remove "fruits" of wrongdoing not applicable. The second theory advanced to support divesti-

ture is that of depriving the party of the "fruits" of his violation. This concept requires that the interests to be divested were acquired as the direct consequence or "fruit" of the illegal practices found to have occurred. Thus, in the *Crescent Amusement* case, 323 U. S. 173, the defendants had coerced their competitors to sell out to them. The same appeared in the *Schine Chain* case, 334 U. S. 110. It was in that case, indeed, that this Court spoke of divestiture as being analogous to the equitable remedy of restitution, since it "merely deprives a defendant of the gains from his wrongful conduct." In the case at bar, there was no finding that American Timken's interests in British Timken and French Timken resulted from any such unlawful acts. Rather, the district court minimized the significance of its ownership of interests in these companies, and placed major stress throughout on the theory of restraints imposed by *agreement* and acts as between *independent* corporations. Thus, in paragraph 153 of its memorandum (R. 1003-1004), the district court declared:

> "The only substantial change in the relationship of the parties resulting from the Dewar-defendant contract was that defendant acquired a stock ownership in British Timken and French Timken."

While we do not concur in the intimation that this "change in the relationship" was of no legal significance, yet there is no suggestion here or elsewhere in the memorandum that the acquisition in itself was unlawful, or that it was the *consequence* of any prior unlawful acts, in the sense connoted by the expression "fruits of the conspiracy." In fact, such a finding would have been beyond the issues in the case, because the acquisitions occurred prior to the combination alleged to have commenced in 1928.

Divestiture to prevent unlawful use of stock not applicable. The third theory supporting the divestiture remedy is that the interests, even though lawfully acquired, are being used in aid of the conspiracy. There is no sug-

gestion in the district court's memorandum that this was done by American Timken with its interests in British Timken and French Timken. It is true that the final judgment enjoins defendant from:

> "Exercising any influence or control over the production, sales or other business policies of British Timken or French Timken. * * *"

but, as stated above, the district court treated the three companies as completely separate corporate units, and stated in its memorandum (R. 1004):

> "Both British Timken and French Timken were managed and operated by Dewar. Except for such powers possessed by virtue of its stock ownership and the contracts, defendant *had no control* over the business conduct of either. * * *
>
> "British Timken and French Timken retained their corporate independence and jealously guarded their interests in dealings with defendant."

Again, while we believe that the district court erred in its interpretation of the facts in this case with respect to the "independence" of British Timken and French Timken, nevertheless, the above statements are wholly inconsistent with any theory that American Timken utilized its interests in those companies in the furtherance of a conspiracy, especially of a conspiracy *with them*.

Divestiture to break up combination not applicable. Another situation which we find in the cases discussed above to support a divestiture decree, is that in which the combination is itself the violation. Applied to this case, this would mean that the *acquisition* of the stock of British Timken by American Timken and its *participation* with Dewar in the *establishment* of French Timken, *were themselves unlawful*, quite apart from any agreements relating thereto, for as we have seen above the district court did not regard the acquisition of the stock as an essential part of the transactions between the companies, but treated it

as merely incidental. For the reasons given and the excerpts from its memorandum previously quoted, it is clear that the district court did not consider whether or not the stock acquisitions in themselves, were in violation of the Act.

The divestiture question under this theory is essentially the converse of the questions involved in the corporate integration cases, of which some of the important earlier examples are *Standard Oil Company vs. United States*, 221 U. S. 1 (1911); *United States vs. American Tobacco Company*, 221 U. S. 106 (1911); and *United States vs. United States Steel Corporation*, 251 U. S. 417 (1920). The latter case illustrates that in these early cases this Court was concerned with three questions: (1) the size of the unit involved; (2) the methods by which it achieved that size; and (3) the power which it was able to exercise over prices and production. As we have pointed out, the district court made only the briefest reference to the size of American Timken, British Timken and French Timken, and that solely as regards their respective percentages of production in their countries. No attention at all was given to the manner in which the companies grew to that size; and indeed there were no allegations in the amended complaint and no evidence whatsoever that any such improper practices were followed as were condemned in the *Standard Oil* and *American Tobacco* cases. Finally, there were no findings with respect to power which the three Timken companies exercised in regard to production or prices of anti-friction bearings. Even by the tests of the earlier cases, then, the findings of the district court were far from adequate to sustain the divestiture provisions of the decree.

Necessity of determining field of competition and district court's failure to do so. Recent cases in which similar questions have been discussed are *United States vs. Paramount Pictures, Inc.*, 334 U. S. 131 (1948), and most sig-

nificant as to the questions involved in this case, *United States vs. Columbia Steel Company*, 334 U. S. 495 (1948).

In *United States v. Columbia Steel Company*, 334 U. S. 495, the ultimate issue was whether it was a violation of the Sherman Act for United States Steel Corporation or its subsidiary, Columbia Steel Company, to acquire the assets of Consolidated Steel Corporation, said to be "the largest independent steel fabricator on the West Coast" (p. 498). This Court first proceeded to an extensive examination of statistics as to the production and sale of rolled steel and other steel products, throughout the United States and in an eleven-state area which was Consolidated's principal market, accepting (p. 520), for the purpose of decision, the Government's contention that:

> "'* * * this area is the one to be considered in measuring the effect on competition of the withdrawal of Consolidated as a market for other rolled steel producers and of the bringing together under common control of Consolidated and the fabricating subsidiaries of United States Steel."

It further laid down the tests of legality of a vertical or horizontal expansion by the acquisition of existing facilities as follows (pp. 527, 528):

> "It is first necessary to delimit the market in which the concerns compete and then determine the extent to which the concerns are in competition in that market. If such acquisition results in or is aimed at unreasonable restraint, then the purchase is forbidden by the Sherman Act. In determining what constitutes unreasonable restraint, we do not think the dollar volume is in itself of compelling significance; we look rather to the percentage of business controlled, the strength of the remaining competition, whether the action springs from business requirements or purpose to monopolize, the probable development of the industry, consumer demands, and other characteristics of the market. We do not undertake to prescribe any set of percentage figures by which to measure the unreason-

ableness of a corporation's enlargement of its activities by the purchase of the assets of a competitor. The relative effect of percentage command of a market varies with the setting in which that factor is placed."

In contrast, in the case at bar, although there was extensive evidence as to the field in which defendant's tapered roller bearings were competing—namely, with all other types of anti-friction bearings and with friction bearings, the district court made no precise findings as to the scope of competition, or with respect to the percentage which the Timken companies controlled, in the industry, and even stated (Mem. par. 35, R. 966):

"It is of no moment what the precise figures were."

Nor was there any exploration of the extent to which the Timken companies had been able to control prices within the anti-friction bearing industry; and the evidence and findings regarding alleged illegal practices (other than the agreements with British and French Timken) were confined to a few instances of cooperation between the three companies to meet competition of their international competitors, especially SKF, and of participation by British Timken and French Timken in agreements in England and France which allocated customers and fixed quotas. There was no evidence that these practices resulted in the destruction of competitors, as was true of the unlawful practices found in all the earlier cases which we have discussed.

Indeed, the district court avoided making any findings of this nature, because it persistently clung to the theory that the three Timken companies were independent entities, actual or potential competitors, who had entered into contracts and conspiracies to restrain trade. Thus, it stated (Mem. par. 144, R. 1002):

"Defendant did not acquire British and French Timken."

and (Mem. par. 160, R. 1005):

"It simply acquired substantial interests in a dominant manufacturer of bearings in England, participated in the formation of and invested on the stock of a potential competitor in France."

It is quite apparent that the district court gave no consideration to the legality or illegality of these acquisitions, as such. Yet obviously, findings on this score are essential, to determine the correctness of the divestiture provisions of the judgment.

It is clear from the foregoing cases that the district court failed to give due consideration to the propriety of the divestiture provisions in the judgment in the light of established precedents and doctrines. Certainly, that court has never fully explained the basis upon which divestiture was ordered.

Ineffectiveness of Divestiture to Create Competition—the Invalid Basis Suggested by Appellee.

The main argument stressed by the appellee in demanding this relief was that, in view of the long-continued relationship between American Timken, British Timken and French Timken, the ownership of stock in those companies would serve as an inducement for it not to compete with them, even after the termination of contractual obligations. However, we have been cited to no authorities which show that the removal of one inducement not to compete is a sufficient basis for ordering divestiture of valuable business interests.

We begin in this case with the understanding that the judgment is not essentially penal or punitive in its object, but that its purpose is the effective enforcement of the Sherman Act, the prevention of future violations, and, to the extent indicated by the cases which we have discussed, the undoing of past violations. *Hartford-Empire Company vs. United States*, 323 U. S. 386; *United States vs. National Lead Company*, 332 U. S. 319. We have already

seen that the divestiture of the British Timken and French Timken stock cannot be sustained on the theory that the *acquisition* of the stock was illegal. Any justification for divestiture in this case, therefore, must be found in the preventive effect of such a judgment.

The evidence is so abundant that it has never been practical, and is not now, for American Timken to attempt to export its bearings into foreign markets, and, as this Court is well enough aware, the international economic situation is presently so disrupted, that there is no reasonable probability whatever that, even without its financial interests in British and French Timken, American Timken could with any success market its products in the areas which were allocated to them because of the competitive advantages which they had there. On the contrary, the opposite would be true. The only effect of divesting American Timken of these interests, therefore, would be to deprive it of holdings in foreign companies which, by its investment of capital and through its invaluable assistance in production and sales methods, have grown, in one instance, from a relatively small and ineffective bearing manufacturer, and in the other from scratch, to substantial factors in the industrial make-up of their respective nations.

It is very doubtful whether it would be possible for American Timken to acquire or construct new facilities in those countries.[57] Yet, the undisputed evidence in the case is that this is the only manner in which it is feasible for a manufacturer of bearings to sell in those countries on any

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[57] See, e.g., the testimony of DeKraft, that at the present time it is necessary for a foreign manufacturer to obtain a governmental permit to start a new manufacturing plant in England (R. 818) and, for that purpose, to show the necessity for producing something in England which is not produced there (R. 819), and that in all probability the Board of Trade would not allow the establishment of such a manufacturing company to compete with established business there (R. 826).

substantial scale. Therefore, the divestiture of American Timken's interests in British and French Timken will not tend to create competition between them. For any such purpose, it is utterly futile.

Furthermore, it is well-known that one of the basic policies of the United States, under the popular name of "Point Four," is the encouragement of private investment by American sources in foreign enterprises. The judgment in the case at bar, which the same Government seeks to sustain, works directly contrary to that policy—the *present investment* of an American company is to be withdrawn, to be replaced by we know not what, under circumstances which will *discourage* not only it, but others in similar situations, from making like investments. It is true that this Court cannot make the policy or enact the laws, but in exercising its discretion in formulating decrees in anti-trust cases it can certainly consider whether any reasonable purpose will be served by certain provisions of the decree. Moreover, it can and should consider whether the judgment is consistent with the purpose of the very Act under which it purports to be issued.

Probable Prevention of Foreign Trade in "Timken" Trade-Marked Bearings Resulting from Divestiture.

Rather than stimulating competition in foreign trade by American Timken and its American customers, the divestiture provisions, together with other portions of the judgment, will make it virtually impossible for American Timken to compete in the territories now served by British and French Timken.

Section IV of the final judgment declares the 1938 agreement between the three Timken companies to be unlawful, orders it terminated, and enjoins American Timken from further performance or enforcement of any of the provisions:

> "including those involving rights or obligations upon termination, of said agreements * * *" (R. 1174, 1175).

This would obviously apply to the provisions of paragraph 3(B) of the 1938 agreement (Deft's. Exh. 27, R. 1771; offered, R. 291; R. 1775) which requires British Timken and French Timken, upon termination of the agreement, and upon request of American Timken, to eliminate the name "Timken" from their corporate names, to refrain from using it as a trade-mark or trade name, and to assign to the latter any trade-mark or other rights in respect of said name which they control. Thus, if American Timken is also to be divested of its interests in these companies, and prevented from acquiring such interests, it probably will lose all rights to the use of the trade-mark in those countries where it has been registered and/or used by British Timken or French Timken, or depends upon such registrations or user.

American Timken is also enjoined by Section VII, subsection C, of the final judgment from entering into any agreement with British Timken or French Timken, providing for:

> "The transfer of any right or immunity under a trade mark or name, relating to the production of anti-friction bearings * * *,"

upon condition that the parties thereto will, among other things, refrain from the sale of anti-friction bearings in any territory, refrain from competing in any market, or exclude any producer or distributor from any market (R. 1178). Because the use of a trade-mark in any territory by more than one manufacturer, except under strict limitations, will impair the validity of the mark, these provisions will prevent *any* licensing of the trade-mark to American Timken by British Timken and French Timken in the areas where they are freed of obligation to return it to the former.

As a consequence, American Timken will be unable to sell bearings in these territories under the trade-mark or name of "Timken." Theoretically, for sales in these territories, it might adopt a new mark or name, and develop

good will in that mark. Practically, this is an impossibility for American manufacturers of automobiles and other products cannot determine which of them are destined for a specific foreign market and could not, and would not, select specially marked bearings for use in foreign markets for the accommodation of American Timken. We have already seen how important the mark "Timken" has been in enabling British and French Timken to develop tapered roller bearings sales in new areas.

If it is unable to use that mark on its own products to be sold in those areas, American Timken would have little chance of developing any substantial business therein. It would have to set up its manufacturing organization in such a way that bearings to be sold in those areas would be separately produced, so that the mark "Timken" would not appear on them.

In this additional way, then, the divestiture provisions would work directly to the contrary of the avowed purpose of increasing the foreign trade of the United States in anti-friction bearings.

Hardship and Loss to American Timken from Divestiture.

Another factor which may well be considered, at least in connection with the other reasons given above, is that, while serving no remedial purpose under the Sherman Act, the divestiture provisions of the judgment will result in a serious loss to American Timken. While this Court has said that divestiture of the benefits of a violation or the undoing of the unlawful project cannot be avoided on the plea of hardship or inconvenience, yet it has also stated on several occasions that the decree should "work out a compliance with the law without unnecessary injury to private property." *United States vs. American Tobacco Company*, 221 U. S. 106, 188; that "* * * one of the fundamental purposes of the statutes is to protect, not to destroy, rights of property." *Standard Oil Company vs. United States*, 221 U. S. 1, 77; and that, so far as is consistent with the purpose of the Act, the decree "should conserve the property interests involved." *United States vs. Union Pacific*

Railroad Company, 226 U. S. 470, 477. Thus, in *Hartford-Empire Company vs. United States*, 323 U. S. 386, it was said (p. 414):

> "Since the provisions of paragraphs 21 to 24 inclusive in effect confiscate considerable portions of the appellants' property, we think they go beyond what is required to dissolve the combination and prevent future violations of like character."

At the hearing on the decree in this case, deVegh testified that the sale of British Timken stock could be made to a non-Englishman legally having dollars, but that the market for such transactions is "extremely small," "very irregular" and "not dependable" (R. 1110, 1111). Even so, such a transaction would not take place on the official quoted exchange rates, but on the basis of what is known as the "switch" pound (R. 1111), which at that time was exchanged at the rate of $1.85 or $1.90 to the pound sterling, as compared with the official rate of $2.80 per pound sterling (R. 1111, 1112). Thus, even if such a sale could be made, American Timken would sustain a loss of approximately one-third of its investment, simply on the exchange transaction.

However, deVegh declared that a sale of the magnitude of that involved here—approximately $1,350,000.00 (R. 1093, 1094)—could not be made within any short interval, and that, even over a longer period of time, "it would have a very depressing effect on the switch pound market" (R. 1113). Indeed, because of this, the British government might even refuse to permit the transfer (R. 1113). Presumably, the stock might be sold "to a speculator somewhere" at a dollar a pound (R. 1113). At this rate, American Timken's loss would be almost two-thirds of its present British Timken investment.

If the sale were made to a British resident, he could not possibly have dollars legally available; American Timken would have to accept sterling which it could hold for a maximum of two months before converting it into another

British industrial stock or into British government bonds (R. 1114, 1115). In converting these into dollars, it would have the same problem of depressing the "switch" pound market as in the sale of its stock (R. 1115, 1116).

As to France, the same difficulties exist, although at the time of the hearing deVegh could not say what the "switch" franc rate of exchange was, because there were "practically no transactions in New York" (R. 1116, 1117).

The loss suffered by American Timken, if required to divest itself of its shares of British Timken and French Timken stock, therefore, will be substantial indeed, and without any compensating beneficial effect so far as creating international trade in anti-friction bearings. This factor cannot well be overlooked in determining whether divestiture should be ordered in this case.

We have expressed the belief, in our Statement as to Jurisdiction in this Court that this case presents the fundamental and novel question of whether an American manufacturer may join with a foreign subject to acquire a business in the foreign country, and in connection therewith agree not to compete in a territory allocated to the jointly owned foreign company. There was nothing in the decided cases prior to 1928 to indicate to American Timken that this course of action would put it in violation of the Sherman Act. If there had been, it might well have chosen to adopt Ely's preferred plan, and acquire for itself full ownership of British Timken, and establish German and French Timken alone even though this would have dispensed with the great advantages apparent from the partnership with Dewar. We do not believe that any court would have said that such acquisitions, or any absence of competition between the three companies under those circumstances, was illegal.

If this Court is now to condemn the mode of proceeding which American Timken did follow, for what appear to have been sound business reasons, it is certainly fitting

that it should not penalize American Timken so severely for doing what, in 1927, it had no reason to believe illegal.

In short, we submit that there is no precedent for the divestiture provisions of the judgment; that they are not supported by the findings of the district court; that they will not accomplish any remedial purpose under the Sherman Act, but instead will prevent American Timken from competing in foreign markets; that they will impose hardship upon American Timken without any compensating benefit to anyone; and that they are solely punitive and penal in their effect.

CONCLUSION.

For the reasons hereinbefore set forth, upon the law and the facts, the judgment should be reversed, and final judgment entered for American Timken, or, in any event, the judgment should be modified in the respects indicated.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1950.

No. 352.

THE TIMKEN ROLLER BEARING COMPANY,
Appellant,

v.

THE UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION.

REPLY BRIEF FOR THE APPELLANT, THE TIMKEN ROLLER BEARING COMPANY.

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REPLY BRIEF FOR THE APPELLANT, THE TIMKEN ROLLER BEARING COMPANY.

STATEMENT.

It is apparent from the appellee's brief that the appellee has undertaken simply to support all of the purported findings made by the district court, and, upon the basis thereof to support its conclusions.

Necessarily, therefore, the discussion of the facts in the appellee's brief, while it may appear to be a full discussion of the facts involved in the case, actually omits certain of the most important facts. Moreover, many of the statements in the appellee's brief are made in such a way as to de-emphasize the importance of other facts, resulting in an over-all impression which does not reflect the true state of the facts as disclosed by the record.

For example, it is said (Appellee's Brief, p. 16) that, although tapered roller bearings compete "*to some extent*"[1]

[1] Emphasis throughout is supplied.

with other types of anti-friction bearings and to a lesser extent with friction bearings" they are "free from competition for certain uses." This statement passes over entirely the uncontroverted evidence that tapered roller bearings compete with other types of anti-friction bearings *for 90%* of the installations of anti-friction bearings, *not merely "to some extent,"* and gives an entirely erroneous picture of the competitive situation in the anti-friction bearing industry.

Again, in stating the facts as to French Timken the appellee says that it is the "largest manufacturer and seller of tapered roller bearings in France" (Appellee's Brief, p. 18), but disregards the evidence which shows what a relatively insignificant operation French Timken is, namely, that it has only 510 employees.

Once more, in discussing Dewar's negotiations with Ely in 1927 the appellee states (Appellee's Brief, p. 30) that the former indicated his preference that the latter should join him in the purchase of British Timken "on account of its 'interest in the profitable operation of the company'" carefully omitting the statement in the same communication that Dewar desired to have American Timken "very much as partners" so that it would have this interest in the profitable operation of British Timken. Indeed, the appellee has not discussed the contemporaneous references to American Timken and Dewar as "partners" in 1927, 1929, and 1936 at all, but has been content to rely upon the finding of the district court and the two statements relied upon in the district court's opinion, discussed in our main brief (p. 82, note 26), which are supposed to show that any possible partnership ended in 1934.

These few examples serve to show that the appellee's statement of the facts cannot be regarded as a full statement thereof. In fact, it portrays the same misleading picture as does the memorandum opinion of the district court, namely, a combination between independent companies,

dominant manufacturers in a mythical tapered roller bearing industry which they control.

The Court will observe that many statements contained in the appellee's brief are merely supported by references to paragraphs in the district court's memorandum opinion.

Many of the factual and legal contentions of the appellee have been anticipated and answered in our main brief. Without attempting to answer piecemeal every minor contention made by the appellee, we propose to discuss certain of the broad issues involved in the case.

ARGUMENT.

I.

THE APPELLEE'S CONTENTIONS AS TO THE ALLEGED COMBINATION AND CONSPIRACY.

A. The 1909 license agreements between American Timken and the Vickers' subsidiary, E. & O. A.

The provisions of the 1909 license agreements between American Timken and the Vickers subsidiary, E. & O. A., loom large in the case at bar, principally because the district court placed such emphasis upon them in arriving at its apparent conclusion that there was an *intentional* illegal combination in restraint of trade which was the "outgrowth of the principal agreements in 1909 when world markets were divided and competition was eliminated" (Mem. par. 120, R. 995). As pointed out in our main brief (pp. 148 to 153), the court disregarded American Timken's contentions as to the legality of its acts on the theory that whatever was done by American Timken and Dewar from 1927 and thereafter constituted merely a continuation of this combination in restraint of trade, which had its roots in the 1909 license agreements. The appellee's brief embraces, and continually expands upon, this theme.

In fact, it is at least doubtful whether the provisions of the 1909 license agreements, found by the district court to have been illegal, constituted violations of the anti-trust

laws. Certainly their legality was sufficiently ambiguous to negative any reasonable inference that American Timken, and the Vickers subsidiary *intended* to violate the Sherman Act at the time these agreements were made, or subsequent thereto.

1. The 1909 agreement covering the United Kingdom.

As the district court found (Mem. pars. 24, 25; R. 962, 963), the license from American Timken to E. & O. A. under the three basic bearing patents in the United Kingdom contained territorial restrictions but they were not entirely exclusive, for both the licensor and the licensee were given the right to sell bearings to manufacturers of vehicles in the territories in which they respectively were making bearings, which, when included in vehicles so manufactured, could be sold any place in the world. We know of no authority which has yet established that a patent licensor may not impose such a restriction upon itself. And it has always been understood that the licensor may limit the patent licensee to manufacture, use or sale within a restricted territory.

E. & O. A. was prevented from manufacturing or selling any anti-friction bearings except those made under the licensed patents under the name "Timken" and was required to manufacture pursuant to instructions given to it by American Timken as the licensor (Mem. par. 25; R. 963). The requirement that E. & O. A. use the name "Timken" in the manufacture and sale of the bearings certainly implied a license to use it, because American Timken necessarily permitted E. & O. A. to use the name when it required it to do so. Restriction to the manufacture and sale of the bearings under the exclusive name "Timken" was a valid one ancillary to the license to use the name which has always been recognized as legal. The authorities supporting this proposition are discussed in Section II, C, *infra*.

There was a provision fixing the minimum price for bearings manufactured by E. & O. A. which was obviously designed to protect the licensor, American Timken, from competition from its licensee, a valid price-fixing provision ancillary to the grant of the license which has been recognized as legal in *United States v. General Electric Company*, 272 U. S. 476; *United States v. Line Material Company*, 333 U. S. 287; and *United States v. United States Gypsum Company*, 333 U. S. 364.

2. The 1909 agreement covering Europe.

The point upon which the district court really relied was based upon provisions in the 1909 license agreement covering Europe which, it held, granted E. & O. A. an exclusive license in European countries in which American Timken had not as yet obtained patents (Mem. pars. 26, 27; R. 963, 964). However, this conclusion is certainly debatable in view of the language of the agreement and particularly one qualifying provision therein which the district court did not include in its memorandum, and which has not been commented upon in the appellee's brief. In this agreement (Deft's. Exh. 190; R. 2322; offered, R. 936), American Timken agreed to pursue its application for the German patent (par. 2) and granted the licensee an exclusive license "in the territories *covered* by the said patents respectively" under two French patents, a Russian patent, and under the German patent, applied for, *as soon as letters patent should have been obtained there*, and further granted E. & O. A. an exclusive license, until the patents should have been granted or after they had ceased to exist, "but only so far as the licensor can then lawfully do so" to make, use, exercise and vend the articles embodying the subject matter of the patents (par. 3). It also agreed that if it should obtain any patents in any of the other European countries it would give the licensee an exclusive license "in the country *covered by* each such patent" and

that, until they should be obtained, "so far as the licensor can lawfully do so in the absence of such patents or grants"[2] E. & O. A. should be licensed exclusively to manufacture and sell the subject matter of the three British patents throughout Europe and in the British colonies, protectorates and dependencies except Canada (par. 5). American Timken agreed that during the period of the license agreement it would not make, use nor sell "in any of the territory *covered by* the provisions of this agreement, hereinafter called 'said territory'" (par. 6), and E. & O. A. agreed not to sell roller bearings "outside the said territory" (par. 39).

Obviously, when the parties referred to territory "covered" by the agreement, as they did in various sections thereof, they may well have been referring to territory "covered" by the agreement when, if and as patents should be obtained "in the country covered by each such patent," so that the provisions as to exclusive territories would not become operative as to particular territories until they should become covered by patents. Moreover, American Timken granted an exclusive license only to the extent that it could lawfully do so. Therefore, it canot be said unequivocally that the agreement was so clearly an attempt to create an exclusive license of the right to manufacture tapered roller bearings in countries in which American Timken had no patents that it constituted an obvious attempt to create an illegal restraint of trade.

On the contrary, the general impression to be deduced from the agreement is that powerful Vickers insisted on obtaining everything it could in the way of an exclusive license from American Timken, which was in its infancy, and that the latter agreed to the former's demands with the reservation, however, that it would license Vickers' subsidiary only to the extent that it could lawfully do so.

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[2] This is the provision ignored by the district court.

B. The appellee's contention that the district court's findings establish that the agreements and other concerted activities of the three Timken companies have unlawfully restrained foreign commerce.

Generally speaking, this section of the appellee's brief undertakes to demonstrate that combinations among independent competitors to allocate exclusive territories, fix prices, eliminate competition of outsiders, and to exchange technological information exclusively for the purpose of eliminating competition of third parties, constitute violation of the anti-trust law. No one can quarrel with the truth of these general propositions. Whether or not they are applicable to the case at bar, in view of the facts, is the issue in the case.

Certain of the statements contained in this section of the appellee's brief, however, should be made the subject of comment.

1. Alleged Price Fixing.

One aspect of American Timken's practices in relation to British Timken and French Timken which the appellee attacks most vigorously is what it terms "price fixing." The appellee apparently regards the alleged price fixing agreements as independent violations of the Act, quite apart from the territorial allocations. The matters to which reference is made are (1) the prices on replacement bearings, (2) the alleged protective discount, and (3) the Russian sales provision.

In approaching the discussion of alleged "price fixing" in this case, one thing should be made clear. There never was any provision in the agreements which undertook to fix generally the prices of either American Timken, British Timken or French Timken.

It should be observed, however, that the pricing provisions, such as they were, in the 1938 agreement between

American Timken, British Timken and French Timken were merely incidental to the territorial allocations, and were adopted as reasonable conditions governing that portion of the territorial allocations which permitted each of the parties to sell bearings for use in the territory of the other for replacement purposes in equipment which originally was supplied with bearings by such party. If, as we have shown, the territorial allocations were lawful, they were not rendered illegal by relaxing their strictness, and the pricing practices which were agreed upon to govern this situation do not fall under the Sherman Act's condemnation of price-fixing, as interpreted by this Court.

In the 1928 agreements there was no provision whatever with respect to prices. The position that the agreement had as one of its purposes the fixing of prices is clearly unsound. Recognizing the shallowness of its contention that price-fixing was one of the objects of the first agreement in which American Timken and Dewar participated, the appellee says on pages 35 and 36 of its brief:

> "Although the 1928 contract (Def. Ex. 23, R. 1754) did not specifically provide for price fixing on replacement bearings, such price fixing was accomplished by a supplementary understanding."

This had reference to what has been called by the district court and the appellee the "protective discount." Actually the "protective discount" had no such sinister scope as was implied in the foregoing language. Prior to 1927 a "protective discount" was established by American Timken for unsolicited bearing orders that originated outside the United States in areas not served by any distributor, and a similar system had been adopted by British Timken for overseas sales. First, it should be noted that this business of American Timken amounted to only $15,000.00 or $25,000.00 per year, so that any practices affecting it hardly warrant serious consideration. The whole

story on these discounts ~~were~~ is simply that in 1927 Hess told Dewar that British Timken was losing business by having a low discount rate on these sales; that he thought British Timken would get more business if it increased its discount rate to 50%; and that British Timken thereupon increased its discount (that is, reduced its prices) to the rate then allowed by American Timken, namely 50% off list (although the list prices were not the same nor were they affected by the discussion) (Deft's. Exh. 31, R. 1800-1834 at 1830, offered R. 318). American Timken's discount rates were subsequently changed by it, without any consultation with British Timken, for unsolicited orders received from all territories except British Timken territory (R. 893-894, 906). The effect of the discount system, then, was no more than a further refinement of the territorial provisions, just as in the case of the provision regarding replacement bearing sales, and was therefore reasonably ancillary to the joint venture.

The pertinent provision of the 1938 business agreement between American Timken, British Timken and French Timken (Deft's. Exh. 27, R. 1771-1780, offered R. 291) was contained in paragraph 6(B) as follows:

> "The covenantor Company in its territory may accept and execute orders for bearings for ultimate destination in the territory of the covenantee Company for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorize sales to or known to be destined for manufacturers in the territory of the covenantee Company or sales at prices in conflict with the wishes of the covenantee Company and the covenantor Company from time to time will notify the covenantee Company of the details of the sales authorized under this paragraph and will pay to the covenantee Company an amount equal to five per centum of the net sale price received under any sales so authorized not being sales made through or at the request of the covenantee Company."

This is substantially identical with the provision in the 1935 Agreement between American Timken and British Timken, where it first appeared, quoted in the district court's memorandum opinion at paragraph 59 (R. 970). In the agreement, it follows the provision authorizing bearings to be shipped into either party's territory as component parts of completed articles of manufacture. This obviously is not a price-fixing agreement as such. But more than that, there was no evidence that the parties had followed this provision of the agreement. Moore's uncontradicted testimony (R. 896-897) is that when bearings are sold to an American manufacturer, it is assumed that a certain percentage will be used for replacement purposes, domestically and for export; that American Timken has no control over the places to which the bearings are shipped; that it makes no efforts to control the prices of such resales; and that this is generally understood by British Timken and French Timken.

As to alleged control of prices on resale by customers, the evidence discloses only one instance in which, over twenty years ago, in 1928, American Timken undertook to persuade a customer to ask its Hungarian distributor to sell at prices which would not undercut those of British Timken's Hungarian distributor (Pltf's. Exh. 39, R. 1387). It refused to do so as a general practice (Pltf's. Exh. 43, R. 1390, 1391).

Fair consideration of the Russian situation fails to support the appellee's views. In the 1928 agreement Russia was treated as British Timken's territory for the obvious reason that the British Government had trade relations with Russia before the American Government did. By 1935 the American Government had established relations with Russia and American Timken and Dewar felt that both companies might be able to do some business there.

The Supplemental Business Agreement of 20 November, 1938 (Deft's. Exh. 28, R. 1780-1789, offered R. 291)

contained in paragraph 12(C), relating to Russia, similar to the clause in the 1935 agreement, a provision authorizing both British Timken and American Timken to sell in Russia, but specifying that they should keep each other advised of negotiations with Russian buyers, and should pay the other a two per cent commission and share all selling expenses on such sales, that prices should "so far as practicable be mutually agreed from time to time," but that either company might make quotations without the other's consent, provided it notified the other party and did not undercut a quotation already made by the other.

This arrangement was designed for the special situation in the Russian economy. As Moore testified (R. 899), since the Russian Government controlled all buying for industry in that country, it was feared that it might seek to take advantage of that position by attempting to obtain quotations from both American Timken and British Timken, and then play one against the other to their mutual disadvantage. In fact, however, Moore could not recall any instance, since 1928, when the Russian buying agencies asked for bids from both American Timken and British Timken on the same order. (R. 898-899.) The fact that they notified each other of the prices at which sales had been made to Russia (R. 897), then, can hardly be declared to be "price fixing."

Furthermore, there was no evidence that this part of the agreement had any effect on prices of bearings sold to Russia. It could not have done so, because the defendant always had strong competition from other American producers. (R. 898.) Again, whatever interpretation be given the provisions of the agreement, they had no practical importance because the situations for which they were designed never arose.

Of course, as has been stated, these provisions did not purport to, and could not, have any effect of fixing the prices at which sales were to be made by American Timken, British Timken or French Timken generally.

The authorities relied upon by the appellee on the subject of price-fixing have nothing to do with a situation of the type involved here. The *Socony-Vacuum* case, 310 U. S. 150, and the *Trenton Potteries* case, 273 U. S. 392, dealt with combinations one of the basic purposes of which was the control of prices. None of this doctrine applies to this case. It is indeed a strange "price-fixing" agreement (if the 1928 agreement is to be called such) which never mentions prices, much less price-fixing.

Another basic weakness of the charge and the finding with respect to price-fixing is that they ignore the fact that American Timken, British Timken and French Timken did not possess the power effectively to *control* prices, particularly not in the markets where the provisions with respect to prices were applicable. It is urged by the appellee that any agreement with respect to prices, regardless of the ability of the parties to affect the market price of the commodity in question, is per se a violation of the Sherman Act. We submit that this is too broad a statement of the law relating to price-fixing agreements, and that it must be qualified by the proposition that the illegality of price-fixing practices depends on the power of the parties engaged therein to make their purposes effective to that end. *United States vs. Socony-Vacuum Oil Company*, 310 U. S. 150; *United States vs. Masonite Corporation*, 316 U. S. 265; *Board of Trade of the City of Chicago vs. United States*, 264 U. S. 231; *Standard Oil Company (Indiana) vs. United States*, 283 U. S. 163; *Appalachian Coals, Inc. vs. United States*, 288 U. S. 344; and *Ethyl Gasoline Corporation vs. United States*, 309 U. S. 430.

There is no evidence in this case that American Timken, British Timken and French Timken, had such a controlling position in the anti-friction bearing industry of the world that they could thus control prices. Indeed, there was no evidence that the provisions of the agreements with respect to prices or any practices of the parties

affected prices in any way, or that this was even their purpose.

For the above reasons, we submit that the price-fixing claims made cannot be sustained, and that there has been no price-fixing between American Timken, British Timken and French Timken in violation of the Sherman Act.

2. Alleged elimination of outside competition.

The statement that "in some instances they have acted collectively to drive outsiders out of the market" (Appellee's Brief, p. 70) is entirely unsupported by any evidence that any competitor of any of the Timken companies had been driven from the market. The same is true of the statement (Appellee's Brief, p. 71) that the practice of "sales to each other on a 'most favorable basis' has made it thoroughly impossible for independent producers to compete." It is completely unsupported by any evidence that independent producers have become unable to compete as a result of any such practice. On the contrary, the evidence discloses that such companies as SKF were consistently making competition very difficult for the Timken companies by underselling them in the various markets. See, for example, the situation in Canada referred to in the appellee's brief (p. 45, note 58), where American Timken solicited assistance from British Timken in order to meet, not eliminate, SKF competition.

In reality, all the acts complained of as having been done by American Timken, British Timken and French Timken were of a character which would normally be associated with the efforts of any three related companies to obtain business to the necessarily resultant exclusion of their competitors.

It is stated categorically that American Timken has exercised the policy of refusing its special bearing steel to competitors who might harm British Timken, the district court finding that the parties made certain that their

special steel "was not made available for use to their competitors" (Appellee's Brief, p. 71). In fact, the district court's finding to this effect (Mem. par. 104; R. 990) was obviously based solely upon the exchange of letters set forth in its memorandum (par. 105; R. 990), in which Hess merely told Dewar that American Timken would not sell its steel tubing to anyone in the world who might as a result harm any of the three Timken companies. There is no evidence in the record that any such policy was actually followed. On the contrary, it is apparent from the provisions of the 1935 business agreement between American Timken and British Timken (Pltf's. Exh. 20, R. 1346; § 9, R. 1351) that provision was made by which American Timken could grant licenses to manufacture, make and sell its steel and tubes in British Timken's territory, and the evidence is uncontroverted that American Timken sells such tubing to its competitors in this country (R. 72-74).

3. Alleged exclusive exchange of know-how.

While there is some claim that there was exclusive exchange of know-how for the purpose of eliminating the competition of third parties (Appellee's Brief, p. 73), the appellee does not attempt to point to any evidence supporting the statement of the district court (Mem. par. 124, R. 996) cited in its brief on that point. Here, again, there is no evidence that any competition has actually been eliminated by virtue of this alleged practice. The district court's statement in this respect is entirely inconsistent with its further statement that "the know-how furnished by defendant to the other companies was not a secret process for the manufacture of tapered roller bearings," and that other manufacturers "were admitted to the plants of British and French Timken, where they could observe *all the know-how* put into operation" (Mem. par. 168, R. 1007).

How the district court could have found, or the appellee could seriously assert, that exclusive exchange of know-how

has buttressed the alleged combination, in view of this last statement of the court, is impossible to understand.

4. Alleged restrictive use of the trademark "Timken."

We call attention at this point that the provisions of the agreements relating to the use of the trademark are of the type and kind that would be found in the usual trademark license agreement. A full discussion of the various provisions complained of by the appellee appears in Section III, C, *infra*.

5. Alleged participation in agreements between British Timken and French Timken and their competitors.

The appellee states that these agreements, although made abroad, were restrictive upon exports by United States bearing producers and had a direct effect upon the foreign trade of the United States, citing paragraphs 117 and 136 contained in the district court's memorandum (Appellee's Brief, p. 81). No citations to the record in support of these findings are made and, as is pointed out in our main brief (p. 160), the uncontroverted evidence in the record is that none of these agreements could have had the effect of restricting exports from, or imports into, the United States of tapered roller bearings (R. 207, 208).

Obviously, the agreement between British Timken and the SKF subsidiary in England could not have affected United States exports or imports because it related merely to prices and customers and did not fix quotas which might have tended to reduce exports from American Timken to British Timken (R. 141).

While the appellee states that the export trade of American Timken was directly affected because the quantity of the bearings which it could ship into France was limited by the quota provisions in French Timken's agreement with SKF, the uncontroverted evidence is that these quotas were consistently exceeded by French Timken, as detailed in our main brief (p. 160).

These agreements related exclusively to domestic bearing business in England and France. There was no evidence that they were intended to affect the foreign commerce of the United States, and none which affirmatively showed that they had such an effect. Therefore, they were not illegal under the Act, because, to establish illegality, it must be shown that they were intended to have, and actually had, an effect on American foreign commerce. In *United States v. Aluminum Co. of America*, 148 Fed. (2d) 416, the court, discussing such agreements, said (p. 443):

> "Did either the agreement of 1931 or that of 1936 violate § 1 of the Act? The answer does not depend upon whether we shall recognize as a source of liability a liability imposed by another state. On the contrary we are concerned only with whether Congress chose to attach liability to the conduct outside the United States of persons not in allegiance to it. That being so, the only question open is whether Congress intended to impose the liability, and whether our own Constitution permitted it to do so: as a court of the United States, we cannot look beyond our own law. * * * Two situations are possible. *There may be agreements made beyond our borders not intended to affect imports, which do affect them, or which affect exports.* Almost any limitation of the supply of goods in Europe, for example, or in South America, may have repercussions in the United States if there is trade between the two. Yet when one considers the international complications likely to arise from an effort in this country to treat such agreements as unlawful, *it is safe to assume that Congress certainly did not intend the Act to cover them.* * * *"

In that case, the agreements were intended to affect imports into the United States and the question was whether, in fact, they did so. In the case at bar, on the other hand, the agreements were not intended to affect either imports into, or exports from, the United States.

In view of the fact that French Timken, at least, was forced into its agreement with SKF in order to survive (see our main brief, p. 161), the arguments of the appellee and the findings of the District Court that these agreements made by Dewar with the competitors in his area were part of the means used by the alleged combination for the purpose of controlling the industry and eliminating the competition of others are not convincing. Since the agreements came to an end in 1939 and have not been renewed (R. 208), they are of no significance in the case.

II.

THE APPELLEE'S ARGUMENT THAT THE ALLEGED RESTRAINTS CANNOT BE JUSTIFIED AS ANCILLARY TO SOME LAWFUL "MAIN PURPOSE."

A. The appellee's argument that the restraints here imposed were unreasonable per se and therefore cannot be justified as "ancillary."

The appellee argues in substance that in order for a restraint ancillary to a valid main purpose to be legal, it must be reasonable in scope, and that a restraint which is unreasonable per se, such as price fixing or allocation of territories, can never be reasonable, so that the provisions for division of territories and alleged price fixing in the business agreements between the Timken companies could not be reasonably ancillary to the formation and conduct of a joint venture between American Timken and Dewar (Appellee's Brief, pp. 83-86).

This argument is not supported by the authorities. It depends for its support upon combination of the *general* principle as to the doctrine of ancillary restraints stated in *United States v. Addyston Pipe Company*, 85 Fed. 271, with *general* authorities such as *Apex Hosiery Company v. Leader*, 310 U. S. 460, and *United States v. Socony-Vacuum Oil Company*, 310 U. S. 150, which did not involve ancillary restraints.

It is well settled, that a restraint ancillary to a valid main transaction may involve price fixing or allocation of territory, or, in fact, an agreement which absolutely prevents competition, provided that it is reasonably necessary to bringing about the consummation of a legal main transaction.

Restraints resulting from price fixing ancillary to the grant of a patent license by a manufacturer to a potential manufacturing competitor have been held legal in *Bement v. National Harrow Company*, 186 U. S. 70, and *United States v. General Electric Company*, 272 U. S. 476. In the recent cases of *United States v. Line Material Company*, 333 U. S. 287, this Court refused specifically to overrule the doctrine of the *General Electric* case as applied to its facts. Contrary to the assertion of the appellee (Appellee's Brief, p. 84, note 79), statutory patent rights do not constitute the sole justification for price fixing. That price fixing can be justified only on the basis that it is reasonably ancillary to the grant of a patent license, in order to encourage it, by protecting a manufacturing patentee from competition of his own making resulting from granting the license, is clear from the distinction made by this Court in *United States v. Masonite Corporation*, 316 U. S. 265, 277, between valid price fixing in such a situation, and invalid price fixing by a patentee who grants a license merely to vend the patented article. In the latter situation, of course, there is no reason, like that of protection of the manufacturing patentee, which justifies fixing the licensee's price, and, therefore, an attempt to fix the price at which the licensed vendor is to sell is outside the scope of the patent monopoly.

Ancillary restraints resulting from allocation of territory have been held not to be illegal per se, *Fowle v. Park*, 131 U. S. 88; *Thoms v. Sutherland*, 52 F. (2d) 592 (C. C. A. 3, 1931). Thus an agreement by a licensor not to license others in the same territory as his licensee con-

stitutes a valid ancillary division of territory for the protection of the licensee, as this Court stated in *Bement v. National Harrow Company*, 186 U. S. 70, 94. Similarly, a valid ancillary restraint is imposed by an agreement by a manufacturer not to sell within a designated territory in competition with an exclusive distributor or selling agent, who is induced to invest his money in the agency by reason of that agreement. *Cole Motor Car Company v. Hurst*, 228 Fed. 280 (C. C. A. 5, 1915), certiorari denied 247 U. S. 511.

The argument of the appellee runs directly contrary to the decision of this Court in *United States v. Bausch & Lomb Optical Company*, 321 U. S. 707, discussed in our main brief (pp. 72, *et seq.*), because in that case this Court held, by a split decision, that an agreement which prevented any competition whatsoever between Bausch & Lomb and Soft-Lite in the distribution of pink tinted lenses was not illegal under the antitrust laws. The same is true of those traditional restraints imposed by the agreement of the vendor of a business to refrain from engaging therein in the same territory for a period of years, which has always been recognized as legal. An agreement for *no* competition certainly imposes a restraint just as effective as, if not more than, an agreement not to compete on the basis of price or in the same territory.

Again, in such cases as *International Salt Company v. United States*, 332 U. S. 392, and *Fashion Originators' Guild v. Federal Trade Commission*, 312 U. S. 457, this Court has indicated that combinations or agreements, the main purpose or effect of which is to foreclose the market to outsiders, impose restrictions on trade which are unreasonable *per se*. Yet in *United States v. Bausch & Lomb Optical Company*, 321 U. S. 707, *supra*, this Court upheld the exclusive agreement between Bausch & Lomb and Soft-Lite by which the former agreed to manufacture exclusively for the latter, and the latter agreed to purchase exclusively

from the former, pink tinted glass, although this obviously foreclosed Bausch & Lomb as a potential manufacturer for other distributors of pink tinted lenses and Soft-Lite as a potential customer for pink tinted glass made by other manufacturers. In *United States v. Columbia Steel Company*, 334 U. S. 495, this Court referred to this exclusive agreement between Bausch & Lomb and Soft-Lite as a typical example of a valid exclusive dealing contract (p. 523, note 23).

Thus, it is seen that the mere fact that an agreement calls for a restraint which would be illegal *per se* if the imposition thereof were the only purpose of the agreement does not cause the agreement to provide for a restraint which cannot be reasonable, if the restraint is reasonably necessary under the circumstances, and ancillary to the consummation of a valid main agreement.

B. The appellee's contentions that the restraints were in no sense ancillary to a joint venture.

The appellee relies first upon the finding of the district court that there was no joint venture, and calls attention to the fact that the district court found that the 1928 business agreements merely extended the long existing arrangements between alleged potential competitors "who continued such arrangements in order to escape each other's competition" (Appellee's Brief, pp. 86-88). We have dealt in our main brief with the district court's fundamental error in overlooking important evidence in arriving at this conclusion (pp. 146-153). There it is pointed out that the district court based this conclusion upon the mistaken theory that from 1925 until the acquisition of British Timken by American Timken and Dewar in 1927, there was not even a colorable legal basis for the continuation of the 1909 license agreements after the basic British patents on bearings had expired in 1924, contrary to the uncontroverted evidence in the record that American Timken pro-

ceeded at that time in accordance with advice of its American trademark counsel that continuation of the license agreements was amply justified by the license of the trademark by American Timken to British Timken, supported in 1926 by the opinion of eminent British trademark counsel.

Significantly, the appellee has nothing to say about the contemporaneous declarations of the "partners" in 1927, 1929 and 1936.

Opposing counsel argue that the relationship between American Timken and Dewar created by the Heads of Agreement of May 16, 1927, did not meet "the familiar legal criteria of a 'joint venture'" (Appellee's Brief, pp. 89, 90). A complete answer to these contentions is that this Court determined in *United States v. Bausch & Lomb Optical Company*, 321 U. S. 707, *supra*, that an arrangement involving even less of the characteristics of a technical legal joint adventure, creating reciprocal legal rights, than that involved in the case at bar, nevertheless constituted a sufficient justification for the imposition of those restraints which can be validly imposed in connection with the organization of a partnership, *by analogy to the principles applicable to partnerships.* Similarly, in *United States v. Scophony Corporation of America*, 333 U. S. 795, this Court did not find it necessary to determine that all of the legal incidents necessary to the creation of a true legal joint adventure were present in order to apply *by analogy* the principles applicable to a legal joint adventure to "what practically, *if not also technically*, was a joint adventure * * *."

The efforts of opposing counsel to distinguish the *Bausch & Lomb* case are singularly unimpressive. While they emphasize in other parts of their brief the fact that British Timken and French Timken were *potential* competitors of American Timken, they seek to distinguish that case on the basis that Bausch & Lomb (which, of course, could have marketed the pink tinted glass which it pro-

duced at any time in competition with Soft-Lite) was not an actual competitor of Soft-Lite (Appellee's Brief, p. 93).

They also develop, without authority, the theory that "one way" restrictions may be valid ancillary restraints, whereas "mutual" restrictions cannot be (Appellee's Brief, pp. 93, 94). What difference could it possibly make, in determining whether restraints are ancillary to a valid main transaction, whether they are imposed on one of the parties thereto or both?

C. The appellee's contentions that the alleged restrictions cannot be justified as ancillary to the licensing of the name "Timken."

There are many omissions from that part of the appellee's brief devoted to a discussion of the trademark licensing, which are more persuasive than the material therein contained. It is, we submit, of the highest significance that there was no discussion of the provisions of the Lanham Act, dealing with that subject; of the international conventions to which this country is a party, in which the subject of trademark licensing is clearly referred to; nor of the decisions cited in our main brief on the points that registration of the trademark may be properly carried in the name of a licensee and that a trademark may be introduced into a territory wherein it has not theretofore been used by the licensor through the medium of a trademark license. These matters are fully argued and discussed in our main brief (pp. 99-138)

There was discussion on the subject of ownership of the mark and the claim is asserted again that American Timken was not the owner of the mark in various areas of the world. This point was discussed at some length in our main brief (pp. 101-120) and it is not necessary to elaborate on it further in this reply brief beyond commenting upon some of the completely unsound statements made in the appellee's brief.

On page 59, the statement is made that:

"Appellant admits that it has no common law rights arising from the use of the mark 'Timken' in areas of the world allotted to British Timken and French Timken."

There is no reference to the source of such alleged admission for the obvious reason that none was ever made. The common law as such had no application on the continent of Europe or in most sections of the world outside of England and the English colonies, protectorates and the United States. It would not have made sense to have admitted the lack of any common law rights in countries where none could have existed because there was no common law.

On page 77, note 76, the appellee refers to the fact that after the passage of the Trademark Act of 1946, American Timken registered the mark "Timken" and is now in a position to utilize the provisions of the statute banning through the facilities of the customs authorities importation of bearings with the mark "Timken" on them. This is a clear statutory right of American Timken and we are at a loss to know why any special significance is attached to its use. Reference was also made on page 77 of the brief to the recording of the registration of the mark with the Bureau of Customs in 1921 preceding any connection with Dewar by six years. Why it is important in respect of the association with Dewar and the licensing of British Timken to use the mark "Timken" is left to imagination.

On pages 104 and 105, statements are made to the effect that ownership rights in a trademark arise only from use of the mark in connection with the sale of products. This is clearly an incorrect statement, for in many countries of the world, use has nothing to do with ownership. The first person to register the mark becomes the owner of it. Derenberg, *Trademark Protection and Unfair Competition*, pp. 16 and 17; Ladas, *The International Protection of Industrial Property*, pp. 489, *et seq.*

It is difficult to understand the statement on page 111 that:

> "Appellant has no legal rights to the mark in England but only a contractual right against British Timken to come to fruition in 1965 when (and if) the current agreements terminate and not renewed."

It would seem that an inquiry is appropriate as to whether contractual rights are not legal rights and whether legal rights cannot be based upon a contract.

On page 113, the appellee states that American Timken had "complete control over the development and use of the name 'Timken' at the time when its international use began in 1909."

This is obviously incorrect for, as pointed out in our main brief, American Timken could not register the mark in foreign countries until it was able to obtain registration in the United States. It was not in a position to do so until the amendment to the Trademark Act in 1920.

In asserting the claim that American Timken was not the owner of the trademark in various areas of the world, the appellee has not been able to point to any finding by the district court declaring that American Timken did not own the mark in any specific country. Nor is any attempt made to explain the challenge of ownership which is in direct conflict with the allegations of the amended complaint.

On pages 109 and 110 of the appellee's brief, there is a table inserted which purports to show the status of registrations in various countries of the world and from this table the argument is made that there were some forty countries in which no registration had been obtained at the time of trial. An examination of this list of countries shows a curious hodge podge of countries that are entirely insignificant from a manufacturing standpoint. Some of them are in the territory of American Timken and therefore not covered by any license by American Timken to British Tim-

ken or French Timken; others are colonies and protectorates of European countries where presentation of a registration from the mother country is necessary to obtain a registration therein; others have no trademark registration laws; none of them are of any manufacturing importance. It is obvious that any bearings imported into these areas would be, either in equipment produced in manufacturing areas of the world, or for replacement parts in such equipment. As a practical matter, registration in such areas is unimportant for the reason that registrations in the manufacturing areas of the world afford complete protection in these non-manufacturing sections.

An examination of this table on pages 109 and 110 of the appellee's brief shows beyond any question that as of the time the license was given by American Timken to British Timken and French Timken in 1928, there were registrations of ownership of the trademark in all the important manufacturing areas of the world and any attempt to attack the license at this time on the basis of lack of ownership is without foundation.

Finally, on page 67 of the brief, the government states that:

> "The division or allocation of *exclusive* territories is the crux of this case."

It should be pointed out again that at no time since 1928 has the use of the trademark by British Timken and French Timken in the areas in which they have been manufacturing been exclusive. On the contrary, the record shows clearly, and indeed the contracts have always so provided, that American Timken could and did make use of the trademark in such areas on its bearings manufactured and sold to producers of equipment in the United States and elsewhere (Pltf's. Exh. 179, R. 1693; offered, R. 952; R. 1701; Deft's. Exh. 99, R. 2005; offered, R. 594; R. 2005). If the alleged exclusive featute of the license is the determinative factor and the charge of exclusiveness is unsound,

then the entire argument of the appellee in respect of the alleged unlawful character of the agreements involved in this case must fail.

On page 113 of its brief, the appellee described as "hokus pokus" the registration of American Timken as registered user of the trademark in England. In point of fact, it was a step taken in full compliance with British law only to cover the use of the mark in England by American Timken as contemplated by the 1938 contract. As has been shown, the bearings of American Timken were going into the English market as a part of American made equipment, and as replacement parts for use in such equipment. No proof has been afforded, as indeed none could be, that such action had any effect on the ownership of the trademark by American Timken, as such ownership was recognized and acknowledged in all the earlier agreements with Dewar and British Timken and French Timken.

The brief of the appellee warrants specific answer with respect to three other matters. First is the claim that the licensed use of a trademark is "monopolistic" and that it is not such a transaction as should be encouraged. Second, is its claim that the requirement of the 1928 business agreement and succeeding agreements that British Timken and French Timken use only the mark "Timken" on tapered roller bearings is unlawful. Third, is the claim that the reversionary clause in the 1938 agreement requiring that the mark revert to American Timken after use thereof by British and French Timken is unlawful.

1. The licensed use of a trademark is competitive and is not monopolistic.

The basis of the appellee's opposition to the trademark license in this case is perhaps unwittingly shown on page 98 of its brief wherein this language appears:

> "The ancillary restraint doctrine is based upon the rationale that the primary transaction is not only lawful but should be encouraged in the public interest.

Trademark licensing is not such a primary transaction."

From this language it is perfectly apparent that the appellee in this case has an inherent dislike of controlled trademark licensing as an instrument of commerce and that this is the true basis of the views that are expressed in the brief filed in this case on its behalf. When consideration is given to this statement, it is understandable that no reference is made in the appellee's brief to the provisions of the Lanham Act relating to controlled licensing of trademarks, to the provisions of the international conventions, or indeed to the many cases decided in this country involving the normal practices incident to trademark licensing, including the decisions of this Court on the same subject.

The fact is that a trademark license is a competitive instrument and not a monopolistic one. It is said at another point of the appellee's brief (p. 98) that a trademark owner is not entitled to any ancillary provision to protect "such a territorial product monopoly." Viewed in its proper light, a trademark is not a territorial product monopoly. On the contrary, it is a territorial monopoly in good will for the obvious reason that no third party is precluded by ownership of a trademark or by its controlled licensing from making a competing article.

The function of the trademark is to provide ready identification of goods and to associate them with the good will that has been developed in their production by the owner of the trademark. It is easy to understand why any man who has goods to sell should not hesitate to adopt a trademark and begin its use, because by so doing he is adopting a means of perpetuating the good will of his business. The use of a trademark and the process of developing good will in it, whether by user of the owner or by a controlled license, are not the result of, and do not result in, monopoly. On the contrary, they are the result of the existence of competitive forces which make it desirable for

the owner of a trademark to develop good will as a means of distinguishing his product or the product of his licensee from that of his competitors. In this case, if all the antifriction bearings in the world were manufactured by American Timken, there would be no need for it to consider the adoption of a trademark, for there would be no antifriction bearings in the market from which it would be necessary or desirable to have its goods distinguished.

The very fact that a trademark has been developed indicates very plainly that there is competition in the sale of the product covered by the mark and, further, that the owner of the mark is desirous of having his goods distinguished from those of his competitors in the same field. The trademark is a convenient way of accomplishing just that, but this does not mean that there is any monopoly in the production of goods of the type covered by the trademark, for any third party is free to manufacture and sell such goods as long as in so doing he does not appropriate any good will developed by the owner of the trademark.

The Congress of the United States at the time of the enactment of the Lanham Act recognized that trademarks were instruments of competition and did not develop monopoly. In Senate Report No. 1333, 79th Congress, 2nd Session, submitted May 14, 1946,[3] under the heading "Trademarks Defeat Monopoly by Stimulating Competition" the following appears:

> "This bill, as any other proper legislation on trademarks, has as its object the protection of trademarks, securing to the owner of the good will of his business and protecting the public against spurious and falsely marked goods. The matter has been approached with the view of protecting trademarks and making infringement and piracy unprofitable. This can be done without any misgivings and without the fear of fostering hateful monopolies, *for no monopoly is involved in trademark protection.*"

[3] Robert, *The New Trademark Manual*, p. 267.

Later on under the same heading, this appears:

"Trademarks are, indeed, the essence of competition, because they make possible the choice between competing articles by enabling the buyer to distinguish one from the other. Trademarks encourage the maintenance of quality by securing to the producer the benefit of the good reputation which excellence creates. To protect trademarks, therefore, is to protect the public from deceit, to foster fair competition, and to secure to the business community the advantages of reputation and good will by preventing their diversion from those who have created them to those who have not. This is the end to which this bill is directed."

Repeatedly in the appellee's brief, reference is made to the older conceptions of a trademark and its uses. In the report it is clearly shown that one of the purposes of the Congress was to modernize trade-mark law in the United States for it is there stated:

"Moreover, ideas concerning trade-mark protection have changed in the last 40 years and the statutes have not kept pace with the commercial development. In addition the United States has become a party to a number of international conventions dealing with trade-marks * * *. These conventions have been ratified, but it is a question whether they are self-executing, and whether they do not need to be implemented by appropriate legislation.

Industrialists in this country have been seriously handicapped in securing protection in foreign countries due to our failure to carry out, by statute, our international obligations. There has been no serious attempt fully to secure to nationals of countries signatory to the conventions their trademark rights in this country * * *"

Then the purposes of the bill are enumerated, among which are

"2. To carry out by statute our international commitments to the end that American traders in foreign countries may secure the protection to their marks to which they are entitled * * *

3. To modernize the trade-mark statutes so that they will conform to legitimate present-day business practice."

There is no provision contained in the trademark license involved in this case which is not supported by statute and the decided cases, or which undertakes to engraft upon the license any rights to which the owner of a trade-mark is not entitled. Thus, it is clear that the entire argument of the appellee on the subject of trade-mark licensing, being predicated upon an unsound premise, must fall.

2. There is no unlawful restraint involved in requiring British Timken and French Timken to manufacture under the mark "Timken."

The basis of this claim by the appellee is that the inclusion of such a provision in the trade-mark license agreement between American Timken as licensor, and British Timken and French Timken as licensee, has the effect of foreclosing American Timken's competitors from sales of anti-friction bearings to British Timken and French Timken. The argument is that since the latter companies can deal only in bearings marked "Timken," they could not buy bearings fro[illegible] the Bower Company, New Departure, (other American manufacturers) or any other anti-friction bearing manufacturer in the United States. A fair test of whether or not such a provision is unreasonable or unlawful is: would American Timken, if it were manufacturing abroad and using its mark there as a manufacturer, be interested in purchasing bearings from another American manufacturer carrying a different mark? The answer, of course, is unqualifiedly "No," for the obvious reason that American Timken would not be interested in "pushing" the products of a competing manufacturer. There is as a consequence no sound reason why American Timken's *alter egos*, its licensees British Timken and French Timken, would proceed on a different basis.

The court will bear in mind that as licensees, these companies are *bearing manufacturers*; that the trade-mark that they are using is a manufacturer's trade-mark. Certainly there is no real "restraint" involved in a provision that requires the licensee to use that mark exclusively, for the obvious reason that as a manufacturer it would not consider using any other mark. Surely British Timken or French Timken as a manufacturer would not be interested in buying from New Departure, any more than General Motors would be interested in explaining to its representatives in the United States and over the world that it was in a position to supply them with Ford automobiles. Would the manufacturer of Camel cigarettes in the United States ever consider advising its distributors that it had arranged to supply them with Chesterfields? Yet, this is the kind of "competition" the restraint of which the government urges is unlawful if included in a trade-mark license agreement.

There is a further and equally sound reason why such a provision in the license agreement is normal, and that is that, if a licensee is permitted to manufacture and sell the same articles as those covered by the trade-mark license under different trade-marks, the effect would be that the value of the mark would be seriously impaired. Customers of such a licensee would immediately feel that the product sold under the licensor's mark was not worth what the licensor claimed, since the licensee was manufacturing a similar product under another mark. This, of course, is in no wise comparable to the situation involved in connection with a patent license. The owner of a patent has a true monopoly and is in a position to prevent anybody from manufacturing the article covered by the patent. There is nothing in either the ownership or the controlled licensing of a trade-mark that prevents a third party from manufacturing a competing product.

Such a provision in a trade-mark license is one that is calculated to require the licensee to "push" the sale of the

product under the trade-mark and thus maintain the value of the mark for the owner. To the extent that a licensee would manufacture a competing product he would dilute the value of the mark. Such exclusive provisions have been recognized as sound in the only cases on this point. Thus, in *The Coca Cola Bottling Company v. Coca Cola Company,* 269 Fed. 796 (D. C. Del. 1920), the license agreement provided that the licensee would "not manufacture, deal in, sell, offer for sale, use or handle or attempt to do so, either directly or indirectly, any product that is a substitute for Coca Cola" (p. 802) and the court held that this provision, as well as others, was "ancillary and incidental" to the licensing of the trademark (p. 808). The same doctrine was upheld in *Brosious v. Pepsi-Cola Company,* 155 Fed. (2d) 999 (CCA 3, 1946), in which, in an action for treble damages under the anti-trust laws, the court definitely implied (p. 101) that a provision that the licensee would not handle any other product with the name "Cola" or any beverage which could be confused with "Pepsi-Cola" was a reasonable condition "calculated to protect the good reputation of its product which is sold under a trade-marked name." See also, *Associated Perfumers, Inc. v. Andelman,* 316 Mass. 176, 55 N. E. (2d) 209 (1940), and *Harris Calorific Company v. Marra,* 345 Pa. 464, 29 Atl. (2d) 64 (1942).

Finally, to avoid deception it is necessary that the licensor in a controlled trademark license supply technical information to his licensee to insure the quality of his licensee's product. Would it be fair for the licensee to use such information to manufacture a different product, or conversely is it unreasonable for the licensor to insist that the information which he gives to the licensee be used for the purpose for which it was intended, namely, to develop goodwill in the trademark covered by the license?

We submit that these considerations show clearly the unsoundness of the appellee's views.

3. The reversionary clause in respect of the trademark in the 1938 agreement which provided for the return by British and French Timken of the mark to American Timken is not unlawful.

One of the features of the 1938 agreement to which the appellee takes exception is the reversionary clause which provides that at the end of the license term, the mark will revert to American Timken. While this claim was advanced in the district court, an examination of the memorandum opinion fails to disclose any reference to it by that court. In point of fact, there is no sound basis for the contention that a licensor should not provide in a license agreement for the return of the subject of the license. If it were not lawful to include such a provision in an agreement licensing a trademark, no trademark owner could ever afford to execute a license of the mark. The penalty for so doing under the appellee's theory would be complete loss of the trademark to the licensee. The appellee cites no authority to support this contention. Among the cases cited in our brief in chief is the case of *E. F. Pritchard Co. vs. Consumers Brewing Company*, 136 Fed. (2nd) 512. On page 519 of its opinion that court said, among other things, that:

> "An owner of a trade name who lends the use of such trade name may resume its exclusive use according to the terms of the lending."

The same conclusion is implicit in the *Scandinavia Belting Company*, *F. R. Arnold & Company*, and *The Dental Products Company* cases, cited on pages 110-111 of our main brief.

We submit that the provision that contemplates a reversion of a trademark to American Timken is a normal, sensible and necessary requirement in a trademark license and that it is in no sense unlawful to include such a provision in a license agreement.

III.

THE APPELLEE'S CONTENTION THAT THE FINDINGS OF FACT UPON WHICH THE DISTRICT COURT BASED ITS JUDGMENT ARE CORRECT AND ARE CLEARLY SUPPORTED BY THE EVIDENCE.

While the appellee relies upon *United States v. Yellow Cab Company*, 338 U. S. 338, as authority that this Court should not review the action of the district court in determining, on the evidence, the intent of the alleged parties to the combination, we call attention to the fact that in *United States v. U. S. Gypsum Company*, 333 U. S. 364, *supra*, the very first finding of the district court held clearly erroneous by this Court was one that the evidence "fails to establish that the defendants associated themselves in a *plan* to blanket the industry under patent licenses and stabilize prices" (p. 393). This Court emphasized the fact that insofar as the district court's findings are "inferences drawn from documents or undisputed facts, * * * Rule 52(a) of the Rules of Civil Procedure is applicable" (p. 394). As pointed out in our main brief (p. 9), the appellee's evidence was almost entirely documentary and therefore the district court necessarily based its decision against American Timken upon inferences from documentary evidence and undisputed facts rather than upon the testimony of witnesses.

A. The appellee's contention that American Timken combined and conspired with potential competitors.

The appellee first argues that American Timken recognized that E. & O. A. was a potential competitor because the 1909 license agreement limited E. & O. A. to its territory (Appellee's Brief, pp. 117, 118). Such reciprocal provision is, of course, an ordinary incident of a patent license and has no particular significance in determining whether or not a licensor deems the licensee to be an *actual* potential competitor. It is difficult to see how E. & O. A. could have been recognized as an actual or potential competitor in 1909

since that company had never produced any anti-friction bearings before that date and as far as the record shows had never indicated any interest in so doing. The fact is that the evidence discussed in our main brief (pp. 33-36) shows that E. & O. A. did not do at all well in the manufacture of tapered roller bearings and at no time was a potential or actual competitor of American Timken.

The appellee next argues that British Timken, from its inception in 1920, experienced a rapid and substantial growth relatively greater than that of American Timken (Appellee's Brief, p. 118, note 101). This is the same discussion which confused the district court when it found that British Timken's growth had been relatively faster than American Timken's, discussed in our main brief (p. 142), which shows that it is based upon an inaccurate comparison of sales of the two companies, British Timken's sales being carefully selected by the appellee from favorable years, which produced the inaccurate conclusion. The statement that British Timken had produced as many as 660,000 bearings a year is particularly unimpressive, in view of the facts that as late as 1920, 11 years after E. & O. A. had undertaken the manufacture of the bearings in 1909, American Timken apparently found it necessary to insist upon an amendment of the 1909 license agreement, covering the United Kingdom, which gave it a right to rescind in the event that Wolseley Motors did not produce a minimum of at least 400,000 bearings in 1920, and 500,000 in every subsequent year (Deft's. Exh. 192, R. 2343; Section 6, R. 2345), and the 660,000 figure was not achieved until the year commencing October 1, 1925 and ending September 30, 1926 (R. 1830). Moreover, while the appellee dilates on the fact that British Timken paid $62,556 royalty in 1923 (Appellee's Brief, p. 118), it fails to call attention to the fact that the royalties dropped to $31,075 in the next year and were only $45,604 in 1926 (Deft's. Exh. 230, R. 2545), after the 1924 reduction from 10% to 5%.

It is said that British Timken's only competitor in England in 1928 was British Bock, Limited (Appellee's Brief, p. 119) in the face of the contemporaneous documentary evidence clearly establishing that as early as 1923 British Timken was sustaining damaging competition from Skefko, the British SKF subsidiary, in the manufacture of tapered roller bearings, which caused it to ask repeatedly for reductions in royalties (see our main brief, pp. 38-40, 42).

Finally, we have the amazing statement that the facts "fully support the conclusions of the district court that *at the time of the formation* of French Timken by appellant and Dewar, the French company was the largest dealer in tapered roller bearings in France * * * and a potential competitor of appellant" (Appellee's Brief, p. 120).

This is another example of the strenuous attempt to build a case, at least on paper, showing a combination between the giants of a mythical roller bearing industry—as early as the organization of one of them—which pervades this entire case.

Moreover, this argument overlooks completely the fact that SMG, the independent former sublicensee of British Timken when it was Vickers' subsidiary, which was sold to SKF in 1930 (see our main brief, p. 143) was equipped to manufacture tapered roller bearings and undoubtedly continued to do so.

B. The appellee's contentions as to findings as to competition between tapered roller bearings and anti-friction bearings.

The appellee contends that it was not necessary for the district court to ascertain with particularity the extent of the elementary competition or freedom from competition between tapered roller bearings and other anti-friction bearings (Appellee's Brief, p. 122), again ignoring in its discussion the undisputed fact that they compete 90% of the

time. On the contrary, it was very necessary, of course, to determine the extent of competition in view of the great importance placed by the district court upon the alleged "dominant" positions of the three Timken companies in the alleged bearing, anti-friction bearing, roller bearing and tapered roller bearing industries to which it referred (see our main brief, p. 12, note 4).

It is said that, in any event, whether or not the Timken companies dominated the alleged tapered roller bearing market has no significance because this is not a monopoly case (Appellee's Brief, p. 123). Yet clearly the district court's findings in this respect are significant in that, if it had not been mistaken as to the position of the companies in the industry in which they compete, it would not have adopted such harsh provisions in its judgment, particularly those which prevent the exclusive exchange of patents, know-how, machinery and materials.

C. The appellee's contentions with respect to the treatment of the three Timken companies as separately operated units, the district court's refusal to consider the evidence as to a joint venture, and its findings that the relationship between the parties was merely a continuation of an illegal combination dating from 1909.

1. The argument that American Timken was merely a stockholder in British Timken and French Timken.

The appellee first undertakes to support the district court's finding that there was no joint venture, merely ownership of stock by American Timken in British Timken and French Timken,—the familiar argument urged unsuccessfully by the defendant in *United States v. Scophony Corporation*, 333 U. S. 795, a decision which opposing counsel have not dignified by mentioning. The appellee seeks to support the district court's finding that in any event any joint venture was ended in 1934. This matter was dis-

cussed in our main brief (p. 82, note 26), in which the utter lack of any basis for this conclusion is shown.

2. The claim that, in fact, the acquisition of American Timken and Dewar constituted merely the continuance of an existing combination between American Timken and British Timken, Vickers' subsidiary.

Opposing counsel argue that the district court considered, and that we conceded in argument that it had considered, all of the evidence as to the complex financial relationships between American Timken and Dewar (Appellee's Brief, p. 126). The district court's memorandum clearly disclosed that, whether or not it was aware of the evidence as to these matters, it disregarded them on the mistaken theory that, even if the facts would otherwise have constituted a valid joint venture, this made no difference because there was an *intentional* combination in restraint of trade, and, therefore, what otherwise might have been a joint venture, could not constitute a "cloak" for it. (See our main brief, pp. 146-153.)

The appellee then argues that in 1924 American Timken "began to cast about" for devices other than the basic bearing patents to support the territorial allocations between it and British Timken, and hit upon the alleged device of the license of the trademark "Timken" (Appellee's Brief, p. 128), that Dewar's underlying motive for making the 1928 business agreement was his desire to escape American Timken's competition and continue the alleged combination in restraint of trade (Appellee's Brief, p. 127), and that American Timken was well aware that he was acting in order to escape this competition, and that one of the purposes of the agreements was to satisfy Dewar in his desire not to have its competition in the areas allocated to British Timken (Appellee's Brief, pp. 127, 128).

We pointed out in our main brief in detail (pp. 148, 153) that, although the district court specifically considered

the statement of American Timken's British solicitor, Duncan, in 1927 in a letter to American Timken as an avowal by the latter of a purpose to suppress competition, nevertheless it completely disregarded the legal advice actually given by American Timken's trademark counsel to it in 1924 to the effect that the license of its trademark to British Timken constituted a legal basis for the continuation of the license agreement and payment of royalty thereon, as well as the opinion by eminent British trademark counsel in 1926, which reenforced this opinion. Since the district court cited one specific piece of evidence in support of its conclusion, it is to be assumed that it cited all of the evidence which it considered on this point. Otherwise, the court would have weighed the evidence and stated its reasons for rejecting the evidence reflected by the opinions given to American Timken by its Amrican and English trademark counsel.

Furthermore, acquisition of British Timken by American Timken jointly with Dewar represents a complete departure from the previous practices. The system of merely licensing the Vickers subsidiaries had failed as a method of promoting tapered roller bearings in competition with other anti-friction bearings in Europe, and American Timken now was starting on an entirely new program for that purpose.

No inference of an intention to suppress competition illegally is to be drawn from the fact that Dewar apparently desired to avoid competition from American Timken in investing his life savings in this enterprise. Dewar undoubtedly assumed, when he suggested an extension of the license agreements, that the provisions thereof were legal, and they were so, because, as its American trademark counsel had advised American Timken in 1924 (Pltf's. Exh. 173, R. 1683; offered, R. 949, 950) and as Kerley and Bray, the British trade-mark counsel, had advised it in 1926 (Deft's. Exh. 99, R. 2005; offered,

R. 594), the licensee had the right to use the name "Timken" which constituted one legal basis for the license agreements thereafter. If, incidental to the licensing of the trade-mark, it was legal to protect the licensee from competition by the licensor, and if it was also legal to extend this protection in connection with the joint adventure, as we contend, then the fact that Dewar sought to obtain the protection to which he was legally entitled, does not lead to any inference that either he or American Timken intended to eliminate competition otherwise than as legally ancillary to the main transaction.

Thus, the parties did not consciously contemplate the extension of alleged illegal agreements in 1927, but merely the implementation of those which they considered to be legal, upon advice of counsel, and they only intended thereby to restrain competition to the extent to which they were legally entitled for their protection.

D. The appellee's contention as to the findings that the Timken companies had combined and conspired to suppress competition of outsiders by acting collectively against outsiders or joining with them.

The appellee apparently misconceives the purport of the statement in our brief (p. 153) as to referral of orders (Appellee's Brief, p. 129). We did not intend to give the impression that there was only one incident in which orders were referred to the other Timken companies by American Timken, and do not think that this conclusion is to be drawn from our statement, which specifically cited the district court's statement on this point (see our main brief, p. 153, which cited the district court's memorandum, par. 71, R. 973). The incident with respect to the order from Ford in 1929 for its Cork, Ireland, plant was not one of the typical referrals, but instead an incident in which American Timken is supposed to have sold bearings to British Timken at a low price for the purpose of carrying out their cooperative enterprise.

With respect to the agreements of British Timken and French Timken with competitors in their areas, the appellee merely asserts that the district court found that American Timken, while not actually a party to these arrangements, had cooperated and consulted with the other Timken companies in bringing them about and had approved these agreements before they were executed (Appellee's Brief, p. 131). The evidence referred to does not support these conclusions, but merely demonstrates that Hess of American Timken knew about the agreements between British Timken and SKF governing the United Kingdom, although he never participated in making them, and that after an agreement had been made between French Timken and SKF covering France in 1930, the renewal thereof in 1932 was submitted to officials of American Timken, and they did not interfere with Dewar's decision to renew it. (See our main brief, pp. 159-161.)

E. The appellee's contentions as to evidence of price-fixing.

These contentions are discussed and answered under Section I, B, 1, *supra*.

F. The appellee's contentions that the district court properly adopted its memorandum opinion as its findings of fact and conclusions of law.

Perhaps the only answer necessary to this portion of the appellee's brief (pp. 133-135) is that the appellee recognizes in note 1, page 5 thereof, that much of the opinion of the district court consists of matter which cannot be properly regarded as either findings of fact or conclusions of law. The appellee has found it desirable to designate certain portions as findings, others as conclusions, and others merely as portions of the opinion. This indicates the nature of the memorandum and shows that it does not perform the proper function of findings of fact and conclusions of law which would justify the district court in adopting it as such.

IV.

THE APPELLEE'S CONTENTIONS AS TO THE RELIEF ORDERED BY THE DISTRICT COURT.

A. The appellee's contentions as to divestiture.

Much of the appellee's argument regarding divestiture is based upon the assumption that British Timken and French Timken "were and are" American Timken's "potential competitors." We have shown in our main brief, pages 138-144, how completely erroneous this assumption is. With respect to French Timken, which was established largely with American Timken's funds, it approaches the absurd. Since this erroneous assumption is its basis, the whole argument is seriously undermined.

But even if British Timken and French Timken are regarded as "potential competitors" of American Timken (although surely their "potentiality" in 1927 was, and even now is, very small), still we are faced with the tests of the *Columbia Steel* case as to the legality of the acquisition of a competitor. At pages 193 to 195 of our principal brief, we have shown that by the tests, the acquisitions were not illegal.

The appellee relies mainly on three cases to sustain the divestiture provisions of the final judgment, *United States v. Paramount Pictures, Inc.*, 334 U. S. 131; *United States vs. Crescent Amusement Co.*, 323 U. S. 173, and *United States vs. National Lead Co.*, 332 U. S. 319. We have already analyzed each of these cases in our principal brief, and submit that, as applied to the case at bar, they do not support the type of decree for which the appellee contends.

In the *Crescent Amusement* case, 323 U. S. 173, as this Court said (page 181):

> "The crux of the government's case was the use of the buying power of the combination for the purpose of eliminating competition with the exhibitors on acquiring a monopoly in the areas in question."

Competitors unable to obtain films, therefore, would "go out of business or come to terms and sell out to the combination with an agreement not to compete for a term of years." It is clear from this Court's opinion (pages 189-190), that it was this abuse of the monopoly power, and the fact that the holdings to be divested were so acquired, which justified the divestiture order.

The *Paramount Pictures* case, 334 U. S. 131, approved, first, the divestiture of interests in theaters acquired as "the products of the unlawful practices" (p. 152). This is apparently the same situation as in the *Crescent Amusement* case, that is, that competitors were forced out of business and their theaters acquired by the defendants. Certainly, no similar claim is made with respect to American Timken's purchase of its interest in British Timken and the establishment of French Timken. The second classification was that of interests which, "though lawfully acquired, may have been utilized as part of the conspiracy to eliminate and suppress competition"—that is, they were thrown into the pooling agreements and clearance systems by which the five major exhibitor-defendants avoided competition among themselves and with others. As we have pointed out in our principal brief (pages 190-191), the argument that American Timken utilized its interests in British Timken and French Timken to promote the conspiracy, is wholly at odds with the district court's findings as to their independence of American Timken. The portion of the argument in the district court to which appellee refers in its brief, at page 140, note 7, shows that the dilemma in which the district court found itself bothered it and the appellee, and that the latter therefore was forced to fall back on a completely different and entirely new and novel ground to sustain the divestiture provisions—namely, that continued ownership of these interests would afford an inducement for American Timken not to compete with British and French Timken.

There is no support for this theory in the *Paramount Pictures* case, which speaks, third, of the divestiture of interests which "would afford opportunity to perpetuate the effects of the restraints on trade." This is tied in with the second classification, ~~mainly~~ namely of interests utilized as part of the conspiracy, so that it depends upon *control* of the foreign companies, which the district court here found to be lacking.

In the *National Lead* case, 332 U. S. 319, the stockholdings ordered divested were not interests in foreign corporations which were found to be co-conspirators, but were interests in companies which were jointly owned by National Lead *and such co-conspirators,* and which had been assigned exclusive territories under the plan for dividing the world markets in titanium pigments. In this way, the stock acquisitions were "part and parcel of the territorial allocation agreements." We would have a comparable situation in this case if Dewar, as a producer of anti-friction bearings on his own account, and American Timken had been adjudged the co-conspirators. Dewar had no personal interest in the production of anti-friction bearings prior to 1927 when he joined American Timken in this enterprise. But, even in the *National Lead* case, the National Lead Company *was* permitted to acquire the interests of the other co-conspirators, apparently because such acquisition would not have the effect of giving National Lead unlawful monopoly power in the industry on an international scale. This is exactly what American Timken contends with regard to the divestiture provisions in the case at bar.

The error in the district court's judgment in respect to divestiture and to the prohibition of further acquisitions of British and French Timken stock is made even more apparent, and its injustice all the more pronounced, by reason of the situation which arose upon the death of Dewar on December 21, 1950, while this case was pending on appeal

in this Court. Upon Dewar's death, pursuant to an agreement between him and American Timken, dated March 22, 1948 (Pltf's. Decree Exh. 3, R. 2680; offered, R. 1142), which succeeded several previous agreements containing substantially the same provisions, American Timken became entitled to purchase his stock in British Timken, consisting of 94,960 ordinary shares. These, added to its own 121,040 shares (Deft's. Exh. 186, R. 2298; offered, R. 911), would constitute 54 per cent of the 400,000 total ordinary shares in British Timken issued and outstanding. Under an agreement between them and others, dated December 10, 1935 (Deft's. Exh. 228, R. 2483; offered, R. 942, R. 2534), American Timken was given the right upon Dewar's death to acquire such shares in French Timken as would give it voting control of that company, and if the remaining shares were to be offered for sale to purchase such shares as well.

American Timken has already taken steps to acquire the British Timken shares, and the French Timken shares giving it 100% ownership of that company.[4]

If and when this transaction has been completed, the culmination of the joint adventure with Dewar will have been achieved, and the same result accomplished as if American Timken, in 1927, instead of joining with Dewar for that purpose, had alone acquired all of the shares of British Timken (later selling some of the shares to the public generally) and had controlled it directly since

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[4] As we pointed out in our main brief (p. 2, note 1), the district court has recently overruled our motion in that court which was designed to introduce into the record in this case the facts with respect to Dewar's death and American Timken's exercise of the options, made effective thereby, to acquire Dewar's stock in British Timken and French Timken. We have filed a motion in this Court asking that the motion in the district court and the district court's order overruling it be incorporated in the record upon appeal in this Court. The following argument is based on the assumption that American Timken will succeed in acquiring Dewar's stock in British Timken and French Timken, and that this Court will consider upon this appeal these facts as to Dewar's death and the exercise of the options.

that time, and had acted alone in establishing French Timken. We do not believe that such acquisitions by American Timken in 1927, or even in 1951, would be considered as violations of the Sherman Act under the principles laid down in *United States vs. Columbia Steel Company,* 334 U. S. 495, and *United States vs. Aluminum Company of America,* 148 F. (2) 416, discussed at greater length in our principal brief at pages 96 and 192-194. The appellee has never urged the contrary, and does not now.

The district court, of course, denied that this case raised any problems such as those presented in the *Columbia Steel* and *Aluminum Company* cases (Mem. par. 144, R. 1001), because it refused to consider that for this purpose the three Timken companies were to be treated as related in the roles of parent and subsidiary, saying:

> "Defendant did not acquire British and French Timken." (Mem. par. 144, R. 1002);

and that American Timken:

> "did not build plants in Europe or purchase subsidiaries abroad" (Mem. par. 160, R. 1005).

To the contrary, American Timken obviously *did* acquire substantial interests in those companies—not 100% ownership at the outset, it is true, but 50% or more in each; and now that Dewar is dead, it will, unless forbidden by the judgment in this case, acquire 100% ownership of French Timken and 54% ownership in British Timken. Thus, the proposition which the appellee must really urge is that although 100% ownership from the beginning would not have violated the law, ownership of less than that percentage, along with the other facts, does spell out a violation, even though it may be expected to culminate in 100% ownership in due course. We submit that such a view exalts the *form* which the transaction has taken over the *substance* of what it was intended to and did accomplish, namely, the extension of American Timken's business into European markets. But surely the application of the Sherman Act cannot be

made so to depend upon form rather than substance! Certainly the Congress never intended that Sherman Act cases should be disposed by dialectics in an economic vacuum!

Despite pronouncements which the appellee cites, that corporate affiliation does not avoid the application of the Sherman Act, this Court has also recognized that the tests of what constitutes an "unreasonable restraint of trade" cannot be the same with respect to related corporations as in the case of completely independent companies, for in the *Columbia Steel* case, *supra*, it said (p. 523):

> "When other elements of Sherman Act violations are present, the fact of corporate relationship is material and can be considered in the determination of whether restraint or attempt to restrain exists."

The two propositions are not mutually inconsistent, and the logic of the above quoted principle is so sound that it cannot be questioned. We submit that the relationship of the three Timken companies is now that of parent and subsidiary in every respect, whatever may have been lacking before, and that this principle now has very direct application in this case.

The consequences of Dewar's death in respect of the stock ownership in British and French Timken thus emphasize the soundness of the analogy between this case and *United States vs. Columbia Steel Company*, 334 U. S. 495, *supra*. It has, of course, complicated the problems with regard to the record in this Court that events have developed as they have. American Timken has sought to follow the procedures specified by this Court for such situations, in the case of *Roemer vs. Simon*, 91 U. S. 149, and approved in *Realty Acceptance Corporation vs. Montgomery*, 284 U. S. 547, and in the rules of this Court. We believe that the consequences of Dewar's death are of importance in this case, as affecting both the judgment on the merits (as explained above) and the appropriate relief and that the district court erred in holding to the contrary and refusing to take further evidence on the questions raised thereby.

As respects the relief, it is hardly necessary to add to what has been said in our principal brief at pages 184-202 on the divestiture question generally. One aspect, however, which is worthy of further comment is the reference to *United States vs. National Lead Company*, 63 F. Supp. 513 (D. C., S. D. N. Y., 1945), aff'd 332 U. S. 319, especially to the alternative form of decree in that case which permitted National Lead Company either to divest itself of all stock interests in certain foreign corporations owned jointly by it and its adjudged co-conspirators, or to acquire the stock of the latter in such companies.

We submit that under the circumstances of this case, it would be in the furtherance of justice to permit American Timken to choose between the same alternatives. It is significant that in this case the remaining shares in British Timken which American Timken has no option to purchase are widely held, no other holder being an alleged co-conspirator as in the *National Lead* case. We further submit that the acquisition of a controlling interest in British Timken and of complete ownership of French Timken will not give American Timken such control of international commerce in anti-friction bearings as would itself be contrary to the Sherman Act.

In the final analysis, the question on this phase of the cases is whether an American corporation may operate foreign subsidiaries which it does not wholly own, and of which it has acquired control following an intermediate step in which it jointly participated with a foreign citizen in the ownership and management of the foreign companies. There are many other American companies which have foreign investments representing much less than 100 per cent ownership of their foreign affiliates. Such arrangements do not unreasonably restrain trade, but rather promote it by encouraging the development of the economies of the foreign countries, which has now become one of the basic objectives of the foreign policy of the United States.

In the long run, it is such development which will promote trade between the United States and foreign countries and will inure to the greatest benefit of this country. The acquisition or the establishment of a foreign plant in conjunction with a foreign national as a means of extending the business of an American company into a foreign market in many cases, as it was in this, is a highly desirable choice of means to accomplish such a purpose. It gives a local flavor to the enterprise and it makes unnecessary the carrying of the full investment by the American company. Surely this is a lawful method of extending business.

The necessity of participating in foreign markets by means of affiliated companies established in the respective countries has been recognized by many business organizations, including such an international competitor of this defendant as the Swedish bearing company, SKF, whose size and power were shown in the trial of this case. As the Supreme Court said in the *Columbia Steel* case (page 533):

> "extension of that industry requires that the existing companies go into production there or abandon that market to other organizations."

This leaves the alternatives of acquiring existing facilities in the new territory, or creating entirely new ones. The choice of the former method should not be forbidden unless it will unreasonably restrain competition in the entire industry, under the tests laid down in the *Columbia Steel* case, *supra*. There is no hint or suggestion that from a practical standpoint the continued ownership of American Timken in such companies will do other than supply a strong competitive force in the anti-friction bearing industry.

A decision on questions of this importance to the American economy should not be made on the basis of abstract logic, but in full recognition of the economic realities involved. We submit that trade by American Timken and other companies in foreign commerce will not be promoted

by depriving them of foreign investments which they have developed over many years, and expecting them either to attempt to compete in the foreign market solely by exporting products of domestic establishments, or to embark *alone* to establish foreign factories, and systems of distribution. Rather, they should be permitted, wherever reasonably possible and wherever they do not actually restrain trade which would otherwise flourish, to develop their foreign trade along such lines as the practicalities of their particular problems require. Only by so doing can the Sherman Act be made a real instrument for the removal of restraints of trade rather than a device for imposing restraints and discouraging foreign trade.

For these reasons, we urge that, even if American Timken be held to have violated the Sherman Act by its past conduct, nevertheless the final judgment herein should be modified to order American Timken either to divest itself of all stock or other financial interests in British Timken and French Timken, or to acquire the controlling interest in British Timken and the entire ownership of French Timken.

The suggestion of the appellee (p. 148) that American Timken may not have raised any issue as to Section VIII, subsection B, which enjoins it from further acquisitions of British Timken and French Timken stock is answered by the fact that American Timken's Statement of Points To Be Relied Upon (R. 1327) states that it intends "to rely upon its assignment of errors herein and upon the following points based thereon" (R. 1327), clearly indicating that it intends to rely *inter alia* upon assignments of error numbers 31 and 32 (R. 1267, 1268) which relate to Section VIII, subsection B of the judgment.

B. The appellee's contentions as to the injunctive provisions of the judgment.

1. The appellee's contentions as to the injunction against the exclusive grant of exclusive patent licenses, know-how, material, and machinery.

The appellee makes no substantial argument with respect to this issue (Appellee's Brief, pp. 149-151). First, it merely refers to, without attempting to support by record references, the statement of the district court (Mem. par. 137, R. 1000) that exclusive exchange of know-how has been most helpful in "buttressing" alleged illegal conduct to achieve the desired result. In fact, as previously seen, the district court found that know-how received by British Timken and French Timken from American Timken was made available to their competitors, and there is no finding by the district court as to any specific instance in which exclusive exchange of patents, know-how, material or machines was resorted to by the Timken companies for the purpose, or with the effect, of eliminating competition by third parties.

It is urged, that, even though there was no allegation in the amended complaint that the exclusive exchange of know-how and of patented and unpatented inventions constituted one of the means by which the alleged combination was carried out, nevertheless the district court could deal with this matter in its final judgment. Federal Rule of Civil Procedure 15 (b) is cited as sanctioning this action on the ground that counsel for American Timken consented to the trial of this issue, the appellee citing paragraph 164 of the district court's memorandum (R. 1006) in which it discussed American Timken's contention that any restraints imposed were ancillary to its agreement to furnish know-how to the foregoing Timken companies. Obviously, "know-how" did not include patents, material and machinery. Moreover, the assertion of this defense did not constitute an implied consent to trial of the wholly different

issue as to whether exclusive exchange of know-how constituted one of the means by which the alleged combination was carried out.

2. The appellee's contentions as to agreements to fix prices.

With respect to the appellee's argument in answer to our contention that we are deprived of the right to fix minimum prices under the Miller-Tydings Act (Appellee's Brief, pp. 152, 153), it is to be observed that it makes no attempt to justify this position, but merely suggests that the judgment can be modified at some time in the future. Obviously, this does not constitute an answer to our argument, which is fully supported by this Court's reasoning in *United States v. The Bausch & Lomb Optical Company*, 321 U. S. 707, 729.

3. The appellee's contention as to the injunction against refusing to sell or selling at discriminatory prices.

It is to be observed that the appellee concedes that the program embraced in Section IX of the district court's judgment is probably intended to involve maintenance of substantial sales and service organizations in foreign countries (Appellee's Brief, pp. 154, 155). It thus takes the position that it will be necessary for American Timken to take steps to enter into export business with persons with whom it would otherwise not engage in business due to the many practical reasons against attempting to engage in export of bearings into foreign countries which have been pointed out in our main brief.

The only authority cited for this provision is *International Salt Company v. United States*, 332 U. S. 392, which is said to authorize a decree "which will pry open to competition a market that has been closed by defendant's restraints" (p. 401). However, that case does not constitute authority for requiring American Timken to engage in business. It is, we believe, the only case in which a provi-

sion for compulsory leasing of patented machinery was included over the protest of the defendant. However, the provision was not included in that case for the purpose of compelling the defendant to compete, but rather as a means of preventing the resumption by the defendant of its past practice of "tying" sales of its unpatented salt to leases of its patented salt-vending machines, which restrained competition by other vendors of unpatented salt with the defendant.

CONCLUSION.

In conclusion, we urge that, contrary to the decision of the district court, and to the picture painted in the appellee's brief, this is *not* a case where three independent companies, already of great size and well established in the anti-friction bearing industries of their respective countries, entered into contracts dividing the world into mutually exclusive territories in which they agreed not to compete with each other and, as a consequence, completely stifled all competition in the industry. To the contrary, in 1928 when the supposedly illegal combination is alleged to have commenced, French Timken, one of the three companies, was *barely coming into existence,* having been established in 1928 largely by the investment and efforts of American Timken, along with those of Dewar. The other foreign company, British Timken, although previously a subsidiary of Vickers, Ltd. and a patent and trademark licensee of American Timken's, had been sold to American Timken and Dewar as its sole owners, and its previous owners dropped out of the picture completely; it employed only about 500 people, and its maximum total sales in any year had been only about £240,000, or $1,150,000.00, in 1926.

Certainly, at that time, if American Timken had acquired British Timken wholly on its own account, as it considered doing, and had established French Timken without

Dewar's participation, no question would ever have been raised as to the legality of such acquisitions; and the fact that it followed the practice of dealing in certain territories exclusively for certain purposes through one company or the other would not have been considered in any way unreasonable or contrary to law.

As of the present time, British Timken has achieved more substantial size, employing about 2,400 people and making sales which in 1947 totalled $14,700,000.00. French Timken, still wholly owned by American Timken and Dewar until the latter's death, is now about as large as British Timken was in 1928, with 500-odd employees and $2,274,723.00 in sales in 1947. Although the inadequate findings of the district court make it difficult to determine, we do not believe that the acquisition *today* of these companies by American Timken (even assuming that it had no previous financial interests in them), and its operation of them along the lines disclosed by the record, could be held to impose an undue restraint on the foreign commerce of the United States. Rather, such acquisitions would be recognized as legitimate expansion by American Timken into the European market, undertaken in that manner because of the practical, commercial necessity of doing European business in anti-friction bearings through companies organized and located there.

Instead of the above situation, the record discloses that, after consideration of such a course of action, American Timken did not *wholly* acquire British Timken in 1928 and did not establish French Timken *wholly* on its own account, but joined for these purposes with an English businessman, Dewar, because of Dewar's exceptional qualifications to promote the sale of tapered roller bearings in England and in Europe generally, and because of the belief that greater success would be achieved by having British management of the British company. At all times, American Timken and Dewar maintained their joint con-

trol of British Timken and French Timken. We have referred to the arrangement between American Timken and Dewar as a joint adventure, because it had all the features of such a relationship in law.

Yet, even this arrangement was obviously planned, if the venture proved worthwhile, to culminate in majority ownership and control of British Timken and French Timken by American Timken alone, because at all times American Timken had the option, upon Dewar's death or withdrawal, to acquire Dewar's shares.

Pending this appeal, upon Dewar's death, that eventuality became a fact, and American Timken began taking the requisite steps to exercise its options to acquire Dewar's shares in British Timken and French Timken.

We find it difficult to believe that, *under these circumstances,* the practices which were agreed upon as between American Timken, British Timken and French Timken, for the sale of bearings in certain territories, can be held to constitute a violation of the Sherman Act. We believe that the district court's decision to that effect was based upon a completely erroneous conception of the facts as shown by the record in this case and of the inferences to be drawn therefrom. We urge that it is in no degree contrary to the language or spirit of the Sherman Act for an American company to undertake to extend its business into foreign countries in the manner followed in this case, and in connection therewith to agree with the foreign companies which it is using as the vehicles for such expansion, not to compete in certain territories with respect to certain important phases of their business. So to hold would seriously interfere with the choice by American companies of the most advantageous means from a commercial standpoint for accomplishing such expansion, without any real beneficial effect in furthering the policy expressed in the Sherman Act.

Furthermore, in the absence of findings by the district court as to the effect of these arrangements upon competi-

tion in the anti-friction bearing industry on a world-wide scale and on many other essential facts, we do not believe that a sufficient basis exists in the record upon which it can properly be determined that a violation of the Sherman Act has occurred, or that American Timken should be prevented from acquiring control of British Timken and absolute ownership of French Timken.

We submit that under the true and complete facts as shown by the records, the judgment of the district court is erroneous and should be reversed; and we again so urge.

Respectfully submitted,

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No. 352

In the Supreme Court of the United States

OCTOBER TERM, 1950

THE TIMKEN ROLLER BEARING COMPANY, APPELLANT

v.

THE UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION

Civil Action 24214

UNITED STATES OF AMERICA, APPELLEE

v.

THE TIMKEN ROLLER BEARING COMPANY, APPELLANT

STATEMENT IN OPPOSITION TO APPELLANT'S STATEMENT OF JURISDICTION AND MOTION TO DISMISS OR AFFIRM

Appellee, pursuant to paragraph 3 of Rule 12 of the revised Rules of the Supreme Court of the United States, moves that the appeal be dismissed or that the Final Judgment of the District Court be affirmed.

This is a direct appeal from the Final Judgment of the United States District Court for the Northern District of Ohio, entered on February 15, 1950, which granted injunctive relief under Section 4 of the Sherman Act with respect to an unlawful conspiracy in restraint of trade, engaged in by the appellant, in the manufacture, sale and distribution of anti-friction bearings.[1]

[1] As defined in Section 1 A of the Final Judgment, " 'Anti-friction bearings' means rotating devices for reducing friction between moving mechanical parts, wherein rollers of various shapes or balls are inserted between containers which are inserted between moving parts. . . ."

In a memorandum opinion, filed March 3, 1949 (83 F. Supp. 284), after trial of the action, the District Court found that appellant had violated Sections 1 and 3 of the Sherman Act by forming a cartel with a British and a French producer of anti-friction bearings, both of whom were named as co-conspirators, whereby appellant and its co-conspirators eliminated competition among themselves and with others by dividing among themselves world markets for the production and sale of anti-friction bearings.

A hearing on the relief in this case was held before the District Court September 28 to October 3, 1949. The Court handed down its Final Judgment on February 15, 1950. The Judgment aimed at severing the ties among the co-conspirators, and enjoined any further concerted action between them. Further provisions had as their objective the restoration of competition in the field of the manufacture, sale, and distribution of anti-friction bearings.

MOTION TO DISMISS

Appellee moves, pursuant to paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States, that this appeal be dismissed because the excessive number of assignments of error makes it impossible to determine the grounds upon which the appellant relies for a reversal of the District Court's Judgment, and this deficiency is not cured by certain broadly stated propositions in appellant's jurisdictional statement. Cf., *Local 167* v. *United States*, 291 U. S. 293, 296.

The 206 assignments of error, covering 67 typewritten pages, advanced by the appellant constitute

a promiscuous attack upon virtually everything done by the District Court.

The most appropriate remarks applicable to this undigested mass are those made by Mr. Justice Miller in *Phillips & Colby Construction Co.* v. *Seymour*, 91 U. S. 646, 648, in referring to only 52 assignments of error:

> "This practice of unlimited assignments is a perversion of the rule, defeating all its purposes, bewildering the counsel of the other side, and leaving the Court to gather from a brief, often as prolix as the assignments of error, which of the latter are really relied on."

This language was approvingly cited in *Chesapeake & Delaware Canal Co.* v. *U. S.*, 250 U. S. 123, in which there were only forty-one assignments. Finally, in *Local 167* v. *United States*, 291 U. S. 293, the Court warned the bar that in the future such an assignment of errors would be ground for dismissal, saying (p. 296):

> The assignment of errors includes more than 250 specifications and occupies more than 35 pages of the record. While it is possible to find among them bases for the five points indicated, they contain so much that is irrelevant that they tend to confuse rather than to define the issues to be presented. They do not appropriately serve the convenience of the appellee or of the court. *Phillips & Colby Const. Co.* v. *Seymour*, 91 U. S. 646, 648. *Central Vermont Ry.* v. *White*, 238 U. S. 507, 508. *Chesapeake & Del. Canal Co.* v. *United States*, 250 U. S. 123, 124. *Seaboard Air Line Ry.* v. *Watson*, 287 U. S. 86, 91. In view of the omission of appellee to object and the lack of precedent definitely in point we refrain from dismissing

the appeal for failure substantially to comply with the statute and our rule in respect of the assignment of errors. 28 U.S.C., § 862. Rule 9. But what is here said is to be understood as an announcement that in the future a failure of that sort may be taken as sufficient ground for dismissal.

MOTION TO AFFIRM

Appellee, pursuant to paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States, moves that the Final Judgment of the District Court be affirmed for the reason that the appeal from said Judgment presents no substantial question for consideration.

In its jurisdictional statement, appellant claims that this case involves two basic and fundamental legal questions of vital importance to American businessmen.

First, appellant claims that the restraints imposed by the territorial allocations were reasonably ancillary to a "joint venture in the general nature of a partnership" between the appellant and a British subject. Nowhere is this legal entity, "joint venture in the general nature of a partnership," defined, but appellant declares that the Supreme Court approved this contention in *United States* v. *Bausch & Lomb Optical Co.*, 321 U. S. 707. The Supreme Court did affirm *United States* v. *Bausch & Lomb Optical Co.*, 45 F. Supp. 387 (S.D. N.Y.), in which the words "joint venture" were casually used, but no fair analysis of the business arrangement discussed in this latter case would make it applicable to the present case. The District Court in the *Bausch & Lomb* case found reasonable a *vertical* selling arrangement between manufacturer and

distributor. Here, we find a *horizontal* arrangement among existing competing manufacturers which resulted in an allocation of sales territories throughout the world. Ever since *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271 (6th Cir.), aff'd. 175 U. S. 211, this has been illegal *per se*. Where there is a *per se* violation, the doctrine of ancillary restraints can have no application. That doctrine can only be brought into play where the issue of the reasonableness of the restraint is still open. Historically, the ancillary doctrine was based upon the seller of a business agreeing for a period of time not to compete with the buyer. This protects the buyer's investment in a reasonable manner which is in the public interest. But this situation has nothing to do with the present case. The District Court correctly disposed of this attempt to becloud with semantics by stating that "regardless of the descriptive term used," (par. 150) this was an illegal contract in restraint of trade. Therefore, there is no substantial, significant, or important question involved in this issue.

The second important question alleged to be involved in this case is the right of an American company to license the use of its trademark "Timken" abroad on a territorial basis. Whatever right an American company might have to license its trademark abroad, it would have this right only upon a *national* basis and then only if (1) the law of the nation in question permits the licensing of trademarks, and (2) the American company complies with the requirements of such law.

But regardless of the law governing the licensing of trademarks abroad, that question is not involved

in this case. Appellant does not own the mark "Timken" in such important areas of potential competition as Great Britain, France and Germany. British Timken and French Timken were and are the registered owners of that mark in their respective countries (Pl. Ex. 149) and British Timken owns the mark in Germany. As the District Court said: "Defendant did not and could not have a right to license a trademark in markets where it did not own the mark." (Par. 190) In fact, appellant is at present taking steps to obtain a license of the mark in Great Britain from British Timken. (D. Ex. D (decree))[2] Hence, with respect to those countries where the problem posed might be of importance to the American businessman, that is, in the major industrial nations of the world, appellant has not licensed and could not license the mark; therefore the question of the right of an American corporation to *grant* a trademark license in these countries is not involved in this case.

Further, the Final Judgment does nothing to interfere with this right to license the mark. Sec. VII of the Judgment, the only provision dealing with trademarks, enjoins appellant from entering into any contract with its co-conspirators which provides for the transfer of any right under a trademark upon condition that the co-conspirators allocate or divide territories or markets or engage in other enumerated restrictive practices.

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[2] Further, appellant has advised the Court that it would become a licensee of the mark "Timken" in other countries when a law permitting it to do so is passed. (D. Ex. D (decree)).

Even in those areas where appellant has the registration of the trademark, that is, areas other than the major industrial countries, such as Great Britain, France and Germany, and in which appellant might presumably license the mark, appellant may not license legally under any agreement which allocates markets throughout the world. It is well settled that the allocation of territories cannot be justified as ancillary to the grant of a license under a patent. *United States* v. *National Lead,* 63 F. Supp. 513, aff'd. 332 U. S. 319; *Ethyl Gasoline Corp.* v. *U.S.,* 309 U. S. 436, 456. Nor can a copyright be used to restrain commerce and suppress competition. *Interstate Circuit, Inc.* v. *U. S.,* 306 U. S. 208; *U. S.* v. *Paramount Pictures,* 334 U. S. 131, 143. Even less can a trademark owner impose such restrictions, for, as was said in *United Drug Co.* v. *Rectanus Co.,* 248 U. S. 90, 98, "The owner of a trademark may not, like the proprietor of a patented invention, make a negative and merely prohibitive use of it as a monopoly." If a patent license will not support an allocation of markets, it must follow that the lesser right, that is, the trademark will not do so either. The reason is, of course, that an allocation of sales territories is a *per se* violation of the Sherman Act. The rule is of universal application that, upon finding a *per se* violation, all discussion as to reasonableness is precluded. This is so whether the ancillary restraint imposed flows out of a patent license, a joint venture, or a trademark license.

Turning now to the appellant's assignments of error, the omnibus and indiscriminate nature of appellant's assignments makes it impossible to

focus attention on any particular points of fact or law. The appellant here objects to 83 of the Court's Findings of Fact. However, the basic agreements establishing this cartel in 1938 (Pl. Ex. 26 and 27) showed on their faces a division of markets and sales territories. The remaining evidence showed conclusively that these agreements were carefully adhered to over a period of many years.[3] The District Court's Findings were amply supported by the evidence in the case. To reconsider all these assignments on factual issues would amount to a needless retrial of the case. The Supreme Court in *United States* v. *Yellow Cab Co.*, 338 U. S. 338, refused to try a case *de novo* on the record, reject nearly all the findings of the trial court, and substitute contrary findings of its own.

The conclusions of law made by the District Court with respect to these facts are plainly correct and amply supported by authority. Appellant objects specifically to 62 of these conclusions. Not one of these objections, so far as can be discerned, raises a substantial or novel point of law. The facts of this case demonstrate that what is here involved is a typical international cartel involving the allocation of territories among competitors to eliminate competition among themselves. As pointed out above, for over fifty years such restraints have been illegal *per se*. *United States* v. *National Lead Co.*, *supra*; *United States* v. *Addyston Pipe & Steel*

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[3] In appellee's answer to appellant's unsuccessful motion for a new trial, dated March 16, 1950, appellee pointed to the page or exhibit in the trial record which supported 71 of these 83 findings objected to. The 12 new objections here made by the appellant are equally negated by an actual reference to the trial record.

Co., supra. In short, the legal questions that might be raised by this appeal involve only already settled law and contain nothing of substantiality or novelty.

Appellant has assigned as error each and every provision of the Final Judgment in this case—30 assignments in all. Many of the provisions are objected to more than once. The inevitable result of such an unselective attack is that many of these assignments are frivolous. For instance, the appellant claims that the Court, sitting as an equity court, was in error in retaining jurisdiction in this case (Assignment 37).[4] Appellant also claims that the Court erred in taxing costs against the appellant (Assignment 38).[5]

The only issue that arises with respect to a final judgment is whether or not the District Court has abused its discretion, for, as was said in the *National Lead* case: "the provisions of this decree, to a large extent, are matters lying within the discretion of the District Court as a court of equity whose duty it was to make the remedy as effective

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[4] The frivolous character of this assignment is readily demonstrated by reference to a previous decision of the Supreme Court:

> "Power to modify the decree was reserved by its very terms, and so from the beginning went hand in hand with its restraints. If the reservation had been omitted, power there still would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the needs." *U. S. v. Swift & Co.*, 286 U.S. 106, 114.

[5] This is claimed as error in spite of the plain language of Rule 54 (d) of the Federal Rules of Civil Procedure: "Costs shall be allowed as of course to the prevailing party unless the court otherwise directs."

as possible." 332 U. S. at 334.[6] The established facts of this case and the law applicable to such facts make it clear that no such abuse can be validly claimed in the present cause.

In its jurisdictional statement, the only question raised by the appellant with respect to the Final Judgment concerned the District Court's order that appellant divest its stockholdings in the co-conspirators. Appellant claims that it neither illegally acquired nor illegally used these holdings. Both of these contentions are contrary to the facts of this case. The agreement (D. Ex. 15) which provided for the purchase of British Timken stock by appellant likewise provided, "in connection therewith," for the continuation of the existing agreement dividing world territories. The stock interest in French Timken was similarly acquired. Thus the acquisitions were illegal because immediately connected with the *per se* violation of the Sherman Act.

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[6] In the proper exercise of its discretion in providing effective and adequate relief in antitrust cases, the District Court should strive to achieve certain end results. First, it should enjoin the unlawful practices. *Ethyl Gasoline Corp.* v. *United States*, 309 U.S. 436, 461 (1940). This was done in the present Judgment by, for example, enjoining the allocation of territories (Final Judgment, V A). Secondly, it should order the undoing of the conditions created within the industry by the unlawful practices. In the present Judgment, the divestiture of appellant's stock holdings in the co-conspirators was ordered in accordance with this objective (Final Judgment, VIII A). And thirdly, it should seek to restore competition in the industry affected. *International Salt Co.* v. *United States*, 332 U.S. 392 (1947). Among the provisions in the present Judgment directed to this end are those ordering advertising in the territories formerly allocated to co-conspirators (Final Judgment, X A), and prohibiting refusals to sell in those territories (Final Judgment, IX).

Appellant also made illegal use of these holdings in the co-conspirators. Although its holdings in British Timken and French Timken did not give appellant control of those companies,[7] they did serve as a means of influencing the suppression of competition among the three companies and encouraging the continued adherence to the agreements. This influence was exercised, in the case of British Timken, by the appellant having one director on that Company's board of four members. An example of its exercise occurred in 1935, when appellant used this influence to bring about a thirty-year extension of the agreements (Tr. of Trial 1962-66; Def. Ex. 131-135). The investments likewise served as an inducement to appellant not to compete with the companies whose stock it held in such substantial amounts (Tr. of Trial 2584, 2784-5). Divestiture on these grounds was approved in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173; *United States* v. *National Lead Co., supra; United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131.

In short, there is no substantial question of fact or law raised by this appeal, nor can it be sustained that the Court abused its discretion in the Final Judgment rendered by it.

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[7] Appellant's holdings did not give it control of British Timken and French Timken, respectively, because a British subject, N. B. U. Dewar, also had substantial holdings in those companies, and by contract with appellant was to retain control of them as long as profits remained at a specified level. Under these arrangements, Dewar maintained operating control of British Timken and French Timken at all times during the joint ownership. (Tr. of Trial 935, 2526-2532; D. Exs. 26, 187, 228, 249).

PRAYER FOR DISMISSAL OR AFFIRMANCE

For the reasons stated it is respectfully submitted that the appeal should be dismissed, or that the Final Judgment of the District Court should be affirmed.

(S.) PHILIP B. PERLMAN,
Solicitor General.

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In the Supreme Court of the United States

OCTOBER TERM, 1950

THE TIMKEN ROLLER BEARING COMPANY,
APPELLANT

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

MEMORANDUM IN OPPOSITION TO MOTION FOR POSTPONEMENT OF ORAL ARGUMENT TO OCTOBER TERM, 1951

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 352

THE TIMKEN ROLLER BEARING COMPANY,
APPELLANT

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

MEMORANDUM IN OPPOSITION TO MOTION FOR POSTPONEMENT OF ORAL ARGUMENT TO OCTOBER TERM, 1951

Appellee, the United States of America, opposes the motion filed by appellant requesting postponement of the oral argument in the above-entitled case until the October, 1951 term. Appellant's request is based on the pendency of a motion filed by it in the District Court on January 24, 1951, six months after the petition for appeal was filed and

allowed by the District Court on July 28, 1950, and more than two months after this Court noted probable jurisdiction on November 6, 1950.

The United States is constrained to oppose postponement of the oral argument not only because it would be contrary to the rule of expeditious hearing of antitrust cases but also for the following specific reasons: (1) appellant's motion in the District Court of January 24, 1951, is on its face completely lacking in substance or merit, and indeed approaches the frivolous; (2) appellant's motion for postponement of argument in this Court is premature, since ample time still remains for the District Court to act upon the motion before the probable date when argument would be heard in this Court.

I

Appellant's motion in the District Court is patently without any substantial basis because that court has already decided all the matters presented in the motion, and no novel or meritorious issues are raised therein. Hence it is extremely probable that the District Court will promptly deny appellant's motion; but even if it should not, the pendency of such motion does not affect the issues on this appeal, and provides no warrant for postponement of the oral argument before this Court.

The motion was based upon the premise that there had been a material change of circumstances following the filing of the appeal. The occasion

which allegedly constituted a material change of circumstances was the death of Michael Dewar on December 21, 1950, and the desire of appellant to exercise certain options to purchase shares of stock owned by Dewar in the co-conspirator corporations, British Timken Limited (herein called "British Timken") and Societe Anonyme Francaise Timken (herein called "French Timken").

The options which appellant stated it wished to exercise were in evidence at the trial (D. Ex. 228, R. 2539-41; D. Ex. 240, R. 2660-1). The District Court, in Section VIII B of its final judgment entered on February 15, 1950, specifically prohibited appellant from exercising these options, as follows (R. 1179):

> B. Defendant is hereby enjoined and restrained, from the date of this judgment, from:
>
> 1. Acquiring, directly or indirectly, any ownership interest in (by purchase or acquisition of assets or securities, or *through the exercise of any option, or otherwise*), or any control over, British Timken or French Timken, or any subsidiary, successor or assign thereof;
> 2. Exercising any influence or control over the production, sales or other business policies of British Timken or French Timken, or any subsidiary, successor or assign, agent, sales representative, or distributor thereof;
> 3. Causing, authorizing or knowingly permitting any officer, director, or employee of

> defendant or its subsidiaries to serve as an officer, director, or employee of British Timken or French Timken or of any subsidiary, successor, assign, agent, sales representative, or distributor thereof. [Emphasis supplied]

The District Court also, in Section IV B of its judgment, cancelled the agreement of March 22, 1948 (D. Ex. 240, R. 2659-2662), which granted to appellant the option on British Timken shares which it now wishes to exercise, as follows: (R. 1175):

> B. Each of the following agreements, entered into during the trial of this action, is hereby terminated; and defendant is hereby enjoined and restrained from the further performance or enforcement of any of the provisions of said agreements and of any agreements amendatory thereof or supplemental thereto:
>
> 1. Agreement dated March 22, 1948 between defendant and Michael B. U. Dewar, Esq., entitled "Agreement with respect to British Timken Limited";

Dewar's death was, in fact, only one of the contingencies named in the agreements which gave appellant options to purchase Dewar's British Timken and French Timken shares. For example, other contingencies named in the agreement as giving rise to such an option on British Timken shares were (1) Dewar's incapacity for a period of six

consecutive months, and (2) Dewar's decision during his lifetime to sell such shares.[1] The agreement also gave Dewar an option on appellant's shares should it have decided to sell (D. Ex. 240, par. 1(d), R. 2660-1). In addition, it gave both appellant and Dewar the right to approve or disapprove, with or without reason, any purchaser found by the other party (D. Ex. 240, par. 2, R. 2661). Similar contingencies were named in the option agreement as to French Timken shares (D. Ex. 228, R. 2539-41).

These various contingencies were all before the District Court when it entered its final judgment. That court might have provided for the exercise of the options upon the occurrence of one or more of the contingencies, but instead it flatly prohibited appellant from acquiring any interests in British Timken or French Timken "through the exercise of any option, or otherwise".

Appellant states in paragraph 4 of its motion

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[1] The British option agreement provided in part as follows (D. Ex. 240, par. 1, R. 2660):

> (a) Upon the death of Mr. Dewar or if he shall become incapacitated by ill health or otherwise for a consecutive period of six months from discharging his duties as a Director of British Timken Limited . . . [appellant] shall have an option to purchase all or any of the 94960 ordinary Shares in British Timken now belonging to Mr. Dewar or his assigns . . .
>
> (b) In the event of Mr. Dewar or his assigns or his or their legal representatives . . . desiring to sell all or any of the Dewar Shares [appellant] shall have an option to purchase all or any of such Shares which option shall be independent of the option in favor of . . . [appellant] provided for in paragraph (a) hereof.

for postponement of oral argument that it has already exercised the option on British Timken shares and part of the option on French Timken shares (even though such exercise was specifically banned by Section VIII B of the judgment), apparently on the basis of a stay of execution of its final judgment granted by the District Court on July 28, 1950 (R. 1255). Whatever may be the propriety of appellant's action pending appeal, certainly appellant has done it at the peril of having to divest itself of the stock so acquired along with that previously held, in the event that this Court affirms Section VIII A of the judgment, which provides (R. 1179):

> A. Within two years from the date of this judgment, defendant shall divest itself of all stock holdings and other financial interests, direct or indirect, in British Timken and French Timken. Within one year from the date of this judgment, defendant shall present to the Court for its approval a plan for such divestiture.

Appellant held 30.25 per cent of the ordinary shares of British Timken (Fg. 66, R. 971) and 50 per cent of the outstanding stock of French Timken (Fg. 54, 66, R. 969, 971). Dewar held approximately 25 per cent of the outstanding ordinary shares of British Timken (Fg. 66, R. 971), and 50 per cent of the outstanding stock of French Timken (Fg. 54, 66, R. 969, 971). Appel-

lant states that it has acquired from Dewar's estate all of his ordinary shares of British Timken, and stock of French Timken representing one vote at stockholder's meetings, both purchases being made pursuant to the options exercisable at Dewar's death; and that it proposes to purchase the remainder of French Timken stock pursuant to a right of first refusal. This option of first refusal on the remainder of French Timken shares was not exercisable upon the contingency of Dewar's death, which appellant claims was the change of circumstances justifying reopening of the judgment, but rather upon the decision of Dewar's holding company to sell, which decision might have been made either during Dewar's lifetime or after his death (D. Ex. 228, R. 2541). Thus, appellant is contending in effect that the occurrence of any of the contingencies named in the option agreements before the District Court justifies reopening the judgment. If this contention has any merit, then the District Court performed a useless act indeed when it specifically enjoined any exercise of the options.

Because the District Court has already acted upon the question of whether exercise of the options should be allowed upon the occurrence of any of the various contingencies, the occurrence of one of the contingencies manifestly is not a material change of circumstances which would justify re-

opening that court's judgment.[2] And, since the record is complete as to the lower court's action regarding exercise of the options, this Court is in a position to review completely that court's action.[3] Therefore, no purpose, other than delay in final disposition of the appeal, will be served by postponement of oral argument to the October term, 1951.

II

Appellant's motion for postponement of oral argument in this Court is, in any event, premature. There is no reason to suppose that the District Court will not act upon appellant's motion there well before the date of oral argument in this Court. We have been advised by the Clerk of this Court that such argument could be set for the week of April 23, 1951. Since probable jurisdiction in this case was noted on November 6, 1950, and the record on appeal has already been printed, there are no impediments (other than appellant's motion for postponement) in the way of early argument of this case. The District Court, at the hearing on appellant's motion on February 14, 1951, indicated that it would take "at least thirty days or more to

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[2] A copy of appellee's memorandum in opposition to appellant's recent motion in the District Court is attached as Appendix.

[3] The printing of the record on appeal was finished on February 28, 1951. Appropriate references have been made above to the printed record. Dewar's death, the single fact not in the record, is now known to this Court, and may be considered for whatever bearing it may have on the appeal.

get to the matter". But in view of the motion's patent lack of merit, the District Court may well decide the motion within a very short time after it begins consideration thereof about the middle or end of this month, and will probably render its decision prior to April 23.[4]

The motion in the District Court, if denied before April 23, as is likely, would present no bar to oral argument. The additional record to which appellant refers in paragraph 9 of its motion for postponement of argument, if received by this Court, would be small and should entail no delay. Part of the additional matter is already contained in the papers filed with this motion. The District Court's order denying the motion could readily be transmitted to this Court. But even if the District Court should grant appellant's motion prior to April 23, and ask leave of this Court to conduct additional hearings, then this Court could at that time decide whether a delay in oral argument of this appeal would be justified.

Moreover, the pendency of the motion below, even while unacted upon by the District Court, should not in any way preclude this Court from proceeding to hear the appeal. In its very nature, that motion presents no conflict with this Court's early consideration of the appeal. Appellant captioned it as a motion that the District Court

[4] The District Court stated that it could not give immediate consideration to the motion because of the press of other matters.

ask leave of this Court to consider appellant's motion that the District Court receive additional evidence and reconsider its final judgment, etc. The pendency of such a motion, even if meritorious, as this one is not, presents no reason for this Court to delay disposition of the appeal. Unless and until such motion should be granted by the District Court, the *status quo* remains unchanged. Only the grant of appellant's motion by the District Court could involve such a change in the *status quo* as to require this Court to consider whether it should delay passing upon the appeal before it.

Appellant states in paragraph 9 of its motion for postponement that if the argument is not deferred until October, 1951 it must "commence forthwith the preparation of a brief in this Court". This statement seems to admit that appellant has taken no steps towards preparation of a brief in this Court, even though the appeal was allowed on July 28, 1950, and this Court noted jurisdiction over three months ago, on November 6, 1950. Further, it is not impracticable, as appellant contends in its motion, for appellant to undertake the preparation of a brief in this Court before the District Court has ruled on the pending motion, since appellant must prepare such a brief in any event, unless it intends to abandon its appeal.

For the reasons stated, it is respectfully submitted that appellant's motion requesting postponement of oral argument of this appeal to the October Term, 1951 should be denied.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

MARCH 6, 1951

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

Filed February 14, 1951

Civil Action No. 24,214

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

v.

THE TIMKEN ROLLER BEARING COMPANY, *Defendant-Appellant*

PLAINTIFF-APPELLEE'S MEMORANDUM IN OPPOSITION TO DEFENDANT-APPELLANT'S MOTION THAT THIS COURT ASK LEAVE OF THE SUPREME COURT OF THE UNITED STATES TO CONSIDER DEFENDANT'S MOTION THAT THIS COURT RECEIVE ADDITIONAL EVIDENCE AND RECONSIDER ITS FINAL JUDGMENT HEREIN AND, IF LEAVE BE GRANTED, THAT THIS COURT PROCEED SO TO DO, BECAUSE OF CHANGED CIRCUMSTANCES DUE TO THE DEATH OF MICHAEL B. U. DEWAR SINCE THE PERFECTION OF AN APPEAL HEREIN TO THE SUPREME COURT OF THE UNITED STATES

The plaintiff-appellee opposes the motion, filed with this Court on January 24, 1951, in which defendant-appellant moved that this Court (1) ask leave of the Supreme Court of the United States to consider defendant-appellant's motion

that this Court (a) receive additional evidence, (b) make additional findings of fact and conclusions of law, and (c) vacate its judgment entirely, or vacate and modify portions of Sections IV and VIII thereof; and (2) if leave be granted, that this Court proceed to take such steps.

The occasion for the motion is alleged to be the death of Michael Dewar on December 21, 1950, and the desire of defendant-appellant (hereinafter called "defendant") to acquire additional shares in British Timken and French Timken, pursuant to certain options exercisable at Dewar's death.

Defendant's proposed acquisition of additional stock in British Timken and French Timken is directly prohibited by the final judgment entered in this case on February 15, 1950. In Section VIII B of the judgment, this Court perpetually enjoined defendant from (1) acquiring any interest in British Timken or French Timken, or (2) controlling their business policies, or (3) permitting any officer, director, or employee of defendant to serve as an officer, director, or employee of British Timken or French Timken.

Section VIII A of the judgment required defendant, within two years after the judgment, to divest itself of all stock holdings and other financial interests, direct or indirect, in British Timken and French Timken, and to present a plan for such divestiture to the Court for approval within one year. Section IV B cancelled the agreement of March 22, 1948, which granted to defendant the

option on British Timken shares which it now wishes to exercise.

The primary purpose of defendant's present motion is to require the vacation of the entire final judgment entered by this Court. At the minimum defendant seeks vacation of Sections IV B and VIII B of the judgment, and modification of Section VIII A to permit defendant either to sell present interests or to buy additional shares in those companies.

Plaintiff-appellee is opposed to the granting of any portion of the motion. The facts alleged therein do not justify vacation of the entire judgment or the vacation or modification of any part thereof. Consequently, it would be useless for this Court to grant the preliminary portions of the motion involving asking leave of the Supreme Court for permission to receive additional evidence and reconsider the final judgment, and to take such steps if leave is granted. Therefore, defendant's motion should be denied in its entirety. (A trial court may properly deny a motion for the receipt of additional evidence and reconsideration of its judgment, where the evidence if received, would not have changed the result previously reached. *Union Bleachery* v. *United States*, 176 F. (2) 517 (C.C.A. 4, 1949).)

The inadequacy of the facts alleged in the motion to justify vacation or modification of the judgment in whole or in part will be considered below.

I

Dewar's death does not, as stated in paragraph 1 of defendant's motion, change the basis upon

which this case was tried or upon which relief was granted.

The agreement giving defendant an option to purchase Dewar's shares in British Timken, in the event of Dewar's death, was executed the day the trial in this case started, and was introduced in evidence at the trial (D. Ex. 240), as well as the hearing on relief (P. Ex. 3 (Decree)). It was cancelled by this Court in Section IV B of its final judgment, and is at the present time "in full force and effect", as defendant states in paragraph 3 of its motion, only because a stay of all of the provisions of the final judgment pending appeal was granted by this Court on July 28, 1950. The agreement of December 11, 1935, granting defendant an option at Dewar's death to purchase one of his shares in French Timken, and, as to the remainder of Dewar's stock in French Timken, the right of first refusal, was likewise in evidence at the trial (D. Ex. 228).

The holdings of defendant and of Dewar in British Timken and French Timken were, at the time of the trial (Fg. 54, 66) and of the relief hearings (Hg. Tr. 28-9, 32, 43, 209-210), the same as they are stated to be at present in paragraphs 3 and 4 of the defendant's motion.

The recently executed British option agreement was discussed extensively at the hearing on relief (Hg. Tr. 132-176, 199, 204-6, 290-1). It was also discussed in plaintiff-appellee's brief in support of its proposed final judgment filed October 24, 1949, in part as follows:

> The two Agreements (P. Ex. 2 and 3 (Decree)) executed by defendant on March 22, 1948, the day the trial in this action began,

should be terminated not only because they are a continuation of the illegal conspiracy, but also because they contain provisions which will interfere with the divestiture of defendant's shares.[4] Plaintiff believes it well-established that this Court has the authority to cancel all contracts to which the defendant is a party where the effect of the contracts would be to interfere with or nullify an order of the Court.

Section 1(c) of the Agreement between defendant and Dewar (Pl. Ex. 3 (Decree)) gives Dewar an option to purchase defendant's shares in the event that defendant should wish to sell them. This option was preceded by a somewhat similar one, relating to Timken Holdings Limited shares, contained in Art. 28 of the Articles of Association of Timken Holdings Limited, dated August 31, 1935.[5]

Section 2 of that Agreement gives Dewar the right to approve any other purchaser whom defendant may find, before a transfer of defendant's shares may be accomplished. This right of Dewar to approve other purchasers is not limited, and hence amounts on its face to a complete right in Dewar to bar any transfer of shares held by defendant in British Timken. This absolute right to approve or disapprove a purchaser of defendant's British Timken stock was preceded by an "honorable understanding" contained in Sec. 1 of the Agreement of September 7, 1935

[4] The contracts would serve no useful purpose in any event should divestiture be ordered, since they were designed to maintain the control arrangements in British Timken (Hear. 136), and are thus dependent upon defendant having an interest in that company.

[5] The Articles of Association were furnished plaintiff by defendant's counsel subsequent to the recent hearing. Pursuant to the arrangement made at the hearing, plaintiff now offers these Articles as Pl. Ex. 7 (Decree).

(P. Ex. 4 (Decree)), that Dewar (a) would not "unreasonably" stand in the way of defendant selling its stock, and would object to a purchaser only "on reasonable grounds", and (b) would take all steps within his power to bring about a registration on the company's books of defendant's shares to the purchaser.

The 1948 Agreements thus differed from the earlier Agreements in that the defendant was for the first time under a legally binding obligation to give Dewar a veto power over the transfer of its stock holdings, a power which could be exercised without assigning reasonable or any other grounds.

Dewar's death was in fact only one of the contingencies named in the agreements which gave defendant options to purchase Dewar's British Timken and French Timken shares. Another contingency named in the agreements as giving rise to such an option was Dewar's decision during his lifetime to sell such shares. The agreements also gave Dewar options on defendant's shares should it have decided to sell. Furthermore, they gave both defendant and Dewar the right to approve or disapprove, with or without reason, any purchaser found by the other party. This Court was cognizant of these contingencies when it entered its final judgment with Section IV B and VIII A and B as integral parts thereof. These sections of the judgment would have little effect if every contingency foreseen in the option agreements should serve as a basis to render the judgment open to reconsideration.

The fact that the contingency of Dewar's death was before the Court when it cancelled the British option agreement, ordered divestiture and en-

joined future acquisitions, clearly indicates not only that the basis of the Court's decision and judgment has not changed, but also that no grounds have been stated upon which defendant's motion could be granted.

II

Defendant's intent and proposal, expressed in paragraph 6 of its motion, to exercise the above-described options, is, as has been pointed out, specifically prohibited by Sections IV B and VIII B of the final judgment. Though the execution of this order of the Court is stayed pending appeal, any such exercise of the option by defendant must be at the peril of having to divest itself of any newly acquired stock along with that previously held, should the Supreme Court affirm Section VIII of this Court's judgment as it was entered.

III

Exercise of the options will not, as defendant contends in paragraph 11 of its motion, raise legal questions not considered or decided by this Court.

The fact of additional stock ownership resulting from exercise of the options will not change or in any way affect this Court's previous determination that defendant and its co-conspirators, British Timken and French Timken, violated the Sherman Act for a period of many years. Nor will such additional stock ownership change or in any way affect the relief ordered by this Court, including the Court's order that defendant divest itself of all its financial interests in British Timken and French Timken, and refrain from acquiring such interests in the future.

The purpose of this relief was to remove obstacles to competition between defendant, British Timken and French Timken imposed by the illegal conspiracy in restraint of trade. The relief was fully justified by the past violations and the threat of future restraints upon competition. Indeed, defendant's proposal now to purchase additional shares in French Timken and British Timken so as to make them controlled subsidiaries shows clearly defendant's continuing intention to suppress competition between itself and these companies. As subsidiaries they will not compete with defendant, nor defendant with them. As defendant's counsel said at the trial "it wasn't anything that could be expected in common sense, that Michael Dewar would compete, if he had a company of his own, with British Timken, or for us to compete with British Timken" (T. 2784.) Thus the wisdom and necessity of the Court's order has already been demonstrated.

Even conceding for argument that defendant might originally have "conducted its operations in the British Empire and Europe through British Timken and French Timken as a majority owned subsidiary" (Def. Motion, par. 11), it does not follow that defendant, after choosing many years ago to make illegal restrictive agreements with potential competitors, may now reap, as a reward for its past violation, the right to acquire control of its co-conspirators, and thus to achieve completely the non-competitive purpose of its conspiracy. The effects of its past violation may not be so easily wiped out. The courts do not permit violators of the antitrust laws to benefit as a result of their violations, by extending and perfecting

their plans to eliminate competition. As the Supreme Court said regarding divestiture of jointly held theatres in the movie industry, in a case cited to this Court by plaintiff-appellee in connection with the proposed judgment (*United States* v. *Paramount Pictures, Inc.*, 334 U.S. 131, 152-3 (1948)):

> To the extent that these acquisitions were the fruits of monopolistic practices or restraints of trade, they should be divested. *And no permission to buy out the other owner should be given a defendant.* . . . . Moreover, even if lawfully acquired, they may have been utilized as part of the conspiracy to eliminate or suppress competition in furtherance of the ends of the conspiracy. In that event divestiture would likewise be justified. . . . In that situation *permission to acquire the interest of the independent would have the unlawful effect of permitting the defendants to complete their plan to eliminate him.*
>
> Furthermore, if the joint ownership is an alliance with one who is or would be an operator but for the joint ownership, divorce should be decreed even though the affiliation was innocently acquired. For that joint ownership would afford opportunity to perpetuate the effects of the restraints of trade which the exhibitor-defendants have inflicted on the industry. [Emphasis supplied.]

The original acquisition of British Timken and French Timken stock by defendant in 1927-8 was illegal because it was part and parcel of the conspiracy to eliminate competition between defendant and those companies. Further acquisitions in 1951 of stock in the same companies can certainly have no effect other than to continue and extend

the purposes of that conspiracy. It would follow that the acquisitions now proposed by defendant would be in themselves illegal, as further steps in the illegal conspiracy already found to exist by this Court.

IV

Vacating Sections IV B and VIII B and amending Section VIII A, the minimum action required by defendant's motion, would have the effect of nullifying most of the remaining provisions of the judgment. For example, Section V of the judgment enjoins defendant from combining with British Timken, French Timken or their subsidiaries for the purpose of allocating markets, restraining production or engaging in other listed restrictive practices. Section VII of the judgment likewise is confined to prohibition of concerted action by defendant with British Timken, French Timken or their subsidiaries, and enjoins these companies from transferring patent licenses, know-how, or trade mark rights upon designated restrictive conditions. Section VI of the judgment, though relating only to unilateral action by defendant, is concerned mainly with such action in connection with British Timken or French Timken, as for example, referral of orders to those companies, and acting as their distributor. These three judgment sections, which, with Sections IV, VIII and IX, comprise the bulk of the judgment, have meaning only so long as British Timken and French Timken are independent of defendant, and would be rendered utterly ineffective if Sections IV and VIII are modified as defendant wishes. Possibly this is the reason defendant has frankly asked, as

its primary request, that this Court vacate its entire judgment.

V

Even assuming that these other portions of the judgment could be effective with British Timken and French Timken under defendant's control, modification of the divestiture section as defendant proposes would defeat the basic objective of the judgment.

This objective was to remove previously existing barriers to competition between defendant, British Timken and French Timken. One of the principal means adopted by this Court in its judgment to achieve this objective was the elimination of defendant's financial interests in these potential competitors. As long as defendant is interested in these companies either partially or wholly, competition between them will not exist. The financial interests will continue to serve, as they have in the past, as an inducement not to compete, and further acquisitions will serve only to increase the inducement. The acquisition by defendant of its stock interests in these companies was an original element of the illegal conspiracy, and the interests were used thereafter as an instrument to further the conspiracy. Defendant at no time used the influence arising from the interests other than to extend the various restrictive agreements which formed part of the conspiracy.[1] Anything short of

[1] These points were all made by plaintiff-appellee at the hearing on relief and in its brief on relief of October 24, 1949. That brief urged, in part, as follows:

> Defendant's investments in potentially competing companies were an integral part of the 1927-28 agreements, which continued the existing illegal conspiracy to suppress

a complete divestiture of these interests, and the prevention of future acquisition of similar interests, would interfere with the fundamental end sought to be accomplished by the judgment.

VI

United States v. *National Lead Company*, 63 F. Supp. 513, affd. 332 U.S. 319 (1947), is not, as defendant suggests on page 12 of its "Statement of Reasons Supporting Motion", a precedent for amendment of this Court's judgment.

Actually, defendant's suggestion comes somewhat late. It was not made at the hearing on relief, where the *National Lead* case was discussed in some detail. The various contingencies of the option agreements were known at that time, and provision could readily have been made in the judgment for their exercise upon the occurrence of any of the contingencies. Instead, the Court pro-

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competition. As such, they were an influencing factor in inducing the renewal of world territorial allocation that would otherwise have expired. [p. 4]

* * * *

As an integral part of the conspiracy whose purpose was thus to eliminate competition, on the part of coconspirators and outsiders alike, defendant's investments in British Timken and French Timken were factors which induced the continuation of the agreements to divide world territories that would otherwise have expired in 1928. [p. 5]

* * * *

The investments served initially, and have continued to serve, as an inducement to defendant not to compete with British Timken and French Timken [p. 5]

* * * *

The investments, though not giving defendant control of British Timken and French Timken, have given it a means of influencing those companies not to compete

hibited their exercise by enjoining further acquisition by defendant of British Timken or French Timken stock. Defendant is not now entitled to a further hearing on a question already decided.

Even assuming, however, that defendant's reference to the *Lead* case were timely, it would not alter the determination already made by this Court to order divestiture and prohibit future acquisitions. A number of factors, not present in this case, led the Court there to include in its divestiture provision the alternative of selling or buying. In the first place, the alternative language was adopted in that case with the understanding that the Government could object to any sale or acquisition later proposed by the defendants. Only one acquisition was in fact approved under the provision, that of a jointly owned Canadian corporation. Several considerations made this acquisition of relatively minor importance to the restoration of

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with defendant. In this way as well, they have been utilized as part of the illegal conspiracy. [p. 6]

* * * *

The influence possessed by defendant over British Timken and French Timken has been thrown in favor of continuing the illegal restrictions when the restrictive agreements were renewed in 1934, 1935 and 1938. [p. 7]

* * * *

. . . Those interests have served, and will continue to serve, within the meaning of the *Crescent Amusement* case (323 U. S. 173), as an inducement to defendant to continue its past illegal restraints. [p. 8]

* * * *

. . . The restrictive agreements were about to expire at the time the stock investments were made (F. 37), and the stock investments were among the factors which brought about the continuation of the illegal agreements. [p. 9]

competition. For example, the Canadian company acquired was not a manufacturer, and hence was not a potential exporter to the United States. Further, the Canadian company owned patents which could exclude National Lead exports to Canada, so that a sale of National Lead's stock to a third party would not have necessarily resulted in promoting exports to Canada. In addition, a difficulty existed to transfer of the Canadian company's stock to a stranger, since it was a private company, not a public company such as British Timken. The Canadian company's charter, as well as certain private agreements, contained restrictions which prohibited any stock transfer without consent of the board of directors. The Court felt that, while it could cancel a private contract between a defendant and a foreigner, as it had already done in the case of the cartel agreements, it could not amend the charter of a foreign corporation.

Notwithstanding these considerations, however, the court indicated that it might still have disapproved the acquisition, had the Government not objected to it too late. The Government had presented its objections to the acquisition at the time when the defendant, as required by judgment, offered its plan of divestiture to the court for approval. The acquisition had, however, been accomplished a year earlier, during the pendency of the appeal, and the Government and the court were notified of it at a hearing. At this hearing the court agreed with the Government that it had no power to approve the acquisition pending appeal, as requested by defendant. At the later hearing on the plan, however, the court decided that certain

statements made by Government counsel at the earlier hearing indicated approval of the acquisition, and estopped the Government from later objecting to the consummated transaction. The court stated that had the Government's position been made known sooner, the court might have framed its judgment differently.

The *National Lead* case was cited to the court by plaintiff-appellee, as we have previously stated, and discussed both orally and in the briefs which were exchanged on the subject of relief in this case. This Court properly adopted a divestiture section which did not contain an alternative permitting defendant to acquire further interests in the co-conspirator corporations which were its potential competitors. (*United States* v. *Paramount Pictures, Inc.*, 334 U.S. 131, 152-3 (1948).) Such a choice given to defendant would have defeated the very purpose of the judgment, by allowing complete and permanent elimination, through integration, of the competition which had previously been suppressed by combination.

VII

Defendant is, in fact, requesting this Court to reconsider matters which it has already decided. Defendant's motion is based upon facts and contingencies which were known and in evidence prior to the entry of the judgment, and upon which this Court has already exercised its discretion.

For example, the fact that Dewar died does not, as suggested on page 12 of defendant's "Statement of Reason Supporting Motion", change or affect this Court's findings in relation to the "joint venture" alleged to have existed between defendant

and Dewar. This Court has found not only that it is doubtful that the joint venture ever existed, but also that even if it did exist it could not excuse the defendant's violations of law (Fg. 150, 154-5, 161-3).[2] If the defendant wishes to urge in the Supreme Court that Dewar's death has some affect upon this Court's holdings in regard to the joint venture, the fact of Dewar's death can, as hereinafter pointed out, be appropriately brought to the attention of the Supreme Court.

Defendant's motion should not be granted, as Circuit Justice Field said of a petition for rehearing on modification of an equity decree, "simply to allow a rehash of old arguments" (*Giant Powder Co.* v. *California V. P. Co.*, 5 Fed. 197, 201).

VIII

Granting defendant's motion will not, as claimed in paragraph 13 of the motion, "prevent unnecessary delay and prolixity in the final disposition of this cause both in this court and on appeal in the Supreme Court of the United States".

On the contrary, for this Court to vacate its judgment, either in whole or in part, and conduct further proceedings on relief, as suggested by defendant, would cause a completely unnecessary and unwarranted delay in the final disposition of this case. The facts alleged in defendant's motion in no way justify repetition of the careful proceed-

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[2] Defendant's statement on page 12 of its "Statement of Reasons Supporting Motion", that the option which it now wishes to exercise was "one provision of the agreement pursuant to which the joint venture was carried on" is an admission that the option agreements were, as plaintiff-appellee contended in its brief of October 24, 1949, "a continuation of the illegal conspiracy."

ings already conducted by this Court before framing its final judgment. Such further proceedings would serve only the purpose of delay.

Even assuming that there is some justification for inserting additional evidence in the record, a much more expeditious method exists than that proposed by defendant. Dewar's death, the only fact alleged in defendant's motion which could be considered "additional evidence",[3] could readily be brought to the Supreme Court's attention by affidavit or stipulation of counsel. In fact, a stipulation as to Dewar's death has been suggested by plaintiff-appellee's counsel.

It has been recognized that an appellate court may receive evidence outside the record of matters occurring after the judgment which may affect the reviewing court's action upon the judgment. *United States* v. *Aluminum Company of America*, 148 F. (2d) 416, 445-6 (C.C.A. 2, 1945). In that case, the court, sitting as a statutory court of last resort, accepted figures outside the record showing aluminum production as of March 1944, over 3½ years after the trial and 2 years after judgment, because such evidence had a bearing upon relief. The court refused to accept evidence of facts, such as Arkansas bauxite reserves in 1940, already existing before judgment but not in the record.

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[3] The other facts alleged by defendant are not new. The option agreements, as we have seen, were in evidence (D. Ex. 240, also introduced as P. Ex. 3 (Decree); D. Ex. 228). That the occurrence of one of the contingencies named in the option agreements would cause "the perfection of resulting rights", as stated in paragraph 14 of defendant's motion, was obvious on the face of the agreements. Defendant's desire to exercise the options is hardly an independent fact, and might be inferred from its past conduct; certainly the Supreme Court would accept counsel's statement as to such desire.

The rule was explained, in part, as follows (148 F. (2d) at 445-6):

> . . . There is no reason why an appellate court upon deciding an appeal from such a judgment should not direct the district court what judgment to enter; and so it often does. Nor is there any reason why in deciding what judgment to direct, it should not advise itself from outside the record of such facts as appear to admit of no genuine dispute; i.e. should take "notice" of whatever the district court itself might take "notice." . . . The case is otherwise as to any facts already existing in August, 1940, such as the amount of bauxite in Arkansas, as to which the "Truman Report" also contains figures. . . . We could not constitutionally substitute it for the findings of a court after a trial; facts which a court may judicially "notice" do not for that reason become indisputable. Wigmore, § 2567a. At most we could do no more than treat the report as newly discovered evidence, and send the issue back for another trial, which in the present case we should under no circumstances be willing to do. *For these reasons we refuse to take "notice" of facts relevant to the correctness of the findings; but we do take "notice" of those relevant to remedies.* [Emphasis supplied.]

Since the death of Dewar occurred after the judgment, it clearly may be noticed by the appellate court under the rule of the *Aluminum* case.[4] Cases

[4] A comment written shortly before the *Aluminum* decision had suggested the rule which was applied in that case to intervening facts. The author of the comment pointed out that the question whether facts arising after judgment and affecting the court's action may be shown in the reviewing court outside the record, "does not seem to have arisen under the old practice"; but expressed the view that "especially where they

cited by defendant, such as *Realty Acceptance Corp.* v. *Montgomery*, 284 U.S. 547 (1932), where the appellate court did not look outside the record, related to facts which occurred before judgment.[5]

In an action such as the present one, where the public interest requires a direct appeal to the Supreme Court (28 U.S.C. § 29), certainly a long delay should not be allowed for additional hearings in the District Court merely to place in the record a fact which could be covered by a stipulation or affidavit filed in the Supreme Court.[6] Having the fact of Dewar's death before it, the Supreme Court could give that fact whatever weight it merited.

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may be shown by incontrovertible evidence, there is no good reason for not permitting them to be proved in the reviewing court". Note, *Appeal and Error—New Evidence in the Appellate Court*, 56 Harv. L. Rev. 1313, 1324 (1943). The same writer distinguished, and criticized, the old practice barring an appellate court from considering evidence which arose before judgment but was not placed in the record, as being archaic and time-consuming, especially where the new evidence is incontrovertible. Note, *Appeal and Error—New Evidence in the Appellate Court, supra;* see also Case Comment *Appellate Practice—Shift of Position—Introduction of New Evidence*, 34 IA L. Rev. 521 (1949).

[5] Other cases cited by defendant also arose from facts occurring before judgment. *Baltimore S.S. Co.* v. *Phillips*, 9 F. (2d) 902; *United States* v. *Newbury Manufacturing Co.*, 123 F. (2d) 453; *Levinson* v. *United States*, 32 F. (2d) 449. In *Roemer* v. *Simon*, 91 U.S. 149 and *Hall* v. *United States*, 78 F. (2d) 168, both relating to newly discovered evidence, it is not possible to ascertain from the report whether the evidence related to facts arising before or after judgment. *In re Robertshaw*, 75 F. (2d) 203 and *Jensen* v. *New York Life Insurance Co.*, 59 F. (2d) 512 involve the determination by judicial bodies of legal issues, rather than the occurrence of facts, after judgment.

[6] The Supreme Court's liberality in accepting extrinsic evidence, even where it occurred before judgment, is demonstrated by its action in a recent case where it received an affidavit as to the fact, which was outside the record and had occurred before judgment, that a contract clause alleged to be illegal had been removed. *Automatic Radio Mfg. Co., Inc.* v. *Hazeltine*

The Court could, if it considered such action necessary, modify the provisions of the judgment. Or, it could affirm those provisions of the judgment not deemed affected by Dewar's death, and remand only the provisions affected to this Court for reconsideration. Or, if it agrees with plaintiff-appellee that no revision of the judgment is necessary or justified, it could affirm the judgment as it was entered by this Court on February 15, 1950.

Such procedure would certainly be a more expeditious method of inserting in the record the fact of Dewar's death for whatever bearing it may have on the issues of this case, than the lengthy and cumbersome one proposed by defendant in its motion. For this reason also, granting defendant's motion, rather than expediting, would materially delay the final disposition of the case.

IX

Defendant relies upon Rule 60(b) (5) and (6) of the Federal Rules of Civil Procedure as conferring power upon this Court to reconsider its final judgment. Rule 60(b), as amended in 1948, reads in part as follows:[7]

> On motion and upon such terms as are just, the Court may relieve a party of his legal representatives from a final judgment, order or

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Research, Inc., 339 U. S. 827, 835 (1950). See also *American Telephone & Telegraph Co.* v. *United States*, 229 U. S. 232, 241 (1936). The Supreme Court commonly accepts evidence of facts which will render a case moot. *Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States* (1936) §§252-254.

[7] The background and history of Rule 60 are fully discussed in Moore and Rogers, *Federal Relief from Civil Judgments* (1946) 55 Yale Law Journal 623.

> proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed, or otherwise vacated, *or it is no longer equitable that the judgment should have prospective application; or* (6) *any other reason justifying relief from the operation of the judgment.* [Emphasis supplied]

Rule 60(b), as set out above, is all-inclusive in that it defines the practice with respect to any and all rights or remedies to obtain relief from final judgments.[8] It is to be emphasized that the rule applies only to the *procedure* for vacating judgments and effects no change in the *substantive* law.[9]

The substantive law applicable to relief from judgments based upon changed circumstances, such as defendant alleges have occurred here, is derived from the inherent jurisdiction of courts of equity to adapt or modify continuing judgments as

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[8] *Report Prepared by the Advisory Committee on Rules for Civil Procedure*, 80th Cong. First Session, H. Doc. No. 473, p. 124.

[9] "It should be noted that Rule 60(b) does not assume to define the substantive law as to the grounds for vacating judgment, but merely prescribes the practice in proceedings to obtain relief." (*Report of Advisory Committee on Rules*, p. 128). See also, *Melekoff* v. *Collins* (D.C. Calif., 1939) 30 F. Supp. 159.

events may shape the need.[10] *U. S.* v. *Swift & Co.*, 286 U.S. 106 (1932) is the landmark case.

In the *Swift* case, a suit brought by the United States under the Sherman Act, a consent decree was entered in 1920 dissolving a monopolistic combination of meat packers and individually enjoining such packers from holding stock in cold storage plants and stock yard terminal railroads, from dealing in commodities not related to meat packing, and from selling meats and milk at retail. In April 1930, more than 10 years after entry of judgment, certain defendants filed petitions to modify the judgment and to adapt its restraints to the alleged changed conditions. Petitioners presented evidence of what they contended to be a substantial change in conditions in the industry. The Supreme Court of the District of Columbia modified the judgment to the extent of permitting defendants to deal in groceries at wholesale. All other modifications prayed for in the petition were denied. An appeal was thereupon taken to the Supreme Court.

The Supreme Court reversed the judgment of the court below which had modified the consent decree. The court, in an opinion by Mr. Justice Cardozo, first discussed the inherent power of a court of equity, upon a showing of changed conditions, to modify a judgment, whether entered by consent or after litigation (286 U.S. at 114-115). The court then discussed the question of whether or not evidence presented by petitioners of substantial change in conditions in the industry was sufficient to justify the exercise of the court's power

[10] Moore and Rodgers, *Federal Relief from Civil Judgments*, *supra*, at pp. 692, 643.

to modify the judgment. In reviewing the consent decree, the court found that the restraints upon the defendants relating to their sale of meats and groceries had been imposed because of the gigantic size of the individual defendants, and their capacity for eliminating the competition of smaller competitors. Against this background, the court held that there had been no change of conditions in the industry which would eliminate the need for restraint upon the individual defendants.

The court there specified the limitations imposed upon the exercise of its jurisdiction to modify continuing judgments and concluded that (p. 119):

> We are not framing a decree. We are asking ourselves whether *anything has happened that will justify us now in changing a decree.* The injunction, whether right or wrong, *is not subject to impeachment in its application to the conditions that existed at its making.* We are not at liberty to reverse under the guise of readjusting . . . *Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions* should lead us to change what was decreed after years of litigation with the consent of all concerned. (Emphasis supplied)

The doctrine of the *Swift* case requires that courts make careful inquiry whether or not anything has occurred since the entry of a judgment which will justify its modification. Judgments will not be reviewed in the light of conditions which existed at the time of entry, but rather on the basis of whether there are changed conditions which clearly result in grievous wrong arising from new and unforeseen

circumstances. Unless such changed conditions be clearly shown, modification will not be ordered. As we have previously pointed out, the facts alleged in defendant's motion relate only to matters previously considered by this Court and fail to disclose such changed conditions which make it inequitable that the judgment have prospective application.

The rule of the *Swift* case represents the substantive law applicable to proceedings under subsection (5) of Rule 60 (b), which prescribes the procedure for seeking modification of a judgment where it is no longer equitable that the judgment should have prospective application. Moore & Rogers, *Federal Relief from Civil Judgments, supra,* at 692, 643. Subsection (6) prescribes the procedure for seeking modification for any other reason justifying relief. That subsection is a catch-all and described by its proponent as a "general residual clause . . . to cover unforeseen contingencies." [11]

A survey of cases filed under Rule 60(b) (5) and (6) indicates that motions for modification or vacation of judgment have been granted only where the facts of the individual case show extreme hardship and injustice.[12] For example, in *Block* v. *Thou-*

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[11] Moore and Rogers, *Federal Relief from Civil Judgments, supra,* at p. 692.

[12] A conflict of opinion exists over a trial court's jurisdiction under Rule 60(b) to modify or vacate judgments after an appeal has been perfected. Some courts have held that an appeal terminates the power of a trial court to act. *Miller* v. *U. S.* (C.C.A. 7, 1940), 114 F. (2d) 267, cert. den. 313 U.S. 591; *Schram* v. *Safety Inv. Co.* (E.D. Michigan 1942) 45 F. Supp. 636; *Fiske* v. *Wallace* (C.C.A. 8, 1940), 115 F. (2d) 1003; *Piascik* v. *British Ministry of War Transport* (S.D. N.Y., 1949) 83 F. Supp. 518; Moore's *Federal Practice,* Vol. 3, Section 73.03 Supp. p. 413; *International Railway Co.* v. *Davidson* (W.D. N.Y. 1945) 65 F. Supp. 58, Barron and Holt-

sandfriend, (C.C.A. 2, 1948), 170 F. (2d) 428, where a motion was filed under subsections (5) and (6), the defendant landlord was granted relief from a judgment based on an order of local rent control authorities reducing his rents and requiring a refund, where, after entry of judgment, the refund order was set aside by the OPA administrator. *Grand Union Equipment Co.* v. *Lippner,* (C.C.A. 2, 1948) 167 F. (2d) 958, also concerned a

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zoff, *Federal Practice and Procedure,* Sec. 1332. Others have held that trial courts may consider such motions with leave of the appellate court. *Perlman* v. *332 West Seventy-Second Street Company* (C.C.A. 2, 1942) 127 F. (2d) 716. See also *S. C. Johnson and Son, Inc.* v. *Johnson* (C.C.A. 2, 1949) 175 F. (2d) 176.

With respect to Rule 60(a), the ambiguity as to which court, trial or appellate, has power to correct *clerical mistakes* pending an appeal, clearly has been recognized (*Federal Relief from Civil Judgment,* p. 686). In 1948, an amendment was adopted permitting trial courts to correct clerical errors pending appeal, with leave of the appellate court. (*Report of Advisory Committee on Rules,* p. 123). Unfortunately, the Advisory Committee has failed to recommend a similar amendment to Rule 60(b), under which this motion was filed, and the conflict of opinion still exists as to this latter subsection.

As previously stated, (*supra,* p. 25); Judge Rifkind held in the *National Lead* case that he had no power pending appeal to approve a plan submitted by a defendant under the divestiture section of the judgment, stating, "As I understand it I am at this point without power to act under Section 8 of the decree. Consequently I am not in a position either to approve or disapprove the proposed acquisition."

In the cases cited by defendant where additional evidence was received by trial courts after appeal, the appellate courts, under the special circumstances, had refused to consider such evidence. (See *supra,* n. 5). Consequently, unless the trial courts had been permitted to receive such evidence it would have been excluded from the consideration of the appellate courts. No such problem is raised in this case since under the circumstances here, as we have seen above (*supra,* pp. [illegible]), the appellate court can readily consider the facts alleged in defendant's motion, for whatever bearing they may have on the issues of the case.

motion filed under subsections (5) and (6). There an order was granted in a bankruptcy proceeding modifying an injunction against prosecution of claims against the debtor, where the purpose of the modification was to enable the creditor to reduce his claim to judgment so as to enable him to maintain an action on an insurance policy issued to the debtor.

Klapprot v. *United States,* 335 U.S. 601, was an action filed under subsection (6) of Rule 60(b). There the defendant Klapprot sought, after four years, to have a default judgment of denaturalization set aside on the ground that the judgment was entered against him while he was in prison awaiting trial on a selective service charge. He alleged that while confined to prison he was ill and was without funds to obtain counsel. He further alleged that after the conviction for the selective service charge had been reversed, he had been charged with sedition and that after that charge had been dismissed he had been held for some time for deportation. Mr. Justice Black, speaking for the court, set aside the default judgment on the basis of the treatment which the defendant had received and his inability to present his defense in the denaturalization proceedings, holding that subsection (6) enabled courts "to vacate judgments whenever such action is appropriate to accomplish justice." See also *United States* v. *Backofen* (C.C.A. 3, 1949) 176 F. (2d) 263. *United States* v. *Miller* (M.D. Pa., 1949) 9 F.R.D. 506, likewise granted relief from a default judgment in an action under Rule 60(b) (6) where a judgment for treble damages had been entered against a

party by default and *without notice* to such party, the amount of damage having been based upon nothing more than a *guess*.

The facts alleged in defendant's motion do not justify relief from the operation of the judgment under the cases describing the substantive law applicable to such relief. If defendant's motion is denied, it will not suffer extreme hardship or "grievous wrong," resulting from new or unforeseen circumstances. It is not necessary or appropriate for this Court to vacate or modify its judgment in order "to accomplish justice."

No events are alleged by defendant to have occurred which would make it "no longer equitable," as defendant states in paragraph 13 of its motion, that the provisions of this Court's judgment "should have prospective application," or which would otherwise justify modification or vacation of the judgment. In short, we have already seen that the option agreements relating to British Timken and French Timken stock were in evidence, and that the various contingencies named in these agreements, including that of Dewar's death, were before this Court when it found the existence of law violations and framed its judgment. The occurrence of one of these contingencies could not affect violations already consummated, nor the relief necessary to dissipate the effects of those violations. Thus, there has been no change in the factual basis of the Court's decision and judgment, nor are any new legal issues raised. The Court could have provided for the exercise of these options upon the occurrence of one or more of the contingencies, but instead elected to prohibit any further acquisitions of British Timken and

French Timken stock. Therefore, the Court has already decided the questions raised in defendant's motion based upon the occurrence of the contingency of Dewar's death.

WHEREFORE, plaintiff-appellee, the United States of America, prays the Court to deny in its entirety the defendant-appellant's motion that this Court, first obtaining leave of the Supreme Court of the United States, receive additional evidence, make additional findings of fact and conclusions of law, and vacate its entire judgment, or vacate and modify portions of Sections IV and VIII thereof.

Respectfully submitted,

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W. PERRY EPES,
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Timken Roller Bearing Co. v. U.S. No. 352,O.T.'50

This is the reply brief to the Government's opposition to the motion filed in District Court. It should be attached to the pending motion to postpone oral argument.

EXHIBIT C.

(Filed in the District Court March 9, 1951.)

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

LIBRARY
SUPREME COURT, U.S

CIVIL ACTION No. 24,214.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE TIMKEN ROLLER BEARING COMPANY,
Defendant.

REPLY TO PLAINTIFF-APPELLEE'S MEMORANDUM IN OPPOSITION TO MOTION THAT THIS COURT ASK LEAVE OF THE SUPREME COURT OF THE UNITED STATES TO CONSIDER APPELLANT'S MOTION THAT THIS COURT RECEIVE ADDITIONAL EVIDENCE AND RECONSIDER ITS FINAL JUDGMENT HEREIN AND, IF LEAVE BE GRANTED, THAT THIS COURT PROCEED TO DO SO, BECAUSE OF CHANGED CIRCUMSTANCES DUE TO THE DEATH OF MICHAEL B. U. DEWAR SINCE THE PERFECTION OF AN APPEAL HEREIN TO THE SUPREME COURT OF THE UNITED STATES.

NOW PENDING ON APPEAL IN THE SUPREME COURT OF THE UNITED STATES.

I.

THE PROCEDURAL QUESTION.

In our "Statement of Reasons Supporting Motion," filed with the defendant's motion, we set forth numerous authorities supporting the procedure defendant has adopted in cases where developments while an appeal was pending made some action by the trial court appropriate.

These authorities are fully discussed in our main brief, and it is not necessary to add to that discussion.

The soundness of our contentions is made evident when it is remembered that the trial court, under the proposed procedure, reconsiders the judgment entered in this case after proof as to the new facts and circumstances has been adduced. It is, of course, eminently proper that this proceeding be had in the trial court, for that court, having considered the case originally, is better qualified than the appellate court, which has not yet done so, to determine the effect of the new circumstances on its judgment. Conceivably, action in the trial court could alter the entire basis of the appeal, making the decision of the appellate court, based on the original facts and the original judgment, wholly academic. Therefore, once jurisdiction has been transferred to the appellate court, before the trial court may act, it must be authorized to do so by the appellate court.

While the position of the plaintiff is not too clear on the procedural question, it seems to be the plaintiff's suggestion in its argument on pages 12 to 15 of its memorandum that the appellate court should first hear and consider the new evidence. One objection to this method of handling this matter is that it would require the appellate court, as to the matters involved in the motion, to act as a court of first instance, and to pass upon questions as to which the trial court has had no opportunity to act. This is something far different from simply modifying the decree of a trial court which itself has had every opportunity to consider all the facts which later come before the appellate court, and is not properly the function of the appellate court. Another objection is that there is no authority for such action by an appellate court.

Indeed, plaintiff does not seriously challenge the propriety of the procedure which defendant seeks to have followed here. Plaintiff does argue (page 12 of its memorandum) that this procedure will not prevent delay and

prolixity in the final disposition of this cause. It is suggested that the Supreme Court could itself make any modifications in the decree which it saw fit by reason of the new developments in the case, or could simply affirm the decree of this Court if it concluded that no modifications were called for by the changed circumstances, or that it could "remand only the provisions affected to this Court for reconsideration." Of course, if we assume as plaintiff apparently does, that the changed circumstances do not affect the result of this case, then it is true that this proceeding in this Court would simply delay the final disposition of this case. On the other hand, if, as we believe, the death of Dewar *and the acquisition by the defendant of his interests in British Timken and French Timken*[1] change the entire factual situation and the legal problems involved in this case, then certainly it is more expeditious to have this Court reconsider the case now, and to postpone the review by the Supreme Court until it has the current situation, and this Court's judgment thereon, before it in the record. We cannot believe that in such a case as this the Supreme Court would wish to have the burden of reviewing a decree based upon one set of circumstances, and modifying it to a new factual situation, without having the judgment of this Court on the effect of the changed circumstances. If the judgment is to be modified because of the changed circumstances, it will be done by this Court, either before review by the Supreme Court, or upon remand by that Court. If the latter, then the modified decree of this Court may itself be subject to review, at the instance of either the plaintiff or the defendant. Then, finally, the case will be disposed of. Certainly it will be more expeditious, more considerate of the time of the Supreme Court, and more in keeping with the proper functions of this Court and the Supreme Court, for this Court to reconsider its judg-

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[1] Emphasis throughout is supplied unless otherwise indicated.

ment in the light of the changed circumstances *before* the Supreme Court is asked to consider this case on appeal.

Plaintiff argues that this procedure should not be allowed to delay the hearing on appeal "merely to place in the record a fact which could be covered by a stipulation or affidavit filed in the Supreme Court." However, as has been emphasized repeatedly, the purpose of this proceeding in this Court is *not* "merely to place in the record" new and additional facts. It is rather to permit this Court to consider the effect of these facts upon its judgment entered prior to the change of circumstances. We have shown that this method of procedure is the most expedient for this purpose.

Moreover, the authorities which plaintiff cites to show that new facts, not in the record, will be considered by the Supreme Court, if presented by affidavit or stipulation, are far from convincing on this point.

It is not at all clear from the opinion in *Automatic Radio Mfg. Co. Inc. vs. Hazeltine Research Inc.*, 339 U. S. 827 (1950), (cited in plaintiff's memorandum at page 15, note 6) that the affidavit which the Supreme Court mentions was not part of the record in the case from the lower courts. That case was heard on motions for summary judgment filed by both parties, with affidavits in support of the motions. Thus, the affidavits themselves constituted the record in the case; and from the opinion of Mr. Justice Minton it is impossible to tell whether the particular affidavit to which he refers at page 835 (stating that Hazeltine had authorized its licensees to discontinue a notice restricting the use of the patented apparatus—one of the facts upon which Automatic based its claim of illegal use of the patent) had been filed in the District Court or only in the Supreme Court. There is nothing in the opinion to lead us to the latter conclusion.

The only other case cited by plaintiff on this point is *United States vs. Aluminum Company of America*, 148 F. (2nd) 416 (C. C. A. 2, 1945). The consideration of facts

outside the record in that case, in the words of the Court itself, depended on the doctrine of judicial notice. That was an unusual case because of the extremely long time which had elapsed between the closing of evidence and the consideration of the appeal—nearly five years—and because during that time, as the Court says, the aluminum industry had been revolutionized by reason of the war. These factors made it especially appropriate that the appellate court bring itself up to date on the facts, and apparently no attempt had been made to accomplish this by a proceeding in the District Court. Therefore, the Court took notice of facts appearing in a Congressional Committee report.

Neither party raised any question as to the propriety of the appellate court's taking judicial notice of the facts which it considered. To the contrary, they asked it to take such notice of certain facts. Certainly there is nothing in the case at bar comparable to the Congressional Committee report from which the Supreme Court, even were it so inclined, could take judicial notice of the fact of Dewar's death or of defendant's acquisition of his interests in British Timken and French Timken.

The only other authorities cited are law review notes which see "no good reason for not permitting them (new facts) to be proved in the reviewing court." The obvious answer to this is that it is not the proper function of a reviewing court to take evidence or to determine, in the first instance, the legal conclusions which follow therefrom. Moreover, in the cases cited in our main brief, the Supreme Court has said that it will not consider additional evidence not in the record certified to it from the trial court.

Finally, it is stated that the Supreme Court accepts facts which render a case moot; but that is a problem far different from the one here involved, and its solution depends on completely different considerations.

In short, we submit that there is no recognized appropriate method, other than that which defendant has fol-

lowed, for bringing the changed circumstances in this case to the attention of the Supreme Court, and, as we have already pointed out, accomplishing the further and broader purpose of this proceeding, namely, to have a reconsideration of the case by this Court. This ultimate object cannot possibly be accomplished unless this Court obtains authority from the Supreme Court to take additional evidence *and* to reconsider its judgment herein. We believe there can be no doubt that the procedure which we have asked the Court to adopt is approved by competent authorities and is best adapted to permitting this Court to take the action in this case which, upon full consideration of the changed circumstances, it may deem appropriate with respect to its judgment herein.

II.

THE EFFECT OF THE CHANGED CIRCUMSTANCES ON THE MERITS AND FINAL JUDGMENT IN THIS CASE.

By far the larger portion of plaintiff's memorandum is directed to the substantive, rather than the procedural, aspects of defendant's motion. It is somewhat difficult to discuss the substantive question without a definite set of facts as the basis for the discussion; and these, of course, will be preesnted to the Court only after it decides the present motion. Presumably, we can treat this in the same manner as a motion to dismiss, and assume that for the purposes of this motion the facts stated therein are admitted to be true. These facts may be sufficient to show that there is probable cause for reconsidering the decree in this case; but we believe there will be other facts which will have to be considered before the Court can determine the appropriate decree to enter under these changed circumstances, and some reference may be made to these in our discussion.

Dewar's death, in itself, of course, is not the only important fact. The facts of ultimate importance are that his death necessarily ends the joint venture between him and the defendant with respect to British Timken and French Timken; that his interests in those companies will now be acquired by the defendant, in all probability, and his control and management transferred to the defendant; and that British Timken and French Timken will now become, for the first time, true subsidiaries of the defendant. Questions as to restraints of trade imposed by contract between defendant, Dewar, British Timken and French Timken, now become secondary; and the primary question is whether defendant's acquisition of ownership control of these companies is illegal. Furthermore, the acquisition of these controlling interests represents the culmination of the joint venture and the fulfillment of its ultimate purpose, namely, the extension of defendant's business of manufacturing and selling tapered roller bearings into foreign countries, and thus permits a reevaluation of the course of conduct which was followed in all the relations between defendant, British Timken and French Timken.

It is contended by plaintiff that Dewar's death does not change the basis upon which this case was tried or upon which relief was granted; that the exercise by defendant of its options to acquire Dewar's stock will not raise legal questions not considered or decided by this Court; and that defendant is simply asking the Court to reconsider matters which it has already decided. It is pointed out that the agreements containing the option provisions were in evidence when this Court entered its judgment herein, and that the Court therefore was fully aware of the possibility that defendant might some day acquire Dewar's interests in British Timken and French Timken. Plaintiff does not take into account the tremendous difference between a mere contingent right to acquire controlling interests in those companies, a mere possibility of making

them true subsidiaries, and the actual fact of such control. Defendant might have desired to acquire these interests prior to this time, but until now it has never had an absolute right to do so. Having entered into the joint venture with Dewar, it was bound to carry that venture through to completion, and had no way of compelling Dewar to sell his interests. Now it does have such right, and is actively proceeding to acquire those shares.

Plaintiff argues (page 2 of its memorandum) that the very acquisition of Dewar's shares is prohibited by the decree entered by this Court, and that the agreements giving defendant the right to acquire those shares are in full force and effect only because a stay of all the provisions of the final judgment has been granted pending appeal (plaintiff's memorandum, page 3). It is clear, therefore, that plaintiff does not deny that defendant may now lawfully acquire Dewar's shares in British and French Timken, though admittedly such acquisition may be at the peril of having to dispose of all the shares should the judgment remain unmodified. The defendant's action is understandable. Upon Dewar's death it was simply placed in the position of having to act within a limited time to exercise its options, or very probably lose the right to acquire control of subsidiaries, one of which it had helped to establish, and both of which it had assisted in developing, with financial and technical aid. It naturally chose to take the necessary action to protect its rights.

The change in the factual situation, then, is quite a significant one. How does it affect the legal questions involved?

This case was commenced by the plaintiff, and tried and decided by this Court, on the theory that three independent companies, being actual or potential competitors in a tapered roller bearing market, had entered into contracts, combinations and conspiracies to restrain competition. (Court's memorandum opinion, pages 53 and 58.) The Court stated that

"Defendant did not acquire British and French Timken" (memorandum opinion, page 53), and

"did not build plants in Europe or *purchase subsidiaries* abroad"

(memorandum opinion, page 58); and the Court therefore rejected defendant's analogy between this case and *United States vs. Columbia Steel Company*, 334 U. S. 495 (1948). The plaintiff made no charges of a monopoly, or an attempt to monopolize on the part of defendant, and the Court made no findings relating to such a charge.

Now, however, the three companies are brought into a parent-subsidiary relationship; and it is clear that a judgment based on the theory of a conspiracy between independent companies should no longer apply to the new legal relationship. Now, the legal questions involved are those presented by the corporate integration cases, such as *Standard Oil Company vs. United States*, 221 U. S. 1 (1911); *United States vs. Paramount Pictures*, 334 U. S. 131 (1948); *United States vs. Aluminum Company of America*, 148 F. (2d) 416, *supra;* and *United States v. Columbia Steel Co.*, 334 U. S. 495, *supra.* These questions apparently were not considered by this Court,[2] as they were not necessary to its decision under the theory on which the case was tried. Further inquiry into these questions is now essential to a proper decision in this case.

The *Columbia Steel* case sets forth most concisely the method of analysis in a case where corporate acquisitions are alleged to result in unreasonable restraints of trade, or to lead to monopoly. In that case the Supreme Court stated (page 527):

"'The same tests which measure the legality of vertical integration by acquisition are also applicable to the ac-

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[2] Although the corporate integration cases were referred to by the defendant by analogy, they apparently were thought inapplicable by the Court for the reasons indicated in its distinguishing of *United States v. Columbia Steel Co., supra.*

quisition of competitors in identical or similar lines of merchandise. It is first necessary to delimit the market in which the concerns compete and then determine the extent to which the concerns are in competition in that market. If such acquisition results in or is aimed at unreasonable restraint, then the purchase is forbidden by the Sherman Act. In determining what constitutes unreasonable restraint, we do not think the dollar volume is in itself of compelling significance; we look rather to the percentage of business controlled, the strength of the remaining competition, whether the action springs from business requirements or purpose to monopolize, the probable development of the industry, consumer demands, and other characteristics of the market. We do not undertake to prescribe any set of percentage figures by which to measure the reasonableness of a corporation's enlargement of its activities by the purchase of the assets of a competitor. The relative effect of percentage command of a market varies with the setting in which that factor is placed."

Somewhat similar is the following declaration from the *Paramount Pictures* case (page 174):

"In the opinion of the majority the legality of vertical integration under the Sherman Act turns on (1) the purpose or intent with which it was conceived or (2) the power it creates and the attendant purpose or intent. First, it runs afoul of the Sherman Act if it was a calculated scheme to gain control over an appreciable segment of the market and to restrain or suppress competition, rather than an expansion to meet legitimate business needs. United States v. Reading Co., 253 U. S. 26, 57; United States v. Lehigh Valley R. Co., 254 U. S. 255, 269, 270. Second, a vertically integrated enterprise, like other aggregations of business units (United States v. Aluminum Co. of America, 2 Cir., 148 F. 2d 416), will constitute monopoly which, though unexercised, violates the Sherman Act provided a power to exclude competition is coupled with a purpose or intent to do so. As we pointed out in United States v. Griffith, 334 U. S. 107, n. 10, size is it-

> self an earmark of monopoly power. For size carries with it an opportunity for abuse. And the fact that the power created by size was utilized in the past to crush or prevent competition is potent evidence that the requisite purpose or intent attends the presence of monopoly power. See United States v. Swift & Co., 286 U. S. 106, 116; United States v. Aluminum Co. of America, supra, 148 F. 2d at page 430. Likewise bearing on the question whether monopoly power is created by the vertical integration is the nature of the market to be served (United States v. Aluminum Co. of America, supra, 148 F. 2d at page 430), and the leverage on the market which the particular vertical integration creates or makes possible."

And in the *Aluminum Company* case, *supra*, in connection with its discussion of the percentages of aluminum production which were controlled by Aluminum Company of America, the Court stated:

> "Hence, it is necessary to settle what we shall treat as competing in the ingot market."

Thus, it is seen that the first problem for the Court in these cases is "to delimit the market"; next, to determine "the percentage of business controlled" in this market by the integrated corporations; third, to examine the "strength of remaining competition"; fourth, to inquire into the motives behind the acquisition—whether they be "business requirements or purpose to monopolize"; and, fifth, to determine such additional questions as "the probable developments of the industry, consumer demands, and other characteristics of the market."

This Court in this case made certain findings with respect to the size and volume of sales of defendant, British Timken and French Timken, and the respective percentages which each produced of tapered roller bearings and antifriction bearings in their respective countries (pages 3, 4 and 5, memorandum opinion), and made general findings to the effect that these figures showed "the dominant position

of defendant, British Timken and French Timken both in the tapered and anti-friction bearing industry." (Memorandum opinion, pages 5, 12 and 13.) The Court never made it entirely clear, however, which percentage it considered as showing defendant's competitive advantage—whether that concerning tapered rollor bearings only or that including all anti-friction bearings, and even stated (memorandum opinion, page 12):

"It is of no moment what the precise figures were."

That may have been true so long as the Court was dealing with three companies on the basis that they were "independent." However, considering the new integration of the three companies and the statements of the Supreme Court in the *Columbia Steel* case, such findings as this are now required for a proper decision of this case.

The Court made no findings regarding the competitors of defendant, British Timken and French Timken, as to their size, strength and sales. There were certain general findings with regard to the alleged participation of British Timken and French Timken in cartel agreements with some of their competitors (memorandum opinion, page 46) and others as to the manner in which they acted with the defendant with respect to other competitors (memorandum opinion, page 46). Nowhere in its opinion, however, did this Court make any findings as to the size and strength of the competing companies. Yet these findings now become of the greatest significance in determining whether defendant's control of British Timken and French Timken constitutes an unreasonable restraint of trade.

The Court also gave little attention to the question of defendant's motives in acquiring the interest in British Timken and in cooperating in the establishment of French Timken, because the Court found (memorandum opinion, page 53) that the defense of absence of intent to restrain trade and of the existence of good business reasons was not valid in such cases. The *Columbia Steel* and *Paramount*

Pictures decisions, quoted above, teach us otherwise where a corporate integration is involved.

The Court did make some general comments with regards to defendant's intent to restrain trade, and cited one letter (not involving defendant's relations with British and French Timken) (memorandum opinion, page 54) to show such an intent with respect to domestic trade; but we submit that to determine the legality of defendant's acquisition of control of these companies more detailed findings, based upon a more thorough examination of the purposes behind defendant's acquisitions, should be made by the Court.

Finally, the Court made few, if any, findings with regard to the probable developments of the industry, consumer demand, and other characteristics of the market.

Furthermore, we submit that the tests of what constitutes an "unreasonable restraint of trade" cannot be the same with respect to parent and subsidiary as in the case of independent corporations. It is true that in its first decision in *United States vs. Yellow Cab Company*, 332 U. S. 218 (1947), the Supreme Court said:

> "The corporate interrelationships of the conspirators, in other words, are not determinative of the applicability of the Sherman Act."

Yet, in the subsequent *Columbia Steel* case, the Court recognized the obvious fact that:

> "A subsidiary will, in all probability, deal only with its parent for goods the parent can furnish."

and declared:

> "That fact, however, does not make the acquisition invalid. When other elements of Sherman Act violations are present, the fact of corporate relationship is material and can be considered in the determination of whether restraint or attempt to restrain exists."

For this further reason, then, we submit that this Court should reconsider its judgment herein in considera-

tion of defendant's acquisition of the controlling interest in British Timken and of complete ownership of French Timken.

In these respects, we believe that the changed circumstances in this case may affect not only the question of the remedy which is appropriate, but even the basic question of whether a violation of the Sherman Act now exists which requires the intervention of this Court; and thus present questions not previously before this Court.

III.

THE FORM OF THE JUDGMENT.

In the first instance, we wish to make it clear that our reference to Rule 60(b) of the Federal Rules of Civil Procedure is not intended to imply that it affects the substantive rights of the defendant to relief from the judgment. We do contend, and, as we read plaintiff's memorandum, it does not deny, that under this rule this Court has power to grant relief from a final judgment, on motion timely made, when:

> "it is no longer equitable that the judgment should have prospective application."

or when there is:

> "any other reason justifying relief from the operation of the judgment."

The rule simply provides a convenient procedure for securing relief from a final judgment.

The cases which plaintiff has cited to show the application of Rule 60(b) do not exhaust the situations in which relief from a judgment may be granted under the rule, and they certainly do not contain any discussions by the various courts which would preclude such relief in the present case.

The most important authority cited by the plaintiff on this aspect of the motion is *United States vs. Swift & Company*, 286 U. S. 106 (1932). The first point to be noted

with regard to that case is the fact that it begins by affirming "the power of a court of equity to modify an injunction in adaptation to changed circumstances" (page 114). The second point is that the decree involved in that case was a consent decree; and, while the Supreme Court makes some statements which indicate that there is nothing about a consent decree which affects the power of the Court with respect to modification, and though the decree was previously attacked upon appeal in the Supreme Court, yet it is clear that this factor of consent had much to do with the Court's unwillingness to have the decree modified. For example, at page 112 of its opinion the Court remarked:

> "The expectation would have been reasonable that a decree entered *upon consent* would be accepted by the defendants and by those allied with them as a definite adjudication setting controversy at rest."

Again, at page 115, it is commented:

> "The defendants, controlled by experienced business men, *renounced* the privilege of trading in groceries, whether in concert or independently, *and did this with their eyes open.*"

And at pages 116-117:

> "We do not turn aside to inquire whether some of these restraints upon separate as distinguished from joint action could have been opposed with success if the defendants had offered opposition. Instead, *they chose to consent,* and the injunction, right or wrong, became the judgment of the court."

And finally at page 119:

> "The difficulty of ferreting out these evils and repressing them when discovered supplies an additional reason why we should leave the defendants where we find them, *especially since the place where we find them is the one where they agreed to be.* * * * Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation *with the*

consent of all concerned. * * * Wisely or unwisely, *they submitted to these restraints upon the exercise of powers that would normally be theirs. They chose to renounce what they might otherwise have claimed,* and the decree of the court confirmed the renunciation and placed it beyond recall."

The other statements by the Court in the *Swift* case, then, must be read in the light of the above quoted remarks, and were not intended to interfere with the sound discretion of the district courts in framing their decrees in anti-trust cases (*United States vs. Crescent Amusement Company,* 323 U. S. 173 (1944)), or in adapting them to changed circumstances, when a consent decree is not involved.

Another important difference between this case and the *Swift* case is that the modification of the decree is sought here prior to any consideration of the case whatever by the Supreme Court. In a sense, so long as the Supreme Court has not acted in this case, it is still a matter of this Court's discretion in framing the decree initially, rather than modifying it after it has already gone into operation and, indeed, after it has been confirmed by the Supreme Court upon attack by the defendant in that Court.

Admittedly, it is an unusual thing for circumstances to change sufficiently to cause a court to modify its judgment once rendered, even before the case can be heard in an appellate court; but we believe that the changed situation as to ownership and control of British Timken and French Timken, thrust upon the defendant, as it were, by events beyond its control, is of sufficient importance that this Court will wish to reconsider its exercise of discretion in the framing of the decree in this case.

With respect to possible modification of the divestiture provisions of the judgment, plaintiff urges that any modification which would exclude these provisions would be contrary to certain statements of the Supreme Court in *United*

States vs. Paramount Pictures, 334 U. S. 131 (1948). The Court there first stated:

> "To the extent that these acquisitions were the *fruits of monopolistic practices or restraints of trade,* they should be divested."

Quite clearly, defendant's acquisitions of interests in British Timken and French Timken cannot properly be characterized as "the fruits" of any illegal practices. Even if it is claimed that the illegal practices which the Court found are to be traced back to a time prior to the original acquisitions, yet in no sense were defendant's acquisitions the consequence of any prior illegal acts. The idea of "the fruits" of illegal practices denotes that by the exercise of monopolistic power or by other improper competitive practices the defendant has been able to force competitors out of business and to buy up the competing concerns' property. There is no such factor in this case with respect to defendant's purchase of interests in British Timken and French Timken.

The Supreme Court in the *Paramount Pictures* case next spoke of properties which, though

> "lawfully acquired * * * have been utilized as part of the conspiracy to eliminate or suppress competition in furtherance of the ends of the conspiracy."

But it has never been claimed that defendant, prior to the present time, had control of either British Timken or French Timken. On the contrary, this Court has found (memorandum opinion, page 57) that

> "British Timken and French Timken retained their corporate independence and jealously guarded their interests in dealing with defendant."

How can it be said, then, that defendant "utilized" its interests in those companies "as part of the conspiracy to eliminate or suppress competition"?

The argument previously advanced by the plaintiff to justify divestiture of these interests has been that they

served as "inducements" to the defendant not to compete with British Timken and French Timken. (Plaintiff's Brief in Support of Its Proposed Final Judgment, pages 5 and 6). But that argument was based on the assumption that contractual restraints of competition between three "independent" companies, and possible continuance thereof, must be removed. Now that defendant will have absolute ownership of French Timken, and majority voting control of British Timken, the fact that its ownership may induce it not to compete with its subsidiaries does not make such ownership illegal, as the Supreme Court held in the *Columbia Steel* case.

The arguments presented in the *Paramount Pictures* case for divestiture, therefore, have no application to the present case, particularly due to the changed ownership situation. None of these arguments are convincing reasons why defendant should not be permitted to acquire and hold the controlling interest in British Timken and the entire voting stock of French Timken. It should be remembered that this is not a case where it is alleged that the defendant alone, or in combination with British Timken and French Timken, has a monopoly within the anti-friction bearing industry in any area whatever. There have been no serious charges that defendant has been able to exercise power to destroy competitors, and in fact there could be no basis for such a charge. In the *Paramount Pictures* case, and indeed every other case where divestiture has been ordered, the defendant was not permitted to *retain* properties which permitted it to exercise this monopolistic power, and divestiture was therefore necessary to prevent this. No such considerations require divestiture in this case.

Plaintiff denies the validity of the *National Lead* case, *United States v. National Lead Company*, 63 F. Supp. 513, aff'd. 332 U. S. 319 (1947) as authority for an alternative form of decree requiring defendant either to divest itself of its holdings in British Timken and French Timken, or

to acquire controlling or complete interests, respectively, in those companies. Certain statements are made which purport to show that the decree entered in such form in that case was really so qualified by extraneous understandings of such a nature that, in fact, the defendant had no such choice as the language of the decree would indicate. It is further said that only one acquisition was ever made under this decree, and that this one was "of relatively minor importance to the restoration of competition." Among other things, it is stated that, because of patents owned by the company acquired, *National Lead* could have been excluded from the Canadian market. *The same may be true in this case with regard to imports by the defendant* into *Great Britain, France and other territories,* if defendant is enjoined from enforcing any rights under its agreements with British Timken and French Timken, by reason of the trademark problems involved, as well as the international economic situation which has been analyzed at length heretofore. It is stated that "a difficulty existed to transfer of the Canadian company's stock to a stranger, since it was a private company." *There are many more difficulties,* practical as well as legal, in connection with the disposition of defendant's interests in British Timken and French Timken.

We submit that there is present here every reason which may have existed in the *National Lead* case for allowing the defendant, as an alternative to divestiture, to acquire and hold the controlling interest in British Timken (the remaining shares being widely held, no other holder being an alleged co-conspirator) and the entire ownership of French Timken. Plaintiff argues that defendant is "somewhat late" in suggesting the alternative form of decree. If any explanation is needed for defendant's failure to suggest this, it is sufficient to say that until now the situation has never been such that a decree in that form would have meant anything as a practical matter. Now, by reason of Dewar's death, defendant could, if permitted by this

Court, make effective the alternative provisions of such a decree.

CONCLUSION.

We believe that the Court, in deciding this motion, is faced with two sets of problems: first, the procedural problems of how the fact of the changed circumstances may be made part of the record in this case, and by what court the effect of those changed circumstances on the decree in this case is now to be considered; and second, the substantive problem of what, if any, relief defendant should be given by reason of the changed circumstances. We believe we have shown that the procedure which this motion asks this Court to follow is the correct and most orderly procedure for these purposes.

Beyond that, of course, the Court cannot really decide this motion until evidence has been introduced and arguments more fully presented on the substantive questions involved. In this sense, arguments now directed to the substantive questions are premature, except as they go to demonstrate that there is, or is not, matter of sufficient importance to warrant the Court's reconsideration. We believe that this Court will recognize that there are new questions of importance in this case, and will wish to give them full consideration after receiving evidence on these questions.

In the final analysis, the question in this case will now become one of whether an American corporation may operate foreign subsidiaries which it does not wholly own, and of which it has acquired control following an intermediate step in which it jointly participated with a foreign citizen in the ownership and management of the foreign companies. There are many other American companies which have foreign investments representing much less than 100 per cent ownership of their foreign affiliates. Such arrangements do not unreasonably restrain trade, but

rather promote it by encouraging the development of the economies of the foreign countries, which has now become one of the basic objectives of the foreign policy of the United States. In the long run, it is such development which will promote trade between the United States and foreign countries and will inure to the greatest benefit of this country.

The necessity of participating in foreign markets by means of affiliated companies established in the respective countries has been recognized by many business organizations, including such an international competitor of this defendant as the Swedish bearing company, SKF, whose size and power were shown in the trial of this case. As the Supreme Court said in the *Columbia Steel* case,

> "extension of that industry requires that the existing companies go into production there or abandon that market to other organizations."

This leaves the alternatives of acquiring existing facilities in the new territory, or creating entirely new ones. The choice of the former method should not be forbidden unless it will unreasonably restrain competition in the entire industry, under the tests laid down in the *Columbia Steel* case, *supra*.

A decision on questions of this importance to the American economy should not be made on the basis of dialectics or abstract logic, but in full recognition of the economic realities involved. We submit that trade by the defendant and other companies in foreign commerce will not be promoted by depriving them of foreign investments which they have developed over many years, and expecting them either to attempt to compete in the foreign market solely by exporting products of domestic establishments, or to embark alone to establish foreign factories, and systems of distribution. Rather, they should be permitted, wherever reasonably possible and wherever they do not actually restrain trade which would otherwise flourish, to develop

their foreign trade along such lines as the practicalities of their particular problems require. Only by so doing can the Sherman Act be made a real instrument for the removal of restraints of trade rather than a device for imposing restraints and discouraging foreign trade.

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No. 382

Supreme Court of the United States

OCTOBER TERM, 1956

THE TIMKEN ROLLER BEARING COMPANY,
APPELLANT

v.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 352

THE TIMKEN ROLLER BEARING COMPANY,
APPELLANT

v.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (R. 958) is reported in 83 F. Supp. 284.

JURISDICTION

The final judgment of the district court was entered on February 15, 1950 (R. 1172), and motions for a new trial and amendment of findings and conclusions were denied on June 14, 1950 (R. 1252). The petition for appeal was filed and allowed on July 28, 1950 (R. 1253–1255). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32

Stat. 823, 15 U. S. C. 29, as amended by Section 17 of the Act of June 25, 1948, 62 Stat. 869. Probable jurisdiction was noted on November 6, 1950 (R. 1327).

QUESTIONS PRESENTED

1. Whether appellant has combined with British Timken and French Timken to restrain foreign commerce by allocating world markets, fixing prices, and restricting competition in the sale of anti-friction bearings.

2. Whether the restraints are reasonable as ancillary to a "joint venture" or to the "licensing" of the trademark "Timken".

3. Whether the findings and evidence support the judgment.

4. Whether the divestiture and injunctive relief ordered by the district court are appropriate and necessary.

STATUTE INVOLVED

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, provides in pertinent part as follows:

> SECTION 1 [as amended by the Act of August 17, 1937, 50 Stat. 693]. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal * * *. [15 U. S. C. 1.]
>
> * * * * *

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. * * * [15 U. S. C. 3.]

SEC. 4 [as amended by the Act of March 3, 1911, Sec. 291, 36 Stat. 1167]. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. * * * [15 U. S. C. 4.]

STATEMENT

THE PROCEEDINGS BELOW

This is a civil action brought by the United States under Section 4 of the Sherman Act. The amended complaint, filed December 15, 1947, charged appellant and two foreign corporations, which were named co-conspirators but not defend-

ants (British Timken, Limited, and Societe Anonyme Française Timken, herein referred to as British Timken and French Timken, respectively), with engaging in a combination and conspiracy to restrain interstate and foreign commerce, in violation of Sections 1 and 3 of the Sherman Act, by entering into agreements and planning and acting together to eliminate competition among themselves and others in the manufacture and sale of antifriction bearings in all markets of the world (R. 25).

The amended complaint prayed for adjudication that the conspiracy and contracts to eliminate competition were illegal, cancellation of the illegal contracts, injunctions against continuation of the restrictive practices and against appellant's transferring the trade-mark "Timken" to British Timken or French Timken so as to exclude appellant from using it anywhere in the world, an order that appellant divest itself of its stock holdings and other financial interests, direct and indirect, in the co-conspirator corporations, and such other relief as might be required to dissipate the effects of the conspiracy (R. 23–25).

The district court, after a trial extending from March 22 to April 27, 1948, filed an opinion on March 3, 1949 (R. 958), which it thereafter adopted as its findings of fact and conclusions of law (R. 1020). The court found that appellant, together with British Timken and French Timken, had combined and conspired to restrain

foreign commerce in anti-friction bearings, in violation of Sections 1 and 3 of the Sherman Act, by (a) dividing the world among themselves into exclusive sales and production territories (Fdg.,[1] par. 117, R. 994; Concls., pars. 128, 129, R. 997), (b) fixing prices for products sold under limited exceptions to the division of territories (Fdg., par. 117, R. 994; Concl., par. 132, R. 998), (c) cooperating to eliminate the competition of outsiders (Fdgs., pars. 117, 119, R. 994, 995; Concl., par. 134, R. 999), and (d) participating in foreign cartels which restricted exports by United States producers (Fdgs., pars. 117, 126, R. 994, 996; Concls., pars. 126, 135, R. 996, 999–1000). The Court also found that the exclusive exchange of patents and "know-how" among appellant and its co-conspirators, together with restrictions imposed by them upon the use of the trade-mark "Timken," were integral parts of the general scheme to suppress trade (Fdg., par. 137, R. 1000).

All of the various defenses raised by appellant were considered and rejected by the district court.

The contentions that there was no intent to restrain trade, that the restraints were reasonable and ancillary to appellant's purchase of British Timken and French Timken stock, and resulted

[1] References to statements in the court's opinion which clearly constitute findings of fact or conclusions of law are so designated in this brief. Other references to the opinion of the court are designated by paragraph number and record page only.

from transactions entered into for legitimate reasons, were rejected by an explicit, comprehensive finding that "all that the evidence discloses is an intent to form a smoothly operating combination to control commerce in the tapered-bearing industry throughout the entire world" (Fdg., par. 146, R. 1002; and see Fdgs., pars. 147, 148, R. 1002). The court concluded that the restraints involved were unlawful *per se* (Concls., pars. 142–3, R. 1001) and could not be justified by "good business reasons" (Concl., par. 145, R. 1002).

The contention that the restraints of territorial allocation and price fixing were reasonably ancillary to a "joint venture" was rejected on several grounds. The court found that no joint venture existed (Fdgs., pars., 156–160, R. 1004–5, and it concluded that had one existed it would not have justified continuation of a pre-existing combination designed to allocate exclusive sales territories, to fix prices, and to eliminate competition both within and without the combination (Concls., pars, 161–3, R. 1005–6). And it found further that the restrictive agreements were not, in any event, actually ancillary to the joint venture (assuming one existed), but were made for the specific purpose of eliminating competition (Fdgs., pars. 150, 154–5, R. 1003, 1004).

The defense that the restraints imposed were reasonably ancillary to the contract provisions for transfer of know-how was likewise overruled. Because the court concluded that even the pos-

session of a patent monopoly would not have justified restraints of the character here involved, the lesser interest in protecting know-how was held clearly inadequate as a justification (Concls., pars. 170, 172–8, R. 1007–9).[2]

A similar finding was reached with respect to the claim that the restraints were permissible as ancillary to appellant's licensing of the trade-mark "Timken" to British Timken and French Timken (Op., pars. 179, 180, R. 1009). The court found that the restrictive trade-mark provisions of the various contracts were secondary to the primary purpose of allocating trade territories and preventing competition in the sale of bearings (Fdgs., pars. 183, 187–8, R. 1009, 1010–1), that the restraints could not in any event be justified even by a patent monopoly, and that they could certainly not be justified as sanctioned by the lesser rights of the owner of a trade-mark (Concls., pars. 195–200, R. 1012–4). Moreover, even assuming that the restraints were ancillary to trade-mark licensing, the court ruled that appellant was not the legal or "equitable" owner of

[2] The court said (Concl., par. 177, R. 1008):

"We are, here, confronted with a situation, wherein a patentee upon the expiration of its patent monopoly, seeks to justify the perpetuation of the favored position it enjoyed by virtue of the patent through the ingenious theory of furnishing know-how. If lawful restraints and monopolies could be predicated on the ownership of know-how they could last ad infinitum. This Court cannot subscribe to such unharnessed privilege."

the mark in many countries within the territory allotted by the contracts to British Timken and French Timken, and, therefore, could not license the mark in such areas (Fdgs., pars. 182, 183, R. 1009–10; Concls., pars. 189, 190, R. 1017).

Appellant's argument (Op., pars. 201–203, R. 1014–5) that equitable relief would be useless, since no substantial United States foreign trade in anti-friction bearings on a competitive price basis has existed for many years, but such trade has been and is impossible as a result of chaotic economic conditions, tariff and currency regulations, government restrictions on imports and exports and sales resistance to foreign made products, was likewise held insufficient, legally and factually. The court held that such obstacles have always existed to our foreign trade, which is subject to fluctuation with political and social changes, and that the provisions of the Sherman Act pertaining to free competition with foreign nations nevertheless continue to be applicable to restraints on such competition (Fdg., par. 205, R. 1015; Concl., par. 209, R. 1017). The court further found that there was and is actual and potential competition in the international roller bearing market, and that such competition would have been greater but for the restrictions imposed upon it by the appellant and its co-conspirators (Fdgs., pars. 202, 204, 206–8, R. 1014, 1015–17).

On February 15, 1950, after the filing of briefs and an extensive hearing on the relief to be

granted, the district court entered its final judgment, which contained, among other provisions, an adjudication that the conspiracy and the described contracts were illegal, injunctions against practices which formed part of the conspiracy or might lead to its revival, an order that appellant divest itself within two years of its interests in the co-conspirator corporations, and an injunction against appellant's acquiring, "through the exercise of any option, or otherwise," any interest in those companies (R. 1179). A motion for a new trial was denied (R. 1252), and the present appeal was taken.[3]

The relief provisions of the final judgment which are apparently challenged on this appeal are as follows (R. 1175–9):

> V. Defendant is hereby enjoined and restrained from entering into, performing, adopting, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under, any combination, conspiracy, contract, agreement, arrangement, understanding, or concerted plan of action with British Timken, French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof:
>
> * * * * *

[3] After this Court had noted probable jurisdiction of this appeal, appellant on January 24, 1951, moved the district court to request leave of this Court to receive additional evidence, make additional findings of fact and conclusions of law, and vacate all or part of its final judgment of February 15, 1950. A hearing was held in the district court on Feb-

F. To fix, maintain or adhere to prices or price ranges, or other terms and conditions of sale or resale of anti-friction bearings produced by defendant for sale or other distribution in any territory or market, or produced by any other person for sale or other distribution in the United States.

G. To receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto, any assignment, license or grant of immunity under a patent or patent application, relating to anti-friction bearings;

H. To receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto, (1) information, advice, assistance or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method, or other technical information, relating to the production of anti-friction bearings, or (2) any material or machinery used in the production of anti-friction bearings, or any information, advice, assistance or rights with respect to any such material or machinery.

VI. Defendant is hereby enjoined and restrained from:

* * * * * *

B. Refusing to sell anti-friction bearings to any person at prices and on terms and

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ruary 14, 1951; and on April 10, 1951, the court denied this motion.

conditions of sale corresponding to those regularly offered to purchasers of the same classification for resale or other distribution in defendant's territory, as herein defined, where the reason for such refusal is that such bearings are for resale or other distribution in British territory or French territory, as herein defined;

* * * * *

VII. Defendant is hereby enjoined and restrained from entering into, performing, enforcing, adhering to, maintaining, furthering, or renewing, directly or indirectly, any contract, agreement, combination, understanding or arrangement with British Timken and/or French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof which provides for:

A. An assignment, license or grant of immunity under any patent or patent application;

B. The receipt, grant, disclosure, rendering available or exchange of information, advice, assistance or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method or other technical information relating to the production of anti-friction bearings, or of any material or machinery used in the production of anti-friction bearings, or of any information, advice, assistance or rights with respect to any such material or machinery; or

C. The transfer of any right or immunity under a trade mark or name, relating to the production of anti-friction bearings, upon the condition or requirement that British Timken and/or French Timken, or any subsidiary, successor, assign, agent, sales representative or distributor thereof shall:

1. allocate or divide territories or markets for the production, sale or other distribution of anti-friction bearings;

2. limit, restrain or prevent importation into or exportation from the United States of anti-friction bearings;

* * * * *

4. refrain from competing or leave any person free from competition in the production, sale or other distribution of anti-friction bearings in any territory or market;

5. exclude any producer or distributor from any market for anti-friction bearings, or interfere with or restrict any producer or distributor in competing in any such maket;

6. maintain or adhere to fixed prices or price ranges, or other terms and conditions of sale or resale of anti-friction bearings;

7. receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto, any assignment, license or grant of immunity under a patent or patent application, relating to anti-friction bearings;

8. receive, grant, disclose, render available or exchange, in such a way as to deny any third person access thereto, (a) information, advice, assistance, or rights with respect to any invention, discovery, improvement, practice, formula, pattern, device, process, method, or other technical information relating to the production of anti-friction bearings, or (b) any material or machinery used in the production of anti-friction bearings, or any information, advice, assistance or rights with respect to such material or machinery;

* * * * *

VIII. A. Within two years from the date of this judgment, defendant shall divest itself of all stock holdings and other financial interests, direct or indirect, in British Timken and French Timken. Within one year from the date of this judgment, defendant shall present to the Court for its approval a plan for such divestiture.

B. Defendant is hereby enjoined and restrained, from the date of this judgment, from:[4]

1. Acquiring, directly or indirectly, any ownership interest in (by purchase or acquisition of assets or securities, or through the exercise of any option, or otherwise), or any control over, British Timken or French Timken, or any subsidiary, successor or assign thereof;

[4] As pointed out *infra*, p. 148, the Government questions whether the appellant is in a position to challenge subsection B of Section VIII.

2. Exercising any influence or control over the production, sales or other business policies of British Timken or French Timken, or any subsidiary, successor, assign, agent, sales representative, or distributor thereof;

3. Causing, authorizing or knowingly permitting any officer, director, or employee of defendant or its subsidiaries to serve as an officer, director, or employee of British Timken or French Timken or of any subsidiary, successor, assign, agent, sales representative, or distributor thereof.

IX. Defendant is hereby enjoined from refusing to sell anti-friction bearings to any person or discriminating as to availability and prices, terms, and conditions of sale of such bearings or failing to provide services and assistance relating to the distribution or use of such bearings comparable to the services and assistance made available to distributors and users of such bearings in defendant's territory, where the reason for such refusal, discrimination, or failure is that such bearings are for use, resale, or other distribution, either in their original form or incorporated in another product, in some country or area other than defendant's territory as herein defined.

The Evidence

The undisputed documentary evidence furnishes, in our view, complete support for the findings and conclusions of the district court with respect to

the restraints imposed by appellant. Moreover, review on this appeal does not encompass detailed scrutiny of the factual inferences of intent (to the extent relevant) which were drawn by the trial judge from the entire record. *United States* v. *Yellow Cab Co.*, 338 U. S. 338. Accordingly, the detailed recital of the background, development, and operation of the conspiracy which follows is included only because of its relevance to the questions of the appropriateness of the relief ordered by the district court.

A. THE APPELLANT, THE CO-CONSPIRATORS, AND THEIR PRODUCTS

Appellant is an Ohio corporation with its main offices in Canton, Ohio (Fdg., par. 6, R. 960; Ans., par. 3, R. 25, 26; R. 458), and its principal plants in Canton and Columbus, Ohio (Fdg., par. 6, R. 960; Ans., pars. 2, 13, R. 26, 28). It is "many times over" the largest manufacturer of tapered roller bearings in the world (Fdgs., pars. 10, 35, R. 960, 965–6; Gov. Ex. 1, not printed;[5] Ans., par. 11, R. 27) and has been since 1904 (Fdg., par. 35, R. 965–6; R. 46).

A tapered roller bearing is a type of anti-friction bearing (Fdg., par. 18, R. 962), which is a device for reducing friction by mechanical means between moving parts in machines (Fdg., par. 17,

[5] The parties have stipulated that exhibits which are of record but were not printed may be referred to in the briefs and argument (R. 1333).

R. 961–2). Tapered roller bearings consist of a circular group of conical or truncated conical steel rollers revolving between two circular steel raceways, which in turn are inserted between the moving parts of the machine.[6] Tapered roller bearings are extensively used in many industrial products containing rotating parts, such as trucks, automobiles, farm machinery, and railroad rolling stock (Fdg., par. 16, R. 961; R. 40–1). Though they compete to some extent with other types of anti-friction bearings and to a lesser extent with friction bearings, tapered roller bearings are free from competition for certain uses.[7]

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[6] Fdgs., pars. 17, 18, R. 961–2; Gov. Exs. 1, 2, p. 6, not printed; Def. Exs. 49–C, 50–A to G, not printed; R. 37, 39–40, 112. The other principal types of anti-friction bearings are straight roller bearings, which have cylindrical steel rollers, and ball bearings, which have steel spheres (Fdgs., pars. 17, 18, R. 961–2; Gov. Exs. 1, 2, p. 6, not printed; Def. Exs. 49–C, 50–A to G, not printed; R. 37, 39–40, 112). A friction bearing consists of a metal sleeve which slides directly over a shaft; oil or other filmy substances, rather than rotating parts, are used to reduce friction between the moving sleeve and shaft (Fdg. 17, R. 961–2; Ans., par. 8, R. 27; R. 475–6, 481).

[7] Fdgs., pars. 19, 20, R. 962; R. 37–8, 40–1. For example, because of their design, they are capable of supporting heavy loads which ball bearings could not support except in a size which would be commercially and industrially impractical (R. 59–60). This is true with respect to railroad cars (R. 489). Tapered roller bearings are also capable of carrying a heavier sidewise thrust load than other types of bearings (R. 40).

Even in instances where ball or straight roller bearings may be adequate alternatives for tapered roller bearings, once the tapered roller bearing is incorporated into the

Appellant's share of the United States annual production of tapered roller bearings has ranged in recent years from 71 to over 80 percent.[8] Its gross sales were approximately $77,097,756 in 1947 (Fdg., par. 10, R. 960; R. 541–3). Its sales of tapered roller bearings for "original installation" constitute approximately 95 per cent of its total bearings sales, while "replacement" or "service" sales make up the remaining 5 per cent (Fdg., par. 21, R. 962; R. 500–1).

British Timken, named as a co-conspirator but not as a defendant, is a British joint stock company with its principal offices and plant at Birmingham, England (Fdg., par. 7, R. 960; Ans., par. 4, R. 26). It is the largest manufacturer and seller of tapered roller bearings in England (Fdgs., pars. 13, 36, R. 961, 966). Though its position once dropped to as low as 70 per cent, in 1927 and at the time of trial it had more than 90 percent of such production (Fdg., par. 13, R. 961;

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design of equipment, ball or straight bearings thereupon become noncompetitive, since these other types of bearings cannot be substituted without redesign of the equipment (Fdg., par. 20, R. 262; R. 210–1, 296–7). In addition, in "replacement" sales of tapered bearings there is no competition from other types of bearings, where the original installation was a tapered bearing (Fdg., par. 20, R. 962; R. 45, 65–6).

[8] Fdg., par. 11, R. 960–1; Gov. Exs. 4, 5, 135 (not printed), 138, R. 1333, 1334, 1557. Appellant makes no other type of anti-friction bearings (Fdg., par. 6, R. 960; R. 460). Appellant also makes alloy steel, seamless tubing, and removable rock bits (Fdg., par. 6, R. 960).

R. 106–7). Its gross sales for 1947 were approximately $14,700,000.[9]

At the time when judgment below was entered, appellant owned 30.25% of the ordinary shares and 1% of the preferred shares of British Timken.[10]

French Timken, also named as a co-conspirator but not as a defendant, is a French corporation with its principal offices at Asnieres, France (Fdg., par. 8, R. 960). It is the largest manufacturer and seller of tapered roller bearings in France.[11] Its 1947 sales amounted to 270,692,963.88 francs or $2,274,723 (Fdg., par. 14, R. 961; Def. Ex. 35, R. 1846).

At the time of the judgment, appellant owned 50% of the outstanding shares of French Timken,[12] and promissory notes from French Timken on which approximately $241,000 is now

[9] Fdg., par. 13, R. 961. Since 1933 or 1934 British Timken has also manufactured, through its subsidiary, Fischer Bearing Company, ball and straight roller bearings (Fdg., par. 7, R. 960; R. 107). The gross sales for 1947, given above, include those of Fischer.

[10] Fdg., par. 66, R. 971; R. 911–2. Appellant's acquisition of its interest held at the time of judgment in British Timken is described on pp. 28–32, *infra*, and in French Timken on pp. 30, 36, *infra*.

[11] Fdg., par. 14, R. 96; R. 117. French Timken has never made ball or straight roller bearings (R. 113), since it is prohibited from doing so by its agreements with appellant and British Timken (Def. Ex. 27, par. 6, R. 1771, 1776; Def. Ex. 28, par. 5, R. 1780, 1783).

[12] Fdgs., pars. 54, 66, R. 969, 971; Def. Ex. 186, R. 2298; Ans., par. 5, R. 26; R. 912–3.

owed (R. 1062–3). In addition, appellant holds a $120,000 note from M. B. U. Dewar, secured by a pledge of his 50% stock interest in French Timken (Def. Ex. 228, R. 2487; 1063).[13]

B. THE BACKGROUND OF THE CONSPIRACY

The court found that the present conspiracy was the natural outgrowth of agreements dating back to 1909 which divided world markets and eliminated competition (Fdg., par. 120, R. 995). In 1909 appellant entered into two contracts (Def. Exs. 189, 190, R. 2305, 2322) with Electric & Ordnance Accessories Company, Limited (Fdg., par. 24, R. 962).

The 1909 agreements provided, in substance, for:

> (1) A division of world production and sales territories, whereby appellant agreed not to manufacture or sell roller bearings (or to sell such bearings to others for resale) in Europe or the British Empire (except Canada), and E&OA agreed not to manufacture or sell outside of these territories.[14]

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[13] See note 10.

[14] Fdgs., pars. 24–27, R. 962–4; Def. Ex. 189, Art. 2, 15, R. 2306, 2319; Def. Ex. 190, pars. 6, 39, R. 2322, 2325, 2335. Both contracts provided that appellant should not, directly or indirectly, manufacture or sell any roller bearings, whether patented or otherwise, in the territory "licensed" to E&OA, nor sell any roller bearings to others for shipment into E&OA territory except as part of complete automobiles made in the United States (Def. Ex. 189, Art. 2, R. 2306;

(2) The compulsory and exclusive use by E&OA of the mark "Timken" on roller bearings made or sold by it.[15]

(3) The fixing of minimum prices at which E&OA could sell within its territory.[16]

(4) The furnishing of manufacturing information by appellant to E&OA, the compulsory use of such information by E&OA, and the right of appellant to adopt any improvements made by E&OA.[17]

Though the two contracts were cast in the form of patent licenses from appellant to E&OA,[18] the restrictions applied to all roller bearings, whether patented or not, and to territories where appellant had no patent rights.[19] The court held that the 1909 agreements were themselves illegal because,

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Def. Ex. 190, par. 6, R. 2325–6). E&OA likewise agreed in each contract not to manufacture or sell "any roller bearings" outside its territory, nor to sell them to others for shipment outside its territory, except as parts of vehicles made in its territory. (Def. Ex. 189, Art. 15, R. 2319; Def. Ex. 190, par. 39, R. 2335.)

[15] Fdgs., pars. 25, 27, 187, R. 963, 964, 1010; Def. Ex. 189, Art. 11, R. 2316; Def. Ex. 190, par. 32, R. 2333.

[16] Fdgs., pars. 25, 27, R. 963, 964; Def. Ex. 189, Art. 14, R. 2318; Def. Ex. 190, par. 37, R. 2335.

[17] Fdgs., pars. 25, 27, R. 963, 964; Def. Ex. 189, Art. 4, 10, 13, R. 2307, 2316, 2317; Def. Ex. 190, pars. 31, 34, R. 2333, 2334.

[18] The principal license covered three existing British patents of appellant, as well as all future patents it acquired which related to roller bearings (Fdg., par. 24, R. 962; Def. Ex. 189, Art. 2, R. 2306).

[19] Fdgs., pars. 24–27, R. 962, 964; Def. Ex. 189, Art. 1, 2, R. 2305, 2306; Def. Ex. 190, pars. 3, 5, R. 2324, 2325.

though patent licenses, they applied to products and territories beyond the scope of existing patent rights, and included future developments and inventions, in the industry (Concls., pars. 120, 170, 173–4, R. 995, 1007, 1008). Moreover, the 1909 agreements set the pattern for the restraints which continued long after the expiration of the patents.[20]

Pursuant to these two contracts, E&OA began the production of bearings in Great Britain in 1909 (R. 427), and thereafter all bearings sold by E&OA and its successor, British Timken, were sold under the name "Timken" (Fdgs., pars. 96, 124, R. 987, 996; R. 430, 440). Appellant, which had not before 1909 sold any bearings in the territories allotted to E&OA by the two contracts, under the name "Timken" or otherwise, was after that date prohibited from doing so by the contracts, to which it gave rigid adherence (Fdgs., pars. 70, 72, 86, 87, R. 972, 973, 983, 984). British Timken by the use of the name in the sale of its tapered roller bearings thus acquired the common law ownership of the name as a trademark in Great Britain (R. 608), and later became the registered owner (*supra*, p. 26, n. 36).

On April 6, 1920, the agreements of 1909 between appellant and E&OA (Def. Exs. 189, 190, R. 2305, 2322) were modified by two contracts (Def. Exs. 191, 192, R. 2338, 2343) between

[20] Fdg., par. 153, R. 1003–4. The basic patents had all expired by 1924 (Fdgs., pars. 31, 188, R. 965, 1010–1; Def. Exs. 82, 242; R. 1965, 2662; R. 220).

appellant and another Vickers subsidiary, Wolseley Motors, Limited (hereinafter called "Wolseley"), providing for the transfer to Wolseley of the E&OA licenses of 1909 (Fdg., par. 28, R. 964; R. 230). Later, on June 4, 1920, British Timken was organized as a wholly-owned subsidiary of Wolseley, and Wolseley's rights under the two 1920 contracts were assigned to British Timken (Fdgs., pars. 31, 32, R. 965; Def. Ex. 199, R. 2359).

The 1920 contracts, though retaining substantially all of the terms of the 1909 contracts, made certain modifications in addition to the assignment to Wolseley (Fdg., par. 28, R. 964). One of the principal changes was an exception to permit appellant to sell bearings to manufacturers in its own territory for export into Wolseley's territory, but only for use in such manufacturer's own products.[21] Wolseley was granted reciprocal rights.[22] The contracts provided, however, that bearings made in the territory of one of the parties and sold for use in the territory of the other should "not be sold at prices which shall be unreasonable or unfair to the party in whose territory the roller bearings are sold."[23]

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[21] Fdg., par. 28, R. 964; Def. Ex. 191, par. 3, R. 2338, 2339; Def. Ex. 192, par. 3, R. 2343, 2344.

[22] Fdg., par. 28, R. 964; Def. Ex. 191, par. 4, R. 2338, 2340; Def. Ex. 192, par. 4, R. 2344.

[23] Fdg., par. 29, R. 964; Def. Ex. 191, par. 9, R. 2341; Def. Ex. 192, par. 9, R. 2345.

Wolseley was required to use the name "Timken" on its bearings as was E&OA under the 1909 contracts,[24] but in the event the contracts were rescinded by appellant under certain listed conditions Wolseley was obligated to abandon the use of the name "Timken."[25]

By 1921 appellant had become aware that its covenants not to make or sell bearings in territories allotted to others resulted in others registering and owning the mark "Timken" in those territories,[26] so that appellant could not use the mark in many areas of the world.[27] In 1916 a German citizen named Prausnitzer had obtained in Germany the first registration in any country of the word "Timken" as a trade-mark for anti-friction bearings.[28] In 1921 the trade-mark "Timken" was registered in France and the French colonies by Societe de Mechanique de Gennevilliers (hereinafter called SMG),[29] the sole

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[24] *Supra*, p. 20; Fdg., par. 187, R. 1010; Def. Ex. 191, pars. 3 & 4, R. 2339, 2340; Def. Ex. 192, pars. 3 & 4, R. 2344.

[25] Fdg., par. 30, R. 964; Def. Ex. 191, par. 10, R. 2341; Def. Ex. 192, par. 10, R. 2346.

[26] Fdg., par. 183, R. 1009; Def. Ex. 63, R. 1947–8; Def. Exs. 77, 79, 80, 89, R. 1961, 1963, 1964, 1993.

[27] Fdg., par. 182, R. 1009. Even in those instances where appellant obtained registrations outside its allotted territory, these registrations were subject to being set aside, since British Timken could have established prior use (R. 609–10, 613–4; see Fdg., par. 182, R. 1009).

[28] Fdg., par. 182, R. 1009; Def. Ex. 87, R. 1972; R. 117–8.

[29] Fdgs., pars. 53, 182, R. 969, 1009; R. 120–1, 450; Def. Exs. 37, 38, 39, R. 1849, 1851, 1859.

French producer of tapered roller bearings.[30] In 1921 appellant was advised by counsel that it had no rights to the mark "Timken" in the United Kingdom, as a result of prior use there by British Timken and its predecessors.[31] Appellant then decided to obtain such rights if possible through cooperation with British Timken (Def. Ex. 80, R. 1964). Throughout the years after 1920, appellant exerted considerable effort to remedy its

[30] Fdgs., pars. 53, 182, R. 969, 1009; R. 111-2. SMG was operating under a sublicense from E&OA (Fdgs., pars. 53, 182, R. 969, 1009; see Def. Ex. 194, pars. 3, 4, R. 2347, 2348-9). The registration in France by SMG was an unpleasant "surprise" to appellant (Def. Exs. 81, 82, R. 1965; R. 586).

[31] Def. Ex. 77, R. 1961; see also Def. Exs. 63, 79, 89, R. 1947, 1963, 1993. Appellant's British trade-mark solicitors explained the situation as follows (Def. Ex. 77, R. 1961):

"Now the idea of the registration of a trade-mark is not to protect the proprietor of the mark but to protect the general public by assuring them that they are obtaining the goods of a particular manufacturer. In the present case the goods actually sold in this country are not manufactured by the Timken Roller Bearing Company, but have been manufactured first of all by the Electric & Ordnance Accessories Company, Limited, then by Wolseley Motors Limited and now by British Timken, Ltd., and if we are to apply under part B of the Act, it seems to us that the application should be made in the name of the British Timken, Ltd., as they would have to prove actual use of the mark for more than two years either by themselves or their predecessors in business. Now if registered in the name of the British Timken, Ltd., your clients would have no rights in this trade mark unless some specific arrangements were made whereby, on termination of the agreement under which these rollers are at the present being manufactured here, the good will of the business in respect thereof must revert to the Timken Roller Bearing Company."

dubious trade-mark position in the various territories allotted by agreement to others.[32]

On December 31, 1924, and January 1, 1925, respectively, appellant entered into two contracts

[32] Fdgs., pars. 183–4, 186, R. 1009–1010; Def. Exs. 79, 80, 83, 89, 91–4, 97, 98, 99, 102–106, R. 1963, 1964, 1966, 1993, 1996–2000, 2002, 2003, 2005, 2010–2015; R. 585–6, 594, 595–6, 609–10, 613–5. On July 30, 1925, appellant was advised (a) that its application for registration in Germany had been successfully opposed by Prausnitzer; (b) that appellant could not register the name in France because SMG had already registered it and that appellant also had no right to registration in Great Britain and Ireland, "because the laws of those countries seemed to require actual use of the trade-mark before registration" (Def. Ex. 89).

Appellant's trade-mark problems in British Timken territory were summarized by its counsel in January 1927 as follows (Gov. Ex. 100, R. 1478):

"Your application in New Zealand has been unsuccessful by reason of your inability to obtain affidavits as to ownership of the mark, the New Zealand trade recognizing the mark as being the property of British Timken. In Great Britain, it seems impossible for you to obtain registration in your name. In both cases, it might be possible to obtain registration in the name of British Timken, with a promise to assign the registrations to you; but we have not done this because of the provision against assignment of a trade-mark registration separate and apart from the business. In France and Germany, representatives of British Timken have obtained registration; * * * The difficulties in these four countries could be surmounted if you were to take over the business of British Timken * * *. If the matter is handled merely by you beginning when British Timken leaves off you will probably not be able to carry back your title to the trade-mark, and there will be the possibility of trouble with other people. For instance, in Germany we understand that 'Timken' is more or less equivalent to 'tapered' and your rights to your trade-mark may be lost unless you can relate back you [sic] ownership to the date of the Prausnitzer registration."

with British Timken, both to be effective as of January 1, 1924.[33] By these agreements the 1909 agreements[34] were extended to January 1, 1929.[35] These agreements also provided for the first time that the mark "Timken" should "belong exclusively" to appellant.[36] British Timken was to have the right to use the name, but upon termination it was required to take all steps necessary to change its name and cease to have any right in the name or to make use of it in any way; British Timken was further obligated, both before and after expiration of the agreement, to do all acts necessary to secure for appellant the exclusive right in the name in British Timken territory.[37]

During the period from 1909 to 1927, appellant, as well as British Timken and its predecessors,

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[33] Fdg., par. 31, R. 965; Def. Exs. 88, 194, R. 1991, 2347.

[34] Def. Exs. 189, 190, R. 2305, 2322, as amended in 1920, Def. Exs. 190, 191, R. 2322, 2338.

[35] Fdg., par. 31, R. 965; Def. Ex. 194, par. 4, R. 2347–8; Def. Ex. 88, par. 3, R. 1992.

[36] Fdg., par. 31, R. 965; Def. Ex. 88, par. 3, R. 1992; Def. Ex. 194, par. 4, R. 2347–8.

[37] Appellant's steps to register the mark in Great Britain had begun in 1920 (Def. Exs. 63–72, 74, 79–80, R. 1947–58, 1959, 1963–4). Appellant soon abandoned, as impossible, the idea of obtaining the registration in its own name (Def. Exs. 77, 79, 80, 83, R. 1961, 1963, 1964, 1966). Instead, it decided to try to obtain the registration through British Timken (Def. Ex. 80, R. 1964). Since it was advised that a direct assignment of the registration to appellant would also require transfer of the good-will of the business of British Timken, appellant decided to insist upon the contract provisions described above relating to

experienced rapid and substantial growth in productive capacity and sales.[38] Each occupied within its own country a dominant position in the tapered roller bearing market, and in 1928 they were strong potential competitors.[39] SMG, the predecessor of French Timken, was then the dominant producer of tapered roller bearings in France and was also a potential competitor (Fdgs., pars. 53, 144, R. 969, 1002–3; R. 111–2, 117).

C. THE PRESENT CONSPIRACY

1. *Formation*

In about 1926, Michael B. U. Dewar, then managing director of Metropolitan Carriage and Wagon Manufacturing Company, the largest Vickers subsidiary (R. 230), became vice-chairman of Wolseley, at a time when Vickers was in financial difficulties (Fdg., par. 37, R. 966; R.

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rights in the mark upon termination of the contract (Def. Ex. 80, R. 1964).

A joint application for registration filed by appellant and British Timken in 1925 (Def. Exs. 91, 92, R. 1996, 1997) was withdrawn upon advice of counsel, who believed that it could not succeed (Def. Exs. 98, 99, 104, R. 2003, 2005, 2011; R. 585–6, 594). The British registration was finally obtained by British Timken in 1940, with "the closest cooperation" from appellant (Gov. Ex. 182, R. 1703; see also Gov. Exs. 179, 181–188, 190, R. 1693, 1703–10, 1711).

[38] Fdgs., pars. 34, 35, R. 965–6; R. 56–7, 84–5, 105–7, 144, 241, 435, 455; Def. Exs. 7, 31, 230, R. 1725, 1800, 2545.

[39] Fdgs., pars. 36, 122, 144, R. 966, 996, 1002–3; Gov. Exs. 4, 5, 34, 137, 138, R. 1333, 1385, 1553, 1577; R. 106–7, 453.

230). During 1926 Dewar made a visit to the United States as a member of a British Government commission studying comparative production costs (R. 232–3), and while in the United States visited appellant's plant (Fdg., par. 37, R. 966; R. 234).

Dewar in 1927 knew that the existing contracts with respect to allocation of territories between appellant and British Timken were, by their terms, to expire on January 1, 1929 (Fdg., par. 37, R. 966; R. 239). On March 10, 1927, upon becoming chairman of British Timken, Dewar wrote to appellant and raised "the question of continuation of our existing agreement" (Fdg., par. 38, R. 966–7; Def. Ex. 4, R. 1722). Dewar suggested making an offer to Vickers for the purchase of British Timken (Fdg., par. 38, R. 966–7; Def. Ex. 4, R. 1722; R. 242). On March 28, 1927, Dewar cabled appellant asking if it would be prepared to extend its agreements with British Timken for 10 years if he were to take over, saying that he did "not think it wise without a 10 years arrangement" with appellant (Fdg., par. 39, R. 967; Def. Ex. 5, R. 1724; R. 247–8). On March 29, 1927, appellant cabled Dewar that it would "give consideration to a ten year term of license" and that "we would be more interested, however, in joining with you in purchasing company from Vickers and making the necessary investment" (Fdg., par. 40, R. 967; Def. Ex. 6, R. 1724; R. 248–9). Dewar replied on

March 30, 1927, that he was "prepared to put up approximately half," and stated that British control was essential (Def. Ex. 7, R. 1725; R. 248–9).

On April 1, 1927, appellant advised its American trade-mark counsel of its proposed purchase of an interest in British Timken, stated that it hoped to arrange for modification of the existing agreements, and requested suggestions as to what should be done regarding name registration (Def. Ex. 102, R. 2010; R. 595–6). Appellant's counsel advised (Fdg., par. 185, R. 1010; Def. Ex. 104, R. 2011):

> We are glad to note that you are endeavoring to obtain controlling interest in British Timken. This is in line with our own suggestion and will put you in *control* of the trade mark "Timken" all over the world, whereas, under existing conditions, there is a danger that, if your present license agreement with British Timken should be terminated, you might not be able to prevent others from establishing a right to use the word "Timken" in certain countries from which you are excluded by the agreement from doing business. [Emphasis supplied.]

Appellant had serious doubts of its rights in the trade-mark "Timken" at that time in the territories assigned to British Timken and French Timken; it realized that it could not use the mark in many of those territories as a result of its own covenants not to compete, and was primarily con-

cerned, therefore, not in safeguarding trade-mark rights which it then possessed, but rather in acquiring rights obtained by others."[40]

In April and May of 1927, negotiations took place in London between an executive of appellant and Dewar, regarding the acquisition of British Timken from Vickers, and renewal of the existing agreements.[41] During these negotiations, Dewar indicated his preference that appellant should join him in the purchase of British Timken on account of its "interest then in the profitable operation of the company" (Def. Ex. 16, R. 1735; R. 264–5). He also insisted upon "a clear understanding of what territories his company would serve."[42] Appellant's representative and Dewar also decided that a jointly owned French company should be organized (R. 288–9)

[40] Fdgs., pars. 182–184, R. 1009–10; Def. Exs. 105, 106, R. 2013, 2015.

[41] Fdg., par. 41, R. 967; Def. Exs. 11, 13, 14, R. 1727, 1728, 1729; R. 251–3, 253–4, 256–7.

[42] Fdg., par. 207, R. 1015–6; R. 933–4. Appellant's Vice-President testified at the trial that "it was only normal" in view of the financial investments, that there should be some understanding as to allocation of territories (R. 933). Appellant's counsel urged at the trial that "Dewar, putting his money into this enterprise, was entitled to that protection" against competition (Orig. R. 2878), and candidly admitted: "It wasn't anything that could be expected in common sense, that Michael Dewar would compete, if he had a company of his own, with British Timken, or for us to compete with British Timken" (Orig. R. 2877).

as well as a jointly owned German company (R. 292–5).

On May 16, 1927, a "Heads of Agreement" was concluded between appellant and Dewar (Fdg., par. 41, R. 967; Def. Ex. 15, R. 1730; R. 257–8). This was a memorandum in general terms of the points agreed upon in the negotiations and was to be "embodied in more formal documents as soon as practicable" (Fdg., par. 41, R. 967; Def. Ex. 15, par. 11, R. 1730, 1734). It provided for the purchase of all outstanding British Timken stock by appellant and Dewar, appellant to contribute £52,500 and Dewar £47,500 (Fdg., par. 42, R. 967; Def. Ex. 15, par. 1, R. 1730), and likewise provided "in connection therewith," as one of the "terms and conditions" of the purchase, for the extension for ten years of the existing restrictive agreements.[43] The district court found that Dewar's underlying motive in making the agreement was his desire to escape appellant's competition and to continue the existing contracts (Fdg., par. 155, R. 1004).

Dewar was to hold a majority of the controlling class of shares and be managing director of British Timken, undertaking "the control and management of the company's affairs", as long as it earned a stipulated minimum net profit

[43] Fdg., par. 43, R. 967–8; Def. Ex. 15, Preamble, par. 10, R. 1730, 1733.

and paid a specified dividend.[44] As one of the terms of the new ten year agreement, all practicable steps were to be taken for protecting the mark "Timken" and "securing the exclusive reversion of the name in all countries to the American Company at the termination of the Agreement" (Fdg., par. 43, R. 967–8; Def. Ex. 15, par. 10 (a), R. 1733). Upon Dewar's death or incapacity for six months, appellant was to "have an option to purchase the shares belonging to him at the date of such death or the expiration of sick period" (Def. Ex. 15, par. 10 (a), R. 1733).

It is apparent from the above facts, as the court held, that the only substantial change in the relationship between appellant and its coconspirators as a result of the Heads of Agreement was that appellant acquired a stock interest in British Timken and French Timken. The pattern of trade restriction continued. (Fdg., par. 153, R. 1003–4.)

Following the signing of the Heads of Agreement, various steps were taken necessary to carry out its terms. Appellant and Dewar acquired British Timken from Vickers, as agreed (Fdg., par. 44, R. 968; R. 267). Activity began looking

[44] Fdgs., pars. 42, 44, 156, R. 967, 968, 1004; Def. Ex. 15, pars. 2, 69, R. 1730, 1954. Dewar retained control of British Timken throughout the period 1928 to the time of trial (Fdg., par. 156, R. 1004; R. 283; R. 911–15; Def. Ex. 26, R. 1766; Def. Ex. 187, R. 2301; Def. Ex. 228, R. 2483; Def. Ex. 249, R. 2672).

to formal agreements embodying the ten year extension of the existing agreements. In November 1927 appellant's London counsel, in connection with a proposal to formalize the Heads of Agreement as a patent license, stated (Fdg., par. 121, R. 995–6; Gov. Ex. 174, R. 1686):

> As we understand the position, the main advantage derived by the English Company under the Agreement will be the advice and information to be received from you, the right to use the name "Timken" and the *absence of your competition.* Do you not think that it would be better to accentuate these advantages in the Agreement, rather than leave them merely as incidents in a patent license? [Emphasis supplied.]

On January 1, 1928, pursuant to Article 10 of the Heads of Agreement, appellant and British Timken entered into a contract called by them a "Business Agreement" (Fdg., par. 47, R. 968; Def. Ex. 23, R. 1754).[45] This contract extended the restrictive arrangements which had existed between appellant and British Timken for nearly twenty years (Fdg., par. 153, R. 1003–4). The first paragraph provided for the division of territories as follows (Fdg., par. 48, R. 968):

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[45] Appellant's counsel described this as "the contract that carries out pretty much the terms of the heads of agreement that was drawn up in May 1947, between American Timken and Michael Dewar" (R. 36).

> For the purposes of this Agreement the United Kingdom of Great Britain and Northern Ireland and all other countries of Europe and all colonies or dependencies of said United Kingdom and European countries except in or adjacent to North or South America shall be deemed to be the territory of the British Company and the rest of the world shall be deemed to be the territory of the American Company.

Each party agreed not to make or sell, or license to others to make or sell, bearings directly or to others for shipment into the other party's territory, except (a) as an assembled part of completed article of manufacture, manufactured in its own territory, and (b) for bearing replacement purposes in such completed article of manufacture, and then only on payment to the other party of 10% of the net sale price as a penalty (Fdg., par. 51, R. 969; Def. Ex. 23, par. 7, 8, R. 1754, 1757–9).

Appellant granted British Timken an exclusive license to make and sell bearings in its territory under all present or future patents of appellant (Fdg., par. 49, R. 968; Def. Ex. 23, par. 2 (b), R. 1755) while British Timken agreed to assign absolutely to appellant all present and future patent rights in appellant's territory (Fdg., par. 49, R. 968; Def. Ex. 23, par. 2 (c), R. 1755–6). Appellant agreed to advise British Timken as to methods of manufacture which British Timken was obliged to follow insofar as economically

practicable (Fdg., par. 50, R. 968; Def. Ex. 23, par. 4, R. 1756–7). The parties were to inform each other as to all improvements and practices whether or not patented (Fdg., par. 50, R. 968; Def. Ex. 23, par. 2 (a), R. 1755).

British Timken was required to make, sell, and deal in bearings only under the mark "Timken" (Fdg., par. 52, R. 969; Def. Ex. 23, par. 6, R. 1757). The parties agreed to endeavor to maintain the distinctive character of "Timken" (Fdg., par. 52, R. 969; Def. Ex. 23, par. 3, R. 1756). British Timken agreed to join appellant in applications for concurrent registration of the mark "Timken" upon request (Def. Ex. 23, par. 3, R. 1757). Upon termination of the contract British Timken agreed that it would eliminate the name "Timken" from its corporate title and would refrain from using the name "Timken" as a trade-mark and would assign rights therein as directed by defendant (Fdg., par. 52, R. 969; Def. Ex. 23, par. 3 (a), R. 1756). The contract was to extend to January 1, 1938, appellant having the privilege to extend it to January 1, 1948 (Def. Ex. 23, par. 16, R. 1762–3).[46]

Although the 1928 contract (Def. Ex. 23, R. 1754) did not specifically provide for price fixing

[46] By another agreement of January 1, 1928 (Def. Ex. 195, R. 2350) all previous contracts between appellant and British Timken were cancelled, and it was also provided that British Timken's agreement with SMG, the French antifriction bearing manufacturer, should remain in effect until June 30, 1928 (see Fdg., par. 53, R. 969).

on replacement bearings, such price fixing was accomplished by a supplementary understanding. On January 13, 1928, one of appellant's officials wrote (Gov. Ex. 39, R. 1387, 1388) "As you know, we have established service prices for bearings identical with your own and operate at the same discounts * * *," and on March 22, 1928, another official of appellant wrote (Gov. Ex. 42, R. 1390) "As you know we have established service prices identical with your own * * *."

Following the execution of these contracts, and pursuant to Article 10 (b) of the Heads of Agreement (Def. Ex. 15, par. 10 (b), R. 1760; R. 288–9), French Timken was organized (Fdg., par. 54, R. 969). Though stock ownership in the French company was divided equally between appellant and British Timken, Dewar, by contract, supervised and controlled its operations.[47] On June 16, 1928, British Timken and French Timken entered into an agreement (Def. Ex. 29, R. 1789), modeled upon British Timken's agreement with appellant (Def. Ex. 23, R. 1754), allocating to French Timken France and its colonies, dependencies and mandates (except those in North and South America) as its exclusive territory for the manufacture and sale of antifriction bearings (Fdg., par. 55, R. 969). This contract contained provisions relating to

[47] Fdg., par. 54, R. 969; Fdg., par. 156, R. 1004; Def. Ex. 186, R. 2298; R. 912–3, 915–6).

patents, trade marks, and know-how and the division of territories almost identical with those in the contract between appellant and British Timken. French Timken then acquired the mark "Timken" from SMG for 12,000 francs (Fdg., par. 54, R. 969; R. 122–23; Def. Exs. 38 and 39, R. 1851, 1859). French Timken began operations by first importing semifinished products from appellant and British Timken and finishing them in France; within five years it was manufacturing all of the component parts of roller bearings (Fdg., par. 56, R. 969–70; 111–2).

Appellant and British Timken also organized a new company in Germany (Fdg., par. 57, R. 970; R. 117–8). Since they were unable to "wrest" the German trade-mark registration of "Timken" from Prausnitzer (Def. Ex. 89, R. 1993), in order to acquire his existing company and the trade-mark registration for the new company, they gave him a 20 or 25 per cent interest in the new company in addition to a salary as manager (Fdg., par. 57, R. 969–970; R. 117–8; Def. Ex. 44, R. 1907). British Timken then entered into an agreement with the new company similar to the one with French Timken, setting aside Germany as the new company's exclusive territory, and providing for the transfer of the trade-mark to British Timken upon termination (Fdg., par. 57, R. 970; Def. Ex. 47, R. 1935). The German company's business was discontinued in 1934 and the

territory was returned to British Timken (Fdg., par. 57, R. 970; R. 117–8).

2. *The 1935 agreements*

A new contract was entered into between appellant and British Timken, on December 29, 1934, effective January 1, 1935 (Gov. Ex. 20, R. 1347), superseding the 1928 contract (Def. Ex. 23, R. 1766) and to extend to January 1, 1951 (Fdg., par. 58; R. 970). With two modifications,[48] the new contract contained substantially the same provisions as the 1928 contract regarding the division of territories, exclusive exchange of patents and know-how and the trade-mark provisions (Fdg., par. 58; R. 970).

The agreement of 1928 between British Timken and French Timken (Def. Ex. 29, R. 1789), was also superseded by a new contract dated July 15, 1935 (Fdg., par. 63, R. 971; Gov. Ex. 25, R. 1373). It was substantially the same as the 1928 agreement, and likewise provided that replacement sales might be made by appellant, French Timken and British Timken in each other's territories at prices satisfactory to the company in whose terri-

[48] Each company was permitted to sell replacement or service bearings in the other's territory but only at prices approved by the company in whose territory the bearings were to be sold and only upon the payment to the other party of 5% of the net sale price (Fdgs., pars. 59, 60, R. 970; Gov. Ex. 20, pars. 7 and 8, R. 1346, 1340–51), and Russia was to be considered open territory in which both parties could sell at prices and terms mutually agreed upon (Fdgs., pars. 61, 62, R. 970–1; Gov. Ex. 20, par. 10 (c), R. 1352).

tory the bearings were being sold (Fdg., par 63, R. 971; Gov. Ex. 25, pars. 7, 8, R. 1377–9). French Timken was also prohibited from making or selling any product other than bearings marked "Timken" (Fdg., pars. 63, 187, R. 971; Gov. Ex. 25, par. 6, R. 1377).

At this time British Timken had obtained trade-mark registrations in three countries within its allocated territory. Appellant meanwhile had obtained registrations in only 13 of 53 countries allocated to it, 24 of the 66 areas allocated to British Timken and none of the 11 areas allocated to French Timken (Gov. Ex. 28, R. 1383; Def. Ex. 87, R. 1972).

During 1935 appellant and Dewar sold a part of their British Timken stock to the British public, though retaining holdings which, when combined, would assure control (Fdg., par 66, R. 971; R. 911, 913–4).

3. *The current agreements*

The current contracts between appellant, British Timken and French Timken, superseding the 1935 agreements (Gov. Exs. 20, 25, R. 1346, 1373), were entered into in November 1938, and by their terms continue until 1965 (Fdg., par. 64, R. 971; Def. Ex. 27, R. 1771; Def. Ex. 28, R. 1780). The principal contract, dated November 28, 1938, designated a "Business Agreement", and sometimes called the "Tripartite Contract", was among appellant, British Timken and French Timken

(Fdgs., pars. 64, 68, R. 971-2; Def. Ex. 27, R. 1771). The "Tripartite Agreement" recited its purposes as follows (Fdg., par. 187, R. 1010; Def. Ex. 27, R. 1772):

> The Companies parties hereto for their mutual advantage and convenience in working have agreed to make arrangements for an interchange between them of information and facilities and in connection therewith *to define their respective territories* and for other purposes in manner hereinafter appearing. [Emphasis supplied.][49]

The other contract dated November 29, 1938, designated "Supplemental Business Agreement", was among appellant, British Timken and Dewar (Fdg., par. 64, R. 971; Def. Ex. 28, R. 1780).

The current agreements contain substantially the same provisions (Fdgs., pars. 68, 69, R. 972) as the 1935 agreements, in regard to division of world production and marketing areas (Def. Ex. 27, par. 6,[50] R. 1776; Def. Ex. 28, par. 12, R.

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[49] The parties agreed, in part, as follows (Def. Ex. 27, par. 6, R. 1776):

"6. Each of the Companies parties hereto as a covenantor Company hereby covenants with each of the other Companies parties hereto as a covenantee Company that during the life of this Agreement the covenantor Company will not directly or indirectly make or sell or authorise others to make or sell bearings in the territory of the covenantee Company or in the territory of the covenantor Company knowing them to be for shipment into the territory of the covenantee Company. * * *"

[50] The territorial allocation was as follows (Def. Ex. 27, par. 1, R. 1772-3):

1787–8), the fixing of prices on all replacement bearings sold in each other's territories (Def. Ex. 27, par. 6 (b); R. 1777; Def. Ex. 28, par. 12, R. 1787–8); the fixing of prices on bearings sold in Russia, which was joint territory (Def. Ex. 28, par. 12 (b); R. 1788), the exclusive exchange of patents and know-how (Def. Ex. 27, par. 2, R. 1773; Def. Ex. 28, par. 6, R. 1783–4); the prohibition against British Timken and French Timken manufacturing or selling bearings except under the mark "Timken" (Fdg., par. 187, R. 1010; Def. Ex. 28, par. 6, R. 1783–4); and the provision for reversion of the mark "Timken" upon the termination (Def. Ex. 27, par. 3; R. 1774–5; Def. Ex. 28, par. 3, R. 1782).

"The Companies parties hereto agree as follows:

"1. For the purpose of this Agreement—

"(A) The territory of the French Company means the territories of the Republic of France on the Continent of Europe and its Dominions, Colonies, Dependencies, and Mandatory Territories in any part of the world except in or adjacent to North or South America.

"(B) The territory of the British Company means the United Kingdom of Great Britain and Northern Ireland, Eire and all countries other than France on the Continent of Europe and all Dominions, Colonies, Depedencies, and Mandatory Territories of the United Kingdom aforesaid and other European countries except France in any part of the world except in or adjacent to North or South America but does not include any part of the territory of the French Company.

"(C) The territory of the American Company means the rest of the world outside the territories of the French Company and the British Company."

D. THE OPERATION OF THE CONSPIRACY

The division of world production and sales territories, provided for in the series of written agreements among appellant, British Timken and French Timken, was adhered to during the entire period of the conspiracy (Fdgs., pars. 70, 72, 86, 87, R. 972, 973, 983–4).[51] In practice, the parties interpreted the contract prohibitions against "directly or indirectly" selling outside of allocated territory as meaning that they should not only refrain from making such sales themselves, but also should "not permit our customers to ship bearings in this territory" (Fdg., par. 74, R. 974–5; Gov. Ex. 107, R. 1498, 1499).

In preserving the territorial allocations, each party to the conspiracy made it a practice to refuse orders from outside its territory, and to refer the prospective customers to the party in whose territory the bearings were to be used.[52] From July 1, 1945, to February 20, 1947, alone, appellant referred 402 inquiries or orders to

[51] In 1941 the Australian Government attempted to interest appellant in the construction of a bearing-manufacturing plant in that country, but appellant stated that "under no circumstances" would it do so, explaining: "We have a contract while British Timken Limited which precludes our establishment of a manufacturing plant in Australia. Such a plant would have to be built by British Timken Limited" (Fdgs., pars. 86–87, R. 983–4; Gov. Ex. 120, R. 1529).

[52] Fdgs., pars. 71, 208, R. 973, 1017; Gov. Exs. 139, 141, 141A, 143, 143A, 146, 146A, 147, 147A, R. 1579, 1582, 1583, 1625, 1634, 1635, 1636.

British Timken and French Timken (Fdg., par. 71, R. 973; Gov. Exs. 142, 143–147A, R. 1583, 1625–1636; R. 218–9).

Sales of bearings for replacement purposes outside of allocated territory, though permitted by contract, were discouraged by a penalty or "commission" of 10% (later 5%) imposed upon such sales pursuant to the contracts.[53] Even when replacement bearings were sold subject to the penalty outside of allocated territory,[54] the prices were regularly fixed by agreement among the parties.[55] The price-fixing provisions for the joint territory of Russia (*supra*, p. 41) were also carefully observed (Fdg., par. 94, R. 986).

The "protective discount" was another device used to discourage the "replacement" sales permitted by the written contracts (Fdg., par. 88,

[53] Fdgs., pars. 51, 59, 60, 75, R. 969, 970, 975; Def. Ex. 23, pars. 7 (b), 8 (b), R. 1754, 1758, 1759; Gov. Ex. 20, pars. 7, 8, R. 1346, 1349–51; Def. Ex. 27, par. 6 (b), R. 1771, 1777).

[54] The territorial restrictions were in some instances made even more rigid by supplemental understanding than the contracts provided. For example, although "replacement" sales outside of allocated territory were permitted upon payment of the penalty, British Timken in 1932 agreed not to quote on any inquiry for replacement bearings coming from appellant's territory, but to advise customers to obtain the required products from appellant, unless the customer demanded a British product or unless SKF or a named subsidiary was in competition (Fdg., par. 70, R. 972; Gov. Ex. 82, R. 1470).

[55] Fdgs., pars. 75, 88, 90, 91, 97, 124; R. 975, 985–6, 987, 996; Gov. Exs. 102, 103, 112, 113, 114, 128, 129; R. 1481, 1484, 1511, 1514, 1517, 1541, 1542; R. 187–8.

R. 985). By mutual understanding, each party to the conspiracy, in selling replacement parts for export into the other's territory, charged substantially higher prices than it charged for replacement bearings sold for export to countries within its own territory (*ibid.;* see also Fdgs., pars. 75, 77, 93, R. 977–8, 986; Gov. Ex. 108, R. 1500). Pursuant to this understanding, appellant ordinarily sold at a 70% discount for export in its own territory, but quoted at a "protective discount" of only 50% in response to inquiries from British Timken territory.[56]

The only exception to the adherence to the territorial divisions and the price-fixing provisions of the agreements was in connection with joint efforts by appellant, British Timken and French Timken to eliminate outside competition. Where deviation was necessary to combat the competition of other bearing producers and dealers, it occurred.[57] Appellant was willing to try to pre-

[56] Fdg., par. 88, R. 985; Gov. Exs. 108, 124, 128, 131, 132, 133, R. 1500, 1532, 1541, 1545, 1546, 1549; R. 895–6.

[57] Fdgs., pars. 92, 97, 98, 124, R. 986, 987–8, 996. One such exception was the practice whereby the three companies, in order to assure the sale of "Timken" bearings manufactured by one of them, each filled orders for replacement bearings in the other's territory (upon payment of the required penalty), in instances when one of the others was not in a position to fill all such orders from within its territory (Fdg., par. 99, R. 988; R. 104–5, 177). This practice was followed notwithstanding British Timken's agreement as a general practice not to quote on any inquiry for replacement bearings coming from appellant's territory (Fdg., par. 70, R. 972; Gov. Ex. 82, R. 1417). Its purpose was, of course, to preserve

vent the growth of outside competition "by any means we could, including selling bearings at a loss if necessary" (Fdg., par. 102, R. 988–9; R. 935–6). At times appellant, British Timken and French Timken joined to fight outside competition by selling to each other at prices which, although not below cost, were considerably below the usual charge made to other customers.[58] In combatting outside competition, the "protective discount" policy was sometimes relaxed in situations where buyers were becoming "familiar with the fact that we are protecting British Timken" (Fdgs., pars. 92, 93, R. 986; Gov. Ex. 131, R. 1545).

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the value of the common mark as a competitive weapon to be used jointly against outsiders. "The whole object of that arrangement * * * was in order to combat competition; that was the whole basis of it" (Fdg., par. 100, R. 988; R. 173).

[58] Fdgs., pars. 73, 103, R. 973–4, 989–90; Gov. Exs. 44, 75, 76, R. 1392, 1458, 1459. For example, in 1929 appellant declined an order from the Ford Motor Company for bearings for its Cork, Ireland, plant, located within British Timken territory, and instead made the bearings, sold them to British Timken for resale to Ford at prices "very materially below the prices that we sell Ford"; appellant explained that "our joint efforts must be made to keep competition out of this Ford situation" (Fdg., par. 73, R. 973–4; Gov. Ex. 44, R. 1392). Later in the same year, appellant suggested that, because of the lower Canadian tariff on English products, it could combat SKF competition in Canada more readily if British Timken would sell its bearings to appellant at low prices for resale by appellant in Canada (Fdg., par. 103, R. 989–90; Gov. Ex. 75, R. 1458). Dewar replied: "I should love to help you compete with SKF in Canada" (Fdg., par. 103, R. 989–90; Gov. Ex. 76, R. 1459).

During World War II, in order to prevent business from going to competing outside manufacturers, the parties, though at first attempting to retain the territorial restrictions inviolate,[59] made special arrangements for appellant to supply customers in British Timken markets for the period of the war (Fdgs., pars. 72, 77–9, R. 973, 977–9). Appellant, however, made sales to such customers at prices fixed by British Timken, through British Timken distributors only, and credited British Timken with part of the profit.[60] In Australia (which was British Timken territory, *supra,* p. 40, n. 49), a critical situation developed in 1940 because of the requirement that the British Timken distributor there should route all orders through British Timken rather than send the orders direct to appellant, even though under the arrangement they were to be filled by appellant (Fdg., par. 78, R. 978). This arrangement caused such delays in the filling of orders that the British Purchasing Commission became concerned over the effect upon the Australian war effort, and appellant became concerned over the bearing business going to outside manufacturers

[59] Fdgs., pars. 74–6, 208, R. 974–6, 1017; Gov. Exs. 107, 109, 123, R. 1498, 1502, 1531.

[60] Fdgs., pars. 77–8, R. 977–8. All sales made outside of allocated territory, under permitted exceptions to the territorial allocations, were handled only through the party to whom the territory was allotted (R. 115, 155, 170–1, 205). For example, appellant never made any sales in French Timken territory except through French Timken (R. 155).

(Fdgs., pars. 79–84, R. 979–81). British Timken finally agreed to permit Australian orders for "Timken" bearings to go directly to appellant (Fdg., par. 85, R. 983; Gov. Ex. 115, R. 1524).

Another means of opposing the competition of other producers of bearings was the exclusive exchange of know-how and inventions, patented and unpatented, among appellant and the co-conspirators.[61] In addition, appellant made it a policy not to sell alloy steel tubing, of which it was and is an important producer (R. 45–6, 72, 73–4, 458), to outside competitors in British Timken territory, for use in making bearings. When Dewar raised a question as to such sales, he was assured by appellant that "under no circumstances would we sell our tubing to anyone in the world who might as a result harm British Timken, French Timken or American Timken".[62]

In cooperating to eliminate competition among themselves and from others, appellant, British Timken and French Timken augmented the previously described agreements and understandings by cartel agreements between British Timken and French Timken and certain of their competitors abroad.[63] These agreements provided for the

[61] Fdgs., pars. 95, 97, 124, 137, R. 986–7, 996, 1000; Gov. Exs. 79, 81, 97, R. 1465, 1467, 1475.

[62] Fdgs., pars. 104, 105, R. 990; Gov. Exs. 85, 86, R. 174, 1473.

[63] Fdg., par. 106, R. 991. Although appellant was not actually a party to any of those cartel agreements, it cooperated and consulted with British Timken and French

sharing of customers and sales on a quota basis, and the stabilization of prices, in England, France and Italy.[64] The English cartel, for example, began in 1932 with a 70%–30% division of the Ford English business between British Timken and SKF (Fdg., par. 112, R. 993; Gov. Exs. 61, 63, R. 1411, 1416), and was then expanded to a general arrangement apportioning all business between British Timken and SKF (R. 141). The cartel agreements were successful in stabilizing and also raising bearing prices in England and France.[65]

The restrictive use of the trade-mark "Timken," in accordance with the contractual provisions requiring British Timken and French Timken to manufacture and sell bearings only under that name (*supra,* p. 41), has continued not only through the entire period of the present conspiracy, but also throughout the period leading up to its formation.[66] These restrictions aided the division of territories (Fdgs., pars. 124, 137,

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Timken in bringing them about, and approved the agreements before they were executed, all as a part of the plan of eliminating outside competition (Fdgs., pars. 110, 111, 125, R. 992, 996; Gov. Exs. 49–65, 65A, 68, 70, R. 1396–1444, 1438, 1445, 1453; R. 543–4).

[64] Fdgs., pars. 106, 111–115, R. 991, 992–4; Gov. Exs. 49, 51, 54, 59, 61, 73, R. 1396, 1397, 1400, 1411, 1455; R. 140, 141, 149–50, 151–2, 154, 207–8.

[65] Fdgs., pars. 111, 112, R. 992–3; Gov. Exs. 60, 63, R. 1409–16.

[66] Fdgs., pars. 96, 124, 137, 187, R. 987, 996, 1000, 1010; Gov. Exs. 3, 49A, 49B (not printed), R. 108, 113–4, 403.

R. 996, 1000), since, as a result of its own covenants not to make or sell bearings in territory allocated to others (Fdg., par. 183, R. 1009–10), in many parts of the world appellant could not use the mark in competition with British Timken or French Timken (Fdg., par. 182, R. 1009).[67] The restrictions also included use of the mark by appellant and its coconspirators as a help in excluding the competition of outsiders.[68] Appellant's primary interest was in preserving the value of the common mark as a means of eliminating competition of outsiders throughout the world (Fdgs., pars. 84, 101, R. 981–3, 988; Gov. Ex. 113, R. 1514).

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[67] Appellant also took steps to prevent British Timken and French Timken from importing "Timken" bearings into its allotted territory, by recording its United States registration with the Bureau of Customs, so that the Bureau would detain any importation of bearings carrying the recorded mark (*infra*, pp. 76–77).

[68] Fdgs., pars. 84, 124, 137, R. 981–3, 996, 1000; Gov. Exs. 43, 113, R. 1390, 1514. For example, in connection with an attempt in 1928 to prevent Timken-Detroit Axle Company from selling appellant's bearings for replacement purposes in Europe at prices lower than those agreed upon with British Timken, one of appellant's officials wrote Dewar: "Naturally, once the trade-mark of Timken is registered in England, this situation can be entirely cleared up" (Gov. Ex. 43, R. 1390). Again, in 1940, appellant advised British Timken that the way to combat competition from other manufacturers for replacement or service sales in Australia was "for British Timken to instruct all of their foreign service connections to very definitely and positively specify Timken tapered roller bearings" (Fdg., par. 84, R. 981–3; Gov. Ex. 113, R. 1515).

E. APPELLANT'S ACTIVITIES DURING AND SINCE TRIAL OF THIS CASE

On the day the trial began, March 22, 1948, appellant entered into two new agreements. One agreement, with British Timken, provided for maintenance of the control arrangements in British Timken (Gov. (Decree) Ex. 2, R. 2677–80; R. 1144). The other agreement, with Dewar, gave appellant an option to purchase Dewar's shares in British Timken upon the occurrence of any of several named contingencies, including his death, incapacity, or decision to sell (Gov. (Decree) Ex. 3, pars. 1 (a) and (b), R. 2680–1). It also gave Dewar an option to purchase shares in the event that appellant should wish to sell them (Gov. (Decree) Ex. 3, par. 1 (c), R. 2681).

In addition, the agreement made Dewar's approval a condition to any sale by appellant of its shares (Gov. (Decree) Ex. 3, par. 2, R. 2682). This absolute right to approve or disapprove a purchaser of appellant's British Timken stock was preceded by an "honorable understanding" contained in Sec. 1 of the agreement of September 7, 1935 (Gov. (Decree) Ex. 4, R. 2683–86), that Dewar (a) would not "unreasonably" stand in the way of appellant selling its stock, and would object to a purchaser only "on reasonable grounds," and (b) would take all steps within his power to bring about a registration on the

company's books of appellant's shares to the purchaser. The 1948 agreements thus differed from the earlier agreements in that the appellant for the first time gave Dewar a legally binding veto power over the transfer of its stock holdings, a power which could be exercised without assigning reasonable or any other grounds.

Appellee urged that these agreements not only were a continuation of the illegal conspiracy, but also would interfere with an order of divestiture, and the district court cancelled the agreements in Section IV B of the final judgment (*supra*, p. 13; R. 1175).

Appellant states in its brief that Michael Dewar died on December 21, 1950, while this appeal was pending. Dewar held approximately 24 per cent of the outstanding ordinary shares of British Timken (Fdg., par. 66, R. 971), and 50 per cent of the outstanding stock of French Timken (Fdgs., pars. 54, 66, R. 969, 971). Appellant also states that it has acquired from Dewar's estate, presumably in February 1951, all of his ordinary shares of British Timken, pursuant to the option described above. It further states that it has acquired stock of French Timken representing one vote at stockholders' meetings, pursuant to another option exercisable at Dewar's death, and that it proposes to purchase the remainder of French Timken stock pursuant to a right of first refusal (Def. Ex. 228, R. 2539–41). This option of first refusal on the remainder of French Tim-

ken shares was not exercisable upon the contingency of Dewar's death, but rather upon the decision of Dewar's holding company to sell, which decision might have been made either during Dewar's lifetime or after his death (Def. Ex. 228, R. 2541).

On October 12, 1949, immediately following the hearing on relief held in the district court, appellant's representatives participated in a conference in London at which arrangements were made for further use of the trade-mark "Timken" by appellant and the co-conspirators on the basis of the existing allocation of territories. One of the purposes of the arrangements was stated to be "that each of the three companies would have the use of the mark contemplated by the 1938 contract" (Def. (Decree) Ex. D, R. 2758). As part of the arrangements, appellant was to become a "registered user" of the name "Timken" in Great Britain and other countries within British Timken territory, British Timken being the "registered owner." (Def. (Decree) Ex. D, R. 2757–62).

Under the British Trade Marks Act, 1938, which "does not legalize the general licensing of trademarks," a registered user may sell products under the registered trade-mark only if control is maintained by the registered owner over the "permitted use" (Gov. (Decree) Ex. 8, R. 2743, 2745, 2750–1). Thus as a "registered user" appellant could manufacture bearings for sale in Great

Britain under the mark "Timken" only "in accordance either with prescribed specifications or standards of quality laid down or directions given" by British Timken, which must be given the right "to inspect the goods and the methods of manufacturing on the premises of the user or to have samples submitted" (Gov. (Decree) Ex. 8, R. 2750). Appellant's rights as "registered user" were to be further confined within the territorial allocation of the 1938 contracts (Def. (Decree) Ex. D, par. (M), R. 2762).

SUMMARY OF ARGUMENT

I

A. The world-wide allocation of manufacturing and sales territories for anti-friction bearings by appellant, British Timken and French Timken was *per se* unreasonable and unlawful under Sections 1 and 3 of the Sherman Act. *United States* v. *National Lead Company,* 63 F. Supp. 513, affirmed, 332 U. S. 319.

B. The sale of bearings by appellant, British Timken and French Timken in each other's territories, under certain limited exceptions to the territorial allocations, only at prices agreeable to the party into whose territory the sales were made, was *per se* unreasonable and unlawful under the Sherman Act. *United States* v. *Socony-Vacuum Oil Company,* 310 U. S. 150, 218.

C. The combined activities of appellant, British Timken and French Timken to reduce the compe-

tition of outsiders, whereby they protected each other's markets, relaxed the territorial division and permitted sales in each other's territory to the extent necessary to prevent sales by a competitor, and sold bearings to each other at preferential prices in order to combat outside competition, were illegal under the Sherman Act. *Associated Press* v. *United States*, 326 U. S. 1, 15.

D. The exclusive exchange of know-how and inventions, patented and unpatented, among appellant, British Timken and French Timken permitted members of the combination to utilize the extensive research and technical knowledge of the group while preventing its access to outsiders. This exclusive exchange buttressed the other illegal conduct, and was an integral part of the conspiracy to suppress trade. As such, it was unlawful under the Sherman Act. *Associated Press* v. *United States*, 326 U. S. 1, 15; *Fashion Originators Guild* v. *Federal Trade Commission*, 114 F. 2d 80 (C. A. 2), affirmed, 312 U. S. 457, 465.

E. The restriction in the division of territories contracts between appellant, British Timken and French Timken, prohibiting the co-conspirators from manufacturing, selling, or dealing in bearings except under the mark "Timken", provided a ready means of policing the division of territories. Appellant was able not merely to prevent British Timken and French Timken from manufacturing or selling their products in appellant's

territory by trade-mark infringement suits, but also to utilize the customs laws for detaining importations of bearings carrying the infringement mark. The restriction also prevented British Timken and French Timken from building up good will in a different mark and thus creating competition for appellant from products labeled under such different mark. Coupled with the contract provision requiring British Timken and French Timken to cease using the mark "Timken" upon termination of the contract, the restriction also assured continuation of the territorial allocation, since those companies could terminate only by accepting virtual destruction of their present business and good will. Even a patent licensor may not limit its licensee to exploitation of patented products. The prohibition against dealing in other marks foreclosed appellant's American competitors from selling bearings to British Timkin and French Timken, which have supplemented their production by purchasing from appellant. Finally, common exploitation of the mark "Timken" through worldwide advertising and promotion gave each member of the combination an advantage as against outside competitors in securing replacement business for original installations made by all three of them.

F. British Timken and French Timken's participation in foreign cartel arrangements to fix prices, allocate customers and divide sales in

England, France and Italy, restricted exports by United States bearing producers and were part of the over-all conspiracy to eliminate competition between the parties and with outsiders, and therefore violated the Sherman Act. *United States* v. *National Lead Company,* 63 F. Supp. 513, 524, affirmed, 332 U. S. 319; *United States* v. *Nord Deutscher Lloyd,* 223 U. S. 512.

II

A. Even if restraint of trade were not appellant's primary purpose, the restraints which it imposed could not be justified, as they were unreasonable *per se.* Such restraints as division of territories and price fixing, because of their inherent character, have been recognized by this Court as necessarily having an undue and unreasonable effect upon competition. Such restraints can under no circumstances be justified by business convenience or necessity, nor by resort to formal business devices. Hence, the fact that division of territories and price fixing might have been expedient for appellant in its business arrangements with Dewar or British Timken and French Timken, or that the arrangements were called a "joint venture" or a "trade-mark license" could not excuse these basic violations of the Sherman Act.

B. The so-called "joint venture," to which appellant claims the restraints were ancillary, did not in fact ever exist. Appellant and Dewar were

not jointly liable for the obligations of British Timken, as they would have been had that business entity been a "joint venture" instead of a corporation. Nor did either have authority to act for the common enterprise, which as a corporation could act only through its duly authorized officers. Other essentials of a "joint venture," such as common control and sharing of profits and losses, were also lacking. And at no time were the restraints of trade ancillary or incidental to the "joint venture." They were the purpose and essence of it.

Appellant's purchase of stock in British Timken and French Timken was in fact only a transaction whereby it acquired substantial interests in potentially competing corporations. The relationship of stockholder and corporation thereby created, even had the stock interests been controlling, could not support an agreement between the affiliated companies not to compete. *Kiefer-Stewart Company* v. *Seagram & Sons,* 340 U. S. 211, 227; *United States* v. *Yellow Cab Co.,* 332 U. S. 218.

C.1. Because of the inherent nature of a trade-mark, its owner may not license another to use it and, as an incident thereto, impose restraints upon competition between them. A trade-mark is merely a method of identifying the source of origin of goods. It enables a seller to distinguish his products from those of others. A trade-mark does not give exclusive rights to manufacture, use

or sell a product within the territory of the nation recognizing the right. The owner of a trade-mark may not make a negative and merely prohibitive use of it as a monopoly. *United Drug Co.* v. *Rectanus Co.*, 248 U. S. 90, 97–8. It does not even give exclusive rights to use of a word or symbol, but only a right to prohibit its use by others so as to confuse purchasers as to source of origin. *Champion Spark Plug Company* v. *Sanders*, 331 U. S. 125, 130.

Trade-mark rights are entirely unlike patent rights, since they are not the product of invention, do not give the public the benefit of disclosure of an invention, and do not carry out any constitutional intent to promote the progress of science and useful arts. Further, trade-mark rights, unlike patent rights, are unlimited in time, and restraints of trade if allowed in connection therewith could be made perpetual. Because of its inherent nature, a trade-mark may be "licensed" only under exceptional circumstances where deception of the public will not result, and in no event may restraints of trade be imposed as an incident to the granting of permission to others to use the mark.

Even if a trade-mark had the status of a patent, it would not support the restraints imposed by appellant. Appellant did not have trade-mark rights in many countries where the territorial restraints applied, and even a patentee may not impose restraints beyond the scope of its patent

rights. Further, appellant required British Timken and French Timken to manufacture bearings only under the name "Timken." Even a patentee may not require his licensee to manufacture only under the patent.

The public interest requires that trade-mark rights be kept within their proper bounds, and not be used as a device for allocating world markets, fixing prices, and otherwise nullifying the policy of the Sherman Act against restrictions on competition.

2. Appellant did not own and hence could not "license" the trade-mark "Timken" in many areas of the world. It had no trade-mark rights in most of the areas allotted to British Timken and French Timken as a result of its covenant not to compete in those areas. It had first permitted others to obtain rights in the mark in connection with the territorial allocation, rather than attempting to use its mark competitively. It did not guard, as a competing seller would, the symbols used to prevent simulation of its goods by actual or potential competitors. Later, it directed its activities, not to protecting its own rights in the mark "Timken," but rather to acquiring rights in that mark which it had permitted others to obtain, without actually entering into competition in contravention of its agreements not to compete.

Appellant admits that it has no common law

rights arising from the use of the mark "Timken" in areas of the world allotted to British Timken and French Timken. Nor is it the registered owner in most of such areas. Appellant claims rather to be the "equitable owner" in those countries, principally on the basis of the provision, in the division of territories contracts, for the reversion of the mark in those areas from British Timken and French Timken to appellant at the expiration of the agreements.

This provision for reversion of the trade-mark, however, was itself a restriction which violated the Sherman Act because it aided the division of territories and suppression of outside competition. Even assuming this provision to be legal under English law, and to give appellant "equitable ownership" in the mark in England, it does not excuse appellant's violation of the Sherman Act. Appellant cannot justify such illegal restraints of trade as division of territories by resort to another provision of the same contract which itself was an illegal restriction under the Sherman Act.

3. Finally, even if appellant had trade-mark rights capable of licensing, and even if the restraints here imposed could have been reasonably ancillary to such licensing, the district court unequivocally found that in fact the restraints were not ancillary but were appellant's primary purpose.

III

The findings are fully adequate and are supported by the evidence. This Court will not undertake to reweigh the evidence, especially as to imponderables such as intent, where a trial court has conscientiously and thoroughly reviewed the entire evidence and made adequate findings. *United States* v. *Yellow Cab Co.*, 338 U. S. 338.

IV

A. Appellant's 30.25 percent stock interest in British Timken and 50 percent interest in French Timken held at the time of judgment were principally acquired in 1927, as an integral part of the illegal agreements which continued the allocation of world trade territories between appellant and British Timken, and made French Timken a party to this and the various other illegal restraints on competition. The existing restrictive agreements were to expire on January 1, 1929, and these stock interests, acquired as an integral part of the conspiracy, were a factor inducing their extension. The "Heads of Agreement" of May 16, 1927, provided for the purchase of stock in British Timken and French Timken by appellant and Dewar, and in connection therewith for the extension of the existing restraints. Since that time, appellant's interests in these companies consistently have been utilized to further the illegal conspiracy. Though not giving appellant

control, they have enabled it to influence the maintenance of restrictions on competition between itself and the companies in which it invested. It used this influence in favor of continuing the illegal restrictions when the basic agreements were renewed in 1934, 1935, and 1938. In addition, the interests served initially and have continued to serve as an inducement for appellant, British Timken and French Timken not to compete with each other. They will continue to serve as a constant deterrent to competition as long as they are allowed to exist.

Because these interests were illegally acquired as an integral part of the conspiracy, were illegally used in furtherance thereof, and have served and will continue to serve as an inducement for appellant and those companies not to compete, the divestiture ordered by the district court was essential to remove effectively existing and prospective barriers to competition.

B. The injunctive provisions of the district court's judgment to which appellant objects were properly designed to terminate the unlawful restraints of trade and to prevent their recurrence. Though consisting primarily of prohibitions against continuation of activities which formed a part of the illegal conspiracy, to the extent that they went beyond the narrow limits of the proven violation, they were necessary in order to provide effective relief. *United States* v. *U. S. Gypsum Co.*, 340 U. S. 76, 90.

The injunctions against exclusive exchange of know-how, patents, material and machinery are justified, since evidence of such exchange was offered at the trial, and the lower court specifically found that the exchange was most helpful in buttressing the other illegal conduct, and was an integral part of the general scheme to suppress trade. The failure of the complaint to make such a charge was not a fatal defect. Federal Rules of Civil Procedure, Rules 15 (b), 54 (c).

The injunctions against appellant's agreeing with British Timken, French Timken, or their subsidiaries, agents, sales representatives, or distributors to fix prices for the sale or resale of bearings in the United States are properly calculated to sever the unlawful ties between appellant and its co-conspirators. The injunctions are directed to horizontal agreements between these companies to fix prices. They do not affect any right appellant may have to maintain resale prices under the Miller-Tydings amendment, unless the exceptional circumstance should arise that appellant, British Timken, and French Timken had the same United States distributor.

The injunctions against appellant's refusing to sell bearings for the reason that they are for resale or distribution in the territories allotted by the conspiracy to British Timken and French Timken are justified by appellant's long-standing policy and practice of not selling bearings in

those countries pursuant to the illegal agreements. A mere injunction prohibiting the appellant from conspiring to divide territories is not sufficient to restore competition in the industry. The injunction against refusing service and assistance to customers located in British Timken and French Timken territory is necessary because the evidence showed that such service and assistance is essential to the sale of bearings. The authority of the district court to deprive appellant of its right to choose its customers was settled by this Court's decision in *International Salt Company* v. *United States,* 332 U. S. 392.

Injunctions against appellant's entering into agreements with British Timken and French Timken for the transfer of trade-mark rights upon restrictive conditions, such as allocation of territories and exclusive exchange of know-how and materials, are justified by the district court's finding that the restrictive use of the trade-mark "Timken" was an integral part of the conspiracy. Appellant's continuing intention to use the mark in conformity with the illegal territorial allocation is demonstrated by its action immediately following the hearing on relief in the district court, when it agreed with British Timken to transfer and allocate rights in the mark pursuant to the territorial division in the 1938 contracts.

ARGUMENT

INTRODUCTION

The underlying legal issues in this case have a simplicity which may be somewhat obscured by the number and intricacy of the agreements which have been entered into in furtherance of the conspiracy, and the prolixity of the points urged by appellant. The two basic questions here are whether the Sherman Act has been violated and if so, whether the relief ordered by the district court is appropriate.

With respect to the question of violation of the Act, it has been abundantly established that appellant for many years has engaged in concerted activities with British Timken and French Timken to allocate world markets, fix prices and restrict the competition of others in the sale of anti-friction bearings. The principal issues raised by appellant are whether the restraints imposed by the parties to the conspiracy can be said to be "ancillary" to some lawful activity, and if so, whether they are reasonable. Appellant contends that the restraints were ancillary to a "joint venture" between appellant and Dewar, or ancillary to the licensing of the trade-mark "Timken". We shall show that the restraints there imposed were unreasonable *per se,* and therefore could not be justified even if ancillary; and that in any event they were not in fact ancillary in purpose, either to a joint venture or to

trade-mark licensing. On the contrary, the creation of stock relationships among the parties and the agreements with respect to the use of the name "Timken" were steps in furtherance of the conspiracy to restrain trade.

The district court has ordered divestiture of the interests of appellant in British Timken and French Timken, and injunctive relief designed to make certain that the potential competitors will be freed of any ties with each other which might prohibit competition among them. We shall show that the decree fashioned by the district court is entirely appropriate to dispel, as far as possible, the effects of this long-standing conspiracy, and to prevent its recurrence in any other form.

I

THE DISTRICT COURT'S FINDINGS ESTABLISH THAT THE AGREEMENTS AND OTHER CONCERTED ACTIVITIES OF APPELLANT, BRITISH TIMKEN AND FRENCH TIMKEN HAVE UNLAWFULLY RESTRAINED FOREIGN COMMERCE

The offense found by the district court involves a world-wide combination and conspiracy between appellant and its co-conspirators to eliminate competition among themselves and with others in the manufacture and sale of antifriction bearings. The suppression of competition by the members of this international cartel is, and has been, accomplished by numerous means and methods.

Some of these means, lawful in themselves, are unlawful as part of the illegal scheme and purpose to eliminate competition. Other means are unreasonable restraints of trade in themselves or are illegal *per se,* such as allocation of territories, price fixing, combination to eliminate the competition of outsiders, and cartel arrangements with foreign producers abroad. Similarly, the basic written contracts between appellant and its coconspirators are in themselves illegal *per se.*

A. *Division of world production and sales territories*

The division or allocation of exclusive territories is the crux of this case. Territorial allocations have existed ever since the beginning of relations between the parties in 1909. They presently exist in the form of current contracts between appellant, British Timken and French Timken which by their terms continue in effect until 1965 (*supra,* p. 39).

Each of the parties is prohibited from manufacturing or selling bearings, or authorizing others to make or sell bearings, in the territories allocated to the other parties. Thus appellant may not export, or permit other American firms to export, its bearings from the United States for sale in Europe and the French and British Empires. Neither may appellant manufacture bearings in Europe or in the French or British Empires and

import such bearings into the United States. (*Supra*, pp. 39–40.)

Conversely, British Timken and French Timken may not import bearings into the United States. This inflexible territorial allocation has been strictly adhered to throughout the period of the conspiracy, and the district court so found (Fdg., par. 70, R. 972).

It is now settled, and the district court correctly held (Concl., par. 128, R. 997), that the division of territories among competitors in different countries of the world and the elimination of competition between them violates the Sherman Act. *United States* v. *National Lead Co.*, 63 F. Supp. 513, affirmed, 332 U. S. 319; *United States* v. *American Tobacco Co.*, 221 U. S. 106, 182. As the district court pointed out, contracts providing that in a particular area products may be sold by only one of the members of a combination "necessarily were intended to and had the effect of eliminating competition" (Concl., par. 129, R. 997).

The inherent danger of such agreements has been recognized by this Court in consistently holding that combinations or conspiracies for allocating or dividing markets are illegal *per se*. *United States* v. *American Tobacco Co., supra; United States* v. *National Lead Co., supra; United States* v. *Addyston Pipe & Steel Co.*, 175 U. S. 211, 241; *United States* v. *Aluminum Co. of America*, 148

F. 2d 416, 439–45, 447–8 (C. A. 2); *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, 497.

B. *Price fixing*

To the limited extent that exceptions have been made to the territorial division, appellant and the co-conspirators have sold in each other's territory only at prices agreeable to the party into whose territory the sales were made. Current contracts provide for agreed prices on replacement sales in each other's territory and a mutual understanding has existed as to the actual prices (the "protective discount") to be charged. Appellant also has fixed the resale price of others buying its bearings in the United States for resale in the territory allocated to the co-conspirators. Prices also have been agreed upon between appellant and British Timken on sales in Russia, which is joint territory. (*Supra,* p. 41.)

The district court was correct in holding (Concl., par. 132, R. 998) that the practice of selling only at prices agreeable to the party into whose territory bearings are sold, the provisions of the contracts for agreed prices on replacement bearings, and the other price fixing arrangements between the parties, constitute violations of the Sherman Act. In an unbroken line of decisions, of which *Kiefer-Stewart Co.* v. *Seagram & Sons,* 340 U. S. 211, is the latest, this Court has held to be illegal *per se* all agreements and combinations

to fix or control prices or restrain price competition.[69]

C. *Elimination of outside competition*

The elimination of competition between appellant, British Timken and French Timken through the division of world markets, price fixing and other means, was but one aspect of the conspiracy. As in most cartels there was also the intent and purpose to eliminate the competition of other anti-friction bearing producers (Fdg., par. 98, R. 987–8). That purpose has been achieved by complete and full cooperation between appellant and its co-conspirators. In some instances they have acted collectively to drive outsiders from the market; in other cases they have joined with outsiders to eliminate competition through arrangements to fix prices and allocate sales and customers. (*Supra*, pp. 47–48.)

The parties in acting collectively against outsiders have made exceptions to the territorial division in order to combat the competition of such outsiders and to protect each other's markets. They have tolerated sales in each other's

[69] *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290; *United States* v. *Joint Traffic Association*, 171 U. S. 505; *United States* v. *Trenton Potteries Co.*, 273 U. S. 392; *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427; *United States* v. *Socony-Vacuum Oil Company*, 310 U. S. 150; *United States* v. *Masonite Corp.*, 316 U. S. 265, 276; *United States* v. *Line Material Co.*, 333 U. S. 287; *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131; *United States* v. *National Ass'n of Real Estate Boards*, 339 U. S. 485.

territory to the extent necessary to prevent that market from going to a competitor. Competitors likewise have been excluded from markets by reason of appellant's intermittent relaxation of its "protective discount" policy. (*Supra*, p. 45.)

Activities against outsiders also have taken the form of sales by the parties to each other at levels below the usual charge made to other customers.[70] In that connection the district court found that the intent and purpose of the parties was to "supplement the plan of strict compliance with the allocated areas and to protect themselves from competition by outsiders" (Fdg., par. 103, R. 989). This practice of sales to each other on a "most favorable basis" has made it virtually impossible for independent producers to compete. (*Supra*, p. 45.)

Furthermore, appellant has exercised the policy of refusing to sell its special bearing steel to competitors who might harm British Timken, the district court finding that the parties made

[70] This is a favored practice of international cartels. See Stocking & Watkins, *Cartels or Competition?* (1948), p. 142:

"Furthermore, price discrimination often arises out of business dealings among cartel members themselves. The offer of special low prices to affiliated concerns is an effective way of promoting trade solidarity. Discrimination is also used to prevent competition from allied or closely related industries.

"All of these cartel practices are, of course, far from consistent with the principles of a 'fair field and no favors' and of 'equal opportunity for all,' which are the bedrock of a private enterprise economic system."

certain that steel was not made available for use by their competitors. The exercise of such policy has had the direct result of placing outside competitors at a competitive disadvantage, thus reducing their ability to survive. (*Supra*, p. 47.)

All of the collective activities herein described—protection of each other's markets; sales of bearings at preferential prices; preferential treatment respecting bearing steel; and use of combined technological resources—were carried out, the district court found, with the intent and purpose of excluding "individual" or outside competitors from the anti-friction bearing market. The court properly concluded as a matter of law that such association of appellant, British Timken and French Timken for the purpose of protecting each other's markets and the exclusion of outsiders was illegal under the Sherman Act (Concl., par. 134, R. 999). This Court, in a uniform series of decisions, has struck down any such collusive action by groups of competitors.

In *Associated Press* v. *United States*, 326 U. S. 1, 15, the vice of such an arrangement was described as follows:

> The Sherman Act was specifically intended to prohibit independent businesses from becoming "associates" in a common plan which is bound to reduce their competitor's opportunity to buy or sell the things in which the groups compete. Victory of a member of such a combination over its business rivals achieved by such

collective means cannot consistently with with the Sherman Act or with practical, everyday knowledge be attributed to *individual* "enterprise and sagacity"; such hampering of business rivals can only be attributed to that which really makes it possible—the collective power of an unlawful combination."[11]

D. *Exclusive exchange of know-how*

Another significant means of eliminating the competition of outsiders has been the exclusive exchange of know-how and inventions, patented and unpatented, among appellant and its co-conspirators. Current agreements provide for a complete and continuous interchange (until 1965) of all technological information relating to the manufacture of anti-friction bearings. (*Supra*, p. 41.)

The district court found that the exclusive exchange of know-how was carried on for the purpose of eliminating the competition of third parties (Fdg., par. 124, R. 996). It therefore held that, while it did not appear that such arrangement alone served as a direct instrument to eliminate competition, it was used by the parties as a "most helpful" aid in buttressing other illegal conduct, and was illegal as an integral part

[11] See also *Montague & Co.* v. *Lowry*, 193 U. S. 38, 45; *Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20, 47–48; *United States* v. *Trenton Potteries Co.*, 273 U. S. 392; *Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 406–7.

of the general conspiracy to suppress competition. (Concl., par. 137, R. 1000.)

The exclusive exchange of know-how has effectively eliminated the competition of third parties since it has permitted the members of this combination to utilize the extensive research and technical knowledge of the group while preventing access to outsiders.[72] The result has been that newcomers and outsiders, while denied access to virtually all the existing technology in the industry, are forced to compete for business against the combined technology and power of the three industrial organizations which control and dominate the world markets for tapered roller bearings. It is, of course, no aid to such potential competitors that tapered roller bearings are competitive with other kinds of bearings (Appellant's Br. 44 ff.).

The illegality inherent in such activities springs from the collective power of a combination as opposed to the individual. The elimination of competition as the result of combination is precisely what the Sherman Act condemns. *Associated Press* v. *United States*, 326 U. S. 1, 15;

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[72] It has been held that pooling of patents by competitors for the purpose and effect of eliminating competition is illegal since it enables *each* member of the combination to use the combined patent power of *all* members against their respective competitors, *Standard Oil Co.* v. *United States*, 283 U. S. 163, 174; *Blount Mfg. Co.* v. *Yale & Towne Mfg. Co.*, 166 Fed. 555, 562 (D. Mass.); *United States* v. *Vehicular Parking*, 54 F. Supp. 828, 830 (D. Del.).

Fashion Originators Guild v. *Federal Trade Commission*, 114 F. 2d 80, 85 (C. A. 2), affirmed, 312 U. S. 457, 465.

E. *Restrictive use of the trade-mark "Timken"*

Just as with know-how, the district court concluded that the restrictive use of the mark "Timken" has been "most helpful" to the conspirators in serving to buttress other illegal acts and was unlawful as an integral part of the general conspiracy to suppress competition (Concl., par. 137, R. 1000).[73]

The mark "Timken" is the only mark that appellant, British Timken and French Timken use on their tapered roller bearings.[74] Indeed, the current contracts prohibit the co-conspirators from manufacturing, selling or dealing in bearings except under that mark. This contract provision is the very heart of appellant's restrictive use of the mark. Most importantly, it provides an easy, almost self-enforcing means of policing the division of territories. To the extent that appellant has exclusive rights in the mark "Timken" in its territory, it can, by the use of infringement suits, or the threat of such suits, successfully prevent British Timken or French Timken from

[73] The scheme of "licensing" the mark by appellant and its co-conspirators is itself unlawful and *a fortiori* no defense to the restrictive practices. See *infra*, p. 94 ff.

[74] The origin, use and ownership of the mark "Timken" are described *supra*, pp. 23–25.

manufacturing or selling their products in that area.[75] Conversely, British Timken and French Timken, by the use of similar devices abroad where they have the exclusive rights to the mark, successfully may prevent appellant from manufacturing or selling its products in those areas. The device can also be employed to prevent importers and exporters, distributors, automotive dealers and other firms, from buying bearings from either appellant, British Timken or French Timken and reselling them in the other's territory.

The operation of the trade-mark device to enforce and police a division of territories is aptly described in Handler, *Trade-Marks and the Anti-Trust Laws,* 38 T. M. Rep. 387, 388–9:

> In implementing a division of world markets, some cartels have parcelled among their members rights in a trade-mark on a geographical basis. All the parties sell the same product under the same mark, one operating in the United States, another perhaps in South America, and others in various parts of Europe. The appor-

[75] This use of a mark as a cartel enforcement device has arisen in other antitrust litigation. *United States* v. *Sperry Corporation*, Civil Action No. 19–175, S. D. N. Y., complaint filed September 1, 1942, consent decree entered September 1, 1942; *United States* v. *The Bayer Co., Inc.*, Civil Action No. 15–364, S. D. N. Y., complaint filed September 5, 1941, consent decree entered September 5, 1941.

For a discussion of the cases and the use of marks to restrain international trade, see Diggins, *Trade-Marks and Restraints of Trade*, 26 Jour. Pat. Off. Society 461 (July, 1944).

> tionment of territorial rights in a mark can be an effective device to prevent shipment of the trade-marked product from one market to another. Indeed, under such an arrangement the courts can be used to enforce and police the cartel restriction.

The present case might well be cited as a classic example of such use of a trade-mark to restrain competition.

By virtue of the provision requiring the manufacture of bearings only under the mark "Timken", appellant also has been able to utilize the customs laws of the United States as an instrument for policing the division of territories. In 1921 appellant obtained a registration of the mark (Gov. Phys. Ex. 150; R. 571) and recorded it with the Bureau of Customs in order to detain any importation of bearings carrying the recorded mark (Gov. Phys. Exs. 150; Gov. Ex. 151 (a), 151 (b), R. 1639, 1642).[76] This use of legal means

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[76] Significantly, although appellant had other marks which it might have been desirous of protecting against use on importations, it recorded with Customs only the mark which its co-conspirators were forced to use on their bearings (Def. Ex. 87, R. 1972; Gov. Ex. 151-A, R. 1642; R. 949). British Timken was likewise in a position to prevent importations of appellant's bearings into Great Britain under the mark "Timken" (R. 618-619).

Upon the passage of the Trade Mark Act of 1946, appellant was no longer able to use the mark to stop importations (Section 28, 60 Stat. 436, 15 U. S. C. 1096). Appellant, however, thereafter took steps which will once again place it in a position to secure the aid of customs officers. On July 11, 1950, appellant obtained registration of the mark "Timken"

to accomplish an unlawful objective contravenes the Sherman Act. *American Tobacco Co.* v. *United States,* 328 U. S. 781, 809.

The provision against the British and French companies' dealing in bearings under any other mark also prevents these companies from building up good will in any different mark and thus creating competition for appellant from products labeled under such different mark. These provisions are comparable to restrictions in patent licenses illegally limiting the licensees to exploitation solely of the patented products and devices (*National Lockwasher Co.* v. *George K. Garrett Co.,* 137 F. 2d 255, 256 (C. A. 3); *McCullough* v. *Kammerer Corp.,* 166 F. 2d 759, 761 (C. A. 9), certiorari denied, 335 U. S. 813), and are particularly vicious when coupled with provisions of the current contracts which require British Timken and French Timken to cease using the name and mark "Timken" upon the termination of the contract and to reassign to appellant all rights in such mark and name. The effect of coupling such provisions is to put the British and French companies in an almost impossible competitive situation upon the termination of the agreements. As the district court held (Concl., par. 96, R. 987), the retention of good will and

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upon the Principal Register (Reg. No. 527512) which, when recorded with the Treasury Department, will again prevent the importation of bearings carrying that mark (Section 40, 60 Stat. 440, 15 U. S. C. 1124).

competitive dominance built up by the co-conspirators through the use of the name "Timken" depended upon the continued right to use that name; the severance of contractual relations would mean the termination of their ability to profit by years of experience in manufacture and successful business dealings with their customers. Viewed realistically therefore, these provisions provide a guarantee against termination of the unlawful agreements by the co-conspirators. So far as they are concerned, the choice is between continuing the conspiracy and submitting to virtual destruction of their names and good will (Fdg. par. 96, R. 987).

The prohibition against dealing in other marks also has reacted to restrict other American producers in exports to foreign countries. In many sizes and types British Timkin and French Timken, in order to meet requirements of their customers, have had to supplement their production by purchasing from appellant in the United States (R. 112–115). Throughout the period of the conspiracy this has amounted to approximately $3,000,000 (Gov. Exs. 153, 154, R. 1648, 1649).

Inasmuch as British Timken and French Timken can deal only in bearings marked "Timken" they have been unable to purchase bearings marked with any other names. The necessary result has been that appellant's American competitors have been completely foreclosed from this

substantial market in England and France. Since the parties by direct agreement could not have erected a barrier excluding competitors from these markets (*International Salt Co.* v. *United States*, 332 U. S. 392, 396–7; *United States* v. *Yellow Cab Co.*, 332 U. S. 218, 227; *United States* v. *General Motors Corp.*, 121 F. 2d 376, 404 (C. A. 7), certiorari denied, 314 U. S. 618), they cannot legally accomplish that purpose indirectly through the use of trade-marks.

American producers who are not members of this combination constantly have been put at a competitive disadvantage by virtue of the common effort of appellant and its co-conspirators to exploit the mark "Timken" for their exclusive benefit (R. 105, 407–8). Such producers must compete individually against the combined world-wide advertising and promotion of "Timken" products by the three largest manufacturers of such bearings. The tendency of a customer to replace a defective or worn-out bearing with the make of bearing he finds originally installed in his machinery is a well accepted fact in this industry (R. 394–5, 511–2). Thus, each member of the combination has an advantage as against outside competitors in securing replacement business for original installations made by all three of them. This collective activity for the purpose of excluding the outside or individual competitor is clearly prohibited by the Sherman Act. *Associated Press* v. *United States*, 326 U. S. 1, 15.

F. *Participation in foreign cartels*

The foreign cartel arrangements between British Timken and French Timken and their competitors in England, France, and Italy to fix prices, allocate customers, and divide sales were found by the district court to have been consummated with the knowledge, approval, and cooperation of appellant (Fdg., par. 125, R. 996). The arrangements were part of the over-all conspiracy to eliminate competition between the parties and with outsiders and appellant's participation "completed the circle in which the combination operated to forestall competition" throughout the world (Fdg., par. 135, R. 999–1000).

These foreign cartel arrangements, although made abroad, restricted exports by United States bearing producers (Fdg., par. 117, R. 994) and had a direct effect upon the foreign trade of the United States (Fdg., par. 136, R. 1000). For example, the cartel agreement between French Timken and French SKF (Gov. Ex. 65, R. 1436; Gov. Ex. 65A, R. 1438), which was sent to appellant for approval (Gov. Ex. 65A, R. 1438), was carefully considered by all of appellant's top officials (R. 543–544), and was finally approved by appellant (Gov. Ex. 70, R. 1453), fixed quotas for French Timken and SKF for sales in France and the French Empire. The quota of French Timken included "Timken" bearings manufactured elsewhere and imported into France, including those made by appellant and sold to French Timken.

under special exception to the territorial allocation (R. 154–155).

This cartel arrangement also provided for agreement on retail prices and prices for all large orders and customers. Thus the export trade of appellant was directly affected since the quantities of bearings that it could ship into France were limited to the quota provisions and, in addition, the prices had to be agreeable not only to French Timken but also to French SKF. (*Supra*, pp. 47–48.)

The Sherman Act prohibits conspiracies and combinations and the impositions of restraints on foreign trade as well as domestic commerce. As the district court properly held (Concl., par. 135, R. 999–1000), restraints on exports and imports are banned. *United States* v. *Nord Deutscher Lloyd*, 223 U. S. 512; *United States* v. *Sisal Sales Corporation*, 274 U. S. 268, 274; *United States* v. *American Tobacco Co.*, 221 U. S. 106, 133–141, 171–172, 185–187; *Thomsen* v. *Cayser*, 243 U. S. 66, 88; *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 443, 444 (C. A. 2); *United States* v. *National Lead Co.*, 63 F. Supp. 513, 524, affirmed, 332 U. S. 319; *United States* v. *General Dyestuff Corp.*, 57 F. Supp. 642, 647 (S. D. N. Y.).

Combinations and conspiracies directly affecting the foreign commerce of the United States are, as the district court held (Concl., par. 136, R. 1000), unlawful even though formed outside the jurisdiction of the United States. *United*

States v. *Nord Deutscher Lloyd*, 223 U. S. 512; *United States* v. *Hamburg-Amerikanische P. F. A. G.*, 200 Fed. 806, 807 (C. C. S. D. N. Y.); *Thomsen* v. *Cayser*, 243 U. S. 66, 88.

The foreign cartel arrangements were held by the district court to be illegal (Concls., pars. 126, 135, R. 996, 999–1000) not only as direct restraints upon United States foreign commerce (Fdg., par. 117, R. 994), but also as part of the over-all conspiracy to eliminate competition (Concl., par. 126, R. 996). The arrangements were links in the conspiratorial chain designed to suppress competition on a world-wide basis (Concl., par. 135, R. 999–1000) and would have violated the Sherman Act even if they had related solely to the commerce of foreign nations. See *United States* v. *National Lead Co.*, 63 F. Supp. 513, 524, affirmed, 332 U. S. 319.

II

THE RESTRAINTS CANNOT BE JUSTIFIED AS ANCILLARY TO SOME LAWFUL "MAIN PURPOSE"

A. *The restraints here imposed were unreasonable per se, and therefore cannot be justified as "ancillary"*

In order to excuse, under the "ancillary restraints" doctrine, the restraints which it imposed upon competition, appellant must show not only that the imposition of the restraints was not its primary purpose, but also that the re-

straints were reasonable in scope."[77] The very case upon which appellant relies so heavily as stating the doctrine makes this clear. *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271 (C. A. 6), modified and affirmed, 175 U. S. 211.

The "ancillary restraints" doctrine is necessarily based upon the rule of reason. Restraints which would otherwise be unlawful are said to be permissible, if reasonable, and if ancillary or incidental to some legitimate main transaction. But the doctrine obviously cannot apply to restraints which are unreasonable *per se*, since such restraints are by definition excepted from the rules of reason.[78] The district court correctly held that the restraints here involved unmistakably fall in the unreasonable *per se* category (Concl., par. 143, R. 1001).

It is, of course, settled law that price fixing is illegal *per se*.[79] It is likewise settled that the

[77] The burden of proof in establishing the defenses and showing that the restraints imposed were reasonable rested upon appellant. *United States* v. *Paramount Pictures*, 334 U. S. 131, 148; *United States* v. *Crescent Amusement Company*, 323 U. S. 173, 188.

[78] Whatever may be the authority of *United States* v. *General Electric Co.*, 272 U. S. 476, cited by appellant, after this Court's decision in *United States* v. *Line Material Company*, 333 U. S. 287, the former case obviously was decided on the basis of statutory patent rights, and was not an application of the ancillary restraints doctrine. Consequently, it is in no way inconsistent with the conclusion that restraints which are unreasonable *per se* cannot be justified as ancillary to a main purpose.

[79] See *United States* v. *Line Material Co.*, 333 U. S. 287, 307, and other cases collected, *supra*, p. 69, n. 69.

allocation of territories cannot be justified as reasonable. *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469; *United States* v. *Aluminum Company of America*, 148 F. 2d 416 (C. A. 2); *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271 (C. A. 6), modified and affirmed, 175 U. S. 211. In the *Addyston* case, Judge Taft, in rejecting the argument that division of trade territories and price-fixing agreements were reasonable, said that "the association of the defendants, however great the competition they had to encounter, and however great the necessity for curbing themselves by joint agreement from committing financial suicide by ill-advised competition, was void at common law, because in restraint of trade, and tending to a monopoly" (85 Fed. at 291). Years later, Judge Learned Hand speaking of the same restraints in the *Aluminum* case, said (148 F. 2d at 427): "It is settled, at least as to § 1, that there are some contracts restricting competition which are unlawful, no matter how beneficent they may be; no industrial exigency will justify them; they are absolutely forbidden."

What the law condemns as unreasonable *per se* cannot be justified on the basis of any claim of business necessity, suppression of competitive evils, or some incidental benefit to the public. As this Court said of price fixing in *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 226, "Whatever economic justification particular price-fixing agreements may be thought to have,

the law does not permit an inquiry into their reasonableness. They are all banned because of their actual or potential threat to the central nervous system of the economy." Hence, the fact that the division of territories or price fixing might have been convenient or expedient for appellant in its business arrangements with Dewar or British Timken and French Timken (such as the alleged "joint venture" or "licensing" of trade-mark rights) could in no way excuse appellant from these fundamental violations of the Sherman Act even if in fact the restraints could in any real sense be viewed as ancillary. In Sections B and C, *infra,* it is pointed out that not only was there no joint venture or lawful licensing of trade-marks, but the restraints on competition themselves have been and are the primary purpose of the agreements among appellant and its co-conspirators.

B. *The restraints were in no sense "ancillary" to a joint venture*

The exact nature of appellant's contention that the restrictive agreements were ancillary to a "joint venture" undertaken by appellant and Dewar is not entirely clear from its statements at the trial or the brief filed with this Court. It appears, however, to be of this nature: appellant and Dewar, pursuant to negotiations undertaken in 1927 (Heads of Agreement, Def. Ex. 15, R. 1730) entered into a "joint venture" to purchase

British Timken, to create a French corporation (French Timken), and to acquire a German corporation (German Timken), for the purpose of manufacturing Timken-type tapered roller bearings. Inasmuch as Dewar was fearful of competition from appellant and the possible adverse effect upon British Timken of such competition, appellant agreed not to compete with British Timken in the sale of the common product. Appellant, on the other hand, having invested its money jointly with Dewar in British Timken, was fearful in turn of the adverse effect upon it of competition from British Timken, and accordingly extracted from British Timken, as well as from French Timken and German Timken, an undertaking by them not to compete in the territory that appellant had staked out for itself.

The defense that the restraints upon competition were ancillary to a main transaction known as a "joint venture" was rejected by the district court (Concl., par. 150, R. 1003). That court found the evidence would not support a finding that the "joint venture" between appellant and Dewar was the main transaction; on the contrary, it explicitly found that the "arrangements were made to carry on effectively the combination, to eliminate competition between the parties and to frustrate any competition of outsiders" (Fdg., par. 154, R. 1004). It found from the evidence that the "only conclusion which may properly be drawn is, that the restraints upon competition

were not ancillary to the 'joint venture'" (*ibid.*).[80]

In finding that the combination to eliminate competition was the primary or main transaction, the district court observed that the restrictive agreements which were part of the combination were in existence many years prior to the alleged "joint venture." The 1928 agreements providing for the joint purchase of British Timken and the establishment of French Timken followed by almost twenty years the original restrictive agreements between appellant and predecessors of British Timken and French Timken (Fdg., par. 152, R. 1003). Thus the "joint venture" arrangements in 1928 did not mark the beginning of *new* business contacts (Fdg., par. 153, R. 1003–4). On the contrary, they merely extended long existing arrangements between potential competitors who

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[80] A defense based upon the doctrine of ancillary restraints, similar to the "joint venture" defense in this case, was offered in the *United States* v. *National Lead Company*, 63 F. Supp. 513, affirmed, 332 U. S. 319. There the court in rejecting the defense pointed out that in the original 1920 agreements, and in each of the subsequent agreements which resulted in the creation of the companies ordered to be divested, "the same purpose, to restrain trade in order to avoid competition, was paramount" (63 F. Supp. at 524).

The defense that territorial restraints may be valid if reasonable and ancillary to an exchange of know-how was rejected on the same grounds in *United States* v. *General Electric Co.*, 82 F. Supp. 753, 845–7, 889 (D. N. J.). Appellant relied unsuccessfully on such a defense in the court below (Concl., par. 178, R. 1009), but has abandoned it in this Court.

continued such arrangements in order to continue to escape each other's competition (Fdg., par. 155; R. 1004).

Not only were the restrictive agreements not ancillary to any "joint venture" between appellant and Dewar,[81] but the Dewar-appellant joint purchase of British Timken was not a "joint venture" since, as a matter of fact, no such relationship ever existed. The non-existence of the "joint venture" relationship is clearly demonstrated by the record; and, as the district court pointedly observed, "The repeated assertion that it [appellant] was in a joint venture or was a member of a partnership does not make it so." (Fdg., par. 160, R. 1005.)

The Dewar-appellant relationship falls far short of meeting the familiar legal criteria of a "joint venture." The Court of Appeals for the Sixth Circuit has laid down tests for determining what constitutes a "joint venture" in *Detachable Bit Co.* v. *Timken Roller Bearing Co.*, 133 F. 2d 632, 635.[82] That court in holding that there had

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[81] At the trial appellant also argued that the restraints were ancillary to its purchase of British Timken and French Timken stock (Op., par. 139, R. 1000–1). Apparently realizing the inconsistency of this argument with the claim that the restraints were ancillary to a "joint venture," appellant has not relied upon it in this Court.

[82] Timken had been sued for breach of an alleged fiduciary duty not to compete with Detachable, the latter claiming that the arrangement had constituted a joint venture. Timken denied that there had been a joint venture relationship, con-

not been a "joint venture" between Timken and Detachable said (p. 635):

> A variety of elements have, from time to time, been considered as pointing to a joint venture, although perhaps not any one of them is conclusive. Among them are to be found agreements for sharing profits or losses as principals * * *; the authority of each party to act for both in respect to the means or agencies employed to execute a common purpose * * *; the incurring of joint obligations for the acquisition of joint rights * * *. Perhaps the most important criterion of a joint venture is the joint control or management of the property used in accomplishing its aims.

The element of control is lacking in the instant case. The evidence is uncontroverted that both British Timken and French Timken were managed and operated by Dewar and that, except for powers posessed by virtue of its stock ownership and the agreements, appellant had no control over the business conduct of either foreign company (Fdg., par. 156, R. 1004). The foreign

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tending that under the settled law a joint venture must have the following essential elements:

"(a) It must be contractual in origin, and the participants must in effect assume the relation of partners; (b) there must be an arrangement to share profits and losses; (c) there must be a joint control over the property used in accomplishing its purpose; (d) it cannot be a corporation nor can the business of a corporation be conducted as a joint venture" (Brief of Defendant, p. 7, N. D. Ohio, Eastern Div., Equity No. 5761).

companies had carefully "retained their corporate independence and jealously guarded their interests in dealings" with appellant (Fdg., par. 157, R. 1004–5). But even if the stock investment of appellant in the British and French companies had indicated a pre-existing "joint venture" in the parties' own judgment, it is clear that by 1934 when British Timken became a "public" company, neither party believed such relationship existed (Fdgs., pars. 157, 158, 159, R. 1004–5). Similarly, there was no agreement between Dewar and appellant to share profits or losses as joint principals or venturers. Nor did the so-called "joint venture" here comply in other respects with the requirements of a genuine joint enterprise.

Appellant, apparently recognizing the utter failure of the record to support a claim that there was a true joint venture, asserts that the Dewar-appellant arrangement constitutes a "joint venture in the layman's sense." The exact nature of what appellant means by a "joint venture in the layman's sense" is not very clear. In the present context it would appear to partake principally of the elements of a conspiracy in restraint of trade.[83]

[83] Appellant's counsel was unable at the trial to determine upon a single or consistent definition of "joint venture in the layman's sense." At times the deal between Dewar and appellant was the joint venture (R. 934), or the partnership. At other times the joint venture or partnership was among the three corporations, British Timken, French Timken and

In effect appellant asks this Court to treat its foreign venture or "partnership" as though appellant had erected a plant abroad or established a subsidiary there to manufacture bearings. If that had been the case there would not have been restrictive agreements prohibiting appellant from making sales anywhere in the world; appellant could have made sales at whatever price it pleased; it could have erected additional plants anywhere it thought they were needed. Appellant has not been able to do any of these things because of its obligations under its agreements with British Timken and French Timken.

The plain fact is, as the district court concluded, that appellant did not build plants in Europe or purchase subsidiaries abroad. Instead it "acquired substantial interests in a dominant manufacturer of bearings in England, participated in the formation of and invested in the stock of a potential competitor in France" (Fdg., par. 160; R. 1005).

There is no magic in the relationship between a stockholder and a corporation which will support an agreement between them not to compete. Even where stock ownership is sufficient to constitute voting control, agreements not to compete are not thereby legalized. It has repeatedly been held that common ownership, financial integra-

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appellant (R. 934). And at one point British Timken was an "instrumentality" of appellant like a wholly owned subsidiary or just a plant established abroad (Fdg. 160, R. 1005).

tion, parent-subsidiary relationship, is not a defense to agreements not to compete between affiliated corporations, if they are in fact separate companies; and the decisive fact here is that these co-conspirators were separate companies, separately operated. *United States* v. *Yellow Cab Co.*, 332 U. S. 218, 227; *Kiefer-Stewart Co.* v. *Seagram & Sons*, 340 U. S. 211; *United States* v. *General Motors Corp.*, 121 F. 2d 376, 404 (C. A. 7), certiorari denied, 314 U. S. 618.

Appellant relies upon *United States* v. *Bausch & Lomb*, 45 F. Supp. 387, 398 (S. D. N. Y.), affirmed, by an equally divided vote, 321 U. S. 707, as authority for insulating from the Sherman Act trade-restraining agreements among parties to a "joint venture". But the *Bausch & Lomb* case involved a vertical arrangement between a manufacturer and a distributor, i. e., "a joint enterprise in which one will produce and the other market the commodity" (45 F. Supp. at 398), and has no application to an arrangement between competing manufacturers. Moreover, the *Bausch & Lomb* case did not involve mutual covenants between the parties not to compete. The restraints were imposed solely upon the manufacturer, Bausch & Lomb. The distributor, Soft-Lite, could manufacture itself, sell its products wherever it pleased and authorize any other manufacturers it desired to manufacture for it in competition with Bausch & Lomb.

Appellant also relies by analogy upon the dictum in *United States v. Addyston Pipe & Steel Co.*, 85 Fed. 271, 281 (C. A. 6), modified and affirmed, 175 U. S. 211, in support of the lawfulness of an agreement by a partner not to compete with the partnership. This dictum can provide no possible support for the type of restrictions here which resulted in an agreement not to compete between corporations producing like goods. Judge Taft was referring to simple, *one-way* restrictions, involving only agreements by partners not to compete with the partnership. He says nothing about an agreement by the partnership not to compete with the partner.

The restrictions imposed in the instant case are anything but simple, one-way restrictions. They are reciprocal, mutual covenants whereby appellant agrees to restrictions upon itself for the benefit of its co-conspirators and the co-conspirators agree to restrictions upon themselves for the benefit of appellant and each other.

C. *The restrictions cannot be justified as ancillary to the licensing of the name "Timken"*

Appellant's contention that the restraints which it imposed upon competition were ancillary to the licensing of the name "Timken", and the protection of its interests in that name, appears to rest upon the proposition that appellant has the right under the laws of various jurisdictions, including the United States, to license the name,

and that this gives it the right to impose restraints upon competition as an incident thereto.

Baldly stated, this defense seems to be that restraints which, considered by themselves, would be patently unreasonable, are somehow legalized if they are incidental to the licensing of a trade-mark. Apart from the fact that the restraints here were not ancillary in character (*infra*, pp. 114–6), there are several insuperable difficulties with this defense. First, it rests upon the premise that a trade-mark confers a species of monopoly which its owner is entitled to exploit as effectively as possible even if the method chosen involves agreements to allocate territories, fix prices, and restrict the competition of others. But, as will be demonstrated, a trade-mark does not give exclusive rights to anything but the mark itself, and that only in a limited way. It carries with it far fewer rights than does a patent, yet even a patent monopoly cannot be extended beyond its terms. The restraints here could not be justified as ancillary to exploitation of a patent monopoly, and *a fortiori* cannot be justified in connection with trade-mark licensing. Second, appellant does not own the trade-mark Timken in many of the foreign countries in which it is purportedly "licensing" it. The "equitable ownership" in the mark which, it is asserted, results from the agreements between appellant and its co-conspirators is simply a label used to describe the unlawful trade restraining obligations which the parties

have assumed to each other. By the same reasoning, the parties could be said to have acquired "equitable ownership" of the respective territorial markets which have been unlawfully allocated to them by the agreements.

Far from furnishing a justification for other restrictive practices, the so-called trade-mark licensing, the district court found, is itself a restrictive device in furtherance of the conspiracy (*supra*, pp. 74–80). Even assuming the applicability of the "ancillary restraints" doctrine upon which appellant relies, such doctrine obviously can only come into play if the "main transaction" is lawful.

1. *A trade-mark may not be used as a device for restraining commerce*

A trade-mark is not a legal monopoly. It does not give any exclusive right to manufacture, use or sell a product within the territory of the nation recognizing the right, but is merely a means of identifying the source of origin of goods.[*] In *United Drug Company* v. *Rectanus Company*, 248 U. S. 90, 97–98, this Court stated:

> The owner of a trade-mark may not, like the proprietor of a patented invention,

[*] Although the Trade Mark Act of 1946, 60 Stat. 427, 15 U. S. C. 1051, *et seq.*, was enacted long subsequent to most of the acts in furtherance of the conspiracy, its provisions are pertinent as reflecting the present policy of the law toward trade-marks. The Act contains the following classic definition of a trade-mark: "any word, name, symbol, or device or

> make a negative and merely prohibitive use of it as monopoly. * * *
>
> In truth, a trade-mark confers no monopoly whatever in a proper sense, but is merely a convenient means for facilitating the protection of one's good-will in trade by placing a distinguishing mark or symbol—a commercial signature—upon the merchandise or the package in which it is sold.

And see *Hanover Star Milling Co.* v. *Metcalf,* 240 U. S. 403, 412; *Columbia Mill Co.* v. *Alcorn,* 150 U. S. 460, 463; *Canal Co.* v. *Clark,* 13 Wall. 311, 322. The right of the seller to protect his mark is a right to prevent use of it by others in such a way as to confuse a purchaser as to the source of origin of the goods. The mark is not protected as such, but only as a symbol of the good will of the business it signifies. *American Steel Foundries* v. *Robertson,* 269 U. S. 372, 380; *United Drug Co.* v. *Rectanus Co.,* 248 U. S. 90, 98; *Hanover Star*

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any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others." Sec. 45, 60 Stat. 443, 15 U. S. C. 1127.

The Act consistently recognizes designation of the source of origin as the inherent function of a trade-mark, providing, for example, that any assigned registration may be cancelled at any time if the registered mark is being used "so as to misrepresent the source" of goods or services (Sec. 10, 15 U. S. C. 1060; see also Sec. 33 (b) (3), 15 U. S. C. 1115 (b) (3)). It further provides for cancellation of a registration at any time "if the registered mark becomes the common descriptive name of an article or substance" (Sec. 14 (c), 15 U. S. C. 1064 (c)).

Milling Co. v. *Metcalf, supra,* at 414; Nims, *Unfair Competition and Trade-Marks* (Fourth Ed., 1947) Sec. 15. Even the right of the owner to exclusive use of the mark is not qualified. A trade-mark is not a monopoly of the use of the word or combination of words, but only a right to prohibit the use of the word or words by others insofar as it is necessary to protect the owner's good will and the public against deceit.[85]

Since a trade-mark is not a monopoly or even a right in gross, the conditions under which it can be licensed are limited, and in no event can such licensing furnish a justification for ancillary restraints of trade. The trade-mark owner is entitled to "license" its use by others only insofar as the public is not deceived, and only upon terms which will protect his right to identify properly his goods as to source of origin. Since he has no exclusive right to make or sell a product within a prescribed territory, as a patentee does, he is not entitled to any ancillary provision to protect such

[85] In *Prestonettes, Inc.* v. *Coty*, 264 U. S. 359, 368, this Court held that "when the mark is used in a way that does not deceive the public we see no such sanctity in the word as to prevent its being used to tell the truth." This principle was recently again applied in *Champion Spark Plug Co.* v. *Sanders*, 331 U. S. 125, where the sale of second-hand spark plugs bearing the mark of the original manufacturer was held lawful since "the plugs, though used, are nevertheless Champion plugs and not those of another make" (331 U. S. at 128), and stated that "full disclosure gives the manufacturer all the protection to which he is entitled" (331 U. S. at 130).

a territorial product monopoly.[86] Territorial division and price fixing bear no conceivable relation to his right merely to identify his product. For these reasons, negative covenants which restrict competition in the sale of a product cannot be supported by a trade-mark "license."

The ancillary restraint doctrine is based upon the rationale that the primary transaction is not only lawful but should be encouraged in the public interest. Trade-mark licensing is not such a primary transaction. The use of the trade-mark by one who is not its owner is almost certain, except under very limited circumstances, to lead to a confusion in the mind of the consumer as to the source of origin of the product which he is buying. Hence, the assignment of trade-marks is not permitted unless the business and good will is also transferred, because of the likelihood of fraud on the public, and the "licensing" of trade-marks, even in those limited situations where it is permitted, is carefully circumscribed. Nims, *Unfair Competition and Trade-Marks* (Fourth Ed., 1947), Sec. 17, 22; Derenberg, *Trade Mark Protection and Unfair Trading* (1936) Sec. 51.

There is no warrant under the traditional law of trade-marks for sanction of trade-restraining agreements as "ancillary" to even legitimate use

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[86] In fact, as seen above, he is not even entitled to exclusive use of the trade name, except insofar as it may be necessary to avoid confusion as to the source of origin of goods.

of a trade-mark.[37] A trade-mark is not the product of invention, nor does it carry out any constitutional intent to promote the progress of science and useful arts. The public receives no benefit such as the advancement of science, or disclosure of an invention, from the owner of the trade-mark. As was pointed out in the *Trade-Mark Cases*, 100 U. S. 82, 94:

> The trade-mark may be, and generally is, the adoption of something already in existence as the distinctive symbol of the party using it. At common law the exclusive right to it grows out of its *use*, and not its

[37] The Trade Mark Act of 1946, 60 Stat. 427, 15 U. S. C. 1051 *et seq.*, reaffirms the subordination of trade-mark rights to the antitrust laws. Section 33 (b) (7) of the Act (15 U. S. C. 1115) penalizes use of a trade-mark "to violate the antitrust laws of the United States." The reasons for this provision were cogently stated by Senator O'Mahoney (92 Cong. Rec. 7872–7873):

"There have been occasions, however, when trade-marks have been misused. There have been occasions when trade-marks have been used in connection with cartel agreements. There have been occasions when trade-marks have been used to restrain the trade and to the disadvantage of little business.

* * * * * * *

"* * * It is a matter of great importance to the consumers of the United States that they shall know that trade-marks are being used as it was intended under the common law that they should be used. * * * *But it is of such great importance to the public of the United States that restraints of trade shall not be permitted, that the Senate inserted this amendment to make it a defense to an infringement suit* as well as to make it a ground of contestability if it should be shown that the registrant was using the mark itself to violate the antitrust law." [Emphasis supplied.]

> mere adoption. By the act of Congress this exclusive right attaches upon registration. But in neither case does it depend upon novelty, invention, discovery, or any work of the brain. It requires no fancy or imagination, no genius, no laborious thought. It is simply founded on priority of appropriation.

There is also no similarity in the rights granted. A patent confers a monopoly for a limited time. A trade-mark is a commercial signature which may last perpetually. The two should not be confused. Indeed, this Court has adverted to "the fundamental error of supporting that a trade-mark right is a right in gross or at large, like a statutory copyright or a patent for an invention, to either of which, in truth, it has little or no analogy." *United Drug Co.* v. *Rectanus Co.*, 248 U. S. 90, 97.[88]

Even if it be assumed, *arguendo*, that, as the owner of the trade-mark "Timken", appellant has the same rights as it would under a patent, the restraints here imposed cannot be justified. The agreements in this case include at least four

[88] A similar difference is to be noted between trade-marks and copyrights. See Chief Justice Holmes in *Chadwick* v. *Covell*, 151 Mass. 190, 193–4, 23 N. E. 1068, 1069:

"* * * When the common law developed the doctrine of trade-marks and trade names, it was not creating a property in advertisements more absolute than it would have allowed the author of Paradise Lost, but the meaning was to prevent one man from palming off his goods as another's, from getting another's business or injuring his reputation by unfair means, and, perhaps, from defrauding the public."

types of provisions which would not be embraced within a patent monopoly: (1) There are territorial restraints with respect to areas in which appellant does not own the trade-mark "Timken," and could not, therefore, "license" it. Plainly a patentee could not, under the shield of his patent, restrain trade in countries where that patent was not in force.[89] (2) There has been widespread price fixing. Cf. *United States* v. *Line Material Co.*, 333 U. S. 287, 314–315; *Standard Oil Co.* v. *United States*, 283 U. S. 163, 175. (3) Appellant agreed not to permit its customers to sell in territories allocated to British and French Timken. A patentee may not control a patented article once it has been sold.[90] (4) British Timken and French Timken have agreed to manufacture tapered roller bearings only under the name "Timken." A patentee may not require his licensee to manufacture only under the patent. *McCullough* v. *Kamerrer Corp.*, 166 F. 2d 759, 761 (C. A. 9), certiorari denied, 335 U. S. 813.

The court below correctly held that "Even the patent monopoly is not broad enough to encompass the power to engage in conduct and practices to eliminate competition such as were employed"

[89] *United States* v. *National Lead Co.*, 63 F. Supp. 513, 524, affirmed, 332 U. S. 319. This is analogous to an attempt to use patents to control trade in unpatented goods, a practice consistently condemned by this Court. E.g., *International Salt Co.* v. *United States*, 332 U. S. 392; *Morton Salt Co.* v. *Suppiger Co.*, 314 U. S. 488.

[90] *United States* v. *Univis Lens Co.*, 316 U. S. 241, and cases cited, p. 250.

here (Concl., par. 197, R. 1013). *A fortiori* the public interest requires that trade-mark rights be kept within their proper bounds and not used as a device for restraining competition (Concl., par. 200, R. 1014).

2. *Appellant did not own and hence could not "license" the name "Timken" in many countries where it claims to have been a licensor*

The district court held that, even assuming the restraints to be in fact ancillary to trade-mark licensing and the law to permit such ancillary restraints, appellant did not own the mark "Timken" in many areas of the world and could not, therefore, license it in such areas (Fdg., par 182, Concls., pars. 189, 190, R. 1009, 1011).

Appellant's own non-competitive conduct was responsible for its not owning the mark "Timken" in the areas of the world in which it agreed not to sell its products. In implementing the division of world markets, it parceled out rights in the name "Timken" on a geographical basis. In addition to confusing the public as to the real origin of the respective products of appellant and its co-conspirators, with the inherent effect of dividing and diluting the significance of the name "Timken" as a mark of identification (R. 104–5, 394–5, 407–8, 512), appellant's conduct resulted in the registration and ownership of the mark "Timken" by others in areas allotted to British Timken and French Timken (Fdg., par. 183, R. 1009–10).

Had appellant's object at any time from 1909 to the present been the competitive use of its mark, it would have pursued an entirely different course of action. It could readily have sold its products wherever possible under the "Timken" mark; registered it in its own name wherever possible; contested British Timken's and French Timken's right to use it in every area where they asserted that right; in those areas where it was unable to prevent those companies from using the mark, it could have possibly obtained non-exclusive rights, and if not it could have developed new marks for its own product in such areas.[91]

These would have been the traditional competitive ways for appellant to deal with its trademark rights. A competing seller ordinarily jealously guards the symbols used to prevent simulation of his goods by actual or potential competitors. Appellant, however, directed its inquiry and planning to the question not how it might protect the name "Timken" but how it might acquire rights in that name without actually entering into competition in contravention of its agreements not to compete (Fdgs., pars. 153, R. 1003). Thus, the typical competitive procedures held no attraction for appellant. They would have defeated rather than achieved what

[91] The mark "TRBCO," for example, was registered by appellant in more countries in the world than was the mark "Timken" (D. Ex. 87, R. 1972–7).

the court below found as a fact to be the real objective, namely, to prevent competition.[92]

Ownership rights in a trade-mark arise *only* from *use* of the mark in connection with the sale of products. The owner's rights then are confined to the territory within which he sells his goods. On the basis of such use, the law of this country recognizes that the user obtains certain common law rights of ownership, limited as described above. *United Drug Co.* v. *Rectanus Co.*, 248 U. S. 90, 97, 98; *Trade-Mark Cases*, 100 U. S. 82, 94. A statutory registration may be obtained on the basis of use (Trade-Mark Act of 1946, Secs. 1, 45, 15 U. S. C. 1051, 1127). A registration may be attacked and cancelled on the basis of prior use by others.[93] In fact, appellant's registrations in those few countries within British Timken territory where it obtained them were subject to being set aside because of British Timken's prior use (R. 609–10, 613–14; See Fdg., par. 182, R. 1009; Appellant's Br. 104). Trade-mark ownership

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[92] Fdg., par. 188, R. 1010–11: "The evidence conclusively proves that defendant entered into the agreements not for the purpose of exercising its right to protect the trade mark 'Timken' from its unlawful use by British and French Timken nor to protect the public from British or French Timken passing off their products as those of defendant, but *for the purpose of preventing competition in the sale of bearings.*" [Emphasis supplied.]

[93] A registration on the Principal Register may be cancelled for prior use at any time during the five-year period before it becomes incontestable (Sec. 14, 15 U. S. C. Sec. 1064). A registration on the Supplemental Register may be cancelled for prior use at any time (Sec. 24, 15 U. S. C. Sec. 1092).

arising from use, and possible subsequent registration, is the only form of such ownership recognized by law.

Because of its agreements not to sell its products in territories allotted to British Timken and French Timken, appellant has never obtained rights on the basis of user within those countries. Though it has obtained registrations in a few of the countries outside its allotted territories, through the cooperation of its co-conspirators, it has not registered the mark in most of the territories allocated to the co-conspirators. Appellant suggests that it has obtained registrations in most of the countries in British and French Timken territory, but the chart on pages 108–109 shows the actual status of registrations of "Timken" throughout the world. Thus the name "Timken" has never had a world-wide connotation as identifying appellant's products, but has had at least three different connotations depending upon the areas of the world in which it was used. In the areas allotted to British Timken and French Timken, the name signified their products. Hence appellant's rights in the name outside the immediate territory in which it was selling were completely non-existent.

Appellant admits that it has never had any common law rights in the name "Timken" as a trade-mark in the areas of the world allotted to British Timken and French Timken. It must, of course, admit that it is not the registered owner

in most of those areas, as the record speaks for itself (Def. Ex. 87, R. 1972). Appellant bases its contention that it has licensed the mark "Timken" upon the claim, rather, that it is the "equitable owner" of that mark in those areas, and that British Timken and French Timken are its "equitable licensees."

Appellant has offered varied explanations for this claim. For example, it refers to the fact that "Timken" was the surname of the founder of the company, and that it is a part of the corporate name.[24] Again, describing the use of the name

[24] That the name "Timken" is in its corporate name, happens to be the surname of the founder of the corporation, and that appellant has registered the name in certain countries, do not entitle appellant to use it everywhere in the world, but on the contrary, weaken its claims to world-wide trade-mark rights. The fact that "Timken" is a surname used by appellant and others as a trade name to identify tapered roller bearings means that it is not a "technical trade-mark" (R. 620–1, 624). *Herring-Hall-Marvin Safe Company* v. *Hall's Safe Company*, 208 U. S. 554, 559.

A mark consisting merely of a surname, although registered under the Trade Mark Act of 1920 (Sec. 1, 15 U. S. C. 121), was unregisterable under the Trade Mark Act of 1905 (Sec. 5, 15 U. S. C. 85) and cannot be registered on the Principal Register provided for by the Trade Mark Act of 1946, except upon evidence that it has become distinctive of the applicant's goods, five years continuous use constituting prima facie evidence (Sec. 2 (e), (f), 15 U. S. C. 1052 (e), (f)). In Great Britain and the British colonies, also, a strong showing of distinctiveness is required to obtain registration of a surname (R. 617, 620, 622–4, 635). As early as June 1921 appellant's counsel advised that, in addition to British Timken's prior use in Great Britain, "there are numerous difficulties

COUNTRIES IN WHICH THE TRADE MARK "TIMKEN" WAS NOT REGISTERED.

(Based on D. Ex. 87, R. 1972–7)

AS OF:

(1) July 16, 1909 (The date of the E&OA agreements).
(2) April 6, 1920 (The date of the Wolseley agreements).
(3) December 31, 1924 (The date of the first British Timken agreement).
(4) January 1, 1928 (The date of the second British Timken agreement).
(5) December 29, 1934 (The date of the third British Timken agreement).
(6) November 28, 1938 (The date of the "Tripartite" agreement).
(7) July 31, 1946 (The date original complaint was filed).

(1) ON JULY 16, 1909, "TIMKEN" WAS NOT REGISTERED IN THE FOLLOWING 118 COUNTRIES (i. e., THE ENTIRE WORLD): (Unless otherwise indicated, registration is in Appellant's name)

(2) Registered between 7/16/09 and 4/6/20:	Argentina	China	Japan	Peru
	Chile	Germany [4]	Mexico	Venezuela
Still not registered in the 110 countries below this line.				
(3) Registered between 4/6/20 and 12/31/24:	Australia	Denmark	Jugo-Slavia	Roumania
	Austria	Egypt	Luxembourg	Spain
	Belgium	France [2]	Netherlands	Sweden
	Brazil	Finland	Norway	Switzerland
	Bulgaria	Hungary	Portugal	Turkey
	Canada	India [3]	Rhodesia (Southern)	United States
Still not registered in the 84 countries below this line.	Czecho-Slovakia	Italy		
(4) Registered between 12/31/24 and 1/1/28:	Greece	Poland		
Still not registered in the 82 countries below this line.				
(5) Registered between 1/1/28 and 12/29/34:	Eire [1]	New Zealand [1]	Russia	South Africa [1]
	Newfoundland	Philippine Islands	Siam	
Still not registered in the 75 countries below this line.				

See footnote at end of table.

(6) Registered between 12/29/34 and 11/28/38:	Colombia	Hong Kong	Manchukuo	Trinidad & Tobago
	Cuba	Jamaica	Puerto Rico	Uruguay
Still not registered in the 66 countries below this line.	Hawaii			
(7) Registered between 11/28/38 and 7/31/46:	Afghanistan	Ecuador	Iceland [2]	Panama
	Belgian Congo	Ethiopia	Iran [3]	Paraguay
	Bolivia	Great Britain [1-6]	Iraq	Salvador
	Costa Rica	Guam	Liberia	Straits Settlement [1]
	Curacao	Guatemala	Morocco	Tangier Zone
	Dominican Republic	Haiti	Nicaragua	Tunis
Not registered in the 40 countries below this line at time of trial:	Dutch Guiana (Surinam)	Honduras		
	Bahama Islands	Dominica	Mauritius	Sierra Leone
	Basutoland [1-6]	Dutch East Indies [4]	Nigeria	South African Union
	Bechuanaland [1-6]	Eritrea	Northern Rhodesia [1-6]	South-West Africa [1-6]
	Bermuda	Fiji Islands	Nyasaland Protectorate	Sudan
	British Guiana [1-6]	Gambia	Palestine	Switzerland Protectorate
	British North Borneo	Gold Coast [1-6]	Portuguese Colonies	Tanganyika Territory
	Burma	Kenya Colony	St. Lucia	Travancore
	Ceylon	Lebanon	St. Vincent	Uganda Protectorate
	Congo Free State	Leeward Islands [5]	Sarawak	Virgin Islands
	Cyprus	Malta & Gozo	Seychelles Islands	Zanzibar

[1] Registration by British Timken.

[2] Registration by SMG, later transferred to French Timken. D. Ex. 87, R. 1972-7 shows registration in 1929.

[3] Registration by British Timken and Appellant apparently by each separately. British Timken registered in Iran and Iceland in June and July 1947, after the complaint was filed.

[4] Registration by Prausnitzer, later transferred to DTG. (Not included in D. Ex. 87, R. 1972-7. See Stipulation R. 598-599.)

[5] D. Ex. 87, R. 1972-7 lists the Great Britain trade mark registration as issuing 8/9/38. The evidence shows, however, that it issued in February 1940 (Gov. Ex. 190 and attachments R. 598).

[6] Registered between July 31, 1946 and February 26, 1947 (November, 1947, in the case of British Timken's registrations.

"Timken" by the predecessor of British Timken under the 1909 agreements, appellant has characterized this as "essentially, an attempt to project its good will ahead of its business" (Appellant's Br. 102, 112), and to project "its reputation into the territory of the British licensee ahead of American Timken's use there of the name 'Timken' as a trade-mark" (*ibid.*).[95] In dealing with the 1928 agreements, appellant contended that the contract provisions (*supra*, p. 35) for reversion of the mark to appellant at the

in connection with the registration of the word 'Timken' by reason of its being a surname" (Def. Ex. 79, R. 1963).

In addition, since the name "Timken" covered a product originally patented, and has always been used to refer to one type of bearing, the name may have even become generic, *Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S. 169. Appellant's British counsel in fact stated in September 1925 that "the name has been frequently used in a context which suggests that it describes a type of bearing rather than a trade origin" (Def. Ex. 99, R. 2005; see also *supra*, n. [illegible] 32).

[95] This Court's statements in *United Drug Co.* v. *Rectanus Co.*, 248 U. S. 90, 98, are sufficient answer to appellant's claim that it could acquire any trade-mark rights by "projecting" its reputation ahead of its use of the mark:

"It results that the adoption of a trade-mark does not, at least in the absence of some valid legislation enacted for the purpose, project the right of protection in advance of the extension of the trade, or operate as a claim of territorial rights over areas into which it thereafter may be deemed desirable to extend the trade. And the expression, sometimes met with, that a trade-mark right is not limited in its enjoyment by territorial bounds, is true only in the sense that wherever the trade goes, attended by the use of the mark, the right of the trader to be protected against the sale by others of their wares in the place of his wares will be sustained."

expiration of the agreements meant that British Timken and French Timken must at such time abandon use of the name "Timken" and allow appellant to establish rights in it, or that they must assign the mark together with the good will of their businesses to appellant; and that these "rights" of appellant to establish if possible its own trade-mark rights in the future made appellant an "equitable owner" of the mark in 1928 (R. 612).

Appellant relies upon the opinion testimony of an expert witness as to the British trade-mark law (R. 612), which, it is contended, establishes that the agreements between appellant and British Timken make the former the equitable owner of the mark in Great Britain.[96] But a careful reading of this testimony reveals that the expert testified in substance that appellant has no legal rights to the mark in England, but only a contractual right against British Timken to come to fruition in 1965 when (and if) the current agreements terminate and not renewed (R. 627–8).[97] This con-

[96] It should be noted that from 1909 to 1928 British Timken was the sole user of the mark in Great Britain, and there is no basis for any contention that appellant had an equitable or any other kind of interest in it during that period.

[97] Appellant has cited no statutory or judicial authority for these novel propositions. Nor does the record contain any contemporaneous reference to such asserted rights to "equitable ownership" of a trade-mark. Appellant's claim appears to be wholly an afterthought which originated following the charge of antitrust law violation.

tractual obligation of British Timken requires it to abandon the mark itself and to assist appellant to secure it if possible. It is difficult to see how, assuming that this relationship may be characterized as giving "equitable ownership" of the mark to appellant, this characterization converts what would otherwise be unlawful restraints of trade into permissible "ancillary" restraints. That "equitable ownership" might be recognized under British law is no more a defense than is the fact that price fixing may be lawful in Great Britain. And surely whatever rights a present owner of a trade-mark might have to protect his mark would not adhere to one who merely has a contingent expectancy of becoming an owner in 1965. There is no suggestion in the testimony of the expert witness for appellant that one having an "equitable interest" may license that interest to any other person, much less to the legal owner.

It is clear from the record that one of the primary methods by which appellant has fettered its principal potential competitors has been to require them to manufacture tapered roller bearings only under the name of "Timken" and at the same time to agree to relinquish use of the mark upon termination of the relationship with appellant. This restrictive arrangement is itself one of the means used to carry out the conspiracy and can hardly serve as a justification for other restrictive activities. Appellant's position in sub-

stance is that an agreement with a potential competitor preventing competition between it and the competitor, and providing that on termination of the agreement the competitor shall surrender the trade-mark it legally owns and has used for many years, is valid as ancillary to the licensing by appellant of the trade-mark which it does not own.

The anomalous result of appellant's contention, if accepted, is that British Timken, which in 1928 had common-law ownership of the mark in Great Britain (R. 609), and later became the registered owner there (Def. Ex. 87, R. 1988), was a "licensee" of its own mark. The argument becomes even more artificial as a result of appellant's action in October 1949, immediately after the relief hearings in the court below, when it took steps to become a "registered user" or "licensee" of the mark "Timken" in Great Britain, British Timken being the "registered owner". (*supra*, pp. 52–3). Appellant's contention leads to the ultimate conclusion that the registered owner of the mark is its "equitable licensee," while the "legal licensee" becomes the "equitable licensor." And the legal licensor is under a duty to supervise the quality of the product of appellant, the purported equitable licensor. Such legal legerdemain and attempted manipulation of trade-mark rights falls into a category aptly termed "hokus-pokus" in *California Fruit Growers Exchange v. Sunkist*

Packing Company, 166 F. 2d 971, 975 (C. A. 7).[98]

Appellant had complete control over the development and use of the name "Timken" at the time when its international use began in 1909. It could have prevented the rise of conflicting interests in, or the concurrent use of, the name at that time. Instead, it encouraged them, deeming the illegal restraint upon competition more to its interests. It would be strange doctrine indeed which would permit appellant now to continue to restrain trade in order to establish trade-mark rights which it has lost or failed to acquire because of its previous restraints of trade.

3. *The restraints were not in fact ancillary to the licensing of the name "Timken"*

Even if it be assumed, contrary to the arguments presented above, that appellant had the power to license the trade-mark in foreign countries, and that restraints of trade of the char-

[98] Appellant significantly does not mention its action, taken in 1949, whereby it arranged to become a "registered user" of the mark "Timken" in Great Britain, and thus subject under British law to British Timken's control of its production (*supra*, pp. 52–3). This action is utterly inconsistent with appellant's claim that, rather than being subject to British Timken control, it controlled British Timken's production, by supplying know-how, in compliance with British trade-mark law (Appellant's Br. 125). Appellant likewise omits any reference to the fact that trade-mark licensing was not known in Great Britain in 1928 when appellant supposedly began to comply with the requirements of the law relating thereto. Limited trade-mark "licensing" was first introduced by the Trade-Mark Act, 1938 (Govt. Ex. 8 (Decree), R. 2741, 2748; see R. 625–6).

acter here imposed are reasonable if ancillary to trade-mark licensing, the fact is that the restraints were not ancillary but were appellant's primary objective. The restraints were not the tail to the kite of trade-mark licensing; it was the other way round. On consideration of all the evidence the district court found as a fact that "the trade-mark provisions of the challenged contracts were subsidiary and secondary to the central purpose of allocating trade territories" (Fdg., par. 187, R. 1010). This Court will not try the question of intent *de novo*. *United States* v. *Yellow Cab Co.*, 338 U. S. 338.

In holding that the restraints imposed by the parties were not in fact ancillary to the "licensing" of the trade-mark the district court reviewed the history of the mark "Timken." The court noted that even as late as 1928[99] appellant had serious doubts of its ownership of the mark in the territories assigned to British Timken and French Timken (Fdg., par. 182, R. 1009). In some countries British Timken's predecessor was the owner of the mark and in France it had been registered by the predecessor of French Timken. A German national, Prausnitzer, owned the mark in that country. The court observed that it was apparent that appellant "could not use the mark in a great portion of the world (*ibid.*)."

[99] As of January 1, 1928, appellant was the registered owner in only 34 countries and British Timken had no registered trade-mark rights anywhere in the world (Def. Ex. 87, R. 1972).

On the basis of appellant's inability to use the mark in most of the world, the court below concluded that appellant "was primarily concerned therefore, not in safeguarding the trade-mark rights which it then possessed, but rather in acquiring the rights obtained by other manufacturers, as a consequence of the early patent license agreements, in areas where * * * appellant had agreed not to manufacture and sell" (Fdg., par. 183, R. 1009–10). The court pointed out that from 1909 to 1924, appellant had been free of competition because of its patent monopoly, and that the evidence shows that the agreements were originally entered into for the "purpose of preventing competition in the sale of bearings" (Fdg., par. 188, R. 1011), and it rejected the attempt to extend the patent monopoly on the basis of the grant by it of trade-mark rights to British and French Timken (*ibid.*).

Thus, in final analysis, the ancillary defense fails, *inter alia*, for the fundamental reason that the restraints were not ancillary to the "licensing."

III

THE FINDINGS OF FACT UPON WHICH THE DISTRICT COURT BASED ITS JUDGMENT ARE CORRECT AND CLEARLY ARE SUPPORTED BY THE EVIDENCE

The findings of facts made by the trial court "represent the considered judgment of an able trial judge, after patient hearing" (cf. *United States* v. *Yellow Cab Co.*, 338 U. S. 338, 341) and

are not to be set aside unless clearly erroneous (Fed. R. Civ. P., Rule 52 (a)). In this case, the Court is unquestionably being asked "to reweigh the evidence and review findings that are almost entirely concerned with imponderables, such as the intent of the parties to certain 1929 business transactions" (338 U. S. at 340).[100]

We submit that the findings of the district court are complete, accurate, and fully supported by the evidence. In view of the standards of review laid down in the *Yellow Cab* case, *supra*, and the prolixity of appellant's attacks upon the findings, it will suffice to confine discussion to the more important findings, and the evidence supporting them.

A. *The finding that appellant combined and conspired with potential or actual competitors*

Despite the fact that British Timken's predecessor, E&OA, did not begin the manufacture of bearings until 1909 (Appellant's Br. 140), the record is clear that appellant recognized E&OA as a potential competitor from the start. In the 1909 agreements, appellant exacted a covenant from E&OA not to manufacture or sell bearings outside the patent licensed territory. While these agreements gave E&OA the right to sell its bearings in its territory at any price it deemed desirable, they provided that the deficiency be-

[100] Here the transactions leading up to the conspiracy and bearing upon general intent go back to 1909.

tween the lowest price charged for the time being by the licensor to the trade in the United States, and the lowest price charged at the time by E&OA, should not exceed the United States tariff chargeable on bearings from any part of E&OA's territory (Def. Ex. 189, Art. 14, R. 2305, 2318; Def. Ex. 190, par. 37, R. 2322, 2335). These safeguards against competition indicate that appellant recognized E&OA as a potential competitor in the United States, and foresaw the possibility that third parties might buy E&OA's bearings and ship them into the United States.

The Vickers subsidiaries from 1909 to 1927, E&OA, Wolseley Motors and British Timken, are pictured by appellant (Appellant's Br. 140–1) as a series of unsuccessful companies with virtually no assets and little substantial progress. The facts show, however, that this was not the case. These subsidiaries were part of the powerful Vickers organization (R. 81–2, 231–2) so that appellant in dealing with them well knew that it was dealing with a company whose business was "world-wide-everywhere" (R. 231).

British Timken, from its inception in 1920, has experienced a rapid and substantial growth.[101] At

[101] In 1920 British Timken had only 350 or 400 employees engaged in the manufacture of tapered roller bearings and was making 60 or 70 sizes, largely automotive (R. 84). In 1927, however, British Timken was making 100 sizes of tapered roller bearings, mostly automotive sizes, and had a growing business in other fields, such as machine tools and mill equipment (R. 85). It was employing 500 people

the beginning of the conspiracy in 1928, British Timken had virtually all of the tapered roller bearing business in Great Britain (R. 107). Its only competitor was British Bock, Ltd. (R. 106), a small concern which was bought out shortly thereafter by British Timken (R. 144). In fact, British Timken controlled 99 or 100 per cent of the British tapered bearing market and was a dominant producer of tapered roller bearings in England as well as a strong potential competitor for appellant (R. 107). When one adds to this the fact that appellant was "many times over the largest manufacturer of tapered roller bearings in the world" (Gov. Ex. 1 (not printed); Ans., par. 11, R. 27), it readily appears that the district court

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(R. 85), and had produced as many as 660,000 bearings a year (Def. Ex. 31, p. 26, R. 1800, 1831).

The sales record of British Timken and its predecessors is equally impressive. In 1912 E&OA's net sales were £27,000 or $135,000; by 1919 they had reached £140,000 or $700,000 (Def. Ex. 230, R. 2545); in 1919 British Timken paid appellant royalties of $37,000, and in 1923 they were $62,000 (Def. Ex. 230, R. 2545). In fact, British Timken was growing at a more rapid rate than appellant. That much is apparent from a comparison of British Timken's net sales (Def. Ex. 230, R. 2545) with appellant's (Def. Ex. 229, R. 2544). British Timken's sales almost doubled in the six-year period preceding the commencement of the conspiracy while appellant's had increased only about 35 percent. Most impressive of all is the record of British Timken's profits in the five-year period immediately preceding the conspiracy agreements of 1928 (Def. Ex. 7, R. 1725). For example, in 1926, British Timken's net profit of $315,000 was more than 26 percent return on its gross sales, "a very good profit" (R. 241).

was fully justified in finding that "the accused agreements between 1928 and 1938 were made between two manufacturers, who on the basis of the evidence, were properly characterized as the largest manufacturer in the world and the largest manufacturer in Great Britain respectively" (Fdg., par. 36, R. 966).

Appellant also takes issue with the findings of the district court that French Timken was a "potential competitor" of appellant's in France (Appellant's Br. 143). The facts are these: A French anti-friction bearing manufacturer, SMG, had been making and selling tapered roller bearings, and in 1927–1928 was the *sole* producer in France (R. 111). SMG had been operating under an agreement with British Timken (Def. Ex. 194, pars. 3, 4, R. 2347–8) which was terminated in 1928 upon the organization of French Timken. The French company presently controls approximately 80 percent of the tapered bearing market in France (Fdg., par. 14, R. 961; R. 117). These facts fully support the conclusions of the district court that at the time of the formation of French Timken by appellant and Dewar, the French company was the largest dealer in tapered roller bearings in France (Fdg., par. 144, R. 1001–2) and a potential competitor of appellant (Fdg., par. 160, R. 1005).

Appellant further asserts that whether or not British Timken and French Timken were competitors of the American company is unimportant,

since it was impossible for these foreign companies to compete with appellant by importing bearings into the United States, and equally impossible for appellant to compete with them in their territories. (Appellant's Br. 143–4.) In the first place, this contention is at war with appellant's other argument that the covenants dividing the world between the three parties were reasonably and necessarily ancillary to the transfer of some property, in order to afford protection against competition for the recipient (Appellant's Br. 99 *et seq.*). Moreover, if competition between the parties was impossible, why did appellant enter into these agreements and why has it so vigorously defended its right to continue them? As the district court expressed it (Fdg., par. 204, R. 1015):

> If all the impediments to foreign trade existed ever since 1914, which became more and more pronounced to the present day, why were the contracting parties, defendant, British Timken and French Timken so concerned about air-tight agreements to keep each one within its own commercial domain? The repeated and persistent provisions of the successive contracts, for territorial restrictions, contradict any claim of lack of ability to compete.

The record abundantly supports the district court's finding that there was, and is, "actual and potential competition in the international roller bearing market" (Fdg., par. 206, R. 1015).

Indeed, on the basis of the evidence the district court concluded that had it not been for the restrictive agreements, "the volume of business with foreign countries would have been considerable in size" (Fdg., par. 208, R. 1017). But even if international trade in tapered bearings had not in fact existed and the conspirators could not have competed, their agreement to abstain from foreign commerce constitutes a violation of the antitrust laws. See *United States* v. *National Lead Co.*, 63 F. Supp. 513, 525–6, 530, affirmed, 332 U. S. 319.

B. *The findings as to competition between tapered roller bearings and antifriction bearings*

Appellant attacks findings by the district court on the grounds that they do not correctly set forth the extent of competition between tapered roller bearings and other types of antifriction bearings (Appellant's Br. 144). What appellant fails to appreciate is that the court below specifically found that there was some degree of competition between tapers and other antifriction bearings, and that, for certain purposes, tapers enjoyed freedom from competition (Fdg., par. 19, R. 962; Fdg., par. 130, R. 997–8). The court was not under the necessity of ascertaining with particularity the extent of this limited competition or freedom from competition. Tapered roller bearings obviously differ in some respects from other types of antifriction bearings and

the public is entitled to the benefits of competition within that segment of the industry. As was stated in *Eastman Kodak Co.* v. *Federal Trade Commission,* 158 F. 2d 592, 594 (C. A. 2), certiorari denied, 330 U. S. 828 (a monopoly case):

> Hence it will not do to say that all film is in the same class. If a purchaser wants a color film he must be able to buy it from more than one manufacturer if there is to be "free and open competition with commodities of the same general class"; that he can buy a black and white film will not serve to destroy the monopoly of the sole producer of color film.

And see *Fashion Originators' Guild* v. *Federal Trade Commission,* 114 F. 2d 80 (C. A. 2), affirmed, 312 U. S. 457.

Appellant also challenges findings that appellant and the co-conspirators dominated the tapered bearing markets of the world. Appellant is undeniably the largest manufacturer of tapered roller bearings in the world (Fdg., par. 10, R. 960; Gov. Ex. 1 (not printed); Ans., par. 11, R. 27). British Timken had 99 to 100 percent of the tapered bearing market in England in 1928 and now has about 95 percent (Fdg., par. 13, R. 961; R. 107). French Timken manufactures about 80 percent of the tapered bearings in France (Fdg., par. 14, R. 961; R. 117).

But the question of whether or not appellant and its co-conspirators dominate the tapered

roller bearing market has no significance in relation to the division of territories. This is not a monopoly case, and restraints of trade can be effected by others than the dominant member of an industry. The only possible significance of the dominant position of the parties is to aggravate the seriousness and results of offenses such as the exclusive exchange of know-how and the combination to suppress the competition of outsiders.

C. *The treatment of the three companies as separately operated units for purposes of determining that they had combined in violation of the Sherman Act, the treatment of evidence designed to indicate a "joint venture," and the finding that the relationship between the parties was merely a continuation of an illegal combination dating from 1909*

Objection is raised by appellant to the action of the district court in treating the three companies as separately operating units for the purposes of determining that they had combined in violation of the Sherman Act. Appellant concedes that the two foreign companies were separate and distinct corporate entities (Appellant's Br. 146) but vehemently denies that they were separately operating in the business of making tapered roller bearings.

It cannot be determined on what basis appellant claims that the co-conspirators were not separately operated. The record is uncontro-

verted, however, that British Timken and French Timken were managed and operated by Dewar and that, except for powers possessed by virtue of its stock ownership and agreements, appellant had no control over the immediate management of either foreign company (Fdg., par. 42, R. 967; Fdg., par. 44, R. 968; Fdg., par. 54, R. 969; Fdg., par. 156, R. 1004; Def. Ex. 15, par. 2, R. 1730; Def. Ex. 69, R. 1954; Def. Ex. 186, R. 2298; 912–3, 915).

If there were ever any doubts as to the separate and distinct operation of the foreign companies, these doubts were dispelled in 1934 when British Timken became a "public" company. Dewar in speaking of the 1934 "new deal" referred to the "very separate and distinct identities of the various Companies concerned", and said that "no one Company has the right to expect any material benefit from another Company without properly paying for it" (Gov. Ex. 176, R. 1690). As Dewar expressed it, "'Me' is British Timken" (Fdg., par. 158, R. 1005; R. 277). This is not to say that appellant's minority interest in British Timken is unimportant. Obviously that interest is substantial and places appellant in a position to exert powerful influence against any latent tendency of British Timken to enter into competition with appellant. But such a minority interest in a potential competitor does not legalize the combination between competitors.

Even if there had been complete control by appellant over British Timken and French Timken so as to create a financial integration or parent-subsidiary relation, these relationships would not serve to insulate the parties from the operation of the antitrust laws. *United States* v. *Yellow Cab Co.*, 332 U. S. 218, 227; *Kiefer-Stewart Co.* v. *Seagram & Sons*, 340 U. S. 211.

Appellant raises objections at several points (Appellant's Br. 57, 146–148) to the alleged failure of the district court to make detailed findings as to the complex financial interrelationships between the parties, indicating the existence of a so-called "joint venture". These financial arrangements were merely subordinate and supplementary agreements, one of the purposes of which was to place control of British Timken and French Timken in Dewar. The fact that the court, in its extended discussion of the "joint venture" defense, made specific findings (Fdg., par. 157, R. 1004–5; Fdg., par. 158, R. 1005; Fdg., par. 159, R. 1005) as to Dewar's control over the foreign companies, is a definite indication that the court considered, and did not disregard, evidence of such financial arrangements. In fact, counsel for appellant has admitted that the court, in reaching its decision, considered evidence offered by appellant in support of its defenses. Counsel said, at the hearing on findings and conclusions (p. 11):

> We have assumed from the opinion of the Court and a very careful reading and re-reading of it, that the Court did receive and *did consider, in coming to the conclusions the Court reached, the evidence offered by defendant in support of what have been termed our various defenses.* [Emphasis added.]

The action of the district court in rejecting the "joint venture" theory and finding that the 1928 agreements "merely extended the restrictive arrangements which had existed for almost twenty years between potential competitors" (Fdg., par. 153, R. 1003–4; Fdg., par. 155, R. 1004), is fully supported by the evidence.

The record is clear that Dewar's underlying motive for making the 1928 agreements was his desire to escape appellant's competition and to continue the existing arrangements. In March 1927, Dewar knew that the agreements had only about eighteen months to run (R. 239) and that if they were not renewed he might have to face appellant's competition (Def. Ex. 88, par. 4, R. 1991, 1192–3; Def. Ex. 194, par. 5, R. 2347, 2349). Consequently one of the first things he considered upon being made chairman of British Timken was (as he wrote to appellant) "the question of the continuation of our existing agreement" (Def. Ex. 4, R. 1722, 1723). This continuation of these agreements, which is actually what the 1928 agreements are, was the primary concern

of Dewar before the so-called "joint venture" was even mentioned, and it was of concern regardless of whether appellant made any investment in British Timken. Even the "Heads of Agreement" speaks of "extending for ten years the terms of the existing agreements" subject to certain modifications (Def. Ex. 15, par. 10, R. 1730, 1733–4).

The evidence also points to the inevitable conclusion that appellant was well aware that Dewar was acting in order to escape appellant's competition. Appellant had been advised by its London attorney that one "main advantage derived by the English company under the agreement" was "the absence of your competition" (Gov. Ex. 174, R. 1686). Similarly, in connection with the previous agreements, appellant had been advised by its own trade-mark attorney that one of the great values to British Timken was the absence of appellant's competition (Gov. Ex. 173, R. 1683). Appellant's vice president himself admitted that one of the purposes of the agreements was to satisfy Dewar in his desire not to have appellant's competition in the areas allocated to the British company (R. 932–4).

The record very plainly shows that at the expiration of the basic patents in 1924, the parties began to cast about for other devices to support the division of territory between appellant and British Timken. An attempt was thereupon

made to employ the trade-mark device.[102] In short, it is there demonstrated that in 1921, as well as 1927, appellant was well aware and had been advised that it had no rights in the name "Timken" in the United Kingdom which it could have licensed to British Timken, so that the intent was not to protect any trade-mark rights but to continue the allocation of territories.

D. *The findings that appellant and its co-conspirators had combined and conspired to suppress the competition of outsiders by acting collectively against outsiders or joining with them*

Appellant raises more than a dozen objections (Appellant's Br. 153–161) to the district court's findings relating to the combination to suppress or eliminate the competition of outside producers of antifriction bearings. It would unnecessarily prolong this brief to answer those objections in detail; a few examples will be cited, however, to show their lack of substance.

As appellant recites (Appellant's Br. 153), the district court found that the parties had adhered to their contractual obligations to maintain exclusive territories (Fdg., par. 70, R. 972) and that each of them had refused orders for shipment outside its territory, referring them to the company in whose territory they were to be used

[102] The subsequent manipulation of trade-mark rights is fully discussed in notes 31 and 32, and text relating thereto, at *supra*, pp. 24–25.

(Fdg., par. 71, R. 973). Appellant points to one instance of referral of orders, and asserts that "This, of course, was in accordance with the basic policy of the joint enterprise" (Appellant's Br. 153). Appellant completely ignores Finding, par. 71 (R. 973) which indicates the large number of orders and inquiries referred by the parties to each other. The evidence showed (Gov. Exs. 139–147A, R. 1579–1636; R. 218–9) and the district court found (Fdg., par. 71, R. 973), that during the period from July 1, 1945, to February 20, 1947, alone, appellant transmitted 402 inquiries or orders to British Timken and French Timken, advising those customers that either the British or French company had the exclusive right to supply the bearings in that territory.

Objection also is raised by appellant as to the district court's findings that provisions of the agreements fixing prices on sales to Russia were carried out to the letter (Fdg., par. 94, R. 986). The claim is made by appellant that this statement is contrary to the only evidence in the record which is, in substance, that this provision was inserted in the agreements to prevent the Russian buying agencies from playing off one company against the other, but that in fact, those agencies never sought quotations from appellant and British Timken on the same business at the same time (Appellant's Br. 155). Here again, appellant has ignored testimony which clearly

supports the district court's finding. Appellant has not referred to the admission of Mr. Moore, appellant's Director of Sales, that the parties had in actual practice kept each other advised of their negotiations for Russian business (R. 897–8). Appellant likewise has overlooked the testimony of its president that in general appellant could not undercut British Timken on sales to Russia, and that appellant and British Timken gave their prices to each other (R. 554).

Still other objections are raised to findings relating to the foreign cartel arrangements entered into by British Timken and French Timken with competitors abroad which the district court found had restricted exports by American producers (Fdg., par. 117, R. 994). Appellant states that the district court found that it [appellant] was not a party to the English and French agreements (Appellant's Br. 159). The court did so find, but in addition it concluded that while appellant was not actually a party to the arrangements, it had cooperated and consulted with the co-conspirators in bringing them about, and had approved the agreements before they were executed, all as a part of the general plan to suppress the competition of outside producers (Fdgs., pars. 110, 111, 125, R. 992, 996). These findings have ample support in evidence (Gov. Exs. 49–65, 65A, 68, 70, R. 1396–1438, 1438, 1445, 1453; R. 543–4).

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E. *The evidence of price fixing*

Appellant contends the record is clear that the provisions of the contracts for fixing prices for replacement bearings sold in each other's territory had "never been followed by the parties since the first agreement was made in 1928" (Appellant's Br. 87). The record does not support this contention. As early as 1928 the parties were fixing prices on replacement bearings (*supra*, pp. 35–36). In practice, after 1935, the parties agreed to a general formula for fixing prices on replacement sales in each other's territory, rather than seeking a price from the other at the time of making each sale. This device was known as the "protective discount" (*supra*, pp. 43–44).

This fixing of abnormally high export prices caused appellant to lose much business, since this "weakness in our pricing policy" caused buyers to become "familiar with the fact that" (Gov. Ex. 131, R. 1545): "we are protecting British Timkin and by so doing, do not have a price that is anywhere near competitive with Bower. As a result, it now develops that we don't even get inquiries for a lot of requirements. They are automatically referred to our competitors." Despite this, appellant continued to adhere to price arrangements even though in some instances it did not agree with British Timken's pricing policies (Gov. Ex. 128, R. 1541).

During World War II when appellant made sales in British Timken's territory at the latter's request, British Timken instructed appellant as to the price to be charged (Gov. Ex. 102, R. 1418; Gov. Ex. 103, R. 1484; Gov. Ex. 112, R. 1511; Gov. Ex. 113, R. 1514; Gov. Ex. 129, R. 1542). The arrangement for Australia was that British Timken would fix prices at which appellant sold bearings in that area (Gov. Ex. 114, p. 4, R. 1521; R. 187, 188), and later when appellant took over all of British Timken's territory, the "protective discount" would be quoted on *all* unsolicited inquiries, unless the order was a large one of special importance (Gov. Ex. 128, R. 1541). Even then, appellant had to communicate with British Timken's agents (Gov. Ex. 128, R. 1541) who would determine prices to be charged in accordance with British Timken's instructions for the handling of such business (Gov. Ex. 125, R. 1534; Gov. Ex. 127, R. 1538).

F. *The district court properly adopted its memorandum opinion as its findings of fact and conclusions of law*

Appellant argues that the district court erred in failing to make proper findings of fact, separately found, and conclusions of law, separately stated, as required by Rule 52 of the Rules of Civil Procedure.

Rule 52 (a) provides in part that, "In all actions upon the facts without a jury * * *,

the court shall find the facts specially and state separately its conclusions of law thereon * * *." By amendment effective March 19, 1948, the following language was added: "If an opinion of memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein."

It is clear from the *Report of the Advisory Committee on Rules for Civil Procedure,* H. Doc. No. 473, 80th Cong., 1st Sess. pp. 111–112, that this amendment was adopted expressly to permit a district court to certify its memorandum opinion as its findings of fact and conclusions of law. Appellant does not appear to be attacking the legality of the procedure whereby the district court, in the instant case, so certified its memorandum opinion.[103]

The first objection raised by appellant is that the memorandum opinion does not contain "underlying and subsidiary findings on several important matters which are essential to a determination of 'all the issues in the case.'" (Appellant's Br. 163.) The complete answer to this contention is that the trial court was not required to make findings on all the facts in the case. It was required to find only such ultimate facts as were necessary to reach a decision in the case. *Skelly Oil Company* v. *Holloway,* 171

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[103] But see cases cited by appellant (Appellant's Br. 163) in support of its attack on the findings. Each of these five cases was decided prior to the amendment to Rule 52 (a).

F. 2d 670, 673 (C. A. 8); *Oedekerk* v. *Muncie Gear Works, Inc.*, 179 F. 2d 821 (C. A. 7); *Norwick Union Indemnity Company* v. *Haas*, 179 F. 2d 827, 832 (C. A. 7); *Klimkiewicz* v. *Westminster Deposit & Trust Company*, 122 F. 2d 957, 958 (C. A. D. C.). As stated in the *Report of Advisory Committee on Rules for Civil Procedure, supra* (p. 112), "the judge need only make brief, definite, pertinent findings and conclusions upon the contested matters; there is no necessity for overelaboration of detail or particularization of facts."

The second objection voiced by appellant is that the memorandum contains much "discussion of, and quotation from, portions of the evidence as to various matters, and the court's reasoning with respect thereto." (Appellant's Br. 164.) The Court's references to evidence and reasoning as to such evidence can hardly be harmful to appellant on this appeal. If anything, such references and reasoning will aid this Court in its review of the case by showing the basis for the district court's findings and indicating the reasoning process employed by the court in reaching its conclusions.

The third objection of appellant is that the statements of fact and conclusions of law "are not stated separately in many instances but must be gleaned from an examination of its entire 60 pages" (Appellant's Br., 164). Reference need only be made to the memorandum opinion itself

in answer to this contention. The lengthy opinion fairly bristles with clear and specific findings of fact and conclusions of law, separately stated. It contains abundantly adequate findings of ultimate facts necessary for a proper adjudication of all pertinent issues, and legal conclusions pertinent to the issues presented.

IV

THE RELIEF ORDERED BY THE DISTRICT COURT IS APPROPRIATE AND NECESSARY

A. *The district court properly directed divestiture of appellant's financial interests in its co-conspirators, British Timken and French Timken*

Subsection A of Section VIII of the judgment requires appellant to divest itself of "all stock holdings and other financial interests" in British Timken and French Timken within two years of the date of judgment, and to submit for the court's approval a plan for such divestiture within one year from such date (R. 1179).

At the time of judgment appellant's financial interests in these co-conspirators consisted primarily of 30¼% of the common stock of British Timken and 50% of the stock of French Timken.[104] These interests in companies which were and

[104] Appellant also owned 1% of the preferred stock of British Timken and certain promissory notes of French Timken (*supra*). Subsequent to the entry of judgment appellant acquired certain additional shares of British Timken and French Timpen stock (*supra*).

are appellant's "potential competitors" (*supra*, pp. 27, 117–121) were acquired as an integral part of the 1927–1928 agreements made by appellant to continue to allocate world markets among it and its co-conspirators and otherwise illegally to restrain competition (*supra*, pp. 28–32).[105] The district court found that the 1927 agreements "were made to carry on effectively the combination to eliminate competition between the parties and to frustrate any competition of outsiders" (Fdg., par. 154, R. 1004).

The "Heads of Agreement" of May 16, 1927 (Def. Ex. 15, R. 1730), provided for purchase of stock in British Timken and French Timken by appellant and Dewar and for extension of the existing restraints "in connection therewith" (Fdg., pars. 42–44, R. 967–8; *supra*, p. 31). The pattern for these restraints was set by the 1909 agreements dividing world markets and eliminating competition (Fdgs., pars. 120, 153, R. 995, 1003–4). These agreements for division of territories and other restraints, as embodied in

[105] Pursuant to these agreements, appellant acquired all of the French Timken stock which it held at the time of judgment (*supra*, pp. 30, 36), as well as most of its stock holdings in British Timken (*supra*, pp. 31, 32). In 1935, when appellant and Dewar sold part of their stock in British Timken on the open market and entered into a series of new agreements designed "to continue the implementation of the earlier contract" (R. 283, 914), appellant repurchased on the open market part of the stock thus sold, the net effect of its sales and repurchases being to reduce its share of British Timken common stock to 30¼% (*supra*, p. 39).

and extended by later agreements between appellant and British Timken, were to expire on January 1, 1929 (Fdg., par 37, R. 966; *supra,* pp. 26, 28). The district court found that appellant's association with Dewar in acquiring an interest in British Timken and French Timken was "formed for the purpose of continuing a combination to allocate exclusive sales territories in the world, to fix prices and to eliminate competition both within and without the combination" (Fdg., par. 163, R. 1006). Thus the stock acquisitions, both in purpose and effect, served to effectuate and solidify the underlying conspiracy to restrain trade in antifriction bearings in all markets of the world.

Appellant, in view of its "joint venture" argument, can scarcely deny that its acquisition of British Timken and French Timken stock was directly linked with its trade-restraining agreements with these companies. The basic premise of the "joint venture" argument is that these agreements were not merely linked with, but were actually subordinate and ancillary to, ~~Timken and French Timken (*supra,* pp. 31–2),~~ appellant's acquisition of a large stock interest in its co-conspirators.

While the 1927 agreements provided that Dewar should control the management of British Timken and French Timken (*supra,* pp. 31–2), appellant was entitled to representation on their board of directors (Def. Ex. 15, par. 7, R. 1732–3; R. 1035). Appellant's ownership interest in these foreign companies thus put it in a position

to exert a powerful voice in opposition to any move on their part to put an end to the cartel system which had been set up. No occasion for exercising this power arose, but appellant threw its influence in favor of continuing the illegal restrictions when the agreements were renewed in [redacted], 1935 and 1938 (*supra,* pp. 38–41). Appellant has itself argued that, had it not done so, it would have been using its own money "to create competition for itself" (R. 1165–6).

Both appellant and Dewar recognized, in 1927 and later, that appellant's financial interests in British Timken and French Timken provide assurance against competition between it and its co-conspirators. Dewar, being anxious to avoid appellant's prospective competition with British Timken upon expiration on January 1, 1929, of the existing trade-restraining agreements (Fdg., par. 135, R. 1005), insisted upon a territorial understanding (Fdg., par. 207, R. 1015–7; R. 933), and sought to insure this result by having appellant purchase part of the British Timken stock so that it would have an "interest then in the profitable operation of the company" (*supra,* p. 30). Appellant's Vice President testified that, in view of its financial investments, allocation of territories was "only normal" (R. 933). These investments, furnishing both motive and means for preventing competition between appellant and the companies in which it

has invested, will remain a constant and powerful deterrent to competition as long as they are permitted to continue.

We submit that there could hardly be a clearer case of illegal acquisition than one where, as here, stock in potential competitors was acquired as an integral part of a conspiracy between the acquired and acquiring companies to restrain trade in a manner forbidden by the Sherman Act. Not only were the stock acquisitions an essential element of the conspiracy itself, but they put behind the scheme to control world trade, in addition to the ties forged by consipracy and agreement, the force of a large ownership interest in putative competitors by the dominant concern in the industry.

We have shown that appellant's interests in British Timken and French Timken (1) were acquired pursuant to and in furtherance of an illegal conspiracy, (2) were used to promote the conspiracy's illegal ends, and (3), if not severed, will continue to serve as an inducement to maintenance of the non-competitive regime of the past. Each of these circumstances, singly considered, constitutes ground for divestiture.[106] *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131, 152–153. Taken together, they furnish the most compelling justification for the divestiture ordered by the district court.

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[106] In the district court the Government urged each of these circumstances as grounds for divestiture (R. 1165–1168).

In the *Paramount* case, certain exhibitor-defendants held stock interests in corporations operating motion picture theatres, other stock interests in the same corporations being held in some cases by other exhibitor-defendants and in other cases by independents, i. e., former, present, or putative motion picture operators not controlled by defendant exhibitors. In that case the district court had found that the result of joint ownership was that the jointly-owned theatres were operated "collectively rather than competitively," and it had ordered termination of all joint ownerships. This Court, after approving the divestiture which had been ordered of theatres jointly owned by defendant-exhibitors, held that the divestiture of theatres jointly owned with an independent should be in some respects broader and in some respects narrower than that decreed by the district court.[107] This Court laid down the principles to govern divestiture of these theatre interests as follows (334 U. S. at pp. 152–153):

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[107] The district court's judgment permitted the defendant-exhibitor to acquire, subject to certain limitations, the existing interests of the independent, whereas this Court held that no such permission should be granted. On the other hand, the district court had ordered divestiture in the case of theatres owned jointly with persons assumed, without inquiry, to come within the classification of an independent, whereas this Court held that divestiture was not appropriate in the case of theatres involving "no more than innocent investments by those who are not actual or potential [theatre] operators."

> To the extent that these acquisitions were the fruits of monopolistic practices or restraints of trade, they should be divested. * * * Moreover, even if lawfully acquired, they may have been utilized as part of the conspiracy to eliminate or suppress competition in furtherance of the ends of the conspiracy. In that event divestiture would likewise be justified. * * *
>
> Furthermore, if the joint ownership is an alliance with one who is or would be an operator but for the joint ownership, divorce should be decreed even though the affiliation was innocently acquired. For that joint ownership would afford opportunity to perpetuate the effects of the restraints of trade which the exhibitor-defendants have inflicted on the industry.

In *United States* v. *Crescent Amusement Company,* 323 U. S. 173, companies which were potential competitors in the operation of theatres had become affiliated in the course of a conspiracy to restrain and monopolize trade and commerce in motion picture films, in violation of the Sherman Act. The district court had entered a judgment which required each corporate defendant to divest itself of any interest in any other corporate defendant or affiliated corporation. This Court held that the principle that those who violate the Sherman Act may not reap the benefits of their violations justified divestiture of

all interest in affiliates whose acquisition was "part of the fruits of the conspiracy." But this Court significantly further held (pp. 189–190):

> But the relief need not, and under these facts should not, be so restricted. The fact that the companies were affiliated induced joint action and agreement. Common control was one of the instruments in bringing about unity of purpose and unity of action and in making the conspiracy effective. If that affiliation continues, there will be tempting opportunity for these exhibitors to continue to act in combination against the independents. The proclivity in the past to use that affiliation for an unlawful end warrants effective assurance that no such opportunity will be available in the future. Hence we do not think the District Court abused its discretion in failing to limit the relief to an injunction against future violations. There is no reason why the protection of the public interest should depend solely on that somewhat cumbersome procedure when another effective one is available.

United States v. *National Lead Company*, 332 U. S. 319, like the present case, involved an illegal division of world territories. This Court upheld the district court's order that defendant divest itself of its foreign stock interests because "the stock acquisitions were part and parcel of the

territorial allocation agreements" (332 U. S. at 363).

Since appellant acquired its British Timken and French Timken stock as part and parcel of an illegal conspiracy, since it had utilized such investment to further this conspiracy, and since the investment would continue to provide opportunity and inducement to joint action to suppress competition, the district court's order of divestiture clearly did not constitute an abuse of the discretion vested in it respecting the framing of appropriate relief against the violations of the Act which it had found and against future violation of the Act.

The district court had a wide range of discretion in fashioning relief, and where its findings of violation are sustained, only abuse of discretion by the district court will lead this Court to recast its judgment. *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 185; *United States* v. *National Lead Co.*, 332 U. S. 319, 334. In view of the appellant's long and undeviating adherence to a cartel system, the district court plainly was justified in concluding that relief limited to mere prohibition of consensual agreements in restraint of trade would be ineffective to undo the effects of the past illegal conduct. The district court was warranted in concluding that if the judgment is to establish conditions conducive to competition in international trade among the erstwhile conspirators, appellant's

ownership interest in its co-conspirators must be severed so that the foreign companies will be completely independent of appellant *de facto* as well as *de jure*.

Appellant contends (Appellant's Br. 22–28, 196–198) that the nature of the business in which it is engaged, together with the obstacles to international trade created by tariffs, quota restrictions, governmental limitations on foreign exchange, etc., are such as to foreclose any substantial invasion of foreign markets by appellant or of domestic markets by its co-conspirators. Appellant concludes that this Court should make the assumption that there will be no competition between appellant and its co-conspirators even if the ties binding them to appellant are severed, and that the Court should hold that, in these circumstances, divestiture operates as a penalty rather than as a measure of relief against past and future violations of the Act.

The district court, dealing with appellant's contention that the exports of antifriction bearings from the United States, and imports into the United States, are so insignificant that action by the court to curb restraints on such trade would be a vain and futile gesture, pertinently observed (Op., par. 204, R. 1015):

> If all the impediments to foreign trade existed ever since 1914, which became more and more pronounced to the present day, why were the contracting parties, defend-

ant, British Timken and French Timken so concerned about airtight agreements to keep each one within its own commercial domain? The repeated and persistent provisions of the successive contracts, for territorial restrictions, contradict any claim of lack of ability to compete.

The district court found that there had, in fact, been "actual and potential competition" in international trade in roller bearings, and that such trade would have been of considerable size but for the restrictive agreements (*supra*, p. 121). Not only is the asserted unlikelihood of any substantial international trade in tapered roller bearings open to serious doubt, but it rests on an inherently speculative forecast as to the factors governing the future course of international trade. The district court properly held that the applicability of the Sherman Act to foreign trade cannot be made dependent upon every fluctuation in international political and economic conditions (Concl., par. 209, R. 1017). And even if any doubt existed as to efficacy of the relief deemed necessary to prevent further violations of the Act, relief is not to be withheld because of possible uncertainty as to how successful it will be in achieving the desired end. Just as in determining the scope of the relief to be granted, "doubts should be resolved in favor of the Government and against the conspirators" (*Local 167 v. United States*, 291 U. S. 293, 299), doubts

as to the efficacy of relief should be resolved in favor of the Government and against those who over a long period have been flagrant violators of the law.

Appellants suggest (Appellant's Br. 198–199) that the provisions of the judgment may have the effect of preventing appellant from using the trade-mark "Timken" in countries where British Timken or French Timken have been prior users of the mark. But even if we assume this to be true, it does not follow that appellant will not be able to compete, by selling its products in such countries under another trade-mark. To do so might well lead to greater competition than if all sold under the same trade-mark.

Appellant also urges (Appellant's Br. 199–202) that divestiture should be denied because it may have the effect of preventing appellant from realizing on the full value of its investment in its co-conspirators. But it is well settled that those who violate the Act "may not reap the benefits of their violations and avoid an undoing of their unlawful project on the plea of hardship or inconvenience" (*United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 189), and that "the policy of the antitrust laws is not qualified or conditioned by" the disadvantages or inconvenience which the judgment provisions may cause to those whose conduct is regulated (*United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131, 159).

Furthermore, the hardship of divestiture to appellant is doubtful and speculative. The testimony shows that there is a regular market for British Timken shares, which are listed on the London Stock Exchange and also traded upon the so-called "switch pound" market in New York (R. 1111). Appellant has a two-year period in which to dispose of this stock and may do so through open market sales, privately negotiated sales, syndicate operations, or any combination of these methods.

It is not clear that appellant has raised, or that it is entited to raise, any issue regarding subsection B of Section VIII of the judgment, which enjoins appellant from further acquisitions of British Timken and French Timken stock (R. 1179).[108] Regardless of whether the issue is properly raised, the provision is clearly necessary to prevent appellant from nullifying, by additional stock purchases, the divestiture which is ordered by subsection A. In the *Paramount* case, *supra*, this Court, in approving termination of theatre interests as to which the defendant-exhibitors were joint owners with potentially competitive independent operators, held that it was improper for the district

[108] There is a reference to this requirement of the judgment in appellant's Summary of Argument (Appellant's Br. 80) and a passing reference to it in the Argument (Appellant's Br. 98), although not in connection with divestiture, and it is not covered by appellant's Statement of Points to be Relied Upon (R. 1327–32).

court to permit termination of such interest through acquisition of the independent's interest (334 U. S. at pp. 152–153).

B. *The injunctive provisions of the judgment are appropriate means for preventing further violation of the Act*

The injunctive provisions of the judgment to which appellant objects principally prohibit concerted action and practices which were found to constitute elements of the illegal conspiracy to which appellant was a party. And to the extent that the prohibitions go beyond activities found to be unlawful, they come within the principle that "relief, to be effective, must go beyond the narrow limits of the proven violation." *United States* v. *U. S. Gypsum Company*, 340 U. S. 76, 90.[109]

1. *Exclusive grant, receipt or exchange of patent licenses, know-how and material and machinery.*—Appellant objects (Appellant's Br. 165–170) to the provisions of the judgment which enjoin it from entering into any conspiracy, agreement, or understanding with British Timken or French Timken for the exclusive grant, receipt or interchange of patent licenses, know-

[109] See also *International Salt Co.* v. *United States*, 332 U. S. 392, 400; *Local 167* v. *United States*, 291 U. S. 293, 299; *Ethyl Gasoline Corp.* v. *United States*, 309 U. S. 436, 461; *United States* v. *Bausch & Lomb Co.*, 321 U. S. 707, 727; *Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 409.

how, or machinery and material relating to anti-friction bearings."[110]

The district court found that, although it does not "convincingly appear" that the exclusive exchange of know-how or enforcement of the trade-mark restrictions alone had served as "direct instruments" to eliminate competition, "they have been most helpful in buttressing other illegal conduct to achieve the desired result" and "were integral parts of the general scheme to suppress trade" (Fdg., par. 137, R. 1000). Means thus employed in effectuating the conspiracy were properly barred by the judgment. Indeed, when a trial court has made a finding of a conspiracy in restraint of trade, the prohibitions of its judgment need not be confined to "the proven means by which the evil was accomplished, but may range broadly through practices connected with acts actually found to be illegal." *United States* v. *U. S. Gypsum Co.*, 340 U. S. 76, 88–89.

It is immaterial that the complaint did not charge that there had been an exclusive exchange of know-how and of patented and unpatented inventions. Evidence to establish such a claim was presented at the trial (Fdg., par. 137, R. 1000) and issues with reference thereto were argued by the parties (Fdg., par. 164, R. 1006). "When issues not raised by the pleadings are tried by the express or implied consent of the

[110] Subsections G, H, Section V, and subsections A, B, C, 7, 8, Section VII, quoted *supra*, pp. 11–13.

parties, they should be treated in all respects as if they had been raised in the pleadings," and failure to amend the pleadings to conform to the evidence "does not affect the result of the trial of these issues." Federal Rules of Civil Procedure, Rule 15 (b).

Hartford-Empire Co. v. *United States,* 323 U. S. 386; *De Beers Consolidated Mines, Ltd.* v. *United States,* 325 U. S. 212; and *United States* v. *National Lead Co.,* 332 U. S. 319, cited by appellant, clearly are not apposite. The *Hartford-Empire* case merely held that, in the absence of a showing of patent invalidity, it was improper to require dedication to the public of patents employed in carrying out illegal restraints of trade. The *De Beers* case merely condemns grant of a preliminary injunction with respect to a matter wholly outside the issues of the case. And the holding in the *National Lead* case was that there was no basis for requiring divestiture of certain plants where there had been no charge, proof, or finding that the plants in question had been acquired or used in violation of the Act.

Appellant also contends that the prohibition against exclusive grant, receipt, or exchange of know-how and certain other property is confiscatory. We submit that this contention is almost frivolous. The prohibition is no more confiscatory than the prohibition against sale or lease of goods on tying clauses or conditions,

outlawed by Section 3 of the Clayton Act. It is a limitation, not a destruction, of property rights. In the *Hartford-Empire* and *National Lead* cases there is some suggestion that a requirement of compulsory licensing royalty-free offends against the due process clause of the Fifth Amendment, but this was on the theory that such a requirement is a destruction of all property rights in the defendants' misused patents.

2. *Agreements to fix sale or resale price.*— Subsection F of Section V of the judgment (*supra,* p. 10) enjoins appellant from agreeing with British Timken or French Timken, or any subsidiary, agent or distributor thereof, to fix or maintain sale or resale price. Appellant contends (Br. 170–173) that this prohibition might deny to it "rights" which it would otherwise have under the Miller-Tydings Act.

Agreements of this kind with British Timken or French Timken are horizontal agreements, not within exemptions from the Sherman Act given by the Miller-Tydings Act. Appellant's objection is therefore limited to the possibility that one of the foreign companies might have a distributor in this country who was also a distributor for appellant. But if appellant sold generally in this country to distributors pursuant to agreements having sanction under the Miller-Tydings Act, it is not clear that the judgment would bar such agreement with a distributor who

also happened to handle products of British Timken. Certainly the applicability of the prohibition might depend upon all the circumstances involved, including the relationship of the distributor to appellant and to the foreign company. If the situation suggested should ever arise, appellant would be free to apply to the district court for an interpretation of the scope of the prohibition of the judgment or for modification of the prohibition if good cause therefor could be shown. See *International Salt Co.* v. *United States*, 332 U. S. 392, 401.

3. *Refusing to sell or selling at discriminatory prices, on products to be resold in British or French territory.*—Subsection B of Section VI of the judgment (*supra*, pp. 10–11) enjoins appellant from refusing to sell bearings to any person at prices and on terms corresponding to those regularly offered to customers in its own territory, where the reason for such refusal is that such bearings are to be resold in territories exclusively allocated to British Timken and French Timken by the 1938 agreements.

Section IX of the judgment (*supra*, p. 14) similarly prohibits sales at discriminatory prices, and failure to provide comparable service and assistance to distributors, on sales in those territories.

For more than forty years appellant has refrained from sales in the countries allocated to its co-conspirators. Appellant and its co-conspirators have "religiously adhered to their

contractual obligations to make the territorial divisions inviolate" (Fdg., par. 70, R. 972). The "inflexible territorial limitations" which they imposed were "designed for the purpose of preventing competition" (Fdg., par. 124, R. 996) and have "had the effect of eliminating competition" (Fdg., par. 129, R. 997). In these circumstances, a mere injunction prohibiting appellant from conspiring to divide territories would plainly be insufficient to restore competition to the industry.

Appellant urges that the prohibitions are too broad, and suggests (Appellant's Br. 173) that they would apply to a refusal to sell, for motives of patriotism, in a territory in which appellant's bearings might come into the hands of Communists infiltrating the region. But questions of this character concern national policy and foreign relations and are to be determined by the appropriate officials of the Federal Government, not by private individuals or corporations.

Appellant objects (Br. 175–178), on the ground of unnecessary expense and burden, to the prohibition against failure to furnish to foreign distributors service and assistance comparable to that given domestic distributors. But service may be as important as price in selling appellant's product. The record is clear that mechanical engineering plays a pivotal role in the sale of bearings for original installation. In the words of appellant's vice president, it is at

the point where the layouts are prepared, when the proposed machinery is on the drawing board of the customer, that competition for original installation business takes place (R. 43-4, 65).

Appellant maintains local sales offices in cities throughout the United States, to each of which is attached a corps of sales engineers. These engineers confer with design engineers at the customer's offices and attempt to place appellant's bearings in the machinery to be manufactured by the customer. The customer in turn calls on appellant for design applications (R. 948). A similar sales engineer organization is maintained by appellant in South America (Gov. Ex. 141, R. 1582) and British Timken and French Timken provide the same type of technical assistance to customers in their respective territories (R. 391). Appellant has admitted that, for it to conduct any satisfactory sales efforts in the markets served previously by British Timken and French Timken, it would be necessary to have independent sales organizations, engineer organizations and replacement organizations (R. 544). Appellant's president has pointed out that "bearings are rarely sold by correspondence or by mail order methods" (R. 545). These facts indicate both the need for and the reasonableness of the provisions of the court's judgment. Of course comparable service is, in some measure, related to the volume of actual or potential business.

Even if it be assumed that the judgment would tend to force appellant "to enter into business relations," it is clear that the requirement would not be beyond the jurisdiction of the district court. *International Salt Co.* v. *United States,* 332 U. S. 392, affirmed an injunction requiring defendants to lease salt-dispensing machinery to all applicants without discrimination, and the Court said in this connection that the purpose of a judgment entered against those who have violated the Sherman Act is not "merely to end specific illegal practices," but in addition to effectively "pry open to competition a market that has been closed by defendants' illegal restraints" (332 U. S. at p. 401).

Appellant's related contention that the judgment deprives it of the right to choose its customers is met not only by the decision in *International Salt,* but also by decisions upholding judgments which require granting patent licenses, at a reasonable rate of royalty, to every applicant therefor. *Hartford-Empire Co.* v. *United States,* 323 U. S. 386, 417–8; *United States* v. *National Lead Co.,* 332 U. S. 319, 330, 332, 364; *United States* v. *U. S. Gypsum Co.,* 340 U. S. 76, 94.

4. *Agreements with co-conspirators as to transfer of trade-mark.*—Subsection C, 1, 2, 4, 5, of Section VII of the judgment (*supra,* p. 12) enjoins appellant from entering into agreements or contracts with its co-conspirators for the transfer of any right or immunity under a trade-

mark or name, upon certain specified conditions which involve limitation of competition, restraint of trade or price fixing.

The district court found that the enforcement of trade-mark restrictions by appellant and its co-conspirators had served to buttress the desired result of eliminating competition among themselves and had been "integral parts of the general scheme to suppress trade" (Fdg., par. 137, R. 1000); that the trade-mark provisions of their agreements "were subsidiary and secondary to the central purpose of allocating trade territories" (Fdg., par. 187, R. 1010); and that appellant's agreements with its co-conspirators governing use of the trade-mark "Timken" was "for the purpose of preventing competition in the sale of bearings," and not to protect itself or the public from deceit (Fdg., par. 188, R. 1010–11).

Based upon such findings, the district court enjoined the use of trade-marks for allocation of territory and like purposes. The basic prohibitions of the judgment against such practices would be ineffective without this trade-mark relief since otherwise trade-mark rights might be employed to divide trade on a territorial basis. To the extent that this relief bars conduct which is lawful standing by itself, such prohibition is proper and appropriate where, as here, it is required in order that the relief be effective. *Local 167* v. *United States*, 291 U. S. 293, 299;

Hartford-Empire Co. v. *United States,* 323 U. S. 386, 409.

Appellant's purpose to continue the allocation of territory is shown by what transpired at the London conference immediately following the hearing on relief in the district court, when it was arranged that appellant become the "registered user" and British Timken the "registered owner" of the mark "Timken" in certain countries within British Timken territory (Def. Ex. D, R. 2757–61). Significantly, it was decided that appellant's rights as a "registered user" in certain territories would be limited by the allocation of territories in the 1938 agreements (Def. Ex. D (Decree), par. (M), R. 2762), so that even though appellant is a "registered user" in Great Britain, for example, it would not be empowered under this agreement to make or sell bearings there for original installation because prohibited from so doing by the 1938 agreements.

Appellant further objects to subsection 8 of Section VII of the judgment (*supra,* p. 13), which enjoins appellant from agreeing with its co-conspirators to transfer trade-mark rights upon condition that the latter exclusively grant, receive or exchange technical information, material or machinery relating to antifriction bearings. Appellant contends (Br. 182–183) that this requirement will stop the making of "controlled trade-mark licenses" since appellant as licensor of the trade-mark "Timken" would not be willing

to supply know-how to a licensee knowing that it would have to supply the same information to third party competitors.

The judgment bars such licensing agreements only when made with British Timken or French Timken or a subsidiary, agent, sales representative or distributor thereof. The substance of the contention therefore is that the judgment should leave appellant free to license its trade-mark rights to British Timken and French Timken; upon the condition that they grant, receive or exchange know-how exclusively with appellant. The contention is a repetition of the objections to prohibiting such exclusive exchange, which we have previously answered (*supra,* pp. 149–151).

We submit that judgment provisions relating to trade-marks are essential if the unlawful combination to allocate territories is to be terminated and its recurrence prevented.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted.

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In the Supreme Court of the United States

No. 352.

OCTOBER TERM, 1950.

THE TIMKEN ROLLER BEARING COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

MOTION FOR POSTPONEMENT OF ORAL ARGUMENT TO OCTOBER TERM, 1951.

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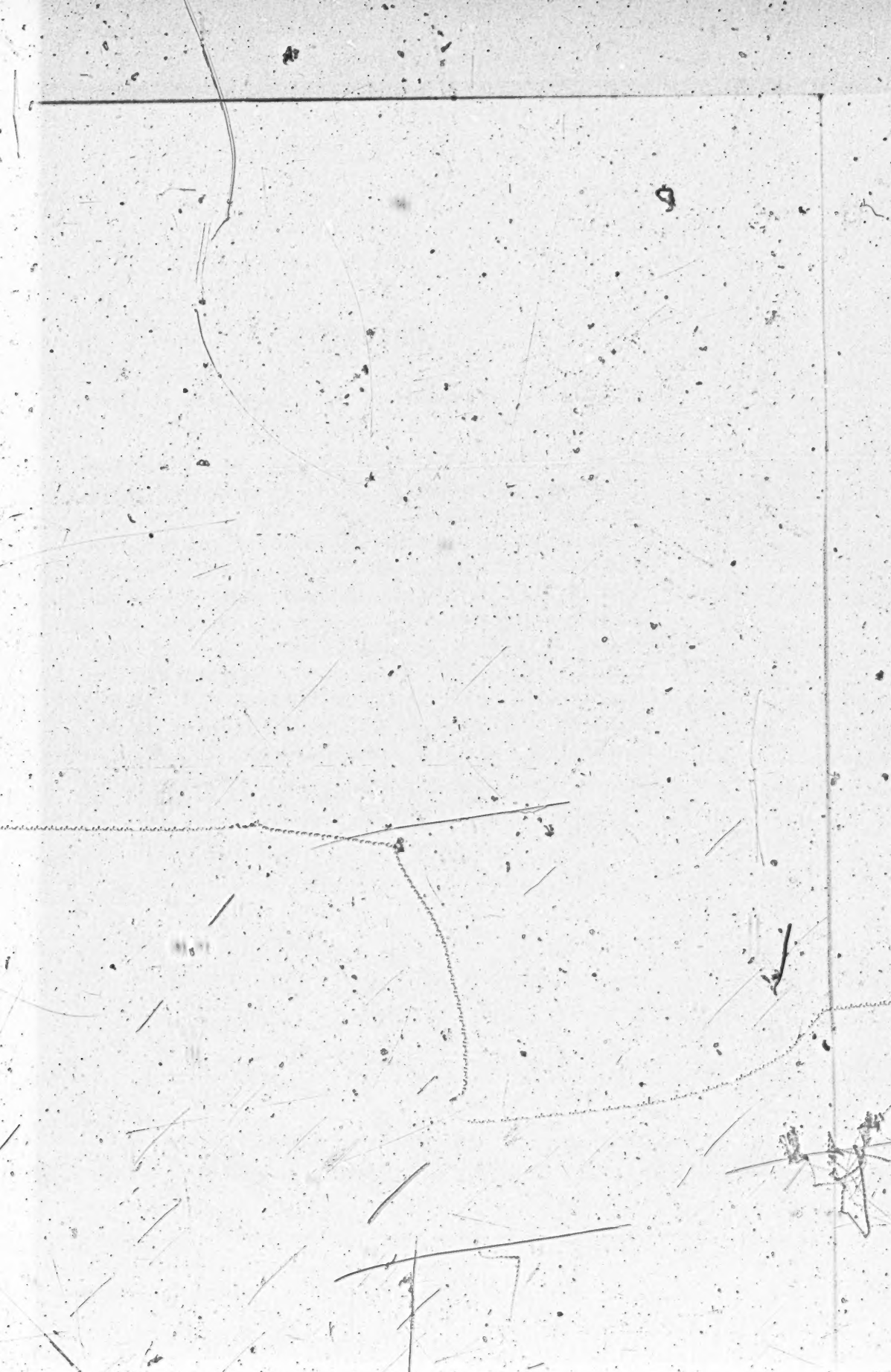
Motion for Postponement of Oral Argument to October Term, 1951 1

Exhibit A. Motion by The Timken Roller Bearing Company, Defendant in the District Court, Appellant in the Supreme Court of the United States, That the District Court Ask Leave of the Supreme Court of the United States to Consider Defendant's Motion That the District Court Receive Additional Evidence and Reconsider its Final Judgment Herein and, if Leave be Granted, That the District Court Proceed So to Do, Because of Changed Circumstances Due to the Death of Michael B. U. Dewar Since the Perfection of an Appeal Herein to the Supreme Court of the United States 6

Exhibit B. Excerpt from Transcript of Hearing on Argument of Motion in the District Court 29



In the Supreme Court of the United States

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THE TIMKEN ROLLER BEARING COMPANY,
Appellant,

vs.

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Appellee.

MOTION FOR POSTPONEMENT OF ORAL ARGUMENT TO OCTOBER TERM, 1951.

The Timken Roller Bearing Company, appellant in the above entitled case, respectfully moves this Honorable Court that the oral argument herein be postponed until the October, 1951, term of this Court, and in support of its motion states:

1. The above-entitled case is now pending on the docket of this Court, petition for appeal having been filed and allowed by the District Court on July 28, 1950 and probable jurisdiction having been noted by this Court on November 6, 1950.

2. Subsequently to the perfection of the appeal to this Court and the noting of probable jurisdiction therein, Michael B. U. Dewar, who in 1927 acquired jointly with the appellant all the stock of British Timken, Limited, an English corporation (hereinafter called "British Timken"), and who in 1928 jointly with the appellant caused Societe Anonyme Francaise Timken, a French corporation (hereinafter called "French Timken"), to be organized died on December 21, 1950.

3. One of the appellant's principal contentions in the above-entitled case in the District Court was that it had not combined unlawfully in restraint of trade and in violation of Section 1 of the Sherman Act (26 Stat. 209, as amended), with British Timken and French Timken, as alleged by the appellee, because it had engaged with Dewar in a joint enterprise (terminated by his death) to conduct the manufacture and sale of antifriction bearings in foreign countries under a license of the trade-mark "Timken"; that British Timken and French Timken, respectively, were acquired and organized as instrumentalities for the purpose of carrying out the enterprise, and that any restraints of trade resulting from agreements between the appellant and these two companies were reasonably ancillary to the organization and conduct of the joint enterprise, all as more particularly described in a motion filed in the District Court after Dewar's death, a copy of which is attached hereto and marked Exhibit A and which is more particularly referred to hereinafter.

4. Pursuant to agreements entered into by the appellant with Dewar in connection with the joint enterprise between them, the appellant was given options effective at Dewar's death to purchase Dewar's ordinary shares of stock of British Timken amounting to approximately 23.74 per cent of all of its issued and outstanding ordinary shares, which, together with the appellant's ordinary shares of stock in British Timken amounting to 30.26 per cent thereof, represent voting control of British Timken, and to purchase stock of French Timken owned by a holding company owned by Dewar representing one vote at stockholders' meetings thereof which, with appellant's stock in French Timken amounting to 50 per cent thereof, represents voting control of French Timken, and also was given the first refusal on the remaining 50 per cent of the stock of French Timken, owned by Dewar's holding company, in the event that Dewar's holding company should desire to sell, all as more

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particularly described in Exhibit A hereto. The appellant has exercised its options as to Dewar's stock in British Timken and in French Timken representing voting control thereof, and has been advised by Dewar's executors that Dewar's holding company desires to sell the balance of the stock of French Timken held by it, and the appellant has advised them that it desires to acquire such balance of French Timken stock. As a result of such acquisition the appellant will become the sole owner of French Timken.

5. On January 24, 1951, the appellant filed a motion, a copy of which is Exhibit A hereto, in the District Court for the Northern District of Ohio, Eastern Division (in which judgment had been rendered against the appellant in the above-entitled case) asking that that court make application to this Court for leave to take and consider evidence of Dewar's death, of appellant's desire to exercise, and exercise of, the options with respect to Dewar's stock in British Timken and the stock of Dewar's holding company in French Timken, and such other evidence deemed relevant by the District Court as the appellant might desire to introduce at the hearing, and to reconsider its judgment herein, and that, upon granting of such application by this Court, the District Court take and consider the additional evidence, thereafter make further application to this Court to remit to it the record to the extent deemed necessary by the District Court for its consideration of the matter, and vacate or modify its judgment in view of the changed circumstances resulting from Dewar's death, all as more particularly set forth in Exhibit A hereto.

6. On February 14, 1951, the District Court heard oral argument on the motion and took it under advisement, and stated to counsel that the Court desired to give the matter careful consideration, to examine the briefs filed by both parties, and an opportunity to study the case, that the Court would be unable to begin the consideration of this matter for 30 days or more from and after February 14,

1951, and that it would be a number of weeks after February 14, 1951, before the Court would reach a decision on the appellant's motion, all as more particularly set forth in a portion of the transcript of the proceedings had with respect to said oral argument, a copy of which is attached hereto and marked Exhibit B.

7. The appellant is advised by the office of the Clerk of this Court that the last assignment of cases for oral argument in the October term, 1950, of this Court will commence on April 16, 1951.

8. It will be impracticable for the appellant to prepare and print a brief on the merits of the above-entitled case after the earliest date on which decision of such motion by the District Court reasonably may be expected and within 3 weeks prior to oral argument of this case on appeal during the period commencing April 16, 1951.

9. If argument is not now postponed it will be necessary to commence forthwith the preparation of a brief in this Court and it is not practicable to undertake, nor is it reasonable to require, the preparation of a brief until the District Court has ruled on the motion, pending disposition thereof, and until any necessary action pursuant to such ruling has been taken, because until such time neither party will know: (1) what facts ultimately will be included in the record before this Court (we are advised by the office of the Clerk of this Court that the printing of the record should be finished by February 28, 1951, but the record, as so printed, will not include any of the facts as to Dewar's death and action taken pursuant thereto, as previously stated herein); (2) what modification, if any, will be made in the findings of facts or conclusions of law of the District Court; and (3) what modification, if any, will be made in the final judgment of the District Court.

10. If the District Court grants the appellant's motion, further time will elapse before the District Court will

be able to request authority from this Court to receive the additional evidence and for the District Court to hear such additional evidence and to reconsider its prior judgment herein; and in such event the appellant would be put to unnecessary expense in the preparation and printing of its brief on the proposed merits of this case in this Court, in that the brief might become unnecessary or inapplicable if the District Court should vacate or modify its judgment.

11. Giving the District Court an opportunity to hear additional testimony in this case based upon the changed circumstances resulting from the death of Dewar, and the opportunity to reconsider its final judgment, will save the time of this Court, by causing to be presented to this Court at one time, with the existing record, any new and additional facts sought to be elicited by the appellant, and will avoid delay in a final determination of this case by this Court.

LUTHER DAY,
1759 Union Commerce Bldg.,
Cleveland, Ohio;

JOHN G. KETTERER,
First National Bank Bldg.,
Canton, Ohio,
Counsel for Appellant.

EXHIBIT A.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

CIVIL ACTION No. 24,214.

UNITED STATES OF AMERICA,
Plaintiff,

VS.

THE TIMKEN ROLLER BEARING COMPANY,
Defendant.

MOTION BY THE TIMKEN ROLLER BEARING COMPANY, DEFENDANT IN THIS COURT, APPELLANT IN THE SUPREME COURT OF THE UNITED STATES, THAT THIS COURT ASK LEAVE OF THE SUPREME COURT OF THE UNITED STATES TO CONSIDER DEFENDANT'S MOTION THAT THIS COURT RECEIVE ADDITIONAL EVIDENCE AND RECONSIDER ITS FINAL JUDGMENT HEREIN AND, IF LEAVE BE GRANTED, THAT THIS COURT PROCEED SO TO DO, BECAUSE OF CHANGED CIRCUMSTANCES DUE TO THE DEATH OF MICHAEL B. U. DEWAR SINCE THE PERFECTION OF AN APPEAL HEREIN TO THE SUPREME COURT OF THE UNITED STATES.

NOW PENDING ON APPEAL IN THE SUPREME COURT OF THE UNITED STATES.

The Timken Roller Bearing Company, defendant in this Court, appellant in the Supreme Court of the United States (hereinafter styled "the defendant"), in support of its motion that this Court ask leave of the Supreme Court of the United States to consider defendant's motion that this Court receive additional evidence and reconsider its final judgment herein and, if leave be granted, that this

Court proceed so to do, because of changed circumstances due to the death of Michael B. U. Dewar since the perfection of an appeal herein to the Supreme Court of the United States, respectfully shows to the Court as follows:

1. Michael B. U. Dewar died in England on December 21, 1950 at the age of 64. He and his acts and agreements with the defendant and others figure prominently and are mentioned frequently in the record, and in the memorandum opinion of this Court in this cause, which was tried throughout and decided upon the basis that Dewar was alive.

2. The final judgment in this cause was appealed to the Supreme Court of the United States on the 28th day of July, 1950, and is now pending on appeal in that Court, being cause No. 352 therein. The appeal was perfected before Dewar died.

3. At the time Dewar died, to wit, on December 21, 1950, he owned approximately 23.74 per cent, consisting of 94,960 ordinary shares, of the issued and outstanding stock of British Timken, Ltd. (hereinafter called "British Timken"), a British corporation engaged in the manufacture of anti-friction bearings, all of the stock of which was acquired jointly by Dewar and the defendant in 1927. At the time of Dewar's death, and at the present time, the defendant owned, and owns, approximately 30.26 per cent, consisting of 121,040 ordinary shares, of the stock thereof. The above described ordinary shares owned by the defendant and by Dewar's estate constitute approximately 54 per cent of the ordinary shares of stock of British Timken, the vote of which is entitled to control its affairs in the absence of default by it with respect to its preferred stock requirements. At the time Dewar died, and at the present time, there was, and is, in full force and effect an agreement between him and the defendant made March 22, 1948 (the latest of a series of agreements which carried out the fundamental agreement to the same effect made in 1927),

by virtue of which the defendant now has the option to purchase all or any of the 94,960 ordinary shares in British Timken belonging to Dewar, exercisable at any time during a period of six months from and after Dewar's death by notice in writing served upon the holders of such 94,960 ordinary shares within the period of six months during which the option is exercisable, at a price agreed upon by the parties, or, failing agreement, at the average price of similar shares of British Timken on the London Stock Exchange over a period of thirty days immediately preceding the date on which the option became exercisable, namely, Dewar's death on December 21, 1950.

4. At the time Dewar died on December 21, 1950, and at the present time, the defendant owned, and now owns, 50 per cent, consisting of 40,000, and La Reunion Industrielle Societe Anonyme (hereinafter called the Lux Company, a company incorporated in Luxembourg, all of the shares of which have been owned directly or indirectly by Dewar) owned, and now owns, the other 50 per cent, consisting of 40,000, of the issued and outstanding ordinary 100 franc par shares of the stock of Societe Anonyme Francaise Timken (hereinafter called "French Timken"), a French corporation engaged in the manufacture and sale of antifriction bearings in France, which was organized at the joint instance of the defendant and Dewar in 1928 and has been jointly owned by them, or corporations owned by them, at all times thereafter. The votes of the above described ordinary shares of French Timken are entitled to control its affairs. The defendant and the Lux Company each own, also, 50 per cent of the issued and outstanding preferred stock and promissory notes of French Timken. By the terms of Section 5 (h) of an agreement entered into on or about the 11th day of December, 1935, by and between the defendant, the Lux Company, Frederick John Pascoe (as trustee) and Dewar, it is provided that, upon the death of Dewar, the Lux Company, if so requested by

the defendant, will cause one share or other holding of shares in French Timken carrying one vote, to be transferred to the defendant or its nominees at the par value of such share or holding, thus transferring voting control of French Timken to the defendant, and it is further provided, in Section 6, that no share of French Timken owned or controlled by the defendant or the Lux Company at the date of said agreement will be sold, transferred or otherwise disposed of unless it has been first offered for sale to the other party by notice in writing, the offer to remain open for acceptance by the party to whom it is made for ninety days after it is received by such party.

5. The defendant acquired 52½ per cent and Dewar 47½ per cent of the capital stock of British Timken in 1927, and the defendant and Dewar caused French Timken to be organized and each acquired, directly or indirectly, half of its ordinary shares, as above set forth, pursuant to a general arrangement in the nature of a joint venture between them by which, in substance, Dewar was to have control of the ordinary affairs of British Timken and French Timken during his lifetime and active participation in the management thereof while those companies made specified profits, and the defendant had the right to acquire complete control of each company in certain events, including Dewar's death, as aforesaid. This arrangement has continued from its inception in 1927 until the date hereof.

6. The defendant intends and proposes, as soon as may be practicable, to exercise its rights under the six months option granted to it by the terms of the aforesaid agreement relating to British Timken stock, and under the option to acquire voting control of French Timken granted to it by the terms of the aforesaid agreement relating to French Timken stock, and proposes to consider the purchase of the remainder of the stock of French Timken, if the same should be offered to it by the Lux Company for ninety days pursuant to the latter agreement. The defendant considers

that it is free so to do without violating any of the provisions of this Court's final judgment in this cause, by virtue of its order entered July 28, 1950 allowing an appeal to the Supreme Court of the United States and staying the execution of said judgment pending the final disposition of said appeal, which order provides as to such stay that:

> "* * * the execution against the above named defendant of all of the provisions of the Final Judgment entered herein, and compliance by the defendant with said Final Judgment be, and the same are, hereby suspended and stayed pending the hearing and final determination of this cause upon appeal."

7. Inasmuch as the time within which the defendant may give the required notices of its intention to exercise its respective options above described is limited as above set forth, it is imperative that it proceed with dispatch so to do for the reason that, if said options are not exercised by it within the times limited, and the final judgment of this Court is reversed or modified by the Supreme Court of the United States, and it is ultimately determined that the defendant may lawfully exercise said options and acquire the stocks covered thereby, it may sustain great and irreparable loss, in that the stock of either or both of British and French Timken, respectively, including the element of control incident thereto, may be sold to purchasers other than the defendant.

8. If the defendant exercises its option, hereinbefore described in paragraph 3, to acquire Dewar's ordinary shares in British Timken, it will be the owner of 216,000 ordinary shares of the stock of British Timken out of a total of 400,000 shares, and will be a majority and controlling shareholder of said corporation with the ensuing and attendant rights to exercise all of the powers vested in it as such.

9. If the defendant exercises its option, hereinbefore described in paragraph 4, to acquire the controlling share

or shares in French Timken from the Lux Company it will be the majority and controlling shareholder of French Timken with the ensuing and attendant rights to exercise all of the powers vested in it as such, and if the Lux Company decides to sell its shares of French Timken, the defendant will have the right to become the owner of all of the stock of French Timken.

10. If the respective options above described are exercised by the defendant and as a consequence thereof, stock interests in British Timken and French Timken, respectively, are acquired as above set forth, it will follow that the defendant will be a majority stockholder of both British and French Timken, respectively, and possibly the sole owner of French Timken, instead of a minority stockholder in British Timken and an equal stockholder with Dewar in French Timken, as it was before Dewar died.

11. The exercise by the defendant of the options to acquire Dewar's former stock interest in British Timken and French Timken, respectively, and the resulting changed and additional stock interest of the defendant therein will necessarily raise and present for determination legal questions which have not heretofore been considered nor decided by this Court, in the light of the changed circumstances, including particularly the question of whether the defendant should be permitted to conduct its operations in the British Empire and Europe through British Timken and French Timken, as majority owned subsidiaries, or, instead, be required to divest itself of all interest in those companies, as presently decreed by this Court.

12. It is in the furtherance of justice, in view of the fact that Dewar has died since the perfecting of the appeal to the Supreme Court of the United States in this cause, and the further fact that the defendant intends and proposes to exercise the options granted to it to acquire additional stock interests in British Timken and French Timken, respectively, as above set forth, that the record in this case

be reopened by this Court for the purpose of permitting the defendant to introduce evidence of these facts and the new situation thereby created.

13. The taking of additional evidence in the respects above stated, will result in having the record in this cause disclose the facts as they now actually exist, and will thereby prevent unnecessary delay and prolixity in the final disposition of this cause both in this Court and on appeal in the Supreme Court of the United States.

14. It is no longer equitable, because of the occurrence of the death of Dewar and the perfection of the resulting rights in the defendant, all of which has occurred since the rendition of this Court's final judgment herein, that such final judgment should have prospective operation in certain respects, including particularly Section IV thereof which terminates, and restrains the defendant from further enforcing any of the provisions of the agreement dated March 22, 1948, between the defendant and Dewar which grants to the defendant the option to purchase Dewar's ordinary shares of stock in British Timken referred to in paragraph 3 hereof, and Section VIII thereof which requires the defendant to divest itself of all stock holdings and other financial interest, direct or indirect, in British Timken and French Timken, and enjoins it from acquiring any ownership interest in British Timken or French Timken by purchase or acquisition of assets or securities or through the exercise of any option, and from exercising any authority or control over the sale or other business policies of British Timken or French Timken.

15. This Court has jurisdiction to ask leave of the Supreme Court of the United States to consider the defendant's motion that this Court receive additional evidence in the respects above set forth, determine the legal questions presented by reason of the change of circumstances as to stock ownership and control of the defendant in British Timken and French Timken, respectively, and reconsider

its final judgment herein, and, if leave be granted, to proceed so to do, by virtue of the decisions and holdings of the Supreme Court of the United States in *Roemer v. Simon*, 91 U. S. 149 and *Realty Acceptance Corporation v. Montgomery*, 284 U. S. 547, 551.

WHEREFORE, The Timken Roller Bearing Company, defendant in this Court, appellant in the Supreme Court of the United States, respectfully moves this Court as follows:

1. That this Court make application to the Supreme Court of the United States for leave to consider the motion made by the defendant in the next succeeding paragraph hereof, and in connection therewith

(a) to receive evidence and insert it in the record in this cause;

(b) to consider such additional evidence and make its findings of fact and conclusions of law with respect thereto;

(c) to obtain, upon further application to the Supreme Court of the United States by this Court, a remittitur of all or so much of the record in this cause now filed in the Supreme Court of the United States as this Court may deem necessary to further consideration of this cause in the light of such additional evidence;

(d) to reconsider its final judgment herein and to relieve the defendant therefrom by vacation or modification thereof, if this Court shall deem such action just; and

(e) in the event that this Court shall not vacate its final judgment herein, to certify such proceedings had pursuant to this motion to the Supreme Court of the United States for inclusion as part of the record on appeal in that Court in this cause.

2. That this Court, upon receiving leave from the Supreme Court of the United States, proceed further in this cause:

(a) to receive and insert in the record in this cause evidence that Michael B. U. Dewar died at the age of 64 on December 21, 1950, after the appeal from this Court to the Supreme Court of the United States had been perfected;

(b) to receive and insert in the record in this cause evidence that the defendant proposes to exercise, as soon as may be practicable, its rights under the option agreements hereinbefore described and thereby to acquire 94,960 ordinary shares of the stock of British Timken, and shares carrying one vote in French Timken, or part or all of the shares of French Timken now owned by the Lux Company if the same shall be offered to the appellant;

(c) to receive and insert in the record in this cause any other evidence offered by the parties which the Court shall deem competent, relevant and material;

(d) to consider such new and additional evidence described in subparagraphs (a) through (c) of this paragraph 2, and determine the legal questions presented by the change of circumstances resulting from the death of Dewar and the exercise by the defendant of the options hereinbefore described, and make its findings of fact and conclusions of law with respect thereto;

(e) to reconsider its final judgment herein and to relieve the defendant therefrom by the vacation thereof, or, in the event that the Court shall not vacate the same, by modification thereof to eliminate the provisions of Sections IV and VIII thereof which adversely affect the rights of the defendant as specified in paragraph 14 hereof, or otherwise as may to the Court seem appropriate; and

(f) in the event that this Court shall not vacate its final judgment herein, to certify such proceedings

had pursuant to this motion to the Supreme Court of the United States for inclusion as part of the record on appeal in that Court in this cause.

LUTHER DAY,
1759 Union Commerce Building,
Cleveland, Ohio,
JOHN G. KETTERER,
First National Bank Building,
Canton, Ohio,
Attorneys for Defendant-Appellant, The Timken Roller Bearing Company.

Notice of Motion.

To Philip B. Perlman, Solicitor General of the United States,
Washington, D. C.

Robert B. Hummel, Chief,
Great Lakes Division,
Antitrust Division,
Department of Justice of the United States,
905 Public Square Building,
Cleveland, Ohio.

Please take notice that The Timken Roller Bearing Company, defendant in Civil Action No. 24,214 in the District Court of the United States for the Northern District of Ohio, Eastern Division, entitled *United States of America vs. The Timken Roller Bearing Company,* and appellant in said cause on appeal in case No. 352 on the docket of the Supreme Court of the United States, entitled *The Timken Roller Bearing Company vs. The United States of America,* has filed the foregoing motion in the above entitled case that the District Court of the United States for the Northern District of Ohio, Eastern Division, ask leave of the Supreme Court of the United States to consider defendant's

motion that the said Distfict Court receive additional evidence and reconsider its final judgment therein, and, if leave be granted, that the District Court proceed so to do, because of changed circumstances due to the death of Michael B. U. Dewar since the perfection of the appeal in said cause to the Supreme Court of the United States, and that the same will be on for hearing before the Honorable Emerich B. Freed, Judge of the District Court of the United States for the Northern District of Ohio, Eastern Division, Federal Building, Cleveland, Ohio, on the 5th day of February, 1951, at 10:00 o'clock, or as soon thereafter as such motion can be heard.

LUTHER DAY,
JOHN G. KETTERER,
Attorneys for Defendant-Appellant, The Timken Roller Bearing Company.

Service of Motion.

Copies of the foregoing motion, notice of motion, and statement of reasons in support thereof were served upon counsel for the plaintiff-appellee in the above entitled cause by depositing in the mail copies thereof addressed to Philip B. Perlman, Solicitor General of the United States, Washington, D. C., and Robert B. Hummel, Chief, Great Lakes Division, Antitrust Division, Department of Justice of the United States, 905 Public Square Building, Cleveland, Ohio, on this 24th day of January, 1951.

LUTHER DAY,
JOHN G. KETTERER,
Attorneys for Defendant-Appellant, The Timken Roller Bearing Company.

STATEMENT OF REASONS SUPPORTING MOTION.

The Court will remember that Dewar, the English businessman who purchased British Timken in 1927 and caused the organization of French Timken in 1928, at the joint instance of himself and defendant, figured very prominently in the evidence when this case was tried on the merits. Much of the evidence introduced by the defendant was for the purpose of proving that Dewar and it, ever since their entering into the Heads of Agreement of May 16, 1927, contemplating the purchase of British Timken and other matters of a broad general nature, had maintained and carried out an arrangement in the nature of a joint venture between them for the purpose of developing the manufacture and sale of tapered roller bearings in defined foreign territory, and that British Timken and French Timken were the instrumentalities through which the joint venture was conducted. One of the defendant's principal contentions was that Dewar and it could lawfully cause arrangements to be made between the foreign Timken companies and the defendant by which the latter, by reason of the joint venture, agreed not to compete with them and they, in turn, not to compete with the defendant.

On December 21, 1950 Dewar died, and it is quite obvious that his death radically changed all of the foregoing situation, and is a fact which, therefore, should appear in the record on appeal to the Supreme Court. This case can no longer be briefed or argued properly, upon the now existing state of facts, on the same basis as that which obtained in this Court before Dewar died.

Moreover, as the motion shows, one provision of the agreement pursuant to which the joint venture has been carried on, was that, upon Dewar's death, the defendant should have the right to acquire control of both British Timken and French Timken by the exercise of the options specifically described in our motion. That which was merely a remote possibility in this regard at the time of the

trial and disposition of this case in this Court has now become a fact. We believe that this Court may wish to reconsider particularly, as requested by the defendant, that portion of its judgment in which it decreed that the defendant should divest itself of all interest in British Timken and French Timken, respectively, and should acquire no further interest therein. After all, it is necessary and usual for American manufacturers to conduct their foreign operations in the principal European countries, including those composing the British Empire, through local subsidiaries, either wholly or partly owned, and this Court may desire to consider whether or not it should afford to the defendant that privilege now that it is potentially the majority owner of both British Timken and French Timken. This was done in *United States v. National Lead Company*, 63 F. S. 513 (S. D. N. Y., 1945) aff'd. *United States v. National Lead Co.*, 332 U. S. 319, in which the court gave National Lead Company the option of either disposing of its stock in certain foreign corporations jointly owned by it and its adjudged co-conspirators, or acquiring the stock of the latter therein.

In any event, it would be in the interest of justice to enable the defendant to insert in the record the facts as to Dewar's death, the exercise of the options by it, and any other competent, relevant and material evidence bearing on this question which this Court might see fit to receive, for the purpose of enabling the Supreme Court on appeal to determine the nature of the relief which should be granted to the plaintiff, assuming that the judgment of this Court on the merits of the case is affirmed.

This motion, of course, is unusual in nature, in that we are asking that the District Court take action in a case which is pending on appeal in the Supreme Court. However, an extended examination of the authorities has revealed that this procedure is authorized and approved by the Supreme Court under circumstances of the nature here present.

In *Roemer v. Simon*, 91 U. S. 149, the appellant presented in the Supreme Court a petition supported by affidavits, stating, in substance, that material evidence previously unknown to him had been discovered since perfection of his appeal from a decree dismissing his bill for an injunction and an accounting resulting from alleged patent infringement. He moved that leave be granted him to give to the appellees the requisite notice of a further motion for a rule requiring them to show cause why the Supreme Court should not remit the record to the Court below for a rehearing of the case. The Supreme Court denied the motion stating (p. 150):

> "It is clear that, after an appeal in equity to this Court, we cannot, upon motion, set aside a decree of the court below, and grant a rehearing. *We can only affirm, reverse or modify the decree appealed from, and that upon the hearing of the cause. No new evidence can be received here.*[1] Rev. Stat. § 698. The court below cannot grant a rehearing after the term at which the final decree was rendered. Equity Rule 88. It would be useless to remand this cause, therefore, as the term at which the decree was rendered has passed. *If the term still continued, the proper practice would be to make application to the court below for a rehearing, and have that court send to us a request for a return of the record, in order that it might proceed further with the cause.* Should such a request be made, we might, in a proper case and under proper restrictions, make the necessary order; but we cannot make such an order on the application of the parties. *The court below alone can make the request to us. The application of the parties must be addressed to that court, and not to us.*"

In *Realty Acceptance Corporation v. Montgomery*, 284 U. S. 547, the Supreme Court reaffirmed its position that the action must be initiated in the first instance in the District Court. In that case, the Circuit Court of Appeals af-

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[1] Emphasis throughout is supplied unless otherwise indicated.

firmed a judgment of the District Court against the defendant for breach of a contract of employment after the expiration of the term in which the District Court had entered judgment against the defendant. After the affirmance, the appellant filed a motion for a rehearing and, before disposition thereof, presented to the appellate court a petition alleging that at the trial the plaintiff had failed to disclose certain earnings of which he had been in receipt which should have been taken into account in mitigation of damages, and that these facts had been discovered only after the perfection of the appeal. The petition prayed that the mandate of the Court of Appeals be stayed to afford the District Court opportunity, if it thought proper, to request the return of the record so that the judgment could be opened and that, if justice should so require, a new trial be granted on the issue of the amount of damages. This petition was granted and the District Court, on application of the appellant, requested the Court of Appeals to return the record, whereupon the latter court vacated its judgment affirming that of the District Court and dismissing the appeal, thus returning the record to the District Court, which then entertained a motion for a new trial, found the evidence newly discovered, set aside the judgment, and granted a new trial. On appeal, the Court of Appeals held that it should not have taken the action which it did, and reinstated the order affirming the original order of the District Court. The Supreme Court, on appeal, held that 28 U. S. C. A. § 876, which defined the appellate jurisdiction of the Court of Appeals as well as that of the Supreme Court, did not grant jurisdiction to the appellate courts to take action to reverse or modify their judgments where no error appeared in the record justifying modification or reversal, merely for the pupose of enabling the lower court to receive newly discovered evidence. The Court referred to *Roemer v. Simon*, 91 U. S. 149, *supra*, as supporting this proposition, and also the proposition that

"if the term had not expired the appellate court might in a proper case, upon request of the court below, return the record, for the opening of the decree and for rehearing" (p. 551). The Supreme Court also held that by rescinding its affirmance of the judgment and dismissing the appeal, the Circuit Court of Appeals ended the case in that court, and deprived itself of all power to add to or alter the record as certified, and "Since there was no case pending power was wanting to make any power granting leave to the court below for any purpose. The attempt by remanding the record with leave to the court below to take action *which would otherwise have been beyond its power* left the matter precisely as if no such order had been made." (p. 552.)

That under the present rule this Court does have power to act as requested by the defendant is shown by our discussion of Rule 60(b) and 6(c), Rules of Civil Procedure, later herein, so that an order of the Supreme Court permitting this Court to act would not be contrary to the decisions in the above cases.

This method of procedure has been recognized as appropriate in *Chisholm-Ryder Company v. Buck*, 65 F. (2d) 735 (C. C. A. 4, 1933), in which the complainant in a patent infringement case on appeal presented to the Appellate Court a motion to receive and consider as a part of the record a certain patent, and the court held it had no jurisdiction to take further proof or to set aside a judgment of the District Court for that purpose, if no error appeared in the record, following *Realty Acceptance Corporation v. Montgomery*, 284 U. S. 547, *supra;* and *In Re Robertshaw*, 75 F. (2d) 203 (Court of Customs and Patent Appeals, 1935), in which the court denied a motion to remand which was joined in by the Commissioner of Patents, in order to enable the patent office to declare an interference between two applications for patents which should have been declared but was not, and to enable the Commissioner of Patents to take proper action, on the ground that application should have been made to the patent office alone to send

to the Court of Appeals a request for return of the record in accordance with the practice laid down in *Roemer v. Simon*, 91 U. S. 149, *supra*; and in *Hall v. United States*, 78 F. (2d) 168 (C. C. A. 10, 1935).

The Court will observe that the motion in the case at bar does not ask that this Court seek to obtain a return of the record from the Supreme Court unless, and until, this Court shall determine whether it is necessary to consider the record, in whole or in part, to determine what action to take in connection with this supplemental proceeding. The authority for this refinement of the rule laid down in *Roemer v. Simon*, 91 U. S. 149, *supra*, is found in *Baltimore S. S. Company v. Phillips*, 9 F. (2d) 902 (C. C. A. 2, 1925), in which the District Court, on motion of the plaintiff therein, and after the appellant had appealed from an adverse judgment, requested the Circuit Court of Appeals to remit the record in connection with a motion in the District Court by the appellant for reargument of the case. The record was remitted and the District Court vacated its judgment and set the cause down for trial. Appealing to the Court of Appeals from a judgment for the plaintiff, the defendant contended that the District Court had no jurisdiction to vacate the judgment of dismissal of the complaint. The Court, after referring to *Roemer v. Simon*, *supra*, as stating the proper practice, said (p. 903):

> "Of course, the appellant may always move to dismiss his appeal (Greene v. United, etc., Co., 124 F. 961, 60 C. C. A. 93 (C. C. A. 1)), and no request is necessary for that purpose. But in so doing he risks all on his cast in the District Court, for it may be too late after decision for a new appeal. Similarly, if on the appellant's motion the District Court asks for a remittitur before deciding the motion, as was apparently the case in Mossberg v. Nutter, 124 F. 966, 60 C. C. A. 98 (C. C. A. 1), and as the District Court did in the case at bar. *The safest way is for the District Court, if disposed to entertain the motion at all, to ask leave of this court to do so. If this is given, it may proceed, the appeal*

> *still pending. Should it decide to reopen, it may then request remittitur; and the appellant will have risked nothing.* This was the course approved by the Circuit Court of Appeals for the Sixth Circuit in Meccano v. Wagner (C. C. A.) 235 F. 890, and we also approve it. Sundh Elec. Co. v. Cutler-Hammer Mfg. Co., 244 F. 163, 170, 171, 156 C. C. A. 591."

See also *Thomas & Betts v. Electrical Fitting Corporation,* 25 Fed. Supp. 173 (D. C. S. D. N. Y. 1938), and *United States v. Newbury Manufacturing Company,* 123 F. (2d) 453 (C. C. A. 1, 1941).

Authority for the retention of the appeal by the Appellate Court while this Court is considering additional evidence is found in *Jensen v. New York Life Insurance Company,* 50 F. (2d) (C. C. A. 8, 1931), 59 F. (2d) 957. In that case the insurance company sued in the Federal District Court to cancel a policy, and Jensen plead in abatement that an action involving the same issue,—as to whether the insurance ever took effect,—was pending in a State Court, and had been decided in favor of Jensen, and was pending on appeal in the State Supreme Court. The plea in abatement was overruled, and the Federal Court decided the case in favor of the insurance company. On appeal, it was made known to the Federal Circuit Court of Appeals that the decision in favor of Jensen in the State Court had been affirmed by the State Supreme Court. The Circuit Court of Appeals decided that it was important that this fact should be in the record in order to enable it to determine properly the question of the effect of the judgment in the State Supreme Court, which, of course, was contrary to that of the Federal District Court. The Court stated that it might (1) affirm the decree without prejudice to an original suit by the plaintiff to set aside the decree in Federal Court because of the final judgment in the State Court; (2) reverse the decree and remand the cause to the District Court for further pleadings and proceedings; or (3) "follow one of the different methods of

procedure shown in" various decisions "following an expression in *Roemer v. Simon*" (p. 515). The court then stated (p. 515):

> "Still another course is open: To retain the present appeal in this court, but remand the cause to the trial court and grant leave to Jensen to apply to that court to reopen the case for the filing of a supplemental pleading and the introduction of evidence on the issue as to the effect of the judgment in the state court.
>
> "The cause can again be brought to this court on appeal from the later decree entered on the supplemental issue, and this court can then determine the whole cause, whether based upon the original or the later decree. Such a course has obvious advantages. It disposes of the whole cause in one suit; and it does away with the necessity of retrying, in the District Court, issues already adjudicated by a decree. It obviates the necessity of passing upon the question of the merits of the suit at this time, a question which may possibly not be necessary for this court to pass upon at all."

The Court then referred to certain other decisions in which somewhat similar procedure had been adopted, and then stated (p. 515):

> "We think the procedure last above outlined as approved by this court should be followed in the case at bar; especially so, as the matters which it is sought to bring to the attention of the court have occurred subsequent to the taking of the present appeal.
>
> "An order will, accordingly, be entered that leave is hereby granted to appellants, defendants below, to make a motion to the United States District Court below to open the case and allow reframing of the pleadings so as to present the issue of the existence of the alleged final judgment in the state court, and the effect thereof upon the suit in the federal court; and leave is hereby granted to said United States District Court to hear, consider, and decide such motion; and if, upon consideration of the evidence and the arguments of the respective parties on that motion, said United

States District Court decides to grant said motion, then thereafter to admit such competent and relevant evidence as any of the parties to this suit may present relative to the existence of the alleged final judgment in the state court, and the effect thereof upon the present cause in the federal court; and thereafter to consider and determine the case upon the record thereof thus supplemented. Meanwhile, the present appeal will remain in this court."

The case was retried, and before it was decided on the second appeal the Supreme Court of the United States decided the cause of *Realty Acceptance Corporation v. Montgomery*, 284 U. S. 547, *supra*. In the *Jensen* case on the second appeal, *Jensen v. New York Life Insurance Company*, 59 F. (2d) 957, the court pointed out that when it remanded the case, as previously outlined, the term of court in which the District Court had entered its decree had ended, and held that, in view of the Supreme Court's decision in *Realty Acceptance Corporation v. Montgomery, supra*, it had exceeded its jurisdiction because "the district court was without power to grant a rehearing after the term in which the decree was entered" and "this court was without authority to grant a remand for that purpose" (p. 960).

However, it would seem that the *Jensen* case is still authority for retention by the Appellate Court of the appeal pending original application in the District Court for relief pursuant to the procedure outlined in *Roemer v. Simon, supra*. Somewhat similar procedure was adopted in *Levinson v. United States*, 32 F. (2d) 449 (C. C. A. 6, 1929), in which the Circuit Court of Appeals, on motion to remand the appeal in order to permit the appellant, who was convicted of a crime, to file a motion for a new trial in the District Court on the ground of evidence of misconduct in connection with the trial, discovered shortly after the appeal was taken, instead retained the appeal, extending the time for making return to the appeal and permitting

the motion for a new trial to be heard by the District Court. The Court said (p. 450):

> "For the reasons stated, we think the motion should be heard on its merits, but we see no occasion for suspending the appellate proceedings except to direct that the time for making return to the appeal be extended until the 1st of June. We assume that the motion will be heard without delay. If granted, and that event is certified to us, the appeal will be dismissed; if denied and appellant conceives that the denial is legally erroneous because beyond the court's discretion, he may include such matter in the return, with amended allegations of error thereon.
>
> "Of course we intimate no opinion as to whether the motion should be granted; we only permit it to be entertained by the trial court as if the appeal had not been made. Upon such motion, the trial court will consider only these two new grounds. As to all the others, appellant, by appealing, deliberately waived his right to make the motion."

It is to be observed that the difficulty which prevented the courts in *Roemer v. Simon*, *Realty Acceptance Corporation v. Montgomery*, and *Jensen v. New York Life Insurance Co.*, *supra*, from taking any action at all, namely, that the term of the District Court at which the judgment had been entered had expired, does not exist in the case at bar. Rule 60(b) of the Federal Rules of Civil Procedure provides in material part:

> "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or dis-

charged, or a prior judgment upon which it is based has been reversed or otherwise vacated, *or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.* The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. * * *"

The emphasized language indicates the portion of the rule which confers power upon this Court to reconsider its final judgment. It is stated in the comments of the rules committed with respect to these portions of Section 60(b):

"* * * Clause (5) further permits relief on the basis that '*it is no longer equitable that the judgment should have prospective application.*' The chief application of this provision will be to a permanent injunction, which, while proper when entered, has become of no use or benefit to the one whose rights were protected, *or where it would be inequitable to continue it, because of the occurrence of facts and conditions since its rendition,* and the decree should accordingly be modified or vacated. Moore and Rogers, Federal Relief from Civil Judgments (1946) 55 Yale J. L. 623, 643."

"Clause (6), which is also new, is likewise not subject to any definite time limit, and is a statement of residual power in the court. Since the intendment of Rule 60(b) is that the rule be inclusive, some statement of residual power was necessary."

Moreover, the ending of the term in which the final judgment in the case at bar was entered does not affect the defendant's right to seek reconsideration of the Court's final judgment pursuant to Rule 60(b), for Rule 6(c) provides as follows:

"The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration

of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it."

In conclusion, for the reasons stated, we submit that the foregoing motions should be granted.

Respectfully submitted,

LUTHER DAY,
JOHN G. KETTERER,

Attorneys for Defendant-Appellant,
The Timken Roller Bearing Company.

EXHIBIT B.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

No. .....

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE TIMKEN ROLLER BEARING COMPANY,
Defendant.

FREED, *J.*—Wednesday, Feb. 14, 1951.

The Court: I want to say to you gentlemen this. I think all of you undoubtedly know what the situation as to the work has been in this court. We have finally reached a point where a judge will be here and we at least see daylight. Now, I can not hope to take this matter up before I dispose of numerous other matters that have been submitted to me before. The only reason I mention that is because it was indicated by Mr. Epes that this matter is about to be set for hearing in the Supreme Court.

As much as I would like to do it, I think other litigants are entitled to have their matters decided in the order in which they were presented. I am in a position where I have so many submissions that it will take me at least three or four weeks before I can get out from under those. I do want you to know that I can not see my way clear to give this one the green light and make those other litigants wait their turn, particularly in view of the fact that this was filed subsequent to those other matters. If it should interfere with the hearing in the Supreme Court I think some arrangement should be made between you to permit this court to consider this motion.

I do want you to know that. I don't know what your desires are. I don't know how important it is to either side to have the matter immediately heard, but it will take me at least thirty days or more to get to this matter. I want you to know, I can't avoid it. It is something that I can't help.

Mr. Ketterer: Well, I don't think that is going to raise any particular problem, your Honor. I mean if that matter is brought to the attention of the Supreme Court I am quite sure they won't raise any problem on that point.

The Court: Is the Government going to object to making some arrangement with the clerk of the Supreme Court on the matter of the hearing of this case?

Mr. Epes: Of course, your Honor, the Government has been anxious to have this case heard in the Supreme Court this term.

The Court: I understood that. That's the only reason I mentioned it to you.

Mr. Epes: Yes.

The Court: But, at the same time, I don't ever want to pass on any matter, gentlemen, unless I give it careful consideration. I don't want to pass on this matter from the bench. You have searched the law, you have devoted a lot of time to it, you have seen fit to file briefs consisting of 20 some pages for each side; the Timken Roller Bearing Company's counsel wish to file a reply brief. I think this Court would be derelict in its duty if it passed on the matter without examining it. I want to examine your briefs and be given an opportunity to study it. I can't pass on it so as to expedite the matter that you want heard. If you think it is that important, I don't know what I can do about it.

Mr. Epes: Well, what is your Honor's suggestion as to the—

The Court: I haven't any. I'm leaving it entirely in your hands, in counsel's hands. All I can say to you is what I have already indicated. I didn't create this situa-

tion of having a court of two judges attempting to carry on the work of this entire district, it wasn't my doing. I think the litigants who have filed briefs and have presented matters to me two or three months ago are entitled to have their cases decided, and I don't think I have any right to say to them, "You wait until I decide the Timken case." I can't do that, and I don't think it is a fair way of disposing of these cases.

Mr. Epes: Your Honor, I appreciate your position entirely and, as I understand what you are saying, you will possibly not get to this for thirty days.

The Court: That's right.

Mr. Epes: And you feel you must read the twenty-page briefs that each side has filed.

The Court: I am not just going to read the briefs, but I want to see the cases.

Mr. Epes: In other words, it will be a number of weeks before we can expect a decision from your Honor?

The Court: Yes. I want you to know that very definitely, because I think it would be unfair to both sides if I didn't tell you.

Mr. Epes: Well, I think possibly, since that is the fact, and I think your Honor is absolutely correct in taking that position, possibly the best thing is for counsel to discuss what we will do in the Supreme Court.

The Court: That's up to you gentlemen.

Mr. Epes: We have got your Honor's position and I think possibly, if we have to do it, we can reach some conclusion.

Certificate.

I, A. V. Jarvela, Official Court Reporter for the United States District Court, Eastern Division, Northern District of Ohio, do hereby certify that the above and foregoing is a true and accurate transcript.

A. V. JARVELA,

Official Court Reporter.

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CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1950.

No. 352

THE TIMKEN ROLLER BEARING COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION.

MOTION OF APPELLANT FOR INCORPORATION OF ADDITIONAL PROCEEDINGS IN THE DISTRICT COURT IN THE RECORD ON APPEAL.

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Counsel for Appellant.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-5647

In the Supreme Court of the United States

OCTOBER TERM, 1950.

No. 352

THE TIMKEN ROLLER BEARING COMPANY,
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vs.

THE UNITED STATES OF AMERICA,
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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION.

MOTION OF APPELLANT FOR INCORPORATION OF ADDITIONAL PROCEEDINGS IN THE DISTRICT COURT IN THE RECORD ON APPEAL.

Now comes the appellant and says that on January 24, 1951, it filed a motion in the District Court of the United States for the Northern District of Ohio, Eastern Division, which entered the final judgment in this case from which this appeal is taken, asking that court to ask leave of this Court to consider this appellant's motion, made contemporaneously therewith, that the District Court receive additional evidence and reconsider its final judgment in this case because of changed circumstances due to the death of Michael B. U. Dewar since the perfection of this appeal, and that on April 10, 1951 said motion was overruled by order of the District Court.

True and full copies of said motion and the order of the District Court overruling the same, duly certified to be such by the Clerk of the District Court, are attached hereto.

The appellant respectfully moves that said motion of the District Court in this case and the District Court's order with respect thereto, be made a part of the record in this case on appeal in this Court.

LUTHER DAY,
JOHN G. KETTERER,
Counsel for Appellant.

Civil Action No. 24,214.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE TIMKEN ROLLER BEARING COMPANY,
Defendant.

MOTION BY THE TIMKEN ROLLER BEARING COMPANY, DEFENDANT IN THIS COURT, APPELLANT IN THE SUPREME COURT OF THE UNITED STATES, THAT THIS COURT ASK LEAVE OF THE SUPREME COURT OF THE UNITED STATES TO CONSIDER DEFENDANT'S MOTION THAT THIS COURT RECEIVE ADDITIONAL EVIDENCE AND RECONSIDER ITS FINAL JUDGMENT HEREIN AND, IF LEAVE BE GRANTED, THAT THIS COURT PROCEED SO TO DO, BECAUSE OF CHANGED CIRCUMSTANCES DUE TO THE DEATH OF MICHAEL B. U. DEWAR SINCE THE PERFECTION OF AN APPEAL HEREIN TO THE SUPREME COURT OF THE UNITED STATES.

NOW PENDING ON APPEAL IN THE SUPREME COURT OF THE UNITED STATES.

The Timken Roller Bearing Company, defendant in this Court, appellant in the Supreme Court of the United States (hereinafter styled "the defendant"), in support of its motion that this Court ask leave of the Supreme Court of the United States to consider defendant's motion that this Court receive additional evidence and reconsider its final judgment herein and, if leave be granted, that this Court proceed so to do, because of changed circumstances due to the death of Michael B. U. Dewar since the perfection of an appeal herein to the Supreme Court of the United States, respectfully shows to the Court as follows:

1. Michael B. U. Dewar died in England on December 21, 1950 at the age of 64. He and his acts and agreements with the defendant and others figure prominently and are mentioned frequently in the record, and in the memorandum opinion of this Court in this cause, which was tried throughout and decided upon the basis that Dewar was alive.

2. The final judgment in this cause was appealed to the Supreme Court of the United States on the 28th day of July, 1950, and is now pending on appeal in that Court, being cause No. 352 therein. The appeal was perfected before Dewar died.

3. At the time Dewar died, to wit, on December 21, 1950, he owned approximately 23.74 per cent, consisting of 94,960 ordinary shares, of the issued and outstanding stock of British Timken, Ltd. (hereinafter called "British Timken"), a British corporation engaged in the manufacture of anti-friction bearings, all of the stock of which was acquired jointly by Dewar and the defendant in 1927. At the time of Dewar's death, and at the present time, the defendant owned, and owns, approximately 30.26 per cent, consisting of 121,040 ordinary shares, of the stock thereof. The above described ordinary shares owned by the defendant and by Dewar's estate constitute approximately 54 per cent of the ordinary shares of stock of British Timken, the vote of which is entitled to control its affairs in the absence of default by it with respect to its preferred stock requirements. At the time Dewar died, and at the present time, there was, and is, in full force and effect an agreement between him and the defendant made March 22, 1948 (the latest of a series of agreements which carried out the fundamental agreement to the same effect made in 1927), by virtue of which the defendant now has the option to purchase all or any of the 94,960 ordinary shares in British Timken belonging to Dewar, exercisable at any time during a period of six months from and after Dewar's death by notice in writing served upon the holders of such 94,960 ordinary shares within the period of six months during which the option is

exercisable, at a price agreed upon by the parties, or, failing agreement, at the average price of similar shares of British Timken on the London Stock Exchange over a period of thirty days immediately preceding the date on which the option became exercisable, namely, Dewar's death on December 21, 1950.

4. At the time Dewar died on December 21, 1950, and at the present time, the defendant owned, and now owns 50 per cent, consisting of 40,000, and La Reunion Industrielle Societe Anonyme (hereinafter called the Lux Company, a company incorporated in Luxembourg, all of the shares of which have been owned directly or indirectly by Dewar) owned, and now owns, the other 50 per cent, consisting of 40,000, of the issued and outstanding ordinary 100 franc par shares of the stock of Societe Anonyme Francaise Timken (hereinafter called "French Timken"), a French corporation engaged in the manufacture and sale of anti-friction bearings in France, which was organized at the joint instance of the defendant and Dewar in 1928 and has been jointly owned by them, or corporations owned by them, at all times thereafter. The votes of the above described ordinary shares of French Timken are entitled to control its affairs. The defendant and the Lux Company each own, also, 50 per cent of the issued and outstanding preferred stock and promissory notes of French Timken. By the terms of Section 5 (h) of an agreement entered into on or about the 11th day of December, 1935, by and between the defendant, the Lux Company, Frederick John Pashe (as trustee) and Dewar, it is provided that, upon the death of Dewar, the Lux Company, if so requested by the defendant, will cause one share or other holding of shares in French Timken carrying one vote, to be transferred to the defendant or its nominees at the par value of such share or holding, thus transferring voting control of French Timken to the defendant, and it is further provided, in section 6, that no share of French Timken owned or controlled by the defendant or the Lux Company at the date of

said agreement will be sold, transferred or otherwise disposed of unless it has been first offered for sale to the other party by notice in writing, the offer to remain open for acceptance by the party to whom it is made for ninety days after it is received by such party.

5. The defendant acquired 52½ per cent and Dewar 47½ per cent of the capital stock of British Timken in 1927, and the defendant and Dewar caused French Timken to be organized and each acquired, directly or indirectly, half of its ordinary shares, as above set forth, pursuant to a general arrangement in the nature of a joint venture between them by which, in substance, Dewar was to have control of the ordinary affairs of British Timken and French Timken during his lifetime and active participation in the management thereof while those companies made specified profits, and the defendant had the right to acquire complete control of each company in certain events, including Dewar's death, as aforesaid. This arrangement has continued from its inception in 1927 until the date hereof.

6. The defendant intends and proposes, as soon as may be practicable, to exercise its rights under the six months option granted to it by the terms of the aforesaid agreement relating to British Timken stock, and under the option to acquire voting control of French Timken granted to it by the terms of the aforesaid agreement relating to French Timken stock, and proposes to consider the purchase of the remainder of the stock of French Timken, if the same should be offered to it by the Lux Company for ninety days pursuant to the latter agreement. The defendant considers that it is free so to do without violating any of the provisions of this Court's final judgment in this cause, by virtue of its order entered July 28, 1950 allowing an appeal to the Supreme Court of the United States and staying the execution of said judgment pending the final disposition of said appeal, which order provides as to such stay that:

"* * * the execution against the above named defendant of all of the provisions of the Final Judgment entered

herein, and compliance by the defendant with said Final Judgment be and the same are, hereby suspended and stayed pending the hearing and final determination of this cause upon appeal."

7. Inasmuch as the time within which the defendant may give the required notices of its intention to exercise its respective options above described is limited as above set forth, it is imperative that it proceed with dispatch so to do for the reason that, if said options are not exercised by it within the times limited, and the final judgment of this Court is reversed or modified by the Supreme Court of the United States, and it is ultimately determined that the defendant may lawfully exercise said options and acquire the stocks covered thereby, it may sustain great and irreparable loss, in that the stock of either or both of British and French Timken, respectively, including the element of control incident thereto, may be sold to purchasers other than the defendant.

8. If the defendant exercises its option, hereinbefore described in paragraph 3, to acquire Dewar's ordinary shares in British Timken, it will be the owner of 216,000 ordinary shares of the stock of British Timken out of a total of 400,000 shares, and will be a majority and controlling shareholder of said corporation with the ensuing and attendant rights to exercise all of the powers vested in it as such.

9. If the defendant exercises its option, hereinbefore described in paragraph 4, to acquire the controlling share or shares in French Timken from the Lux Company it will be the majority and controlling shareholder of French Timken with the ensuing and attendant rights to exercise all of the powers vested in it as such, and if the Lux Company decides to sell its shares of French Timken, the defendant will have the right to become the owner of all of the stock of French Timken.

10. If the respective options above described are exercised by the defendant and as a consequence thereof, stock

interests in British Timken and French Timken, respectively, are acquired as above set forth, it will follow that the defendant will be a majority stockholder of both British and French Timken, respectively, and possibly the sole owner of French Timken, instead of a minority stockholder in British Timken and an equal stockholder with Dewar in French Timken, as it was before Dewar died.

11. The exercise by the defendant of the options to acquire Dewar's former stock interest in British Timken and French Timken, respectively, and the resulting changed and additional stock interest of the defendant therein will necessarily raise and present for determination legal questions which have not heretofore been considered nor decided by this Court, in the light of the changed circumstances, including particularly the question of whether the defendant should be permitted to conduct its operations in the British Empire and Europe through British Timken and French Timken, as majority owned subsidiaries, or, instead, be required to divest itself of all interest in those companies, as presently decreed by this Court.

12. It is in the furtherance of justice, in view of the fact that Dewar has died since the perfecting of the appeal to the Supreme Court of the United States in this cause, and the further fact that the defendant intends and proposes to exercise the options granted to it to acquire additional stock interests in British Timken and French Timken, respectively, as above set forth, that the record in this case be reopened by this Court for the purpose of permitting the defendant to introduce evidence of these facts and the new situation thereby created.

13. The taking of additional evidence in the respects above stated, will result in having the record in this cause disclose the facts as they now actually exist, and will thereby prevent unnecessary delay and prolixity in the final disposition of this cause both in this Court and on appeal in the Supreme Court of the United States.

14. It is no longer equitable, because of the occurrence of the death of Dewar and the perfection of the resulting rights in the defendant, all of which has occurred since the rendition of this Court's final judgment herein, that such final judgment should have prospective operation in certain respects, including particularly Section IV thereof which terminates, and restrains the defendant from further enforcing any of the provisions of the agreement dated March 22, 1948, between the defendant and Dewar which grants to the defendant the option to purchase Dewar's ordinary shares of stock in British Timken referred to in paragraph 3 hereof, and Section VIII thereof which requires the defendant to divest itself of all stock holdings and other financial interest, direct or indirect, in British Timken and French Timken, and enjoins it from acquiring any ownership interest in British Timken or French Timken by purchase or acquisition of assets or securities or through the exercise of any option, and from exercising any authority or control over the sale or other business policies of British Timken or French Timken.

15. This Court has jurisdiction to ask leave of the Supreme Court of the United States to consider the defendant's motion that this Court receive additional evidence in the respects above set forth, determine the legal questions presented by reason of the change of circumstances as to stock ownership and control of the defendant in British Timken and French Timken, respectively, and reconsider its final judgment herein, and, if leave be granted, to proceed so to do, by virtue of the decisions and holdings of the Supreme Court of the United States in *Roemer v. Simon*, 91 U. S. 149 and *Realty Acceptance Corporation v. Montgomery*, 284 U. S. 547, 551.

WHEREFORE, The Timken Roller Bearing Company, defendant in this Court, appellant in the Supreme Court of the United States, respectfully moves this Court as follows:

1. That this Court make application to the Supreme Court of the United States for leave to consider the motion

made by the defendant in the next succeeding paragraph hereof, and in connection therewith

(a) to receive evidence and insert it in the record in this cause;

(b) to consider such additional evidence and make its findings of fact and conclusions of law with respect thereto;

(c) to obtain, upon further application to the Supreme Court of the United States by this Court, a remittitur of all or so much of the record in this cause now filed in the Supreme Court of the United States as this Court may deem necessary to further consideration of this cause in the light of such additional evidence;

(d) to reconsider its final judgment herein and to relieve the defendant therefrom by vacation or modification thereof, if this Court shall deem such action just; and

(e) in the event that this Court shall not vacate its final judgment herein, to certify such proceedings had pursuant to this motion to the Supreme Court of the United States for inclusion as part of the record on appeal in that Court in this cause.

2. That this Court, upon receiving leave from the Supreme Court of the United States, proceed further in this cause:

(a) to receive and insert in the record in this cause evidence that Michael B. U. Dewar died at the age of 64 on December 21, 1950, after the appeal from this Court to the Supreme Court of the United States had been perfected;

(b) to receive and insert in the record in this cause evidence that the defendant proposes to exercise, as soon as may be practicable, its rights under the option agreements hereinbefore described and thereby to acquire 94,960 ordinary shares of the stock of British Timken, and shares carrying one vote in French Tim-

ken, or part or all of the shares of French Timken now owned by the Lux Company if the same shall be offered to the appellant;

(c) to receive and insert in the record in this cause any other evidence offered by the parties which the Court shall deem competent, relevant and material;

(d) to consider such new and additional evidence described in subparagraphs (a) through (c) of this paragraph 2, and determine the legal questions presented by the change of circumstances resulting from the death of Dewar and the exercise by the defendant of the options hereinbefore described, and make its findings of fact and conclusions of law with respect thereto;

(e) to reconsider its final judgment herein and to relieve the defendant therefrom by the vacation thereof, or, in the event that the Court shall not vacate the same, by modification thereof to eliminate the provisions of Sections IV and VIII thereof which adversely affect the rights of the defendant as specified in paragraph 14 hereof, or otherwise as may to the Court seem appropriate; and

(f) in the event that this Court shall not vacate its final judgment herein, to certify such proceedings had pursuant to this motion to the Supreme Court of the United States for inclusion as part of the record on appeal in that Court in this cause.

/s/ LUTHER DAY,
LUTHER DAY,
1759 Union Commerce Building,
Cleveland, Ohio,

/s/ JOHN G. KETTERER,
JOHN G. KETTERER,
First National Bank Building,
Canton, Ohio,

Attorneys for Defendant-Appellant,
The Timken Roller Bearing Company.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF OHIO, SS.:

I, C. B. WATKINS, Clerk of the United States District Court in and for the Northern District of Ohio, do hereby certify that the annexed and foregoing is a true and full copy of the original Motion by The Timken Roller Bearing Company, Defendant in this Court, Appellant in the Supreme Court of the United States, that this Court ask leave of the Supreme Court of the United States to consider Defendant's motion that this Court receive additional evidence and reconsider its Final Judgment herein and, if leave be granted, that this Court proceed so to do, because of changed circumstances due to the death of Michael B. U. Dewar since the perfection of an appeal herein to the Supreme Court of the United States now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Cleveland, Ohio this 17th day of April, A. D. 1951.

C. B. WATKINS,
Clerk.
By JAMES P. RAINEY,
Deputy Clerk.

(Seal)

Civil Action No. 24,214.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE TIMKEN ROLLER BEARING COMPANY,
Defendant.

ORDER ON MOTION BY THE TIMKEN ROLLER BEARING COMPANY, DEFENDANT IN THIS COURT, APPELLANT IN THE SUPREME COURT OF THE UNITED STATES, THAT THIS COURT ASK LEAVE OF THE SUPREME COURT OF THE UNITED STATES TO CONSIDER DEFENDANT'S MOTION THAT THIS COURT RECEIVE ADDITIONAL EVIDENCE AND RECONSIDER ITS FINAL JUDGMENT HEREIN AND, IF LEAVE BE GRANTED, THAT THIS COURT PROCEED SO TO DO, BECAUSE OF CHANGED CIRCUMSTANCES DUE TO THE DEATH OF MICHAEL B. U. DEWAR SINCE THE PERFECTION OF AN APPEAL HEREIN TO THE SUPREME COURT OF THE UNITED STATES.

(Filed April 10, 1951.)

The instant motion was submitted to the Court on oral arguments and extensive briefs of the respective parties.

It is urged that the change of circumstances which developed since the cause was heard should prompt this Court to request the Supreme Court for permission to hear new evidence, make additional findings of fact and state its conclusions of law and determine the effect of the changed factual situation on the decision heretofore rendered.

Defendant points out that Michael B. U. Dewar died in December, 1950. During his lifetime (and at the time of trial), he owned 23.74 per cent of the stock of British

Timken, Limited. Defendant had at the time of trial and now has the option to purchase this stock as well as stock in French Timken, all of which would give defendant a controlling interest in British Timken and possibly the outright ownership of French Timken. Defendant recently indicated to the proper parties its desire to exercise the option.

After due consideration, the Court is of the opinion, in the light of the facts and on the evidence developed at the time of trial, that the reasons advanced in support of the motion warrant neither the re-examination of the final judgment in respect of the finding of violation of the Sherman Anti-trust Act nor the reconsideration of the relief which this Court regards as essential and necessary to remove the existing impediments to competition.

IT IS THEREFORE ORDERED that the motion be and is hereby overruled.

FREED,

United States District Judge.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF OHIO, SS.:

I, C. B. WATKINS, Clerk of the United States District Court in and for the Northern District of Ohio, do hereby certify that the annexed and foregoing is a true and full copy of the original Order on Motion by The Timken Roller Bearing Company, Defendant in this Court, Appellant in the Supreme Court of the United States, that this Court ask leave of the Supreme Court of the United States to consider Defendant's motion that this Court receive additional evidence and reconsider its Final Judgment herein and, if leave be granted, that this Court proceed so to do, because of changed circumstances due to the death of Michael B. U. Dewar since the perfection of an appeal herein to the Supreme Court of the United States now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Cleveland, Ohio this 17th day of April, A. D. 1951.

C. B. WATKINS,
Clerk.

By JAMES P. RAINEY,
Deputy Clerk.

(Seal)